

03/14/16: SDS (7th draft) (Tree bylaw subcommittee)  
4/6/2016: MEA-SJN (8<sup>th</sup> draft) (Tree bylaw subcommittee)  
4/7/2016: SDS (9<sup>th</sup> draft) (Tree bylaw subcommittee)  
4/8/2016: SDS (10<sup>th</sup> draft) (Tree bylaw subcommittee)

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## **SUMMARY OF TREE PRESERVATION BYLAW**

The By-law requires developers, homeowners or contractors seeking building or demolition permits to submit simultaneously to the Tree Department a site plan indicating which mature, healthy trees (DBH >10”) located in the setback shall remain in place, or be removed and mitigated. Mitigation can be achieved by planting an equal number of new trees or by paying fees into an already established Tree Fund for the town to plant replacement trees.

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## **ARTICLE 22 TREE PRESERVATION**

### **SECTION 1. Findings and Purpose**

The Town of Arlington finds that preservation of the tree canopy and planting of replacement trees is essential to preserving the character and aesthetic appearance of the Town and maintaining quality of life and the environment in the Town. Trees improve air quality, protect from heat and glare, reduce noise pollution, limit topsoil erosion and storm water runoff, provide natural flood control, enhance property values, contribute to the distinct character of neighborhoods, and offer natural privacy to neighbors.

The purpose of this By-law is to minimize the impact of residential and commercial development on trees within the Town of Arlington. Loss of trees during demolition of existing buildings, construction of new buildings and/or expansion of existing buildings, without mitigation, threatens to significantly reduce Arlington’s tree canopy.

### **SECTION 2. Definitions**

A. The following definitions shall apply to this By-law:

“Building Footprint” – Outline of the total area covered by a building’s perimeter at ground level.

“Caliper” – Diameter of a tree trunk (in inches) measured six inches above the ground for trees up to and including four-inch diameter, and 12 inches above the ground for larger trees.

“DBH (Diameter at Breast Height)” – Diameter of a tree trunk measured in inches at a height of four and a half (4 1/2) feet above the ground; or, for multiple-trunk trees, the aggregate diameters of the multiple trunks at a height of four and a half (4 1/2) feet above the ground.

“Demolition” – Any act of destroying, pulling down, removing or razing a building or commencing the work of total or substantial destruction of a building.

“Protected Tree” - Any existing healthy tree on private land with a DBH of ten (10) inches or greater, located in the setback area, which does not pose an immediate hazard to person or property or is not under imminent threat of disease or insect infestation.

“Setback Area” – The portion of the property which constitutes the minimum depth of side, rear and front yards as per the Zoning Bylaw of the Town of Arlington.

“Tree Fund” – An existing Town account established for the purpose of buying, planting, and maintaining trees in the Town which may receive deposit of contributions in lieu of planting new trees by property owners and fines collected under this By-law.

“Tree Plan” – A site plan drawn and stamped by a certified land surveyor or engineer showing all Protected Trees in the setback areas and indicating, on the site plan or in a separate document, which Protected Trees will be retained, which will be removed, and, as to Protected Trees which will be removed, whether mitigation will be by replacement on the property or by payment into the Tree Fund.

“Tree Removal” – The cutting down of a tree.

"Tree Warden" - The Tree Warden or his/her designee.

B. Additional definitions may be provided in rules and regulations approved by the Board of Selectmen where consistent with the intent and efficient execution of this By-law.

### **SECTION 3. Applicability**

A. The requirements of this By-law and all applicable rules and regulations apply to the following circumstances:

(1) Proposed demolition of an existing residential or non-residential structure;

(2) Proposed construction on a developed lot which would result in an increase of 50 percent or more of the total building footprint of the new structure(s) when compared to the total footprint of pre-existing structures; or

(3) Proposed construction of any scope on a lot with no residential or non-residential structure on it.

B. Sites under the jurisdiction of the Arlington Redevelopment Board (“ARB”) or the ARB as the Planning Board, the Zoning Board of Appeals, or the Conservation Commission pursuant to Arlington’s Wetlands Protection By-law (Title V, Article 8) may waive the requirements of this By-law in full or in part where such waiver serves the interests of the community and the reasons therefore are memorialized by such bodies.

C. The requirements of this By-law shall not apply to trees defined as Public Shade Trees under G.L. c. 87 § 1.

#### **SECTION 4. Procedures and Requirements for the Preservation of Trees**

A. Removal of Protected Trees on applicable sites shall be prohibited unless such removal is authorized by a written approval of the Tree Plan and commencement of work, in accordance with this Bylaw.

B. In all instances of construction or demolition as defined and applicable herein, the owner of the property shall submit a Tree Plan accompanied by a fee of \$50, to the Tree Warden prior to or concurrent with an application for a building or demolition permit. Additionally, if any Protected Trees were removed during the 12 months preceding the application for a building or demolition permit, such trees shall be accounted for on the Tree Plan to the best of the owner's ability, and shall be mitigated pursuant to paragraph 4.C.

C. For each Protected Tree removed, there shall be either (1) a replacement tree planted on the property no later than 90 days after the Certificate of Occupancy is issued, of a minimum caliper of two and a half (2.5) inches and of a species native to the area and expected to reach a height of 50 feet or more at maturity; or (2) a \$500 payment made to the Tree Fund prior to commencement of work on the property, which the Town shall use to plant replacement trees in the vicinity of the tree removal or in other locations in the discretion of the Tree Warden.

D. If the Tree Plan is consistent with the requirements of this Bylaw, the Tree Warden shall so certify in writing approving the Tree Plan and commencement of work. Said certification shall occur within 10 business days. If the Tree Plan as submitted does not satisfy the requirements of this By-law and associated rules and regulations, the Tree Warden shall so notify the applicant with recommendations to achieve compliance. The Tree Warden shall be permitted access to the site during normal business hours to verify and ensure compliance with the approved Tree Plan.

E. An owner aggrieved of the Tree Warden's determination on a Tree Plan, or with respect to the need for such a plan, may appeal such determinations to the Board of Selectmen at a public hearing. A written decision on such appeals shall be rendered within 14 business days of the close of such hearing(s).

#### **Section 5. Enforcement and Fines**

A. Following a determination of violation by the Tree Warden, an owner shall be subject to fines for the activities listed below, to be paid into the Tree Fund, said fines to be set forth in rules and regulations issued by the Board of Selectmen. Said activities are:

(1) Removal of a Protected Tree on an applicable site without prior written approval of commencement of work per Section 4.D, \$1,500. There shall be a fine for each Protected Tree removed.

(2) Removal of a Protected Tree which is not identified for removal in the Tree Plan. There shall be a fine for each Protected Tree removed, \$500.

(3) Failure to mitigate tree removal within the time set forth in Section 4.C of this By-law. There shall be a fine of \$300 for each day until mitigation is achieved.

B. Wherever there is reasonable cause to believe that an owner or their agent willfully violates this By-Law or an approved Tree Plan, the Town may institute a civil action for injunctive relief in a court of competent jurisdiction ordering appropriate parties to correct a condition in violation, or to cease an unlawful use of the property.

C. An owner aggrieved of the Tree Warden's determination of violation(s) may appeal such determination(s) to the Board of Selectmen at a public hearing.

#### **Section 6. Administration**

The Board of Selectmen shall establish further administrative rules and regulations for the review and approval of Tree Plans, as well as enforcement determinations. Failure to issue rules and regulations will not have the effect of suspending or invalidating this By-law.

#### **Section 7. Severability Clause**

If any provision of this By-law is declared unconstitutional or illegal by final judgment, order or decree of the Supreme Judicial Court of the Commonwealth, the validity of the remaining provisions of this By-law shall not be affected thereby.

#### **Section 8. Relationship to Other Laws**

Nothing in this By-law shall be construed to restrict, amend, repeal, or otherwise limit the application or enforcement of existing Town of Arlington By-laws or laws of the Commonwealth of Massachusetts.