

TOWN OF NARRAGANSETT

CHAPTER 890

AN ORDINANCE IN AMENDMENT OF CHAPTER 66 OF THE CODE OF ORDINANCES OF THE TOWN OF NARRAGANSETT, RHODE ISLAND, ENTITLED "STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES"

It is ordained by the Town Council of the Town of Narragansett as follows:

Section 1: The Town Council of the Town of Narragansett hereby amends Chapter 66 of the Code of Ordinances of the Town of Narragansett entitled "Streets, Sidewalks, and Other Public Places" by adding the following Article III:

ARTICLE III, CHAPTER 66. STREET TREE ORDINANCE

DIVISION 1. GENERALLY

Section 66-125. Authority

(a) Section 2-87 of this code and R.I.G.L. §45-35-1 et seq. describe the powers and duties of the conservation commission. One of these duties is to preserve the natural aesthetic areas within the town. The conservation commission may recommend to the town council, boards or agencies a program for the better promotion, development, utilization or preservation of open areas, streams, shores, wooded areas, roadsides, swamps, marshlands and natural aesthetic areas.

(b) G.L. 1956 §§2-14-2 through 2-14-11, establishes the position of town tree warden to be appointed by the town council. The town tree warden has jurisdiction over the care and control of all trees and shrubs within the limits of any public road or grounds. It also falls within the town tree warden's charge to make suitable regulations governing the care and preservation of those trees and shrubs subject to the approval of the town council.

Section 66-126. Findings

(a) The town council hereby finds that:

- (1) Trees moderate air, noise, visual pollution and glare;
- (2) Tree root systems aid in the stabilization of soil and its water content. This prevents flooding, erosion, and mud slides.
- (3) The presence of trees can increase property values;

(4) Trees complete the natural water cycle by drawing water from the soil and evaporating it into the air, where it forms clouds and eventually falls as rain. This preserves the present climate;

(5) Trees enhance the overall aesthetics and general quality of life of the town;

(6) Trees provide valuable shelter, cover and food for wildlife;

(7) Trees absorb carbon dioxide and generate oxygen to maintain breathable air. They also absorb oxides of nitrogen and sulfur which produce acid rain and contribute to global warming;

(8) Trees provide natural air conditioning by providing shade and cooling through evaporation of water from leaves.

(b) The incorporation of forests, woodlands and trees into community planning enhances the quality of life. Because of their value for providing shade, reducing air pollution, providing wildlife habitat, preventing soil erosion and sediment control, increasing property values, and generally improving the aesthetic quality of the town, it shall be the policy of the town to preserve existing trees and plant more of them.

Section 66-127. Purpose

The purposes of this article are to:

(a) Regulate the protection, preservation, planting and non-public safety related maintenance and removal of street trees in the town.

(b) Establish a tree board to assist the town tree warden in performing his/her duties.

(c) Establish guidelines for removing, maintaining and planting street trees so as to:

(1) Enhance the natural landscape through the planting of additional trees;

(2) Promote the planting of appropriate species to increase diversity and mix; and

(3) Provide for improved wildlife habitat.

(d) Develop and implement a systematized tree management program as designed by the tree warden and the tree board, with assistance from other town departments, offices, and boards, when appropriate.

Section 66-128. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means any *person* applying for a permit required by this article.

Approval means a written assent from the town tree warden pursuant to a duly executed application.

Permit means a non-fee written form issued by the town tree warden granting permission to an *applicant* to conduct only those activities allowed by this article.

Person means any person, firm, partnership, association, corporation, company or organization of any kind including public utilities and municipal departments.

Public grounds includes the grounds surrounding municipal buildings, school yards, Narragansett Land Trust or Narragansett Housing Authority properties, *public parks*, and any other property owned by the town.

Public parks means, for the purposes of this article, any town public space designated for recreation and/or conservation under the authorized control of the Department of Parks and Recreation or the Narragansett Land Trust.

Street tree means:

(1) any tree with a main trunk diameter greater than two and one-half inches which trunk, in whole or in part, lies within the limits of any public road or *public grounds* within the town or

(2) any tree or shrub planted by the town on public roads or *public grounds*, or planted under a permit issued in accordance with this ordinance, no matter what the diameter of the trunk.

Tree board means that town body composed of the conservation commission membership.

Tree-lined street means all town public roads and grounds with existing *street tree* populations.

Tree removal means any act that will cause a *street tree*, as defined in this section, to die within a three-year period subsequent to such act.

Tree warden means the municipal arborist and his/her designated deputies or other qualified designated official of the town assigned to carry out the enforcement of this article.

Tree well means an opening in the ground surrounding the base of the tree trunk not covered by sidewalk or paving. The tree warden shall determine the size of each tree well.

DIVISION 2. TREE WARDEN

Section 66-129 Appointment and qualifications

The town tree warden shall be appointed by the town council in accordance with G.L. 1956, §2-14-2. The tree warden shall have training and experience in arboriculture and shall have passed the state arborist examination and been issued a State of Rhode Island Arborist License.

Section 66-130. Duties

(a) Duties of the town tree warden shall conform to those duties and responsibilities outlined in G.L. 156, §§2-14-2 through 2-14-10 and 2-15-1 through 2-15-17, and include the following:

- (1) The tree warden shall have charge of and be responsible for the management of all street trees.
- (2) The tree warden shall assume the care and control of trees within public parks, with the written assent of the Director of the Parks and Recreation Department.
- (3) The tree warden shall assume the care and control of trees on town school grounds, with the written assent of the Superintendent of Schools.
- (4) The tree warden shall, with the approval of the Town Manager, expend all sums that shall be appropriated for the planting, removal, maintenance, care and management of street trees, in accordance with all local ordinances and the town Charter.
- (5) The tree warden shall grant or deny and attach reasonable conditions to permits required under this section. The tree warden may obtain an advisory opinion from the tree board prior to granting or denying a permit.
- (6) The tree warden will act as the liaison with the State Department of Transportation in matters involving the planting, removal and maintenance of trees within the rights-of-way of state roads within the corporate boundaries of the town.
- (7) The tree warden may enlist the assistance of appropriate State or Federal agencies, including state colleges and universities, in identifying diseases, verifying the need for removal, and determining procedures for removal of diseased trees.
- (8) The tree warden shall develop and implement a systematized street tree management program with the assistance of the tree board and other appropriate boards, offices, and departments.

(b) The execution of duties listed above shall be coordinated with each department, board, or office that has jurisdiction over the land on which a tree is situated. These duties shall not be

executed in a manner that would disrupt the regular routine business and activities of these entities.

Section 66-131. Enforcement.

The town tree warden shall, as provided for in G.L. 1956, §§2-14-1 through 2-14-10 and G.L. 1956 §§2-15-1 through 2-15-17, enforce such rules, regulations and procedures as are deemed necessary to enforce the intent of this article.

DIVISION 3. TREE BOARD

Section 66-132. Duties.

(a) The tree board shall assist the tree warden when he/she requests such assistance when he/she proposes to the town council such rules, regulations, and permit and penalty procedures deemed necessary to carry out the intent and enforcement of this article.

(b) The tree board shall assist the tree warden in the preparation of a systematized tree management program for the town, which may be considered for adoption by the Town Council within five years of the date of the ordinance from which this article is derived.

(c) The tree board shall communicate and work with civic and public interest groups and individuals concerned with tree care, management, preservation and planting in order to maintain and enhance the town's street tree population.

(d) The tree board shall provide recommendations to the tree warden, who shall be responsible for the annual update of the systematized tree management program.

(e) The tree board shall assist the tree warden in performing a windshield inventory of street trees by July 1 of each year. The purpose of this inventory shall be to locate sick or damaged trees that may present a safety hazard, to locate trees of special concern, and to determine streets and grounds in the town where street trees are needed. Assistance may also be rendered by the Department of Engineering, Department of Public Works (Highways and Facilities) or any other interested office, department or board.

(f) The tree board shall hear appeals by citizens of decisions made by the tree warden.

Section 66-133. Authority.

(a) The town tree board shall assist the town tree warden in:

- (1) Regulating and planning for the maintenance, removal and planting of street trees to ensure public safety.
- (2) Preserving the aesthetics of town rights-of-way and other town properties with regard to street trees.

(3) Protecting the value and health of town forests as a whole.

(b) The tree board may review upon request by the tree warden all non-public safety-related requests for permits for any planting, removal or trimming of street trees.

Section 66-134. Membership.

The tree board shall be composed of the membership of the Conservation Commission.

DIVISION 4. APPLICABILITY

Section 66-135. Protection of street trees.

(a) The following restrictions shall apply concerning any street tree, unless a written permit is obtained in advance from the tree warden:

(1) No person shall knowingly damage, cut, carve or transplant any tree; attach wire, nails, advertising poster or other contrivance to any tree; allow any gaseous, liquid, chemical or solid substance that is harmful to trees to come in contact with them; or set fire or permit any fire to burn when such fire or the heat thereof shall injure any portion of any tree.

(2) No person shall deposit, place, store or maintain any stone, brick, sand, fill material, concrete or other material that may impede the passage of water, air and fertilizer to the roots of any street tree growing in town.

(3) No person shall preclude the percolation of water or nutrients and gaseous exchange vital to a tree's survival by placing any impervious materials within the confines of a tree well opening, or by raising or lowering the natural grade or compacting the soil over the tree root system.

(4) No person shall move any building or any other large object that may injure street trees or parts thereof.

(5) All street trees that are within 30 feet of any excavation, demolition, or construction of any building, driveway, or hard landscaping structure or any other non-public safety-related street work shall be guarded through the length of the project with a good substantial fence, frame or box not less than four feet high or other methods approved by the tree warden. Whenever practicable, the protective structure shall be placed at least to the edge of the tree crown width. Tree protection materials shall not be attached by nailing or otherwise penetrating or otherwise damaging a tree and must be removed upon the completion of work. The owner of the property where the excavation or construction occurs shall be responsible for the compliance with this provision of this article.

(6) Requests for removal of healthy street trees, which do not pose an immediate threat to public safety, shall be reviewed on a case-by-case basis by the town tree warden upon submission of a completed permit.

Section 66-136. Planting of street trees.

(a) Any person desiring to plant a street tree must first obtain a written permit from the tree warden. Any permit shall be granted to a date certain and shall include consideration of appropriateness of the species, location, size and public safety.

(b) All street tree planting, pruning, treatment, and removal shall conform with ANSI 300 series standards and procedures.

DIVISION 5. PERMITS.

Section 66-137. Permits Required by All Persons (see Section 66-128, Definitions)

(a) A written non-fee permit shall be required for planting, spraying, pruning, removing, cutting or otherwise disturbing any street tree. Each permit shall be granted to a date certain and, for planting, shall include consideration of the appropriateness of the species, location, size, location of overhead and underground facilities, location of sidewalks, curb-cuts and street signs and public safety.

(b) The tree warden may issue a permit, provided that the proposed method and quality of work shall be consistent with ANSI 300 series standards and procedures. The tree warden may request advisory opinion from the tree board prior to issuance of the permit.

(c) Any permit shall be deemed null and void if its terms are violated.

(d) The tree warden and tree board shall be notified by the bearer of such permit upon satisfactory completion of designated work.

(e) A notice shall be posted at the site of pending street tree removal by the town tree warden according to the procedure outlined in G.L. 1956 §2-14-8.

(f) All costs for non-emergency tree removal shall be the responsibility of the party requesting tree removal.

(g) A written non-fee permit shall be required to clear trees within five feet either side of an unmarked property boundary between private property and the limits of any road or grounds within the town. The permit to clear can only be granted after the tree warden and the property owner agree that a street tree or neighbor's tree is not in the area proposed for clearing. If the parties cannot agree, the property owner must post survey boundaries endorsed by a registered surveyor to resolve the dispute.

(h) No permit for tree removal and/or planting in a town public right-of-way shall be issued by the tree warden unless the application has been reviewed and approved by the Director of Public Works (Highways and Facilities) and the Town Engineer. This review will include but not be limited to: impacts and compatibility with vehicular and pedestrian safety, public and private utilities, streets, curbing, sidewalks, storm drains, roadway maintenance and roadway construction whether existing or planned for the future.

(i) All construction activities including tree removal and/or planting, installation of tree wells, changes in grade and modifications to pedestrian walkways in the public right-of way require the issuance of a Road Construction Permit from the Department of Public Works in accordance with the provisions of Narragansett Code of Ordinances Section 66 Article II.

Section 66-138. Expiration

A permit shall contain a definitive date of expiration, and applicable work shall be completed within the time allowed in the permit and in the manner described. Permits for routine work performed by utility companies shall be valid for one year from the date of the permit.

Section 66-139. Copies retained.

The town shall retain copies of all tree permit applications, approval and verification of compliance for at least three years.

DIVISION 6. ENFORCEMENT.

Section 66-140. Compensation.

(a) All trees removed, destroyed or damaged as a result of unauthorized activity shall be replaced at the expense of the responsible person. Replacement of trees shall be made with 2-½ inch to six-inch caliper trees as directed by the tree warden, following consultation with the tree board. When and where deemed suitable by the tree warden, trees of less than 2 ½ inches in caliper may be approved. The sum of the calipers of the replacement trees shall be equivalent to the sum of the diameters (diameter at breast height) of the trees removed, destroyed or damaged as a result of the unauthorized activity. The tree warden will have discretion in determining the appropriate level of replacement where trees are removed due to disease, storm damage or other prior condition.

(b) The tree warden shall consider the following when determining the replacement of lost trees:

(1) Selecting trees that reflect or enhance the character of a neighborhood.

(2) Selecting trees for their suitability to the given environment, such as soil type, resistance to pollution, size, growth rate, appropriate hardiness zone, branching habit, rooting habit, fruiting habit, disease resistance and aesthetics.

(3) Giving consideration to diversity of species in a given area to avoid decimation by

epidemic.

(c) Trees will be replaced in the same general location as the tree that has been removed. In instances where tree replacement in the same general area is determined not to be possible, the town tree warden with the assistance from the tree board may designate an alternate location for tree placement. Trees must be replaced in a timely fashion, within one season if possible, but not in a time of drought or extreme weather.

(d) The town tree warden with assistance from the tree board, the Department of Public Works and public safety officials shall coordinate the activity of volunteers, licensed arborists and professional horticulturists to ensure the timely replacement planting of street trees in a manner which is in the best interest of public safety. Consideration must be given to avoiding tree/sidewalk conflicts through careful selection of appropriate street trees and planting techniques such as the use of pavers and grates or root barriers to avoid such conflicts.

Section 66-141. Emergencies.

The requirements of this article may be waived by the town director of public safety in the case of emergencies, such as winter storms, tropical storms, hurricanes or other natural or human made disasters, so that they in no way shall hinder private or public work to restore order to the town. All emergency work shall, to the degree practicable, shall be consistent with ANSI A300 series standards and procedures.

Section 66-142. Exemptions.

(a) The requirements of this article shall not apply to decisions of the director of public safety or his/her designee in carrying out the duties and responsibilities of his/her office.

(b) Emergency activities of the Public Works Department and public utilities, required to ensure the public safety shall be exempt from the requirements of this article.

(c) Routine preventative tree maintenance activities of the Department of Public Works (Highways and Facilities) and/or the Department of Parks and Recreation, including pruning and/or removal activities for public safety conducted in accordance with ANSI 300 series standards and procedures shall be exempt from the requirements of Division 5 – Permits of this article. Such activities of these departments must be supervised by professional arborists holding Rhode Island Arborist Licenses. In all but emergency cases, trees to be removed must be posted [section 66-137(e)].

(d) Routine and/or emergency root intrusion removal activities within the public underground utility lines, as may be deemed necessary by the Town Engineer and conducted according to ANSI 300 Series standards and procedures and supervised by professional arborists, shall be exempt from the requirements of Division 5 (Permits) of this article.

(e) The requirements of this article shall not apply to invasive or undersirable non-native species as determined by the Rhode Island department of Environmental Management, or those listed by

the Rhode Island Natural History Survey, the Rhode Island Wild Plant Society, the University of Rhode Island Master Gardeners, or the Narragansett Tree Warden, from time-to-time amended.

Section 66-143. Interference with the tree warden.

No person shall hinder, prevent, delay or interfere with the tree warden or any of his/her assistants while they are engaged in carrying out the implementation of this article, provided however, that nothing in this article shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction, for the protection of property rights by the owner of any property within the town.

Section 66-144. Severability

This article and the various parts, sentences, sections and clauses thereof are hereby declared to be severable. If any part, sentence, section or clause is adjudged invalid, it is hereby provided that the remainder of this article shall not be affected thereby.

Section 66-145. Effective Date

This article and any amendment thereto shall be declared to be of immediate necessity for the preservation of public peace, health and safety and shall be in full force and effective from and after its passage and publication as provided by law.

Section 66-146. Relationship to other ordinances.

Nothing in this article shall be construed to restrict, amend, repeal or otherwise limit the application or enforcement of the zoning ordinance or the subdivision and land development regulations of the town.

This ordinance shall take effect upon its passage, and all other ordinances or parts of ordinances inconsistent herewith are hereby repealed.

First reading read and passed in the Town Council meeting legally assembled the 20th day of August, 2007.

Second reading read and passed in the Town Council meeting legally assembled the 4th day of September, 2007.

ATTEST:

S/Carol Robbins

Carol Robbins, Town Clerk