

## SECTION 5.10. TREE PROTECTION & PRESERVATION

### A. Title

Section 5.10 may be cited as the “Town of Wellesley Tree Bylaw” and/or “Tree Bylaw”.

### B. Intent and Purpose

The intent of Section 5.10 is to encourage the preservation and protection of sizeable Trees on portions of private property during significant demolition and/or development activity.

Trees are recognized for their abilities to improve air quality, protect from glare and heat, reduce noise, aid in the stabilization of soil, provide natural flood and drainage control, create habitats for wildlife, enhance aesthetics and property values, contribute to the distinct character of certain neighborhoods, provide natural privacy to neighbors, and reduce ambient carbon in the atmosphere. Therefore, the Town deems that the preservation and protection of certain Trees on private property, the requirement to replant Trees to replace those removed, and the collection of financial contributions to support the Town’s Tree planting and maintenance efforts are public purposes that protect the public health, welfare, environment and aesthetics.

### C. Reserved.

### D. Applicability

1. Applicability: The requirements of Section 5.10 shall apply under any of the following circumstances:
  - a. Proposed demolition of an existing structure with a footprint of 250 square feet or greater;
  - b. Construction of retaining walls subject to the requirements of Section 5.14;
  - c. Construction of any building or structure on a vacant lot; or
  - d. Construction of one or more structures or additions to structures on a lot, where the total area of the footprint of the new structures will result in an increase of 50% or more of the total footprint of the pre-existing structure(s).
2. Non-applicability: The requirements of Section 5.10 shall not apply to:
  - a. The subdivision of land under the Subdivision Control Law and the Rules and Regulations Governing the Subdivision of Land in Wellesley Massachusetts, wherein the Planning Board regulates the planting, retention and/or replacement of Trees, by means of the Board's authority over the subdivision of land;

- b. Construction subject to Large House Review, wherein the Planning Board regulates the planting, retention and/or replacement of Trees located on private residential land;
  - c. Those areas of property under the jurisdiction of the Wetlands Protection Act (Chapter 131 and 310 CMR), wherein the Wetlands Protection Committee regulates the retention and/or replacement of Trees located on private land. Protected Trees located outside areas under the jurisdiction of the Wetlands Protection Committee shall be subject to Section 5.10;
  - d. Town-owned public Trees, including Trees that are considered to be Public Shade Trees pursuant to M.G.L. Chapter 87, which are protected by the Natural Resources Commission acting as the Town's Tree Warden; and
  - e. Emergency projects necessary for public safety, health and welfare as determined by the Inspector of Buildings.
3. Existing Encroachments: For the purposes of interpreting, administering, and enforcing Section 5.10 and Section 5.1, an existing structure shall not be considered to be a nonconforming structure solely because the structure, or a portion of the structure, is located within the CRZ and/or Drip-Line of an existing Protected Tree. The reconstruction of demolished structures or portions of structures within the previously encroached area of the CRZ and/or Drip-Line shall be prohibited, except when consistent with the requirements of Section 5.10.

E. Town of Wellesley Tree Bank Fund

Any contributions collected per Section 5.10.F.2.b.ii. shall be deposited in the Tree Bank Fund.

F. Protected Trees

1. Scope.

Demolition and/or construction activity (as identified under Section 5.10.D.1) on a property on which a Protected Tree is located is prohibited unless required Tree protection and/or mitigation measures will be taken as set forth in this subsection.

2. Tree Protection & Mitigation:

- a. Protection: Each Protected Tree to be retained on property planned for demolition and/or construction activity shall be protected by the establishment of a Tree Save Area. The Tree Save Area shall be delineated within the submitted Tree Protection & Mitigation Plan, shall be installed prior to the issuance of applicable permits, and shall remain in place until work is completed on the property. Any fencing to be included in the Tree Save Area shall consist of chain link wire fencing.

- b. The applicant shall submit written documentation, prepared, stamped, dated and signed by a Certified Arborist, to the Building Department confirming that the required Tree Save Area identified in the Tree Protection & Mitigation Plan has been installed.

An applicant may choose to encroach within the CRZ and/or Drip-Line of a Protected Tree; however, such proposed action shall require the applicant to submit a maintenance plan for the Tree, to be prepared, stamped, dated and signed by a Certified Arborist as part of the Tree Protection & Mitigation Plan. Under these instances, the Tree Save Area may be reduced to protect only those areas of the CRZ and/or Drip-Line not proposed for encroachment.

- c. Mitigation: The removal of a Protected Tree from a property in connection with one or more of the circumstances set forth in Section 5.10.D.1. shall require mitigation by satisfying one of the following provisions (i. *Replanting of Trees* or ii. *Contribution to the Town of Wellesley Tree Bank Fund*). 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.
  - i. *Replanting of Trees*: For each inch of DBH of Protected Tree(s) which are removed no less than one (1.0) inch of caliper of new Tree(s) shall be replanted in accordance with the following:
    - 1. Each new Tree must have a minimum caliper of three (3) inches;
    - 2. Such replanting, either on the applicant's land or on land abutting the applicant's land with the express written approval of the owner of such abutting land, shall occur prior to Final Inspection, or be otherwise assured at such time to the satisfaction of the Town in a manner consistent with the Rules and Regulations;
    - 3. If the Protected Tree to be removed is an Overstory Tree species, the replacement tree(s) to mitigate the removal shall be an Overstory Tree species; and
    - 4. Invasive Tree species, as determined by the Department of Public Works - Park & Tree Division, shall not be replanted to mitigate the removal of a Protected Tree.
  - ii. *Contribution to the Tree Bank Fund*: The Select Board shall establish a Tree Bank Fund contribution schedule, such schedule to be based on the DBH of Protected Tree(s) to be removed, impact on Town infrastructure, and other environmental impacts associated with the removal of the Tree. The schedule may also take into account the aggregate DBH of Protected Trees to be removed. The applicant shall make such contribution to the Tree Bank Fund

for the removal of a Protected Tree, not already mitigated for, per Section 5.10.F.2.b.i.; such contributions shall be deposited to the Tree Bank Fund.

3. Plan Review and Permit Issuance:

- a. Tree Protection & Mitigation Plan Submittal: Prior to the issuance of a permit in connection with one or more of the circumstances set forth in Section 5.10.D.1 on property on which a Protected Tree is located or was located within twelve (12) months prior to application, the owner of the property shall submit a Tree Protection & Mitigation Plan to the Building Department along with the applicable application.

If a permit requiring the submittal of a Tree Protection & Mitigation Plan was issued for a property within twelve (12) months prior to application for one or more of the circumstances set forth in Section 5.10.D.1., the submittal of a Tree Protection & Mitigation Plan shall not be required for subsequent permits unless any information required under Section 5.10.F.3.b. is changed or altered.

- b. Tree Protection & Mitigation Plan Requirements: The submitted Tree Protection & Mitigation Plan shall be a to-scale survey or site plan, along with any accompanying documentation, containing information prepared, stamped, dated and signed by an individual(s) appropriately licensed and authorized by the State of Massachusetts to attest to and certify such information, unless a specific certification is referenced herein. The plan shall include, but not be limited to, the following information:
- i. Boundaries of the subject property, including all property lines, easements, and right-of-ways of public and private ways;
  - ii. The location of all existing buildings, driveways, retaining walls and other improvements, with an indication of those features to be retained or removed/demolished;
  - iii. The location of all planned buildings, driveways, retaining walls and other improvements;
  - iv. The location, height, DBH, and species of all existing Protected Trees and all Protected Trees that were removed within twelve (12) months prior to application for an applicable demolition or building permit, with an indication of those Protected Trees to be removed and those to be retained, if applicable;
  - v. The CRZ, Drip-Line and location of the Tree Save Area shall be shown for all Protected Trees to be retained;
  - vi. The location, caliper, species, and planting schedule of Trees to be replanted to mitigate the removal of a Protected Tree(s), if applicable;

- vii. A maintenance plan prepared, stamped, dated and signed by a Certified Arborist for all Protected Trees which are proposed to have encroachment within the CRZ and/or Drip-Line, if applicable;
  - viii. The amount to be contributed to the Tree Bank Fund to mitigate the removal of a Protected Tree(s), if applicable; and
  - ix. Such other information as is required by the Inspector of Buildings pursuant to applicable regulations.
- c. Building Department Action: If the Tree Protection & Mitigation Plan is consistent with the protection and mitigation requirements contained herein and any established rules, regulations or manuals, and any applicable Tree Bank Fund contribution has been submitted, the Building Department may issue any applicable permit. If the proposal does not meet or satisfy these requirements, the Building Department shall deny all applicable permit applications and so notify the applicant.
4. Maintenance of Protected and Replanted Trees:
- a. Protected Trees: Each Protected Tree retained shall be maintained in good health for a period of no less than twenty-four (24) months from the date of Final Inspection, or issuance of a Certificate of Occupancy if applicable. Should such Tree die within this twenty-four (24) month period, the owner of the property shall be required to provide mitigation consistent with the requirements for the removal of a Protected Tree as contained herein within nine (9) months from the death of the original Tree.
  - b. Replanted Trees: All new Trees replanted to mitigate the removal of Protected Tree(s) shall be maintained in good health for a period of no less than twenty-four (24) months from the date of planting. Should such Tree die within this twenty-four (24) month period, the owner of the property shall be responsible for replacing the Tree with a Tree equal to or greater than the size of the original replacement Tree at the time of planting; such Tree shall be planted within nine (9) months of the death of the original replacement Tree.

G. Rules and Regulations

The Planning Board may promulgate or amend Rules and Regulations which pertain to the administration of Section 5.10, 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 specifications, the procedure for the submission and approval of such plans, the procedure for determining final compliance with these regulations, and the criteria and procedure regarding the Planning Board's acceptance of sureties (i.e., bonds, letters of credit, etc.) intended to satisfy the requirements of Section 5.10.F.2.b.i., so long as the Rules and Regulations conform to Section 5.10 of the Zoning Bylaw. The adoption or amendment of Rules and Regulations shall be after a public hearing to receive

comments on the proposed or amended Rules and Regulations. The public hearing shall be advertised once in a newspaper of general local circulation, at least 14 days prior to the date of the public hearing.

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