



AGENDA PACKET

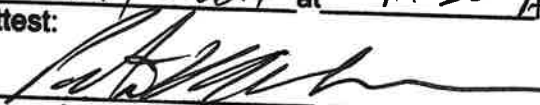
**CITY COUNCIL'S COMMITTEE ON LEGISLATIVE AFFAIRS & ELECTIONS
TUESDAY, OCTOBER 15, 2024 6:00 PM**

**EVERETT CITY HALL, 484 BROADWAY, CITY COUNCIL CHAMBERS, 3RD FLOOR
EVERETT, MA 02149**

**Posted in accordance with the
provisions of Mass. General Laws
Chapter 30A- Sections 18-25**

on 10/9/2024 at 9:35 A

Attest:



Assistant City Clerk

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EVERETT, MA
2024 OCT -9 A 9:35



AGENDA

CITY COUNCIL'S COMMITTEE ON LEGISLATIVE AFFAIRS & ELECTIONS TUESDAY, OCTOBER 15, 2024 6:00 PM

EVERETT CITY HALL, 484 BROADWAY, CITY COUNCIL CHAMBERS, 3RD FLOOR
EVERETT, MA 02149

ROLL CALL

PLEDGE OF ALLEGIANCE

UNFINISHED BUSINESS

1. **C0259-24** Ordinance/s/ Councilor Katy L. Rogers
An ordinance pertaining to trees in the City of Everett
2. **C0302-24** Order/s/ Councilor Robert J. Van Campen, as President
An order requesting the confirmation of the appointment of Mirlande Felissaint as Director of Elections/Registrar for a for a term ending January 5, 2026

ADJOURNMENT

www.cityofeverett.com

(All agendas and reports can be obtained on City of Everett Website)

Respectfully submitted:

Michael J. Mangan

Legislative Aide
Everett City Council Office



C0259-24

To: Mayor and City Council
From: Councilor Katy L. Rogers
Date: July 22, 2024

Agenda Item:

City of Everett tree ordinance

Background and Explanation:

The City of Everett is dedicated to enhancing its urban tree canopy, which will improve the environment, esthetics, and quality of life for its residents. The benefits include energy conservation, air quality improvement, storm runoff reduction, micro-climate control, wind speed reduction, noise pollution reduction, wildlife habitat provision, aesthetic enhancement, property value protection, and public space definition.

Attachments:

Katy Rogers <katyforeverett@gmail.com>

7/16/2024 6:48 PM

Everett Tree Ordinance

To Michael Mangan <michael.mangan@ci.everett.ma.us> • david_flood@comcast.net

City of Everett Tree Ordinance

BACKGROUND: The City of Everett is dedicated to enhancing its urban tree canopy, which will improve the environment, aesthetics, and quality of life for its residents. The benefits include energy conservation, air quality improvement, storm runoff reduction, microclimate control, wind speed reduction, noise pollution reduction, wildlife habitat provision, aesthetic enhancement, property value protection, and public space definition.

ORDINANCE:

1. Urban Canopy Preservation and Expansion

- Preserve existing trees and promote new tree planting.
- Ensure the city remains a Tree City USA by maintaining a tree department, having a city tree ordinance, spending at least \$2 per capita on urban forestry, and celebrating Arbor Day.
- Adhere to the "right tree, right place" philosophy for long-term success.

2. Tree Protection and Replacement

- Protect Public Shade Trees as defined by M.G.L. c. 87.
- Encourage private property owners to plant trees within their lot's setback area.
- Allow the Tree Warden or authorized organizations to plant trees in public rights-of-way or within the setback from such rights-of-way.

3. Tree Removal and Mitigation

- Require a Tree Permit for any project impacting Significant Trees, Public Trees, or Public Shade Trees.
- A Mitigation Plan is required for any tree removal, detailing replacement trees and, if necessary, mitigation payments to the Tree Replacement Fund.

4. Definitions

- Key terms include Aggregate Diameter, Caliper, Certified Arborist, DBH, Lot, Mitigation Payment, Mitigation Plan, Pruning Standards, Public Shade Tree, Public Tree, Replacement Caliper, Replacement Trees, Remove, Significant Tree, Tree Permit, Tree Protection Plan, Tree Protection Zone, Tree Replacement, Tree Replacement Fund, Tree Survey, Tree Warden.

5. Tree Warden Responsibilities

- Oversee all trees within public rights-of-way and on city property.
- Develop an annual work plan for tree maintenance, replacements, plantings, and removals.
- Grant or deny permits, coordinate with city departments, and enforce the ordinance.

6. Tree Survey and Permit Requirements

- A Tree Survey is required for projects needing a Building Permit, Special Permit, or Site Plan Review.

- o Tree Permits are required for any project that may impact Significant Trees, Public Trees, or Public Shade Trees.

7. Enforcement and Penalties

- o Violations of the ordinance will result in fines up to \$300 per day, mandatory tree replacement, or mitigation payments.
- o Unauthorized tree removal will incur significant penalties based on the tree's DBH.

8. Tree Replacement Fund

- o Established for the sole purpose of supporting tree planting and maintenance throughout the city.

Severability

- If any provision of this ordinance is found invalid, the remaining sections shall remain in effect.

Effective Date

- This ordinance takes effect immediately upon passage and publication as provided by law.

BACKGROUND: This ordinance was created in collaboration on with the City of Everett arborist and is being presented upon his suggestions ☐

City Of Everett Tree Ordinances

Intent and Purpose

1. The City of Everett is committed to investing in its urban tree canopy. To that end, these ordinances shall guide the City in the preservation of existing trees, the promotion of new tree planting and in community engagement with our urban canopy. Development of the City's urban canopy will serve to improve the environment, the aesthetics and the quality of life in the City of Everett and for its residents. The numerous functions of a well-developed urban tree canopy include;
 - a. Conserving energy, and combating heat island effect by providing shade and evaporative cooling through transpiration,
 - b. Improving local and global air quality by absorbing carbon dioxide, ozone, particulate matter, and producing oxygen,
 - c. Reducing storm runoff, flooding and soil erosion,
 - d. Providing microclimate control,
 - e. Reducing wind speed and directing air flow,
 - f. Reducing noise pollution,
 - g. Providing habitat for birds, small mammals, and other wildlife,
 - h. Enhancing visual and aesthetic qualities that attract visitors and businesses,
 - i. Providing natural privacy among neighbors,
 - j. Protecting and increasing real property values,
 - k. Contributing to the definition of public spaces and creating civic identity and responsibility.

2. The provisions of this ordinance reinforce, enhance, and expand existing legal vehicles to ensure that future development and public policy adequately preserve, protect, and provide for replacement of Public Trees and Public Shade Trees as well as increasing the total tree inventory.

3. The City resolves to plant more trees and in greater variety in order to compensate for past tree losses, the length of time required for a tree to achieve maturity and to provide resiliency through biodiversity. The City will adhere to "right tree, right place" philosophy to ensure that all new trees are planted and maintained to ensure long term success into maturity.

4. This ordinance:
 - a. Ensures that The City of Everett sustains its designation as Tree City USA by meeting or exceeding the four core standards of sound urban forestry management;
 - i. Maintaining a tree department,
 - ii. Having a City tree ordinance,
 - iii. Spending at least \$2.00 per capita on urban forestry,
 - iv. Celebrating Arbor Day.
 - b. Protects and preserves Public Shade Trees pursuant to M.G.L. c. 87.

- c. Encourages private property owners to plant or to accept a tree from the City to be planted within the setback area of their lot instead of in the tree lawn or tree pit, if the Tree Warden so recommends.
- d. Allows the Tree Warden, or a private organization acting with the written consent of the Tree Warden, to plant trees acquired with public or private funds in the public rights-of-way or within the setback from such public rights-of-way with acceptance by the property owner for the purpose of improving, protecting, shading, or ornamenting the land.

Definitions

1. "Aggregate Diameter": The combined DBH (diameter at breast height) of multiple tree trunks growing from the same root system shall be considered to be the DBH of the tree in the case of any tree where more than one stem originates below 54.5 feet from the ground.
2. "Caliper": A measurement of the tree trunk diameter used when any tree is less than 6" and is a measurement of the diameter of the tree trunk at 12 inches above the ground. Caliper measurement is typically used when purchasing new trees.
3. "Certified Arborist": An arborist certified by the Massachusetts Arborists' Association or the International Society of Arboriculture, or any successor of either organization.
4. "DBH (diameter at breast height)": The diameter of a tree trunk measured in inches at a height of 4.5 feet above the ground. For multiple trunk trees, DBH is the aggregate diameter of the trunks.
5. "Lot": A parcel of land in identical ownership throughout, bounded by other lots or streets, which is designated by its owner to be used, developed or built upon as a unit.
6. "Mitigation Payment." A payment to be paid to the Tree Replacement Fund associated with the removal of applicable Significant Trees, Public Trees or Public Shade Trees that have not been replaced with Replacement Trees in accordance with the mitigation requirements established in this Ordinance. The Mitigation Payment shall be in accordance with the City of Everett's most recent tree planting costs in consideration of two (2) times or more, the total DBH or Caliper of trees Removed.
7. "Mitigation Plan": A document to be provided where any applicable Significant Tree, Public Tree or Public Shade Tree is proposed to be Removed from a Lot, stating;
 - a. Why any applicable Significant Tree, Public Tree or Public Shade Tree is proposed to be Removed from a Lot,
 - b. A description of the Replacement Tree proposed to replace any applicable Significant Tree, Public Tree or Public Shade Tree to be Removed,
 - c. The Mitigation Payment, if required.
8. "Pruning Standards": Standards for pruning of trees as defined in the ANSI A300 Tree Care Standards and any future amendments or revisions to the same.
9. "Public Shade Tree": A tree located in the public way, as defined in M.G.L. c. 87, Sec. 5.
10. "Public Tree": Any tree located on land owned completely by the City of Everett. This does not include any tree that fits the definition of a Public Shade Tree under M.G.L. c. 87.

11. "Replacement Caliper": The caliper for applicable Significant Trees, Public Trees and Public Shade Trees planted in replacement for Removed trees shall be at least two (2) times the DBH or aggregate diameter whichever is greater, of the tree Removed.
12. "Replacement Trees." A tree or trees to be planted to replace applicable Significant Trees, Public Trees or Public Shade Trees to be Removed from the Lot. The approval of the Tree Warden will be required if Replacement Trees are to be placed on other Lots. Replacement Trees shall continue to be identified as such for a period of ten (10) years.
13. "Remove (including removing and removal)": Cutting down any applicable Significant Tree, Public Tree or Public Shade Tree and all other acts which cause the actual removal or the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of an applicable Significant Tree, Public Tree or Public Shade Tree, including, but not limited to, excessive or improper pruning.
14. "Significant Tree": Any tree six (6) inches DBH or larger which is on a Lot. This does not include any tree that fits the definition of a Public Tree under this ordinance or any tree that fits the definition of a Public Shade Tree under M.G.L. c. 87.
15. "Tree Permit": A document signed and certified by the Tree Warden required to be issued for any project requiring a Site Plan Review per the City of Everett Code of Ordinances, Division IV, Sec. 19, where any applicable Significant Tree, Public Tree or Public Shade Tree may be damaged or disturbed as a result of a project on the lot. A Tree Permit shall also be required for any project that requires or may result Removal, damage or disturbance including through, pruning, digging or through the compaction of soil due to the passage or parking of vehicles or equipment within the Tree Protection Zone or other means to any Public Trees or Public Shade Trees and their Tree Protection Zone.
16. "Tree Protection Plan": A document designed by a Certified Arborist and approved by the Tree Warden which shall include the following information;
 - a. Drawings of Tree Protection measures,
 - b. The location on the Lot of all applicable Significant Trees, Public Trees and Public Shade Trees and their Tree Protection Zone ,
 - c. An indication of which applicable Significant Trees, Public Trees and Public Shade Trees and their Tree Protection Zones may be affected, damaged or otherwise disturbed including by the compaction of soil in and around a tree's root system by vehicle traffic, parking or other means,
 - d. In the event that any applicable Significant Tree, Public Tree or Public Shade Tree is proposed to be Removed, the Tree Protection Plan shall include the location of any applicable Significant Tree, Public Tree and Public Shade Tree, and their Genus, Species, Height and DBH or Caliper,
 - e. In the event that any applicable Significant Tree, Public Tree or Public Shade Tree is proposed to be Removed, the Tree Protection Plan shall include the location of Replacement Tree or trees and their Genus, Species, Height and DHB or Caliper.
 - f. A schedule for planting the proposed Replacement Tree or trees,
 - g. In the event that any applicable Significant Tree, Public Tree or Public Shade Tree is proposed to be Removed and an inadequate number of Replacement Trees are proposed to be planted, a Mitigation Plan shall be included in the Tree Protection Plan,

- h. Such other conditions as specified by the Tree Warden pursuant to applicable regulations.
- 17. "Tree Protection Zone": The area surrounding a tree which must remain as undisturbed as possible so as to prevent damage or removal of the tree. Including but not limited to the area where roots critical to the vigor and structure of the tree are located. The size and shape of a Tree Protection Zone shall be defined by a Certified Arborist, shall adhere to the ANSI A300 Tree Care Standards and be approved by the Tree Warden.
- 18. "Tree Replacement": The Tree Warden shall require the replacement of any Removed applicable Significant Tree, Public Tree or Public Shade Tree, which shall be planted by the applicant or their contractors under the supervision of a Certified Arborist and subject to approval by the Tree Warden.
- 19. "Tree Replacement Fund": Payments required by this ordinance for planting at the same site or at another location shall be deposited into this fund.
- 20. "Tree Survey": A document designed by a Certified Arborist and approved by the Tree Warden which shall include the location, Genus, Species, Height and DBH of all Significant Trees, Public Trees and Public Shade Trees and their Tree Protection Zone on a Lot and those trees that have been Removed from a Lot within one year prior to the submission of a Tree Survey. If applicable; a Tree Survey shall include a Tree Protection Plan and a Mitigation Plan. A Tree Survey shall be required for any project requiring any Building Permit, a Special Permit per The City of Everett Code of Ordinances, Division IV Sec. 3 or a Site Plan Review per the City of Everett Code of Ordinances, Division IV, Sec. 19. A Tree Survey shall also be required for any project that requires or may result in any Public Trees or Public Shade Trees being Removed, damaged or disturbed including through, pruning, digging or through the compaction of soil due to the passage or parking of vehicles or equipment within the Tree Protection Zone.
- 21. "Tree Warden": The individual who holds this title shall be an arborist certified by the Massachusetts Arborists Association (MAA), The International Society of Arboriculture or any successor of either organization. The duties and responsibilities of the Tree Warden shall conform to M.G.L. c. 87 and shall include other responsibilities described in this ordinance.

Compliance with state law

- a. Nothing in this ordinance shall be construed to restrict, amend, repeal, or otherwise limit the application or enforcement of existing municipal or state law.

Tree Replacement Fund

- b. There is hereby established a Tree Replacement Fund which shall be held by the City Treasurer in an account and administered in accordance with applicable provisions of the Massachusetts General Laws. Any payments into the Tree Replacement Fund shall be deposited in said Fund and shall be used solely for the purpose of supporting tree planting and maintenance throughout the entire City.

Applicability

- c. The terms and provisions of this ordinance shall be administered by the Tree Warden and shall apply to any applicable Significant Tree and to any Public Tree or Public Shade Tree and their Tree Protection Zone located within the City of Everett.

Tree Warden

1. The Tree Warden shall be a Certified Arborist by the Massachusetts Arborist's Association, The International Society of Arboriculture, or any successor of either organization.
2. The duties and responsibilities of the Tree Warden shall conform to M.G.L.A. c. 87 and shall include, but not be limited to, the following and as may be further specified in this ordinance;
 - a. Care and control of all trees within public rights-of-way and care and control of all trees on City property,
 - b. Development of an annual work plan, using the tree inventory as a resource, for systematic tree maintenance, replacements, plantings, and removals for each fiscal year. The plan shall include locations of work, designated work to be accomplished, and resources including funds required,
 - c. Posting notices and holding public hearings for the removal of Public Trees and Public Shade Trees as required by M.G.L. c. 87 and this ordinance,
 - d. Expending funds appropriated for planting trees on land within public rights-of-way, City owned property and in the setback of a Lot with the express approval of the Owners,
 - e. Granting or denying permits and attaching thereto reasonable conditions required under this ordinance,
 - f. Working in conjunction with other City departments to seek grants or other assistance concerning the preservation, maintenance and planting of trees in City,
 - g. Development of rules, regulations, tree inventories, manuals, and other data, in conjunction with other City departments, to carry out the purposes and intent of this ordinance,
 - h. Supervising the planting and care of City trees to ensure that such planting and care meets the criteria of these ordinances and the ANSI A300 Tree Care Standards,
 - i. Ensuring the regular maintenance of and updating of the City of Everett's Tree Inventory to track removal and replacement of trees in order to replace lost trees in an orderly fashion,
 - j. Appointment of designee to serve in the absence of the Tree Warden,
 - k. Coordinate with any private organization that creates a program for the planting or pruning of Public Trees and Public Shade Trees on City property, in the public rights-of-way or within the setbacks with the express approval of the Owners,
 - l. With authorization by the council, undertaking other responsibilities consistent with the purposes and intent of this ordinance,
 - m. Enforcement of this ordinance.

Tree Survey

1. A Tree Survey Shall be required in the case of any project that requires any Building Permit, a Special Permit per The City of Everett Code of Ordinances, Division IV Sec. 3, or a Site Plan Review per the City of Everett Code of Ordinances, Division IV, Sec. 19. The application for any Building Permit, a Special Permit or a Site Plan Review shall include a tree survey which shall first have been submitted to the Tree Warden not less than twenty-one (21) days prior to the submission of the application for a, Building Permit, Special Permit or Site Plan Review.
2. A Tree Survey shall also be required for any project that requires or may result in any Public Trees or Public Shade Trees being Removed, damaged or disturbed including through, pruning, digging or through the compaction of soil due to the passage or parking of vehicles or equipment within the Tree Protection Zone.
3. A Tree Survey shall include the location, Genus, Species, Height, DBH and Tree Protection Zone of all Significant trees, Public trees and Public Shade trees that will be Removed, damaged, or disturbed, including through the compaction of soil due to the passage or parking of vehicles or equipment within the Tree Protection Zone by any project requiring any Building Permit, a Special Permit per The City of Everett Code of Ordinances, Division IV Sec. 3 or a Site Plan Review per the City of Everett Code of Ordinances, Division IV, Sec. 19.

Tree Permits

1. A Tree Permit shall be required in the case of any project where any applicable Significant Tree or Public Tree or Public Shade Tree will be Removed, damaged or disturbed including through, pruning, digging or through the compaction of soil due to the passage or parking of vehicles or equipment within the Tree Protection Zone,
2. No Tree Permit Application fee shall be charged,
3. If applicable, a Tree Permit application shall be submitted concurrently with a Tree Survey in accordance with this ordinance and if applicable, a Mitigation Plan and a Tree Protection Plan,
4. The Tree Warden shall review applications for Tree Permits in accordance with the provisions of this ordinance and with any rules or regulations promulgated hereunder,
5. The Tree Warden shall date stamp or otherwise record the date of filing of each application for a Tree Permit,
6. The Tree Warden shall complete the review of each Tree Permit application relating wholly to Significant Tree Removal no later than ten (10) business days after the submission of a completed application to the Tree Warden,
7. Upon the issuance of a Tree Permit, the Tree Warden may prescribe in writing such protective measures for existing trees, as they deem necessary. The Tree Warden shall make a determination that the prescribed protective measures have been adequately provided before any disturbance of the site related to the permitted activity may begin,
8. In the case of any project which requires any Building Permit, a Special Permit per The City of Everett Code of Ordinances, Division IV Sec. 3 or a Site Plan Review per the City of Everett Code of Ordinances, Division IV, Sec. 19, the Owner of the Lot shall be required to commit to comply with all provisions of the Tree Permit and if applicable, the provisions of the Mitigation Plan, the Tree Protection Plan and other provisions of this Chapter and regulations promulgated hereunder in the application for requires any Building Permit, a Special Permit per The City of

Everett Code of Ordinances, Division IV Sec. 3, or a Site Plan Review per the City of Everett Code of Ordinances, Division IV, Sec. 19,

9. If applicable, the Tree Warden shall report whether the Tree Permit was granted or denied to the Planning Board or the Director of Inspectional Services within the same ten (10) business days. If the Planning Board or the Director of Inspectional Services receives no such report about a Tree Permit for the property within the above-stated time period, the Planning Board or Director of Inspectional Services shall accept a Building Permit, Special Permit or Site Plan Review application without that report,
10. In the case of a project where a Tree Permit allows for the Removal of an applicable Significant Tree, a Public Tree or a Public Shade Tree, Tree Warden shall keep a record of the type and size of tree Removed, the reason for the removal, photographs of the tree documenting the reason for removal, the date, the contractors, and the name and address of the property owner,
11. Any Tree Permit issued by the Tree Warden shall be valid for 90 days from issuance. The Tree Warden, following an email or written request by the applicant, may extend the length of the permit for any length of time, as they deem necessary and appropriate,
12. A Tree Permit may be suspended or revoked at any time by the Tree Warden upon written notice to the permit holder that the permit holder has failed to comply with either this ordinance or the conditions of the Tree Permit. The written notice shall be sent by certified mail, return receipt requested, or by hand delivery and shall provide an opportunity for the permit holder to correct the non-compliance and apply for a renewal of the Tree Permit upon compliance, where practicable.

Mitigation Plan

1. In the case of any project which requires a Tree Permit and where a Tree Survey identifies a Tree Removal, A Mitigation Plan will be required for all Trees Removed,
2. The Mitigation Plan shall be designed and certified by a Certified Arborist,
3. The Mitigation Plan shall be subject to approval by the Tree Warden,
4. If applicable a Mitigation Plan shall be submitted concurrently with an application for a Tree Permit. A Mitigation Plan shall include;
 - a. Why any Tree is proposed to be Removed from a Lot,
 - b. A description of the Replacement Tree proposed to replace any tree to be Removed, including Genus, Species, Height and Caliper,
 - c. A schedule for planting the proposed Replacement Tree,
 - d. If applicable, a Mitigation Payment,
 - e. If applicable, a Tree Protection Plan,
5. Replacement Trees will continue to be identified as Replacement Trees for a period of ten (10) years after they are planted,
6. No Replacement Tree shall be Removed without a Tree Permit issued by the Tree Warden. In all cases, the Tree Warden shall keep a record of the type and size of any Replacement Tree Removed, the reason for the removal, photographs of the Replacement Tree documenting the reason for removal, the date, the contractor, and the name and address of the property owner,
7. A Mitigation Payment will be required for all Replacement Trees Removed. The Mitigation Payment shall be assessed on a DBH basis in consideration of the Replacement Tree Removed, in accordance with the City of Everetts's most recent tree planting and maintenance costs

inclusive of purchasing, planting, watering, and maintaining Replacement Trees for a period of not less than five years. No reduction of the amount of Mitigation Payment otherwise available under this Ordinance will be allowed in connection with the Removal of Replacement Trees.

8. In the case of any project which requires a Tree Permit and where a Tree Survey identifies a tree Removal, the total DBH of Replacement Trees, or Mitigation Payment of equivalent value, as applicable, shall be 2 times or more, the total DBH of the trees to be Removed.

Tree Protection Plan

1. A Tree Protection Plan shall be required in the case where any applicable Significant Tree, Public Tree or Public Shade Tree or their Tree Protection Zone which will not be Removed, extends or overlaps into the work zone of any project, excavation or construction where any applicable Significant Tree, Public Tree or Public Shade Tree or their Tree Protection Zone may be damaged or disturbed including through, pruning, digging or through the compaction of soil due to the passage or parking of vehicles or equipment within the Tree Protection Zone,
2. If applicable a Tree Protection Plan shall be submitted concurrently with an application for a Tree Permit.
3. The Tree Protection Plan shall be designed and certified by a Certified Arborist,
4. The Tree Protection Plan shall be subject to approval by the Tree Warden,
5. All applicable Significant Trees, Public Trees and Public Shade Trees and their Tree Protection Zone near the excavation or construction of any building, structure, or street, or in the vicinity of utility work shall be sufficiently guarded and protected by those responsible for such work so as to prevent injury to said applicable Significant Trees, Public Trees and Public Shade Trees.
6. A Tree Protection Plan shall include;
 - a. The location on the Lot of all applicable Significant Trees, Public Trees and Public Shade Trees and their Tree Protection Zone
 - b. An indication of which applicable Significant Trees, Public Trees and Public Shade Trees and their Tree Protection Zones may be affected, damaged or otherwise disturbed including by the compaction of soil in and around a tree's root system by vehicle traffic, parking or other means.
 - c. Descriptions and drawings of tree protection measures that will be used to prevent damage or disturbance to trees and their root systems that will be retained.

Significant trees

1. A Tree Permit shall be required in the case of any project that requires a Site Plan Review per the City of Everett Code of Ordinances, Division IV, Sec. 19, where the Tree Survey identifies any Significant tree that will be Removed, Damaged or disturbed including through pruning, digging or through the compaction of soil due to the passage or parking of vehicles or equipment within the Tree Protection Zone.
2. No Tree Permit shall be required for the removal or disturbance of a Significant Tree located wholly on a Lot not Owned or managed by the City of Everett except in the case of any project which requires a Site Plan Review per Division IV: Zoning, § 19 Site Plan Review
3. A Tree Permit to Remove an applicable Significant Tree shall be issued when an applicable Significant Tree will be;

- a. Replaced or relocated on site or on an abutter's setback with the abutter's express approval in accordance with the provisions of the Mitigation Plan,
- b. Replaced by a Mitigation Payment into the Tree Replacement fund,
- c. The Tree is dead, diseased, injured, in danger of falling, dangerously close to existing structures, is causing disruption of utility service, is causing drainage or passage problems upon public rights-of-way, or poses a threat to pedestrian or vehicular safety and no other means of mitigation is applicable as certified by the Tree Warden.
- d. The removal of the Tree is necessary and desirable in order to enhance or benefit the health or condition of other trees on the same site as certified by the Tree Warden.

Public Tree and Public Shade Trees

1. A Tree Permit shall be required in the case of any project where any Public Tree or Public Shade Tree will be Removed, damaged or disturbed including through pruning, digging or through the compaction of soil due to the passage or parking of vehicles or equipment within the Tree Protection Zone.
2. Except as provided by a Tree Permit, no person other than the Tree Warden or their designee shall Remove, prune, alter or disturb any Public Tree or Public Shade Tree or the Tree Protection Zone of any Public Tree or Public Shade Tree, including through the compaction of soil due to the passage or parking of vehicles or equipment.
3. When a Public Tree or Public Shade Tree is to be Removed, a public tree hearing shall be scheduled. The public tree hearing will be advertised twice in a local newspaper during the 14 days prior to the public tree hearing, posted on the City website, the City hall bulletin board, and a notice shall be affixed to the tree itself. The resident or owner requesting the removal of a Public Tree or Public Shade Tree shall pay for costs associated with this notice.
4. After the conclusion of a favorable public tree hearing a Tree Permit to Remove a Public Tree or Public Shade Tree shall be issued when a Public Tree or Public Shade Tree will be;
 - a. Replaced or relocated on site or on an abutter's setback with the abutter's express approval in accordance with the provisions of the Mitigation Plan,
 - b. Replaced by a Mitigation Payment into the Tree Replacement fund,
 - c. The Tree is dead, diseased, injured, in danger of falling, dangerously close to existing structures, is causing disruption of utility service, is causing drainage or passage problems upon public rights-of-way, or poses a threat to pedestrian or vehicular safety and no other means of mitigation is applicable as certified by the Tree Warden.
 - d. The removal of the Tree is necessary and desirable in order to enhance or benefit the health or condition of other trees on the same site as certified by the Tree Warden.

Duty of Care

1. Upon issuance of any City of Everett permit by the Planning Board, the director of Inspectional Services or the Tree Warden, the permit holder is required to take reasonable precautions to ensure that any applicable Significant Tree and all Public Trees and Public Shade Trees are adequately protected and maintained free from harm from work associated with the permit issued. Failure to adequately protect and maintain any applicable Significant Trees and all Public Trees and Public Shade Trees free from harm may result in a fine, and failure to adequately protect applicable Significant Trees and all, Public Trees and Public Shade Trees that results in

any applicable Significant Trees and all, Public Trees and Public Shade Trees being Removed within Five (5) years of the failure to protect being noted may result in a fine and a Mitigation Payment that reflects the value in accordance with two (2) times the DBH of the applicable Significant Trees, Public Trees or Public Shade Trees Removed.

Tree Donations

1. Voluntary contributions may be made to benefit tree planting and maintenance in Everett shall be deposited into the Tree Replacement Fund.

Enforcement

1. Any person who violates any of the provisions of this Chapter shall be notified by the Tree Warden of the specific violation by certified or registered mail, return receipt requested, or by hand delivery. The notice shall set forth the nature of the violation and a reasonable time period within which compliance must be had.
2. Upon notice from the Tree Warden that work on any Lot on which an applicable Significant Trees, Public Tree, Public Shade Tree or their Tree Protection Zone is located is being performed contrary to any applicable Tree Protection Plan or Mitigation Plan or any provision of this Chapter, such work shall be immediately stopped. The stop work order shall be in writing, and shall be given to the owner of the Lot involved, or to the owner's agent, or to the person doing the work, and shall state the conditions under which work will be permitted to resume.
3. Any person who shall continue any work in or about said lot after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not more than \$300.00. Each day during which a violation exists shall constitute a separate offense.
4. Injunctive Relief. Whenever there exists reasonable cause to believe that a person is violating any applicable Mitigation Plan or Tree Protection Plan or any provision of this Chapter, the City may institute a civil action for a mandatory or prohibiting injunction in a court of competent jurisdiction ordering the defendant to correct the unlawful condition upon or cease the unlawful use of the property.
5. Failure to apply for and receive a Tree Permit or failure to replace an applicable Significant Tree, Public Tree, Public Shade Tree or make a payment into the Tree Replacement Fund or to post and maintain a bond in accordance with this ordinance shall constitute a separate violation of this Chapter for which there shall be a fine of not more than \$300.00. Each day such violation continues shall constitute a separate offense.
6. Alternative Penalty; As an alternative to any fine stated in this ordinance, citations may be issued pursuant to M.G.L. c. 40, § 21D, assessing a fine of not more than \$300.00 for each day the violation is committed or permitted to continue.
7. Tree vandalism. Each instance of mayhem shall constitute a violation of this ordinance and shall be subject to a fine of up to \$300.00.
8. Removal without a Tree Permit. Each instance in which an applicable Significant Tree, Public Tree or Public Shade Tree is Removed without a Tree Permit shall constitute a violation of this ordinance and shall be subject to a fine in the amount applicable to the City of Everetts most recent tree planting and maintenance costs inclusive of purchasing, planting, watering, and maintaining Replacement Trees for a period of not less than five years,

- a. The fine for any applicable Significant Tree, Public Tree or Public Shade Tree Removed without a Tree Permit shall be assessed at two (2) times the total DBH of any applicable Significant Tree, Public Tree or Public Shade Tree Removed,
 - b. No reduction of the amount of the fine otherwise available under this Ordinance will be allowed in connection with the Removal of any applicable Significant Tree, Public Tree or Public Shade Tree Removed without a Tree Permit.
9. Each failure to replace an applicable Significant Tree, Public Tree or Public Shade Tree or to make a payment into the Tree Replacement Fund beyond the timeframe of the Tree Permit shall constitute a separate violation of this ordinance and shall be subject to a fine in the amount of \$300.00. Each day such violation continues shall constitute a separate offense.
10. Failure to comply with a condition contained in a Tree Permit. Each instance where there is a failure to comply with a condition contained in a Tree Permit shall be subject to a fine in the amount of \$300.00.
11. Failure to comply with a stop work order. Each instance where there is a failure to comply with a stop work order shall constitute a violation of this ordinance, which shall be subject to a fine in the amount of \$300.00. Each day such violation continues shall constitute a separate offense;
12. Nothing herein shall be construed to require the City of Everett to make a payment into the Tree Replacement Fund for any tree that it Removes.

Severability

1. Severability. The provisions of this ordinance are severable. If any section, provision, or portion of this ordinance is determined to be invalid by a court of competent jurisdiction, then the remaining provisions of this ordinance shall continue to be valid.

Effective Date

In Effect. This Ordinance shall take effect immediately upon passage and publication as provided by law.

#4- C0259-24

Legislative Affairs & Election Committee
September 9, 2024

The Committee on Legislative Affairs & Elections met on Monday, September 9, 2024 at 6pm in the City Council Chambers.

The meeting was recorded by ECTV and can be viewed on the City of Everett website.

Members present were Councilor Michael Marchese, presiding, Councilors Stephanie Smith, Katy Rogers and Stephanie Martins.

The Committee considered an Ordinance offered by Councilor Katy Rogers: An Ordinance pertaining to trees in the City of Everett.

David St. Louis, Arborist, was also present.

David Flood, Legislative Research Specialist provided the Committee with a reformatted version of the Tree Ordinance submitted by Councilor Rogers, but noted that the Ordinance still needed a preamble. Councilor Rogers remarked that the Ordinance provides opportunities for the City to invest in its urban tree canopy. Councilor Smith asked Mr. St. Louis if this Ordinance would result in any costs to the City and Mr. St. Louis responded that it shouldn't. The Committee recommended that the Sponsor meet with Mr. Flood to address the need for a preamble as well as to finalize a fine schedule and suggested that the Ordinance be provided to the City Solicitor for her review and comments prior to it being presented at the next meeting.

The Committee voted: to grant further time.

Respectfully Submitted,

John W. Burley
Clerk of Committees

ENROLLED ORDINANCE

PUBLISHED PURSUANT TO CHAPTER 1 SECTION 4.5 OF THE REVISED ORDINANCES OF THE CITY OF EVERETT AND IN COMPLIANCE WITH MASSACHUSETTS GENERAL LAWS Chapter 43, Section 23.

ENROLLED: MM/DD/2024

DATE OF PROPOSED ORDAINMENT: MM/DD/2024



CITY COUNCIL..... No. C0259-24

IN THE YEAR TWO THOUSAND AND TWENTY-FOUR

AN ORDINANCE PERTAINING TO TREES IN THE CITY OF EVERETT

Councilor /s/ Katy L. Rogers

Whereas: x; and

Whereas: x, and

Whereas: x.

Now, therefore, by the authority granted to the City Council of the City of Everett-Tree, Massachusetts to make and amend ordinances:

Be it Ordained by the City Council of the City of Everett, Massachusetts that Chapter 17 of the Revised Ordinances of the City of Everett is hereby amended as follows:

The title of Chapter 17 shall be amended by changing the title from "STREETS AND SIDEWALKS" to "STREETS, SIDEWALKS AND OTHER OUTDOOR SPACES"

Chapter 17 of the Revised Ordinances of the City of Everett is hereby further amended as follows:

Article V of Chapter 17 of the Revised Ordinances of the City of Everett shall be amended by adding a new Division 3 as follows:

DIVISION 3. CITY TREE ORDINANCES

Section 17-120 Intent and purpose

(a) The City of Everett is committed to investing in its urban tree canopy. To that end, ~~these ordinances~~this division shall guide the city in-;

(1) The preservation of existing trees,;

(2) The promotion of new tree planting; and

(3) In community engagement with our urban canopy.

~~(a)(b)~~ Development of the city's urban canopy will serve to improve the environment, the aesthetics and the quality of life in the city of Everett and for its residents. ~~The numerous functions of a well-developed urban tree canopy include:~~

(c) The numerous functions of a well-developed urban tree canopy include:

- (1) Conserving energy, and combating heat island effect by providing shade and evaporative cooling through transpiration;
- (2) Improving local and global air quality by absorbing carbon dioxide, ozone, particulate matter, and producing oxygen;
- (3) Reducing storm runoff, flooding and soil erosion;
- (4) Providing microclimate control;
- (5) Reducing wind speed and directing air flow;
- (6) Reducing noise pollution;
- (7) Providing habitat for birds, small mammals, and other wildlife;
- (8) Enhancing visual and aesthetic qualities that attract visitors and businesses;
- (9) Providing natural privacy among neighbors;
- (10) Protecting and increasing real property values; and
- (11) Contributing to the definition of public spaces and creating civic identity and responsibility.

~~(b)(d)~~ The provisions of this ordinance division reinforce, enhance, and expand existing legal vehicles to ensure that future development and public policy adequately preserve, protect, and provide for replacement of public trees and public shade trees as well as increasing the total tree inventory.

~~(e)~~ The city resolves to plant more trees and in greater variety in order to compensate for past tree losses, the length of time required for a tree to achieve maturity and to provide resiliency through biodiversity.

~~(e)(f)~~ The city will adhere to "right tree, right place" philosophy to ensure that all new trees are planted and maintained to ensure long term success into maturity.

~~(d)(g)~~ This ordinance division:

- (1) Ensures that the city of Everett sustains its designation as Tree City USA by Meeting or exceeding the four core standards of sound urban forestry management;
 - a. Maintaining a tree department;
 - b. Having a city tree ordinance;
 - c. Spending at least \$2.00 per capita on urban forestry; and

- d. Celebrating Arbor Day.
- (2) Protects and preserves public shade trees pursuant to M.G.L. c. 87.
- (3) Encourages private property owners to plant or to accept a tree from the city to be planted within the setback area of their lot instead of in the tree lawn or tree pit, if the tree warden so recommends.
- (4) Allows the tree warden, or a private organization acting with the written consent of the tree warden, to plant trees acquired with public or private funds in the public rights-of-way or within the setback from such public rights-of-way with acceptance by the property owner for the purpose of improving, protecting, shading, or ornamenting the land.

Section 17-121 Definitions

- (a) "Aggregate diameter": The combined DBH (~~diameter at breast height~~) of multiple tree trunks growing from the same root system shall be considered to be the DBH of the tree in the case of any tree where more than one stem originates below 54.5 feet from the ground.
- (b) "Caliper": A measurement of the tree trunk diameter used when any tree is less than 6" inches and is a measurement of the diameter of the tree trunk at 12 inches above the ground. Caliper measurement is typically used when purchasing new trees.
- (c) "Certified arborist": An arborist certified by the Massachusetts Arborists' Association or the International Society of Arboriculture, or any successor of either organization.
- (d) "DBH (diameter at breast height)": The diameter of a tree trunk measured in inches at a height of 4.5 feet above the ground. For multiple trunk trees, DBH is the aggregate diameter of the trunks.
- (e) "Lot": A parcel of land in identical ownership throughout, bounded by other lots or streets, which is designated by its owner to be used, developed or built upon as a unit.
- (f) "Mitigation payment." A payment to be paid to the tree replacement fund associated with the removal of applicable significant trees, public trees or public shade trees that have not been replaced with replacement trees in accordance with the mitigation requirements established in this Ordinance division. The mitigation payment shall be in accordance with the City of Everett's city's most recent tree planting costs in consideration of ~~two (2)~~ times or more, the total DBH or caliper of trees removed.
- (g) "Mitigation plan": A document to be provided where any applicable significant tree, public tree or public shade tree is proposed to be removed from a lot, stating;
 - (1) Why any applicable significant tree, public tree or public shade tree is proposed to be removed from a lot;
 - (2) A description of the replacement tree proposed to replace any applicable significant tree, public tree or public shade tree to be removed, and
 - (3) The mitigation payment, if required.

- (h) "Pruning standards": Standards for pruning of trees as defined in the ANSI A300 Tree Care Standards and any future amendments or revisions to the same.
- (i) "Public shade tree": A tree located in the public way, as defined in M.G.L. c. 87, Sec. 5.
- (j) "Public tree": Any tree located on land owned completely by the city ~~of Everett~~. This does not include any tree that fits the definition of a public shade tree under M.G.L. c. 87.
- ~~4. "Replacement Caliper": The caliper for applicable Significant Trees, Public Trees and Public Shade Trees planted in replacement for Removed trees shall be at least two (2) times the DBH or aggregate diameter whichever is greater, of the tree Removed.~~
- (k) "Replacement trees." A tree or trees to be planted to replace applicable significant trees, public trees or public shade trees to be removed from the lot. The approval of the tree warden will be required if replacement trees are to be placed on other lots. Replacement trees shall continue to be identified as such for a period of ~~ten (10)~~ years.
- (l) "Remove (including removing and removal)": Cutting down any applicable significant tree, public tree or public shade tree and all other acts which cause the actual removal or the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of an applicable significant tree, public tree or public shade tree, including, but not limited to, excessive or improper pruning.
- (m) "Significant tree": Any tree ~~six (6)~~ inches DBH or larger which is on a lot. This does not include any tree that fits the definition of a public tree under this ordinance or any tree that fits the definition of a public shade tree under M.G.L. c. 87.
- (n) "Tree permit": A document signed and certified by the tree warden required to be issued for any project requiring a site plan review per ~~the City Appendix A, Section 19 of Everett Code of these Revised Ordinances, Division IV, Sec. 19~~, where any applicable significant tree, public tree or public shade tree may be damaged or disturbed as a result of a project on the lot. A tree permit shall also be required for any project that requires or may result removal, damage or disturbance including through, pruning, digging or through the compaction of soil due to the passage or parking of vehicles or equipment within the tree protection zone or other means to any public trees or public shade trees and their tree protection zone.
- (o) "Tree protection plan": A document designed by a certified arborist and approved by the tree warden which shall include the following information:
 - (1) Drawings of tree protection measures;
 - (2) The location on the lot of all applicable significant trees, public trees and public shade trees and their tree protection zone;
 - (3) An indication of which applicable significant trees, public trees and public shade trees and their tree protection zones may be affected, damaged or otherwise disturbed including by the compaction of soil in and around a tree's root system by vehicle traffic, parking or other means;
 - (4) In the event that any applicable significant tree, public tree or public shade tree is proposed to be removed, the tree protection plan shall include the location of any applicable significant tree, public tree and public shade tree, and their genus, species, height and DBH or caliper,

- (5) In the event that any applicable significant tree, public tree or public shade tree is proposed to be removed, the tree protection plan shall include the location of replacement tree ~~or trees(s)~~ and their genus, species, height and DHB or caliper.
 - (6) A schedule for planting the proposed replacement tree ~~or trees,(s)~~;
 - (7) In the event that any applicable significant tree, public tree or public shade tree is proposed to be removed and an inadequate number of replacement trees are proposed to be planted, a mitigation plan shall be included in the tree protection plan,
 - (8) Such other conditions as specified by the tree warden pursuant to applicable regulations.
- (p) "Tree protection zone": The area surrounding a tree which must remain as undisturbed as possible so as to prevent damage or removal of the tree. Including but not limited to the area where roots critical to the vigor and structure of the tree are located. The size and shape of a tree protection zone shall be defined by a certified arborist, shall adhere to the ANSI A300 Tree Care Standards and be approved by the tree warden.
- (q) "Tree replacement": The tree warden shall require the replacement of any removed applicable significant tree, public tree or public shade tree, which shall be planted by the applicant or their contractors under the supervision of a certified arborist and subject to approval by the tree warden.
- (r) "Tree replacement fund": Payments required by this ~~ordinance~~ division for planting at the same site or at another location shall be deposited into this fund.
- (s) "Tree survey": A document designed by a certified arborist and approved by the tree warden which shall include the location, genus, species, height and DBH of all significant trees, public trees and public shade trees and their tree protection zone on a lot and those trees that have been removed from a lot within ~~one~~ 1 year prior to the submission of a tree survey. If applicable, a tree survey shall include a tree protection plan and a mitigation plan. A tree survey shall be required for any project requiring any building permit, a special permit per ~~The City Appendix A, Section 3 of Everett Code of these Revised Ordinances, Division IV Sec. 3~~ or a site plan review per ~~the City of Everett Code of Appendix A, Section 19 of these Revised Ordinances, Division IV, Sec. 19~~. A tree survey shall also be required for any project that requires or may result in any public trees or public shade trees being removed, damaged or disturbed including through, pruning, digging or through the compaction of soil due to the passage or parking of vehicles or equipment within the tree protection zone.
- (t) "Tree warden": The individual who holds this title shall be an arborist certified by the Massachusetts Arborists Association (MAA), the International Society of Arboriculture or any successor of either organization. The duties and responsibilities of the tree warden shall conform to M.G.L. c. 87 and shall include other responsibilities described in this ~~ordinance~~ division.

Section 17-122 Compliance with state law

Nothing in this ~~ordinance~~ division shall be construed to restrict, amend, repeal, or otherwise limit the application or enforcement of existing municipal or state law.

Section 17-123 Tree replacement fund

(a) There is hereby established a tree replacement fund which shall be held by the city treasurer in an account and administered in accordance with applicable provisions of the Massachusetts General Laws.

(a)(b) Any payments into the tree replacement fund shall be deposited in said fund and shall be used solely for the purpose of supporting tree planting and maintenance throughout the entire city.

Section 17-124 Applicability

The terms and provisions of this ~~ordinance~~division shall be administered by the tree warden and shall apply to any applicable significant tree and to any public tree or public shade tree and their tree protection zone located within the city ~~of Everett~~.

Section 17-125 Tree warden

(a) The tree warden shall be a certified arborist by the Massachusetts Arborist's Association, the International Society of Arboriculture, or any successor of either organization.

(b) The duties and responsibilities of the tree warden shall conform to M.G.L. ~~A.~~ c. 87 and shall include, but not be limited to, the following and as may be further specified in this ~~ordinance~~division:

- (1) Care and control of all trees within public rights-of-way and care and control of all trees on city property;
- (2) Development of an annual work plan, using the tree inventory as a resource, for systematic tree maintenance, replacements, plantings, and removals for each fiscal year. The plan shall include locations of work, designated work to be accomplished, and resources including funds required;
- (3) Posting notices and holding public hearings for the removal of public trees and public shade trees as required by M.G.L. c. 87 and this ~~ordinance~~division;
- (4) Expending funds appropriated for planting trees on land within public rights-of-way, city owned property and in the setback of a lot with the express approval of the owners;
- (5) Granting or denying permits and attaching thereto reasonable conditions required under this ~~ordinance~~division;
- (6) Working in conjunction with other city departments to seek grants or other assistance concerning the preservation, maintenance and planting of trees in ~~City~~the city;
- (7) Development of rules, regulations, tree inventories, manuals, and other data, in conjunction with other city departments, to carry out the purposes and intent of this ordinance;

- (8) Supervising the planting and care of city trees to ensure that such planting and care meets the criteria of ~~these ordinances~~ this division and the ANSI A300 Tree Care Standards;
- (9) Ensuring the regular maintenance of and updating of the ~~City of Everett's city's~~ tree inventory to track removal and replacement of trees in order to replace lost trees in an orderly fashion;
- (10) Appointment of designee to serve in the absence of the tree warden;
- (11) Coordinate with any private organization that creates a program for the planting or pruning of public trees and public shade trees on city property, in the public rights-of-way or within the setbacks with the express approval of the owners,
- (12) With authorization by the ~~council~~ mayor, undertaking other responsibilities consistent with the purposes and intent of this ~~ordinance~~ division; and
- (13) Enforcement of this ordinance.

Section 17-126 *Tree survey*

- (a) A tree survey shall be required in the case of any project that requires any building permit, a special permit per ~~The City Appendix A, Section 3 of Everett Code of these Revised Ordinances, Division IV Sec. 3,~~ or a site plan review per ~~the City of Everett Code of Ordinances, Division IV, Sec. Appendix A, Section 19.~~ The application for any building permit, a special permit or a site plan review shall include a tree survey which shall first have been submitted to the tree warden not less than ~~twenty-one (21)~~ days prior to the submission of the application for a, building permit, special permit or site plan review.
- (b) A tree survey shall also be required for any project that requires or may result in any public trees or public shade trees being removed, damaged or disturbed including through, pruning, digging or through the compaction of soil due to the passage or parking of vehicles or equipment within the tree protection zone.
- (c) A tree survey shall include the location, genus, species, height, DBH and tree protection zone of all significant trees, public trees and public shade trees that will be removed, damaged, or disturbed, including through the compaction of soil due to the passage or parking of vehicles or equipment within the tree protection zone by any project requiring any building permit, a special permit per ~~The City Appendix A, Section 3 of Everett Code of these Revised Ordinances, Division IV Sec. 3,~~ or a site plan review per ~~the City of Everett Code of Appendix A, Section 19 of these Revised Ordinances, Division IV, Sec. 19.~~

Section 17-127 *Tree permits*

- (a) A tree permit shall be required in the case of any project where any applicable significant tree or public tree or public shade tree will be removed, damaged or disturbed including ~~through,~~ pruning, digging or through, the compaction of soil ~~due to the~~ passage or parking of vehicles or equipment within the tree protection zone.
- (b) No tree permit application fee shall be charged.

- (c) If applicable, a tree permit application shall be submitted concurrently with a tree survey in accordance with this ~~ordinanc~~edivision and if applicable, a mitigation plan and a tree protection plan.
- (d) The tree warden shall review applications for tree permits in accordance with the provisions of this ~~ordinanc~~edivision and with any rules or regulations promulgated hereunder.
- (e) The tree warden shall ~~date~~-stamp or otherwise record the date of filing of each application for a tree permit.
- (f) The tree warden shall complete the review of each tree permit application relating wholly to significant tree removal no later than ~~ten~~(10) business days after the submission of a completed application to the tree warden.
- (g) Upon the issuance of a tree permit, the tree warden may prescribe in writing such protective measures for existing trees, as they deem necessary. The tree warden shall make a determination that the prescribed protective measures have been adequately provided before any disturbance of the site related to the permitted activity may begin.
- (h) In the case of any project which requires any building permit, a special permit per ~~The City Appendix A, Section 3 of Everett Code of these Revised Ordinances, Division IV Sec. 3~~ or a site plan review per ~~the City of Everett Code of Appendix A, Section 19 of these Revised Ordinances, Division IV, Sec. 19~~, the owner of the lot shall be required to commit to comply with all provisions of the tree permit ~~and if applicable, the provisions of the mitigation plan, the tree protection plan and other provisions of this Chapter~~edivision and regulations promulgated hereunder in the application for requires any building permit, a special permit per ~~The City of Everett Code of Ordinances, Division IV Sec. Appendix A, Section 3~~, or a site plan review per the ~~City of Everett Code of Ordinances, Division IV, Sec. Appendix A, Section 19~~.
- (i) If applicable, the tree warden shall report whether the tree permit was granted or denied to the planning board or the director of inspectional services within the same ~~ten~~(10) business days. If the planning board or the director of inspectional services receives no such report about a tree permit for the property within the above-stated time period, the planning board ~~etor~~ director of inspectional services shall accept ~~a~~ building permit, special permit or site plan review application without that report.
- (j) In the case of a project where a tree permit allows for the removal of an applicable significant tree, a public tree or a public shade tree, the tree warden shall keep a record of the type and size of tree(s) removed, the reason(s) for the removal, ~~photographs~~photograph(s) of the tree(s) documenting the reason for removal, the date, the contractors, and the name and address of the property owner.
- (k) Any tree permit issued by the tree warden shall be valid for 90 days from issuance. The tree warden, following an email or written request by the applicant, may extend the length of the permit for any length of time, as they deem necessary and appropriate.
- (l) A tree permit may be suspended or revoked at any time by the tree warden upon written notice to the permit holder that the permit holder has failed to comply with either this ~~ordinanc~~edivision or the conditions of the tree permit. The written notice shall be sent by certified mail, return receipt requested, or by hand delivery and shall provide an

opportunity for the permit holder to correct the non-compliance and apply for a renewal of the tree permit upon compliance, where practicable.

Section 17-128 *Mitigation plan*

- (a) In the case of any project which requires a tree permit and where a tree survey identifies a tree removal, a mitigation plan will be required for all trees removed,
- (b) The mitigation plan shall be designed and certified by a certified arborist,
- (c) The mitigation plan shall be subject to approval by the tree warden,
- (d) If applicable, a mitigation plan shall be submitted concurrently with an application for a tree permit. A mitigation plan shall include:
 - (1) Why any tree is proposed to be removed from a lot,
 - (2) A description of the replacement tree proposed to replace any tree to be removed, including genus, species, height and caliper,
 - (3) A schedule for planting the proposed replacement tree,
 - (4) If applicable, a mitigation payment,
 - (5) If applicable, a tree protection plan,
- (e) Replacement trees will continue to be identified as replacement trees for a period of ~~ten~~ **(10)** years after they are planted,
- (f) No replacement tree shall be removed without a tree permit issued by the tree warden. In all cases, the tree warden shall keep a record of the type and size of any replacement tree removed, the reason for the removal, photographs of the replacement tree documenting the reason for removal, the date, the contractor, and the name and address ~~of~~ the property owner,
- (g) A mitigation payment will be required for all replacement trees removed. The mitigation payment shall be assessed on a DBH basis in consideration of the replacement tree removed, in accordance with the ~~City of Everett's city's~~ most recent tree planting and maintenance costs inclusive of purchasing, planting, watering, and maintaining replacement trees for a period of not less than ~~five~~ **5** years. No reduction of the amount of mitigation payment otherwise available under this ~~Ordinance will~~ division shall be allowed in connection with the removal of replacement trees.
- (h) In the case of any project which requires a tree permit and where a tree survey identifies a tree removal, the total DBH of replacement trees, or mitigation payment of equivalent value, ~~asa~~ **4s** applicable, shall be 2 times or more, the total DBH of the trees to be removed.

Section 17-129 *Tree protection plan*

- (a) A tree protection plan shall be required in the case where any applicable significant tree, public tree or public shade tree or their tree protection zone which will not be removed, extends or overlaps into the work zone of any project, excavation or construction where any applicable significant tree, public tree or public shade tree or their tree protection zone may be damaged or disturbed including through, pruning, digging or through the

compaction of soil due to the passage or parking of vehicles or equipment within the tree protection zone;

- (b) If applicable a tree protection plan shall be submitted concurrently with an application for a tree permit.
- (c) The tree protection plan shall be designed and certified by a certified arborist;
- (d) The tree protection plan shall be subject to approval by the tree warden,
- (e) All applicable significant trees, public trees and public shade trees and their tree protection zone near the excavation or construction of any building, structure, or street, or in the vicinity of utility work shall be sufficiently guarded and protected by those responsible for such work so as to prevent injury to said applicable significant trees, public trees and public shade trees.
- (f) A tree protection plan shall include:
 - a. ~~The location on the Lot of all applicable Significant Trees, Public Trees and Public Shade Trees and their Tree Protection Zone~~
 - (1) An indication of which applicable significant trees, public trees and public shade trees and their tree protection zones may be affected, damaged or otherwise disturbed including by the compaction of soil in and around a tree's root system by vehicle traffic, parking or other means; and
 - (2) Descriptions and drawings of tree protection measures that will be used to prevent damage or disturbance to trees and their root systems that will be retained.

Section 17-130 Significant trees

- (a) A tree permit shall be required in the case of any project that requires a site plan review per the City of Everett Code of Ordinances, ~~Division IV, Sec. Appendix A, Section~~ 19, where the tree survey identifies any significant tree that will be removed, damaged or disturbed including through pruning, digging or through the compaction of soil due to the passage or parking of vehicles or equipment within the tree protection zone.
- (b) No tree permit shall be required for the removal or disturbance of a significant tree located wholly on a lot not owned or managed by the city ~~of Everett~~ except in the case of any project which requires a site plan review per ~~Division IV: Zoning Appendix A, § 19~~ Site Plan Review
- (c) A tree permit to remove an applicable significant tree shall be issued when an applicable significant tree will be:
 - (1) Replaced or relocated on site or on an abutter's setback with the abutter's express approval in accordance with the provisions of the mitigation plan,
 - (2) Replaced by a mitigation payment into the tree replacement fund,
 - (3) The tree is dead, diseased, injured, in danger of falling, dangerously close to existing structures, is causing disruption of utility service, is causing drainage or passage problems upon public rights-of-way, or poses a threat to pedestrian or vehicular safety and no other means of mitigation is applicable as certified by the tree warden.

- (4) The removal of the tree is necessary and desirable in order to enhance or benefit the health or condition of other trees on the same site as certified by the tree warden.

Section 17-131 Public tree and public shade trees

- (a) A tree permit shall be required in the case of any project where any public tree or public shade tree will be removed, damaged or disturbed including through pruning, digging or through the compaction of soil due to the passage or parking of vehicles or equipment within the tree protection zone.
- (b) Except as provided by a tree permit, no person other than the tree warden or their designee shall remove, prune, alter or disturb any public tree or public shade tree or the tree protection zone of any public tree or public shade tree, including through the compaction of soil due to the passage or parking of vehicles or equipment.
- (c) When a public tree or public shade tree is to be removed, a public tree hearing shall be scheduled. The public tree hearing will be advertised twice in a local newspaper during the 14 days prior to the public tree hearing, posted on the city website, the city hall bulletin board, and a notice shall be affixed to the tree itself. The resident or owner requesting the removal of a public tree or public shade tree shall pay for costs associated with this notice.
- (d) After the conclusion of a favorable public tree hearing, a tree permit to remove a public tree or public shade tree shall be issued when a public tree or public shade tree will be:
 - (1) Replaced or relocated on site or on an abutter's setback with the abutter's express approval in accordance with the provisions of the mitigation plan;
 - (2) Replaced by a mitigation payment into the tree replacement fund;
 - (3) The tree is dead, diseased, injured, in danger of falling, dangerously close to existing structures, is causing disruption of utility service, is causing drainage or passage problems upon public rights-of-way, or poses a threat to pedestrian or vehicular safety and no other means of mitigation is applicable as certified by the tree warden; or
 - (4) The removal of the tree is necessary and desirable in order to enhance or benefit the health or condition of other trees on the same site as certified by the tree warden.

Section 17-132 Duty of care

- ~~(a)~~ Upon issuance of any city-~~of Everett~~ permit by the planning board, the director of inspectional services or the tree warden, the permit holder is required to take reasonable precautions to ensure that any applicable significant tree and all public trees and public shade trees are adequately protected and maintained free from harm from work associated with the permit issued.
- ~~(a)~~(b) Failure to adequately protect and maintain any applicable significant trees and all public trees and public shade trees free from harm may result in a fine, and failure to adequately protect applicable significant trees and all, public trees and public shade trees that results in any applicable significant trees and all, public trees and public shade trees being

removed within ~~Five (5)~~ years of the failure to protect being noted may result in a fine and a mitigation payment that reflects the value in accordance with ~~two (2)~~ times the DBH of the applicable significant trees, public trees or public shade trees removed.

Section 17-133 *Tree donations*

Voluntary contributions may be made to benefit tree planting and maintenance in ~~Everett~~the city shall be deposited into the tree replacement fund.

Section 17-134 *Enforcement*

- (a) Any person who violates any of the provisions of this ~~Chapter~~division shall be notified by the tree warden of the specific violation by certified or registered mail, return receipt requested, or by hand delivery. The notice shall set forth the nature of the violation and a reasonable time period within which compliance must be had.
- (b) Upon notice from the tree warden that work on any lot on which an applicable significant ~~Tree~~tree, public tree, public shade tree or their tree protection zone is located is being performed contrary to any applicable tree protection plan or mitigation plan or any provision of this ~~Chapter~~division, such work shall be immediately stopped. The stop work order shall be in writing, and shall be given to the owner of the lot involved, or to the owner's agent, or to the person doing the work, and shall state the conditions under which work will be permitted to resume.
- (c) Any person who shall continue any work in or about said lot after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not more than \$300.00. Each day during which a violation exists shall constitute a separate offense.
- (d) ~~Injunctive Relief.~~ Whenever there exists reasonable cause to believe that a person is violating any applicable mitigation plan or tree protection plan or any provision of this ~~Chapter~~division, the city may institute a civil action for a mandatory or prohibiting injunction in a court of competent jurisdiction ordering the defendant to correct the unlawful condition upon or cease the unlawful use of the property.
- (e) Failure to apply for and receive a tree permit or failure to replace an applicable significant tree, public tree or, public shade tree or make a payment into the tree replacement fund or to post and maintain a bond in accordance with this ~~ordinance~~division shall constitute a separate violation of this ~~Chapter~~division for which there shall be a fine of not more than \$300.00. Each day such violation continues shall constitute a separate offense.
- (f) ~~Alternative Penalty.~~ As an alternative to any fine stated in this ~~ordinance~~division, citations may be issued pursuant to M.G.L. c. 40, § 21D, assessing a fine of not more than \$300.00 for each day the violation is committed or permitted to continue.
- (g) ~~Tree vandalism.~~ Each instance of ~~mayhem~~vandalism to an applicable significant tree, public tree or, public shade tree shall constitute a violation of this ~~ordinance~~division and shall be subject to a fine of up to \$300.00.
- (h) ~~Removal without a Tree Permit.~~ Each instance in which an applicable significant tree, public tree or public shade tree is removed without a tree permit shall constitute a violation of this ~~ordinance~~division and shall be subject to a fine in the amount applicable

to the ~~City of Everett~~city's most recent tree planting and maintenance costs inclusive of purchasing, planting, watering, and maintaining replacement trees for a period of not less than ~~five~~5 years;

- (1) The fine for any applicable significant tree, public tree or public shade tree removed without a tree permit shall be assessed at ~~two (2)~~ times the total DBH of any applicable significant tree, public tree or public shade tree removed,
 - (2) -No reduction of the amount of the fine otherwise available under this ~~Ordinance~~division will be allowed in connection with the removal of any applicable significant tree, public tree or public shade tree removed without a tree permit.
- (i) Each failure to replace an applicable significant tree, public tree or public shade tree or to make a payment into the tree replacement fund beyond the timeframe of the tree permit shall constitute a separate violation of this ~~ordinance~~division and shall be subject to a fine in the amount of \$300.00. Each day such violation continues shall constitute a separate offense.
 - (j) Failure to comply with a condition contained in a tree permit. Each instance where there is a failure to comply with a condition contained in a tree permit shall be subject to a fine in the amount of \$300.00.
 - (k) Failure to comply with a stop work order. Each instance where there is a failure to comply with a stop work order shall constitute a violation of this ~~ordinance~~division, which shall be subject to a fine in the amount of \$300.00. Each day such violation continues shall constitute a separate offense;
 - (l) Nothing herein shall be construed to require the city ~~of Everett~~ to make a payment into the tree replacement fund for any tree that it removes.

~~Severability~~

~~Severability—Secs. 17-135-17-139 Reserved~~

The provisions of this ordinance are severable. If any section, provision, or portion of this ordinance is determined to be invalid by a court of competent jurisdiction, then the remaining provisions of this ordinance shall continue to be valid.

~~Effective Date~~

~~In Effect—This ordinance shall take effect immediately upon passage by the City Council and publication as provided by law—subsequent approval by His Honor the Mayor.~~



A true copy attest

Sergio Cornelio

Sergio Cornelio, City Clerk

ENROLLED ORDINANCE

PUBLISHED PURSUANT TO CHAPTER 1 SECTION 4.5 OF THE REVISED ORDINANCES OF THE CITY OF EVERETT AND IN COMPLIANCE WITH MASSACHUSETTS GENERAL LAWS Chapter 43, Section 23.

ENROLLED: MM/DD/2024

DATE OF PROPOSED ORDAINMENT: MM/DD/2024



CITY COUNCIL..... No. C0259-24

IN THE YEAR TWO THOUSAND AND TWENTY-FOUR

AN ORDINANCE PERTAINING TO TREES IN THE CITY OF EVERETT

Councilor /s/ Katy L. Rogers

Whereas: x; and

Whereas: x, and

Whereas: x.

Now, therefore, by the authority granted to the City Council of the City of Everett, Massachusetts to make and amend ordinances:

Be it Ordained by the City Council of the City of Everett, Massachusetts that Chapter 17 of the Revised Ordinances of the City of Everett is hereby amended as follows:

The title of Chapter 17 shall be amended by changing the title from “**STREETS AND SIDEWALKS**” to “**STREETS, SIDEWALKS AND OTHER OUTDOOR SPACES**”

Chapter 17 of the Revised Ordinances of the City of Everett is hereby further amended as follows:

Article V of Chapter 17 of the Revised Ordinances of the City of Everett shall be amended by adding a new Division 3 as follows:

DIVISION 3. CITY TREE ORDINANCES

Section 17-120 Intent and purpose

- (a) The City of Everett is committed to investing in its urban tree canopy. To that end, this division shall guide the city in:
 - (1) The preservation of existing trees;
 - (2) The promotion of new tree planting; and
 - (3) In community engagement with our urban canopy.

- (b) Development of the city's urban canopy will serve to improve the environment, the aesthetics and the quality of life in the city and for its residents.
- (c) The numerous functions of a well-developed urban tree canopy include:
 - (1) Conserving energy, and combating heat island effect by providing shade and evaporative cooling through transpiration;
 - (2) Improving local and global air quality by absorbing carbon dioxide, ozone, particulate matter, and producing oxygen;
 - (3) Reducing storm runoff, flooding and soil erosion;
 - (4) Providing microclimate control;
 - (5) Reducing wind speed and directing air flow;
 - (6) Reducing noise pollution;
 - (7) Providing habitat for birds, small mammals, and other wildlife;
 - (8) Enhancing visual and aesthetic qualities that attract visitors and businesses;
 - (9) Providing natural privacy among neighbors;
 - (10) Protecting and increasing real property values: and
 - (11) Contributing to the definition of public spaces and creating civic identity and responsibility.
- (d) The provisions of this division reinforce, enhance, and expand existing legal vehicles to ensure that future development and public policy adequately preserve, protect, and provide for replacement of public trees and public shade trees as well as increasing the total tree inventory.
- (e) The city resolves to plant more trees and in greater variety in order to compensate for past tree losses, the length of time required for a tree to achieve maturity and to provide resiliency through biodiversity.
- (f) The city will adhere to "right tree, right place" philosophy to ensure that all new trees are planted and maintained to ensure long term success into maturity.
- (g) This division:
 - (1) Ensures that the city sustains its designation as Tree City USA by Meeting or exceeding the four core standards of sound urban forestry management;
 - a. Maintaining a tree department;
 - b. Having a city tree ordinance;
 - c. Spending at least \$2.00 per capita on urban forestry; and
 - d. Celebrating Arbor Day.
 - (2) Protects and preserves public shade trees pursuant to M.G.L. c. 87.

- (3) Encourages private property owners to plant or to accept a tree from the city to be planted within the setback area of their lot instead of in the tree lawn or tree pit, if the tree warden so recommends.
- (4) Allows the tree warden, or a private organization acting with the written consent of the tree warden, to plant trees acquired with public or private funds in the public rights-of-way or within the setback from such public rights-of-way with acceptance by the property owner for the purpose of improving, protecting, shading, or ornamenting the land.

Section 17-121 Definitions

- (a) "Aggregate diameter": The combined DBH of multiple tree trunks growing from the same root system shall be considered to be the DBH of the tree in the case of any tree where more than one stem originates below 54.5 feet from the ground.
- (b) "Caliper": A measurement of the tree trunk diameter used when any tree is less than 6 inches and is a measurement of the diameter of the tree trunk at 12 inches above the ground. Caliper measurement is typically used when purchasing new trees.
- (c) "Certified arborist": An arborist certified by the Massachusetts Arborists' Association or the International Society of Arboriculture, or any successor of either organization.
- (d) "DBH (diameter at breast height)": The diameter of a tree trunk measured in inches at a height of 4.5 feet above the ground. For multiple trunk trees, DBH is the aggregate diameter of the trunks.
- (e) "Lot": A parcel of land in identical ownership throughout, bounded by other lots or streets, which is designated by its owner to be used, developed or built upon as a unit.
- (f) "Mitigation payment." A payment to be paid to the tree replacement fund associated with the removal of applicable significant trees, public trees or public shade trees that have not been replaced with replacement trees in accordance with the mitigation requirements established in this division. The mitigation payment shall be in accordance with the city's most recent tree planting costs in consideration of 2 times or more, the total DBH or caliper of trees removed.
- (g) "Mitigation plan": A document to be provided where any applicable significant tree, public tree or public shade tree is proposed to be removed from a lot, stating;
 - (1) Why any applicable significant tree, public tree or public shade tree is proposed to be removed from a lot;
 - (2) A description of the replacement tree proposed to replace any applicable significant tree, public tree or public shade tree to be removed, and
 - (3) The mitigation payment, if required.
- (h) "Pruning standards": Standards for pruning of trees as defined in the ANSI A300 Tree Care Standards and any future amendments or revisions to the same.
- (i) "Public shade tree": A tree located in the public way, as defined in M.G.L. c. 87, Sec. 5.

- (j) "Public tree": Any tree located on land owned completely by the city. This does not include any tree that fits the definition of a public shade tree under M.G.L. c. 87.
- (k) "Replacement trees." A tree or trees to be planted to replace applicable significant trees, public trees or public shade trees to be removed from the lot. The approval of the tree warden will be required if replacement trees are to be placed on other lots. Replacement trees shall continue to be identified as such for a period of 10 years.
- (l) "Remove (including removing and removal)": Cutting down any applicable significant tree, public tree or public shade tree and all other acts which cause the actual removal or the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of an applicable significant tree, public tree or public shade tree, including, but not limited to, excessive or improper pruning.
- (m) "Significant tree": Any tree 6 inches DBH or larger which is on a lot. This does not include any tree that fits the definition of a public tree under this ordinance or any tree that fits the definition of a public shade tree under M.G.L. c. 87.
- (n) "Tree permit": A document signed and certified by the tree warden required to be issued for any project requiring a site plan review per Appendix A, Section 19 of these Revised Ordinances, where any applicable significant tree, public tree or public shade tree may be damaged or disturbed as a result of a project on the lot. A tree permit shall also be required for any project that requires or may result removal, damage or disturbance including through, pruning, digging or through the compaction of soil due to the passage or parking of vehicles or equipment within the tree protection zone or other means to any public trees or public shade trees and their tree protection zone.
- (o) "Tree protection plan": A document designed by a certified arborist and approved by the tree warden which shall include the following information:
 - (1) Drawings of tree protection measures;
 - (2) The location on the lot of all applicable significant trees, public trees and public shade trees and their tree protection zone;
 - (3) An indication of which applicable significant trees, public trees and public shade trees and their tree protection zones may be affected, damaged or otherwise disturbed including by the compaction of soil in and around a tree's root system by vehicle traffic, parking or other means;
 - (4) In the event that any applicable significant tree, public tree or public shade tree is proposed to be removed, the tree protection plan shall include the location of any applicable significant tree, public tree and public shade tree, and their genus, species, height and DBH or caliper,
 - (5) In the event that any applicable significant tree, public tree or public shade tree is proposed to be removed, the tree protection plan shall include the location of replacement tree(s) and their genus, species, height and DHB or caliper.
 - (6) A schedule for planting the proposed replacement tree(s);
 - (7) In the event that any applicable significant tree, public tree or public shade tree is proposed to be removed and an inadequate number of replacement trees are

proposed to be planted, a mitigation plan shall be included in the tree protection plan,

- (8) Such other conditions as specified by the tree warden pursuant to applicable regulations.
- (p) "Tree protection zone": The area surrounding a tree which must remain as undisturbed as possible so as to prevent damage or removal of the tree. Including but not limited to the area where roots critical to the vigor and structure of the tree are located. The size and shape of a tree protection zone shall be defined by a certified arborist, shall adhere to the ANSI A300 Tree Care Standards and be approved by the tree warden.
- (q) "Tree replacement": The tree warden shall require the replacement of any removed applicable significant tree, public tree or public shade tree, which shall be planted by the applicant or their contractors under the supervision of a certified arborist and subject to approval by the tree warden.
- (r) "Tree replacement fund": Payments required by this division for planting at the same site or at another location shall be deposited into this fund.
- (s) "Tree survey": A document designed by a certified arborist and approved by the tree warden which shall include the location, genus, species, height and DBH of all significant trees, public trees and public shade trees and their tree protection zone on a lot and those trees that have been removed from a lot within 1 year prior to the submission of a tree survey. If applicable, a tree survey shall include a tree protection plan and a mitigation plan. A tree survey shall be required for any project requiring any building permit, a special permit per Appendix A, Section 3 of these Revised Ordinances or a site plan review per Appendix A, Section 19 of these Revised Ordinances. A tree survey shall also be required for any project that requires or may result in any public trees or public shade trees being removed, damaged or disturbed including through, pruning, digging or through the compaction of soil due to the passage or parking of vehicles or equipment within the tree protection zone.
- (t) "Tree warden: The individual who holds this title shall be an arborist certified by the Massachusetts Arborists Association (MAA), the International Society of Arboriculture or any successor of either organization. The duties and responsibilities of the tree warden shall conform to M.G.L. c. 87 and shall include other responsibilities described in this division.

Section 17-122 Compliance with state law

Nothing in this division shall be construed to restrict, amend, repeal, or otherwise limit the application or enforcement of existing municipal or state law.

Section 17-123 Tree replacement fund

- (a) There is hereby established a tree replacement fund which shall be held by the city treasurer in an account and administered in accordance with applicable provisions of the Massachusetts General Laws.

- (b) Any payments into the tree replacement fund shall be deposited in said fund and shall be used solely for the purpose of supporting tree planting and maintenance throughout the entire city.

Section 17-124 Applicability

The terms and provisions of this division shall be administered by the tree warden and shall apply to any applicable significant tree and to any public tree or public shade tree and their tree protection zone located within the city.

Section 17-125 Tree warden

- (a) The tree warden shall be a certified arborist by the Massachusetts Arborist's Association, the International Society of Arboriculture, or any successor of either organization.
- (b) The duties and responsibilities of the tree warden shall conform to M.G.L. c. 87 and shall include, but not be limited to, the following and as may be further specified in this division:
 - (1) Care and control of all trees within public rights-of-way and care and control of all trees on city property;
 - (2) Development of an annual work plan, using the tree inventory as a resource, for systematic tree maintenance, replacements, plantings, and removals for each fiscal year. The plan shall include locations of work, designated work to be accomplished, and resources including funds required;
 - (3) Posting notices and holding public hearings for the removal of public trees and public shade trees as required by M.G.L. c. 87 and this division;
 - (4) Expending funds appropriated for planting trees on land within public rights-of-way, city owned property and in the setback of a lot with the express approval of the owners;
 - (5) Granting or denying permits and attaching thereto reasonable conditions required under this division;
 - (6) Working in conjunction with other city departments to seek grants or other assistance concerning the preservation, maintenance and planting of trees in the city;
 - (7) Development of rules, regulations, tree inventories, manuals, and other data, in conjunction with other city departments, to carry out the purposes and intent of this ordinance;
 - (8) Supervising the planting and care of city trees to ensure that such planting and care meets the criteria of this division and the ANSI A300 Tree Care Standards;
 - (9) Ensuring the regular maintenance of and updating of the city's tree inventory to track removal and replacement of trees in order to replace lost trees in an orderly fashion;
 - (10) Appointment of designee to serve in the absence of the tree warden;

- (11) Coordinate with any private organization that creates a program for the planting or pruning of public trees and public shade trees on city property, in the public rights-of-way or within the setbacks with the express approval of the owners,
- (12) With authorization by the mayor, undertaking other responsibilities consistent with the purposes and intent of this division; and
- (13) Enforcement of this ordinance.

Section 17-126 Tree survey

- (a) A tree survey shall be required in the case of any project that requires any building permit, a special permit per Appendix A, Section 3 of these Revised Ordinances or a site plan review per Appendix A, Section 19. The application for any building permit, a special permit or a site plan review shall include a tree survey which shall first have been submitted to the tree warden not less than 21 days prior to the submission of the application for a building permit, special permit or site plan review.
- (b) A tree survey shall also be required for any project that requires or may result in any public trees or public shade trees being removed, damaged or disturbed including through, pruning, digging or through the compaction of soil due to the passage or parking of vehicles or equipment within the tree protection zone.
- (c) A tree survey shall include the location, genus, species, height, DBH and tree protection zone of all significant trees, public trees and public shade trees that will be removed, damaged, or disturbed, including through the compaction of soil due to the passage or parking of vehicles or equipment within the tree protection zone by any project requiring any building permit, a special permit per Appendix A, Section 3 of these Revised Ordinances or a site plan review per Appendix A, Section 19 of these Revised Ordinances

Section 17-127 Tree permits

- (a) A tree permit shall be required in the case of any project where any applicable significant tree or public tree or public shade tree will be removed, damaged or disturbed including pruning, digging or through, the compaction of soil passage or parking of vehicles or equipment within the tree protection zone.
- (b) No tree permit application fee shall be charged.
- (c) If applicable, a tree permit application shall be submitted concurrently with a tree survey in accordance with this division and if applicable, a mitigation plan and a tree protection plan.
- (d) The tree warden shall review applications for tree permits in accordance with the provisions of this division and with any rules or regulations promulgated hereunder.
- (e) The tree warden shall date-stamp or otherwise record the date of filing of each application for a tree permit.
- (f) The tree warden shall complete the review of each tree permit application relating wholly to significant tree removal no later than 10 business days after the submission of a completed application to the tree warden.

- (g) Upon the issuance of a tree permit, the tree warden may prescribe in writing such protective measures for existing trees, as they deem necessary. The tree warden shall make a determination that the prescribed protective measures have been adequately provided before any disturbance of the site related to the permitted activity may begin,
- (h) In the case of any project which requires any building permit, a special permit per Appendix A, Section 3 of these Revised Ordinances or a site plan review per Appendix A, Section 19 of these Revised Ordinances, the owner of the lot shall be required to commit to comply with all provisions of the tree permit provisions of the mitigation plan, the tree protection plan and other provisions of this division and regulations promulgated hereunder in the application for requires any building permit, a special permit per Appendix A, Section 3, or a site plan review per the Appendix A, Section 19,
- (i) If applicable, the tree warden shall report whether the tree permit was granted or denied to the planning board or the director of inspectional services within the same 10 business days. If the planning board or the director of inspectional services receives no such report about a tree permit for the property within the above-stated time period, the planning board or director of inspectional services shall accept building permit, special permit or site plan review application without that report,
- (j) In the case of a project where a tree permit allows for the removal of an applicable significant tree, a public tree or a public shade tree, the tree warden shall keep a record of the type and size of tree(s) removed, the reason(s) for the removal, photograph(s) of the tree(s) documenting the reason for removal, the date, the contractors, and the name and address of the property owner,
- (k) Any tree permit issued by the tree warden shall be valid for 90 days from issuance. The tree warden, following an email or written request by the applicant, may extend the length of the permit for any length of time, as they deem necessary and appropriate,
- (l) A tree permit may be suspended or revoked at any time by the tree warden upon written notice to the permit holder that the permit holder has failed to comply with either this division or the conditions of the tree permit. The written notice shall be sent by certified mail, return receipt requested, or by hand delivery and shall provide an opportunity for the permit holder to correct the non-compliance and apply for a renewal of the tree permit upon compliance, where practicable.

Section 17-128 Mitigation plan

- (a) In the case of any project which requires a tree permit and where a tree survey identifies a tree removal, a mitigation plan will be required for all trees removed,
- (b) The mitigation plan shall be designed and certified by a certified arborist,
- (c) The mitigation plan shall be subject to approval by the tree warden,
- (d) If applicable, a mitigation plan shall be submitted concurrently with an application for a tree permit. A mitigation plan shall include:
 - (1) Why any tree is proposed to be removed from a lot,
 - (2) A description of the replacement tree proposed to replace any tree to be removed, including genus, species, height and caliper,

- (3) A schedule for planting the proposed replacement tree,
- (4) If applicable, a mitigation payment,
- (5) If applicable, a tree protection plan,
- (e) Replacement trees will continue to be identified as replacement trees for a period of 10 years after they are planted,
- (f) No replacement tree shall be removed without a tree permit issued by the tree warden. In all cases, the tree warden shall keep a record of the type and size of any replacement tree removed, the reason for the removal, photographs of the replacement tree documenting the reason for removal, the date, the contractor, and the name and address of the property owner,
- (g) A mitigation payment will be required for all replacement trees removed. The mitigation payment shall be assessed on a DBH basis in consideration of the replacement tree removed, in accordance with the city's most recent tree planting and maintenance costs inclusive of purchasing, planting, watering, and maintaining replacement trees for a period of not less than 5 years. No reduction of the amount of mitigation payment otherwise available under this division shall be allowed in connection with the removal of replacement trees.
- (h) In the case of any project which requires a tree permit and where a tree survey identifies a tree removal, the total DBH of replacement trees, or mitigation payment of equivalent value, as applicable, shall be 2 times or more, the total DBH of the trees to be removed.

Section 17-129 Tree protection plan

- (a) A tree protection plan shall be required in the case where any applicable significant tree, public tree or public shade tree or their tree protection zone which will not be removed, extends or overlaps into the work zone of any project, excavation or construction where any applicable significant tree, public tree or public shade tree or their tree protection zone may be damaged or disturbed including through, pruning, digging or through the compaction of soil due to the passage or parking of vehicles or equipment within the tree protection zone.
- (b) If applicable a tree protection plan shall be submitted concurrently with an application for a tree permit.
- (c) The tree protection plan shall be designed and certified by a certified arborist.
- (d) The tree protection plan shall be subject to approval by the tree warden,
- (e) All applicable significant trees, public trees and public shade trees and their tree protection zone near the excavation or construction of any building, structure, or street, or in the vicinity of utility work shall be sufficiently guarded and protected by those responsible for such work so as to prevent injury to said applicable significant trees, public trees and public shade trees.
- (f) A tree protection plan shall include:
 - (1) An indication of which applicable significant trees, public trees and public shade trees and their tree protection zones may be affected, damaged or otherwise

disturbed including by the compaction of soil in and around a tree's root system by vehicle traffic, parking or other means; and

- (2) Descriptions and drawings of tree protection measures that will be used to prevent damage or disturbance to trees and their root systems that will be retained.

Section 17-130 Significant trees

- (a) A tree permit shall be required in the case of any project that requires a site plan review per the City of Everett Code of Ordinances, Appendix A, Section 19, where the tree survey identifies any significant tree that will be removed, damaged or disturbed including through pruning, digging or through the compaction of soil due to the passage or parking of vehicles or equipment within the tree protection zone.
- (b) No tree permit shall be required for the removal or disturbance of a significant tree located wholly on a lot not owned or managed by the city except in the case of any project which requires a site plan review per Appendix A, § 19 Site Plan Review
- (c) A tree permit to remove an applicable significant tree shall be issued when an applicable significant tree will be:
 - (1) Replaced or relocated on site or on an abutter's setback with the abutter's express approval in accordance with the provisions of the mitigation plan,
 - (2) Replaced by a mitigation payment into the tree replacement fund,
 - (3) The tree is dead, diseased, injured, in danger of falling, dangerously close to existing structures, is causing disruption of utility service, is causing drainage or passage problems upon public rights-of-way, or poses a threat to pedestrian or vehicular safety and no other means of mitigation is applicable as certified by the tree warden.
 - (4) The removal of the tree is necessary and desirable in order to enhance or benefit the health or condition of other trees on the same site as certified by the tree warden.

Section 17-131 Public tree and public shade trees

- (a) A tree permit shall be required in the case of any project where any public tree or public shade tree will be removed, damaged or disturbed including through pruning, digging or though the compaction of soil due to the passage or parking of vehicles or equipment within the tree protection zone.
- (b) Except as provided by a tree permit, no person other than the tree warden or their designee shall remove, prune, alter or disturb any public tree or public shade tree or the tree protection zone of any public tree or public shade tree, including through the compaction of soil due to the passage or parking of vehicles or equipment.
- (c) When a public tree or public shade tree is to be removed, a public tree hearing shall be scheduled. The public tree hearing will be advertised twice in a local newspaper during the 14 days prior to the public tree hearing, posted on the city website, the city hall bulletin board, and a notice shall be affixed to the tree itself. The resident or owner requesting the removal of a public tree or public shade tree shall pay for costs associated with this notice.

- (d) After the conclusion of a favorable public tree hearing, a tree permit to remove a public tree or public shade tree shall be issued when a public tree or public shade tree will be:
 - (1) Replaced or relocated on site or on an abutter's setback with the abutter's express approval in accordance with the provisions of the mitigation plan;
 - (2) Replaced by a mitigation payment into the tree replacement fund;
 - (3) The tree is dead, diseased, injured, in danger of falling, dangerously close to existing structures, is causing disruption of utility service, is causing drainage or passage problems upon public rights-of-way, or poses a threat to pedestrian or vehicular safety and no other means of mitigation is applicable as certified by the tree warden; or
 - (4) The removal of the tree is necessary and desirable in order to enhance or benefit the health or condition of other trees on the same site as certified by the tree warden.

Section 17-132 Duty of care

- (a) Upon issuance of any city permit by the planning board, the director of inspectional services or the tree warden, the permit holder is required to take reasonable precautions to ensure that any applicable significant tree and all public trees and public shade trees are adequately protected and maintained free from harm from work associated with the permit issued.
- (b) Failure to adequately protect and maintain any applicable significant trees and all public trees and public shade trees free from harm may result in a fine, and failure to adequately protect applicable significant trees and all public trees and public shade trees that results in any applicable significant trees and all public trees and public shade trees being removed within 5 years of the failure to protect being noted may result in a fine and a mitigation payment that reflects the value in accordance with 2 times the DBH of the applicable significant trees, public trees or public shade trees removed.

Section 17-133 Tree donations

Voluntary contributions may be made to benefit tree planting and maintenance in the city shall be deposited into the tree replacement fund.

Section 17-134 Enforcement

- (a) Any person who violates any of the provisions of this division shall be notified by the tree warden of the specific violation by certified or registered mail, return receipt requested, or by hand delivery. The notice shall set forth the nature of the violation and a reasonable time period within which compliance must be had.
- (b) Upon notice from the tree warden that work on any lot on which an applicable significant tree, public tree, public shade tree or their tree protection zone is located is being performed contrary to any applicable tree protection plan or mitigation plan or any provision of this division, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the lot involved, or to the owner's agent, or to the person doing the work, and shall state the conditions under which work will be permitted to resume.

- (c) Any person who shall continue any work in or about said lot after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not more than \$300.00. Each day during which a violation exists shall constitute a separate offense.
- (d) Whenever there exists reasonable cause to believe that a person is violating any applicable mitigation plan or tree protection plan or any provision of this division, the city may institute a civil action for a mandatory or prohibiting injunction in a court of competent jurisdiction ordering the defendant to correct the unlawful condition upon or cease the unlawful use of the property.
- (e) Failure to apply for and receive a tree permit or failure to replace an applicable significant tree, public tree or, public shade tree or make a payment into the tree replacement fund or to post and maintain a bond in accordance with this division shall constitute a separate violation of this division for which there shall be a fine of not more than \$300.00. Each day such violation continues shall constitute a separate offense.
- (f) As an alternative to any fine stated in this division, citations may be issued pursuant to M.G.L. c. 40, § 21D, assessing a fine of not more than \$300.00 for each day the violation is committed or permitted to continue.
- (g) Each instance of vandalism to an applicable significant tree, public tree or, public shade tree shall constitute a violation of this division and shall be subject to a fine of up to \$300.00.
- (h) Each instance in which an applicable significant tree, public tree or public shade tree is removed without a tree permit shall constitute a violation of this division and shall be subject to a fine in the amount applicable to the city's most recent tree planting and maintenance costs inclusive of purchasing, planting, watering, and maintaining replacement trees for a period of not less than 5 years:
 - (1) The fine for any applicable significant tree, public tree or public shade tree removed without a tree permit shall be assessed at 2 times the total DBH of any applicable significant tree, public tree or public shade tree removed,
 - (2) No reduction of the amount of the fine otherwise available under this division will be allowed in connection with the removal of any applicable significant tree, public tree or public shade tree removed without a tree permit.
- (i) Each failure to replace an applicable significant tree, public tree or public shade tree or to make a payment into the tree replacement fund beyond the timeframe of the tree permit shall constitute a separate violation of this division and shall be subject to a fine in the amount of \$300.00. Each day such violation continues shall constitute a separate offense.
- (j) Failure to comply with a condition contained in a tree permit. Each instance where there is a failure to comply with a condition contained in a tree permit shall be subject to a fine in the amount of \$300.00.
- (k) Failure to comply with a stop work order. Each instance where there is a failure to comply with a stop work order shall constitute a violation of this division, which shall be subject to a fine in the amount of \$300.00. Each day such violation continues shall constitute a separate offense.

- (l) Nothing herein shall be construed to require the city to make a payment into the tree replacement fund for any tree that it removes.

Secs. 17-135-17-139 Reserved

The provisions of this ordinance are severable. If any section, provision, or portion of this ordinance is determined to be invalid by a court of competent jurisdiction, then the remaining provisions of this ordinance shall continue to be valid.

This ordinance shall take effect upon passage by the City Council and subsequent approval by His Honor the Mayor.



A true copy attest

A handwritten signature in black ink that reads "Sergio Cornelio". The signature is written in a cursive style.

Sergio Cornelio, City Clerk

#2- C0259-24

Legislative Affairs & Election Committee
September 23, 2024

The Committee on Legislative Affairs & Elections met on Monday, September 23, 2024 at 6pm in the City Council Chambers.

The meeting was recorded by ECTV and can be viewed on the City of Everett website.

Members present were Councilor Michael Marchese, presiding, Councilors Stephanie Smith, Katy Rogers and Robert Van Campen, as ex-officio. Member absent was Councilor Stephanie Martins.

The Committee considered an Ordinance offered by Councilor Katy Rogers: An Ordinance pertaining to trees in the City of Everett.

Councilor Rogers informed the Committee that she had collaborated with the City's Arborist on the subject matter but still needed to meet with David Flood, Legislative Research Analyst, David Palumbo, Direction of Inspectional Services and David St. Louis, Arborist to finalize the proposal.

The Committee voted: To grant further time.

Respectfully Submitted,

John W. Burley
Clerk of Committees



C0302-24

To: Mayor and City Council
From: Councilor Robert J. Van Campen
Date: September 9, 2024

Agenda Item:

An order requesting the confirmation on the appointment of Mirlande Felissaint as Director of Elections/Registrar for a for a term ending January 5, 2026

Background and Explanation:

Attachments:



CARLO DeMARIA
MAYOR

CITY OF EVERETT - OFFICE OF THE MAYOR

484 Broadway Everett, Massachusetts 02149

☎ 617-394-2270

✉ mayorcarlo.demaria@ci.everett.ma.us

September 4, 2024

Honorable City Council
484 Broadway
Everett, MA 02149

Dear Honorable Members:

In accordance with Section 3-3 of the City of Everett Home Rule Charter, I hereby appoint and submit for your confirmation, Mirlande Felissaint as Director of Elections/Registrar for a for a term ending January 5, 2026.

I recommend your favorable passage of this order.

Respectfully submitted,

Carlo DeMaria
Mayor



September 4, 2024
City of Everett, Massachusetts
CITY COUNCIL

Offered By: _____
Councilor Robert VanCampen, as President

Bill Number:
Bill Type: Order

BY THE CITY COUNCIL OF THE CITY OF EVERETT, as Follows:

I hereby appoint and submit for your confirmation, Mirlande Felissaint as Director of Elections/Registrar for a term ending January 5, 2026.

#4- C0302-24

Legislative Affairs & Election Committee
September 23, 2024

The Committee on Legislative Affairs & Elections met on Monday, September 23, 2024 at 6pm in the City Council Chambers.

The meeting was recorded by ECTV and can be viewed on the City of Everett website.

Members present were Councilor Michael Marchese, presiding, Councilors Stephanie Smith, Katy Rogers and Robert Van Campen, as ex-officio. Member absent was Councilor Stephanie Martins.

The Committee considered an Order offered by Councilor Robert Van Campen, as President: An Order requesting the confirmation of the appointment of Mirlande Felissaint as Director of Elections/Registrar for a term ending January 5, 2026.

Mirlande Felissaint, appointee to Director of Elections; Erin Deveney, Mayor's Chief of Staff and Terri Ronco, Director of Human Resources were also present.

Councilor Rogers noted that she did not have any resume of the appointee before her and asked Ms. Felissaint if she had any election experience in which Ms. Felissaint responded no. Councilor Rogers asked Ms. Felissaint what her experience was in and Ms. Felissaint responded that she had management, political, criminal justice and leadership skills. Councilor Rogers asked Ms. Felissaint if she lived in Everett and if she votes in Everett. Ms. Felissaint responded that she did live in Everett but lives in the City of Chelsea now but has been active in the community and had worked for the Mayor. Councilor Van Campen remarked that he needed to understand the process for filling this role where the position was critical towards election integrity in the City. He noted that no applicant information was provided as was requested and mentioned that the position was filled in July with someone who has no experience in elections and wanted to know who was on the interview committee. Ms. Deveney acknowledged that appointments from the Mayor to the City Council was different in the past, with the City Council now wanting to review applicants before hiring. She informed the Committee that the City Solicitor had advised that other resumes are not a matter of public record if the applicants were not made aware their resumes would be made public. Ms. Ronco informed the Committee that the position was posted internally and externally and that four resumes were received for the position with 2 being internal and 1 internal with the Mayor being the hiring authority. Councilor Van Campen asked if any had election experience and Ms. Ronco responded yes. Councilor Van Campen requested to receive redacted versions of resumes noting that this is not a position for on the job training with elections being so critical. Ms. Ronco stated that she would defer to the City Solicitor on the redacted resume request. Councilor Smith noted that the Budget for the position was increased by \$16,000 as a means to attract better candidates with election experience and she remarked that she was concerned with the way this was conducted. Councilor Smith inquired if this was considered a Department Head position and should be included in the Administrative Code. Ms. Deveney agreed that this was a significant position but wasn't sure if it should be included as a Department Head due to concerns with the influence of authority, but concurred that the position with regards to reporting needed clarification.

The Committee voted: To grant further time.

Respectfully Submitted,

John W. Burley
Clerk of Committees