

TOWN OF MEDWAY GENERAL BYLAWS

ARTICLE 31 TREE PRESERVATION

31.1. PURPOSE: The intent of the Tree Preservation Bylaw (Tree Bylaw) is:

- a) To promote and protect the public health, safety, and general welfare of the residents by providing for the regulation of the planting, maintenance, protection, and removal of trees within the Town of Medway;
- b) To recognize and appreciate that trees produce oxygen, capture carbon dioxide from the atmosphere, provide air purification, prevent soil erosion, control flooding, assist in water purification, contribute to the quality of life by providing cooling shade, provide habitat for wildlife, reduce noise levels, and aesthetically enhance the landscape;
- c) To preserve and protect trees and their canopies as an important environmental and cultural resource that enhances the Town of Medway's natural character and heritage;
- d) To protect the people in the Town of Medway from personal injury and property damage caused by the improper planting, maintenance, protection, or removal of trees;
- e) To protect property values by maintaining a healthy and vigorous community forest;
- f) To allow for the protection of certain trees during demolition and/or construction activity by designating areas of a lot where trees shall be protected and requiring mitigation for trees removed via replanting or collection of fees to support the Town's tree planting and maintenance efforts.

31.2. DEFINITIONS: For the purposes of this Tree Bylaw, the following definitions shall apply:

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

Certificate of Exemption: A document approved and authorized by the Permitting Authority stating that the applicant/property is exempt from the regulations under this Bylaw. The Permitting Authority shall issue a Certificate of Exemption if the proposed activity does not have potential to harm a Protected Tree.

Commission: The Town of Medway Conservation Commission.

Conservation Permits: Written permit to perform activities in or on resource areas or areas protected by the Town of Medway Bylaw Article 21.

Construction: Building of structure(s) on a vacant or occupied lot; or additions to a structure on a lot that increases the total structure's square feet (of existing foundation) by 50% or greater.

Demolition: Removal of an existing structure with slab or foundation which is equal to 250 square feet or greater.

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

Invasive Species: Any plant listed on the most recent version of the Massachusetts Prohibited Plant List as published by the Massachusetts Department of Agriculture.

Lot Clearing: Removal of 75% or more of the Tree Canopy on a vacant lot.

Permitting Authority: Medway Conservation Commission, Conservation Agent, or the Tree Warden.

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

Tree Mitigation Fund: An account established pursuant to (M.G.L. c. 44 § 53E½) for the deposit of contributions in lieu of tree replanting as required by this Tree Bylaw.

Tree Preservation Area: The minimum front, side, and rear yard setback areas of a parcel as specified in Section 6.1 or other provisions of the Zoning Bylaw.

Tree Protection and Mitigation Plan: A plan submitted to the Permitting Authority for approval prior to the commencement of demolition, construction, or tree removal on a property on which a Protected Tree is located.

Tree Removal: Mechanical demolition of a living tree, or any act (a) that has caused a tree to die within the previous 12 months or (b) is likely to cause significant decline or death as determined by the Permitting Authority.

Tree Removal Permit Application: Written request to remove a Protected Tree in the Tree Preservation Area. The application must include a Tree Protection and Mitigation Plan.

Tree Removal Permit: Formal permission granted to remove a tree within the Tree Preservation Area via written permit.

31.3. SCOPE AND APPLICABILITY

- 31.3.1. The requirements of this Bylaw and all applicable rules and regulations apply to the following:
- a. Proposed demolition of existing residential or non-residential structures if construction includes removal of trees in the Tree Preservation Area.
 - b. Proposed construction on a developed lot if construction includes removal of trees in the Tree Preservation Area.
 - c. Proposed construction of any building or structure on a lot with no residential or non-residential structure on it.
 - d. Proposed lot clearing of 75% or more of Tree Canopy on a vacant lot.
- 31.3.2. The following are exempt from the requirements of this Bylaw and all applicable rules and regulations:
- a. Public Shade Trees pursuant to M.G.L. Chapter 87.
 - b. Emergency projects necessary for public safety, health, and welfare, as determined by the Permitting Authorities.
 - c. Trees severely damaged as the direct result of a natural disaster.
 - d. A period of an emergency such as a tornado, windstorm, flood, or other natural disaster.
 - e. Trees that are hazardous as determined and confirmed in writing by a Certified Arborist or the Tree Warden.
 - f. Trees currently infected by a disease or insect infestation of a permanent nature, as determined and confirmed in writing by a Certified Arborist or the Tree Warden.
 - g. New construction (only), the construction of new driveways or entryways to the property. Width of driveways/entryways should follow the public safety requirements of Fire and Police regulations. This exemption does not include clearing of trees outside the footprint of the proposed driveway/entryway and sightlines to the lot proposed for development. For single family homes, this does not include requests for a second driveway or entryway if the lot has an existing driveway or entryway.

31.4. TREE PROTECTION AND MITIGATION

31.4.1 In connection with any activity regulated by this Bylaw, see Section 31.3, no person shall Remove a Protected Tree within a Tree Preservation Area without first applying for and receiving a Tree Removal Permit or Certificate of Exemption in accordance with this Bylaw. No building permit or Land Disturbance Permit shall be issued for any use, site, construction, or structural alteration that is subject to this Bylaw until the issuance of a Tree Removal Permit by the Permitting Authority if applicable to the project.

31.4.2. PROTECTION DURING DEMOLITION AND/OR CONSTRUCTION: Each Protected Tree to be retained on the property shall be shielded by the establishment of a fenced off Tree Preservation Area. The Tree Preservation Area shall be delineated on the submitted Tree Protection and Mitigation Plan, shall be installed prior to any demolition or site work, and shall remain in place until work is completed on the property, excluding final landscaping.

31.4.3. MITIGATION: The removal of a Protected Tree(s) from a property in connection with one or more of the circumstances set forth in Section 31.3.1 shall require mitigation based upon aggregate DBH of Protected Tree(s) removed. Mitigation shall be achieved by satisfying one or a combination of the following provisions:

- a. Replanting of Trees: For each inch of DBH of the Protected Tree(s) removed trees shall be replanted in accordance with the following:
 - 1. Each tree proposed for planting must have a minimum caliper of one inch or greater.
 - 2. Replacement Trees shall be determined as follows;
 - a. 6” -8” caliper trees proposed for removal, replaced with 1 tree for every 1 removed;
 - b. 8”-20” caliper trees proposed removal, replaced with 2 trees for every 1 tree removed;
 - c. Greater than 20” caliper tree proposed for removal, replaced with 3 trees for every 1 tree removed; and
 - d. All proposed replacement trees shall be native and shall not consists of non-native, cultivars or invasive species.
- b. Contribution to the Town of Medway Tree Mitigation Fund: The Commission shall establish a Tree Mitigation Fund contribution schedule with assigned value per inch of DBH of Protected Tree(s) to be removed and not otherwise mitigated. Tree Mitigation Fund contributions shall be received by the Town Conservation Commission, prior to the start of any tree removal and construction of any portion of the proposed project on the lot. Mitigation measures shall be identified in the submitted Tree Protection and Mitigation Plan. The removal or proposed removal of a Protected Tree(s) that has been mitigated for, in conjunction with a previous applicable permit, shall not require additional mitigation under subsequent permits, unless such mitigation has not been completed or otherwise assured.
- c. Contribution rate schedule.

12” Diameter at Breast Height (DBH) and Less	\$25 per inch
Greater than 13” DBH but no more than 18” DBH	\$50 per inch
Greater than 18” DBH	\$75 per inch

31.4.4. UNAUTHORIZED REMOVAL: The removal of any Protected Tree not identified on the Tree Protection and Mitigation Plan shall require mitigation at the rate specified in Section 31.4.3 In addition, any person removing a Protected Tree not

identified on the Tree Protection and Mitigation Plan in violation of this Bylaw shall be subject to enforcement pursuant to Section 31.9.1.

31.5. TREE REMOVAL PERMIT PROCEDURE:

31.5.1. APPLICATION:

- a. The application for a Tree Removal Permit must include a Tree Preservation and Mitigation Plan documented, prepared, dated, and signed by a Certified Arborist.
- b. Tree Removal Application Submittal: Prior to the issuance of a permit in connection with one or more of the circumstances set forth in Section 31.3.1 on a property which a Protected Tree is located, the applicant shall submit a Tree Removal Application to the Commission when filing a separate Conservation Application as part of the filing documents. If there is no Conservation Application being submitted as part of the project review, the Tree Removal Application shall be submitted to the Conservation Agent, who will make a decision with the recommendation of the Tree Warden for review and determination.
- c. Tree Removal Application Requirements: Tree Removal Permit Application must include a Tree Preservation and Mitigation Plan documented, prepared, dated, and signed by a Certified Arborist. The plan shall be a to-scale survey or site plan that indicates the applicable Tree Preservation Area, existing improvements, proposed construction and/or demolition, Protected Trees, and preservation and maintenance procedures in accordance with this Bylaw and the Rules and Regulations in effect at the time. It must also specify any tree removals and proposed mitigation measures per the requirements of this Bylaw.
- d. Re-Submittal: If demolition or construction has not commenced within twelve months of the date that a Tree Removal Permit Application was submitted for a property, or if removal of a previously unidentified Protected Tree is necessary during construction, an amended Tree Removal Permit Application shall be submitted identifying any changes from the previous plan, if any, and associated mitigation measures, if any.

31.5.2. ISSUANCE OR DENIAL

- a. If the Tree Protection and Mitigation Plan is consistent with the protection and mitigation requirements contained herein and any established Rules and Regulations, then the Permitting Authority may issue an approval to any applicable permit. Applicant shall be sent a notice of this decision within 21 days of the vote at a public meeting and by Certified Mail Return Receipt. If the proposal does not meet or satisfy these requirements of this Bylaw, the Permitting Authority shall notify the applicant and the appropriate Town Department that all applicable permits should be denied due to lack of meeting requirements of this Bylaw. Applicant shall be sent a notice of this decision within 21 days of the vote at a public meeting and by Certified Mail Return Receipt. If the Permitting Authority fails to act on an application within thirty days after the application has been made, it shall be deemed to be approved. This time limit may be extended by mutual agreement of the applicant and Permitting Authority.
- b. All Tree Removal Permits shall be recorded at the Norfolk County Registry of Deeds and shall run with the land.

31.6. MAINTENANCE OF PROTECTED AND REPLANTED TREES:

- a. Protected Trees: Each Protected Tree retained shall be maintained in good health for a period of no less than twenty-four months from the date of final inspection, or issuance of a Certificate of Occupancy if applicable. Should such tree die or significantly decline in the opinion of the Tree Warden and/or Conservation Commission or Certified Arborist, within this twenty-four-month period, the owner of the property shall be required to provide mitigation consistent with the requirements for the removal of a Protected Tree as contained herein within nine months from said determination.
- b. Replanted Trees: All new trees planted to mitigate the removal of Protected Tree(s) shall be maintained in good health for a period of no less than twenty-four months from the date of planting. Should such tree die within this twenty-four-month period, the owner of the property shall be responsible for replacing the tree with a tree equal to or greater than the size of the original Replanted Tree at installation; such replacement tree shall be planted within nine months of the death or serious decline of the original Replanted Tree.

31.7. CERTIFICATE OF EXEMPTION

A. APPLICATION:

- a. Applicant shall submit a Certificate of Exemption Application to the Commission when filing a separate Conservation Application as part of the filing documents. If there is no Conservation Application being submitted as part of the project review, the Certificate of Exemption Application shall be submitted to the Conservation Agent for review and determination.

B. ISSUANCE OR DENIAL:

- b. If the proposed Building Activity does not have potential to harm a Protected Tree, the Permitting Authority may issue any applicable permit or notify the

appropriate Town Department. If the proposal does not meet or satisfy these requirements, the Permitting Authority shall notify the applicant and the appropriate Town Department that all applicable permits shall not be issued until the requirements are met. If the Permitting Authority fails to act on an application within thirty days after the application has been made, it shall be deemed to be approved.

31.8. TREE MITIGATION FUND There is hereby established a Town of Medway Tree Mitigation Fund (“Tree Fund”) pursuant to M.G.L. c. 44 § 53E½. Any contributions collected per Section 31.4.3 of this Tree Bylaw shall be deposited in the Tree Mitigation Fund and shall be used solely for the purpose of buying, planting, and maintaining trees within residential neighborhoods and Town-owned properties in the Town of Medway.

31.9. ADMINISTRATION

31.9.1. ENFORCEMENT: The Permitting Authorities are hereby authorized to enforce all the provisions of the Tree Bylaw. Anyone who violates any provision of this Bylaw shall be punishable by a fine of not more than three hundred dollars for each offense. As an alternative means of enforcement, the enforcing person may impose noncriminal penalties pursuant to G.L. c. 40, §21D and Article 19 of the Town’s General Bylaws, in accordance with the following schedule:

Bylaw	Noncriminal Penalty Schedule	Noncriminal Penalty	Enforcement Agent
Tree Preservation Bylaw	1 st Offense	\$100	Conservation Agent
	2 nd Offense	\$200	
	3 rd & each	\$300	
	subsequent offense		

31.9.2. APPEAL

- a. Any person aggrieved by a decision of the Tree Warden or Conservation Agent under this Bylaw may file an appeal with the Commission. Said appeal must be in writing and must be received by the Commission within ten business days of issuance of the written decision. The Commission shall conduct a public hearing on the appeal and shall give the public notice thereof, at the expense of the applicant. Public notice shall include mailed notice to all persons owning land within 100 feet of any part of the applicant’s land at least 14 days before said hearing. The Commission shall rule within 20 days of the close of the public hearing.
- b. Appeals of final decisions of the Commission shall be pursuant to G.L. c. 249, § 4.
- c. No Protected Trees shall be removed while an appeal is pending.

31.10. RULES AND REGULATIONS

The Commission may promulgate or amend Rules and Regulations which pertain to the administration of this Tree Bylaw and shall file a copy of said rules in the office of the Town Clerk. Such rules may prescribe the size, form, contents, style, and number of copies of plans and expense specifications, the procedure for the submission and approval of such plans, and the procedure for determining final compliance with these regulations. The adoption or amendment of Rules and Regulations shall be after a public hearing to receive comments on the proposed or amended Rules and Regulations.

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Adopted at November 13, 2023 Town Meeting
Approved by Attorney General April 18, 2024