

GENERAL BYLAWS - TREE PRESERVATION BYLAW

ARTICLE 10

Lead Petitioners: Joslin Murphy (TMM P16), John Harris, (TMM P8); Co-Petitioners: Olivia Fischer Fox, Richard Murphy (TMM P16), Hugh Mattison (TMM P5).

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To see whether the Town will vote to amend the Town’s General Bylaws by adding a new Tree Preservation Bylaw, as follows:

ARTICLE X.XX: TREE PRESERVATION BYLAW

X.XX.1. PURPOSE: The intent of this Tree Preservation Bylaw is to encourage the preservation and protection of certain trees in connection with significant demolition and/or construction activity by designating areas of a lot where trees must be protected, and by requiring mitigation for trees that are removed by either the replanting of trees or the collection of fees to support the Town’s tree planting and maintenance efforts.

X.XX.2. DEFINITIONS: For the purposes of this Tree Bylaw, the following definitions shall apply:

2.1 Caliper: Diameter of a tree trunk (in inches). For trees up to and including four (4) inches in diameter, the caliper is measured six (6) inches above the existing grade at the base of the tree. For trees larger than four (4) inches in diameter, the caliper is measured twelve (12) inches above the existing grade at the base of the tree.

2.2 Certified Arborist: A professional arborist possessing current certification issued by the International Society of Arboriculture (I.S.A.) and/or the Massachusetts Arborist Association (M.A.A.).

2.3 Diameter at Breast Height (DBH): The diameter of a tree trunk at four and one-half (4.5) feet above the existing grade at the base of the tree. If a tree splits into multiple trunks below four and one-half (4.5) feet above the existing grade, the DBH shall be considered to be the measurement taken at the narrowest point beneath the split.

2.4 Invasive Species: Any plant or tree listed on the most recent version of the Massachusetts Prohibited Plant List as published by the Massachusetts Department of Agriculture, or currently listed as “likely invasive” or potentially invasive” by the Massachusetts Invasive Plant Advisory Group (MIPAG).

2.5 Protected Tree: Any existing tree with a DBH of six (6) inches or greater that has any portion of its trunk within a Tree Yard at grade level. Invasive Species (as defined herein) shall not be considered Protected Trees.

2.6 Reviewing Agent: Any agent delegated in writing by the Commissioner of Public Works to administer and implement this Tree Protection Bylaw.

2.7 Tree Preservation Fund: An account established under this Bylaw pursuant to M.G.L. 44 § 53E½ for the deposit of permit application fees and contributions in lieu of tree replanting as required by this Tree Preservation Bylaw.

2.8 Tree Protection & Mitigation Plan: A plan submitted to the Reviewing Agent for approval prior to the commencement of demolition and/or construction on any property on which a Protected Tree is located.

2.9 Protected Tree Impact and Removal Permit: A permit issued by the Reviewing Agent prior to the commencement of demolition and/or construction on a property on which a Protected Tree is located.

2.10 Tree Removal: The mechanical destruction or demolition of a living tree, or any act (a) that has caused a tree to die within the previous 12 months or (b) is likely to cause significant decline or death as determined by the Reviewing Agent.

2.11 Tree Save Area: The minimum area beneath the canopy of the tree which must be left undisturbed in order to preserve a sufficient root mass to give the tree a reasonable chance at survival.

2.12 Tree Yard: The area of a lot (as “lot” is defined in Section 2.12 of the Zoning Bylaw) that is located within 20 feet of any property line.

X.XX.3. TOWN OF BROOKLINE TREE FUND: There is hereby established a Town of Brookline Tree Preservation Fund (“Tree Fund”) pursuant to M.G.L. 44 § 53E½. Any permit application fees or contributions collected per Section X.XX.5.2(b) of this Bylaw shall be deposited in the Tree Fund, and shall be expended by the Commissioner of Public Works solely for the purpose of purchasing, planting and maintaining trees within the Town and for the implementation of this Tree Protection Bylaw.

#### X.XX.4. SCOPE AND APPLICABILITY

4.1 Within all residential districts of the Town, it is prohibited to remove a Protected Tree without a Protected Tree Impact and Removal Permit during construction or within the 12 months prior to submitting an application for a demolition or building permit for: (a) demolition of an existing structure of 250 gross square feet or greater; (b) construction of any building or structure on a vacant lot; or (c) construction of one or more structures or additions to structures on a lot that increases the Gross Floor Area (GFA) by 50% or greater, as defined by Zoning Bylaw Section 2.07.1.

4.2 The requirements of this Bylaw shall not apply to: (a) those areas of property under the jurisdiction of the Wetlands Protection Act (Chapter 131 and 310 CMR); (b) Public Shade Trees pursuant to M.G.L. Chapter 87; (c) emergency projects necessary for public safety, health and welfare, as determined by the Reviewing Agent or the Town's Tree Warden; (d) trees severely damaged as the direct result of a natural disaster; (e) trees that are hazardous as determined and confirmed in writing by a Certified Arborist; or (f) trees currently infected by a disease or insect infestation of a permanent nature, as determined and confirmed in writing by a Certified Arborist.

#### X.XX.5. TREE PROTECTION & MITIGATION

5.1 Protection: Each Protected Tree without a Protected Tree Impact and Removal Permit to be retained on property that is planned for demolition and/or construction activity shall be protected by the establishment of a fenced-off Tree Save Area. The Tree Save Area shall be delineated within the submitted Tree Protection & Mitigation Plan, shall be installed prior to any demolition or site work, and shall remain in place until work is completed on the property, excluding final landscaping. The applicant shall submit written documentation, prepared, dated and signed by a certified arborist, registered land surveyor, or licensed architect, to the Reviewing Agent confirming that the required Tree Save Area has been installed as identified in the Tree Protection & Mitigation Plan before work on the property begins.

5.2 Mitigation: The removal of a Protected Tree(s) from a lot in connection with one or more of the circumstances set forth in Section X.XX.4.1 shall require mitigation based upon the aggregate DBH of Protected Trees removed. Mitigation shall be achieved by satisfying one or a combination of the following provisions:

(a) Replanting of Trees: For each inch of DBH of Protected Tree(s) removed, no less than one-half inch of caliper of new tree(s) shall be replanted subject to and in accordance with the following: (1) Each new tree must have a minimum caliper of at least three (3) inches; (2) Such replanting, either on the applicant's land or on land abutting the applicant's land with the express written approval of the owner of such abutting land, shall occur prior to the issuance of a Final Certificate of Occupancy, or be otherwise assured at such time to the satisfaction of the Reviewing Agent in a manner consistent with the Rules and Regulations established under this By-law; or

(b) Contribution to the Town of Brookline Tree Preservation Fund: The Commissioner of Public Works shall establish a Tree Fund contribution schedule, subject to approval by the Select Board, assigning a value not less than \$500.00 per inch of DBH of Protected Tree(s) to be removed and not otherwise mitigated. Such Tree Fund contributions shall be received by the Town prior to the issuance of all applicable permits. Mitigation measures shall be detailed in the submitted Tree Protection and Mitigation Plan. The

removal or proposed removal of a Protected Tree(s) that has been mitigated for, in conjunction with a previous applicable permit, shall not require any additional mitigation under subsequent permits, unless such mitigation has not been completed or otherwise assured to the satisfaction of the Reviewing Agent.

5.3 Unauthorized Removals: The removal of any Protected Tree without a Protected Tree Impact and Removal Permit that is not identified on the Tree Protection & Mitigation Plan shall require mitigation at the rate specified in Section X.XX.5.2. In addition, any person removing or causing to be removed any Protected Tree without a Protected Tree Impact and Removal Permit or not identified on the Tree Protection & Mitigation Plan in violation of this bylaw shall be subject to a non-criminal disposition fine as specified in Article 10.3 of the Town's General Bylaws of \$300 per Protected Tree, per day, until the mitigation required under Section X.XX.5.2 of this By-law is complete.

5.4 Plan Review and Permit Issuance:

(a) Tree Protection & Mitigation Plan Submittal: Prior to the issuance of a Protected Tree Impact and Removal Permit in connection with one or more of the circumstances set forth in Section X.XX.4.1 on property on which a Protected Tree is located or was located within twelve (12) months prior to application, the owner of the property shall submit a Tree Protection & Mitigation Plan to the Reviewing Agent along with the required permit application and application fee.

(b) Tree Protection & Mitigation Plan Requirements: The submitted Tree Protection & Mitigation Plan shall be a to-scale survey or site plan that indicates the applicable Tree Yard, existing improvements, proposed construction, Protected Trees, Tree Save Area and preservation and maintenance procedures in accordance with the Rules and Regulations in effect at the time. It must also specify any tree removals and proposed mitigation measures per Section X.XX.5.2.

(c) Re-Submittal: If demolition or construction has not commenced within twelve (12) months of the date that a Tree Protection & Mitigation Plan was submitted for a property, or if removal of a previously unidentified Protected Tree is necessary during the course of construction, an amended Tree Protection & Mitigation Plan shall be submitted along with the applicable fee identifying any changes from the previous plan and associated mitigation measures. If demolition and/or construction is not completed within 12 months of the date of the Reviewing Agent's initial inspection, an application for a permit extension and re-inspection fee shall be submitted. Additional permit extension applications and re-inspection fees shall be submitted every 12 months thereafter until demolition and construction is completed.

(d) Reviewing Agent Action: If the Tree Protection & Mitigation Plan is consistent with the protection and mitigation requirements contained herein and any established Rules

and Regulations, and applicable Tree Fund contributions have been submitted, the Reviewing Agent shall issue a Protected Tree Impact and Removal Permit and/or notify the appropriate Town Department. If the proposal does not meet or satisfy these requirements, the Reviewing Agent shall notify the applicant and withhold the Protected Tree Impact and Removal Permit until the requirements of this Bylaw are met. If the Reviewing Agent fails to act on an application within thirty (30) days after the application has been made, it shall be deemed to be approved.

#### 5.5 Maintenance of Protected and Replanted Trees:

(a) Protected Trees: Each Protected Tree retained shall be maintained in good health for a period of no less than twenty-four (24) months from the date of Final Inspection, or issuance of a Certificate of Occupancy if applicable. Should such a tree die or significantly decline in the opinion of the Reviewing Agent within this twenty-four (24) month period, the owner of the property shall be required to provide mitigation consistent with the requirements for the removal of a Protected Tree as contained herein within nine (9) months from said determination.

(b) Replanted Trees: All new trees planted to mitigate the removal of Protected Tree(s) shall be maintained in good health for a period of no less than twenty-four (24) months from the date of planting. Should such tree die or be removed within this twenty-four (24) month period, the owner of the property shall be responsible for replacing the tree with a tree equal to or greater than the size of the original Replanted Tree at installation; such replacement tree shall be planted within nine (9) months of the death or serious decline of the original Replanted Tree. Tree planting and transplanting shall adhere to the most current American National Standards Institute (ANSI) A300 (Part 6) Tree, Shrub and other Woody Plant Management – Standard Practices (Planting and Transplanting).

### X.XX.6. ADMINISTRATION

6.1 Enforcement: The Commissioner of Public Works or their designee is hereby authorized to enforce the provisions of this Tree Preservation Bylaw.

6.2 Appeals: Any person who is aggrieved by refusal, order, or decision of the Reviewing Agent or Commissioner of Public Works under this Bylaw may appeal to the Select Board or its designee within 20 days from the date of such refusal, order, or decision.

### X.XX.7 RULES AND REGULATIONS

The Commissioner of Public Works in consultation with Town Counsel may promulgate or amend Rules and Regulations which pertain to the administration of this Tree Bylaw, and shall file a copy of said Rules and Regulations in the office of the Town Clerk. Such Rules and Regulations may prescribe the Protected Tree Impact and Removal Permit

application fee, along with the size, form, contents, style, and number of copies of plans and specifications, the procedure for the submission and approval of such plans, and the procedure for determining final compliance with these regulations. The adoption or amendment of Rules and Regulations shall be after a public hearing to receive comments on the proposed or amended Rules and Regulations. The public hearing shall be advertised once in a newspaper of general local circulation, at least 14 days prior to the date of the public hearing.

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**And also,** to amend Article 10.3 of the Town’s Non-Criminal Disposition Bylaw by adding the following: Table of Specific Penalties under Article 10.3:

Article X.XX Tree Preservation By-law:

For each violation: \$300.00 per Protected Tree, per day, until mitigation required under Article X.XX is complete.

or act on anything relative thereto.

#### EXPLANATION

*Trees are the fairest ornaments of nature.* Wilson Flagg

The Town’s tree canopy is being lost at an alarming rate. In addition to reducing ambient carbon in the atmosphere, preventing and mitigating heat islands, and providing harborage for wildlife, “Trees not only purify the air and reduce storm water runoff, but also beautify streets, increase property values, make neighborhoods more resilient, enhance community livability, and improve health and general well-being”. *Town of Brookline Urban Forest Climate Resiliency Master Plan* (June 2021).

In 2001 – more than twenty years ago, Town Meeting established a Moderator’s Committee to evaluate the feasibility, effectiveness, and possible benefits of a tree protection by-law in Brookline. Although a draft by-law was apparently produced, it never materialized. Fifteen years later, in response to great concern over the loss of large heirloom trees and other significant tree cover on properties that were being clear-cut by property developers, a petitioned warrant article proposing a Tree Protection By-law was submitted to the May 2016 Annual Town Meeting in the form of Article 11. On this occasion, Town Meeting referred the Article to a Select [Board] Committee in order to “evaluate the best way to provide tree protection in the Town” and report back to the 2017 Annual Town Meeting. The Tree Protection Committee provided Town Meeting with an update in 2017, but did not make a recommendation that

materialized into a tree protection by-law. Instead, minor changes were proposed to Section 8.26.2 of the Town's General Bylaws, the Town's "Erosion and Sediment Control" Bylaw. Under certain circumstances, these changes require the identification of *all* trees of 8 inch DBH or greater on an Erosion and Sediment Control Plan, but do not otherwise protect or mitigate the loss of trees on the property.

This Article is intended to complement the work of the Select Board's Tree Protection Committee, to respond to recommendations contained in the 2021 *Urban Forest Climate Resiliency Plan* and to address the funding and staffing concerns that have been raised in the past. The proposed bylaw is modeled after the Town of Concord's Tree Protection By-law, which itself is the result of a comprehensive study that was conducted of tree preservation measures in other communities. It is submitted to Town Meeting, *now urgently*, in order to reduce further mass destruction of significant trees in Brookline, and to address the recommendation in the *Urban Forest Climate Resiliency Plan* that the Town's urban forest be grown and protected.

If enacted by Town Meeting, the proposed by-law would require residential property developers to protect trees – 6" DBH or greater - that are located within the defined perimeter of a lot in connection with significant demolition and/or construction activity. If trees are removed from the protected area, the bylaw would require property owners/developers to either plant replacement trees or pay a fee to a Town Tree Fund for planting elsewhere in town.

This Bylaw, long overdue, is intended to encourage the preservation and maintenance of trees in Brookline, similar to existing, experience-based, Attorney General approved ordinances and by-laws that have been adopted by other communities including in Lexington, Concord and Wellesley.

Your favorable action on the Article is respectfully requested.