

Tree-Preservation Bylaw – DRAFT – April 7, 2021

ARTICLE (TBD). To see if the Town will vote to adopt as Chapter 225 of the Code of the Town a general bylaw entitled “Tree-Preservation Bylaw,” as follows:

§ 225-1. Purpose.

The intent of this Tree-Preservation Bylaw (the “Bylaw”) is to encourage the preservation and protection of trees during new Building Activity (meaning only the activities defined in subsection 225-13(b) below) by:

- (a) designating specific areas of a lot where trees must be protected, and
- (b) requiring mitigation for trees removed, by either
 - (i) replanting trees or
 - (ii) collecting fees to support the Town’s tree planting and maintenance efforts.

In no event may the Town deny a landowner’s right to remove a tree subject to this Bylaw; any landowner may remove a tree or trees, on the condition that they undertake one of the mitigation options set forth herein.

Trees are recognized for their abilities to mitigate heat island effects; provide shade cover; reduce energy consumption; improve air quality; reduce noise pollution; reduce topsoil erosion and storm water runoff; provide wildlife habitat; sequester carbon; enhance the quality of life and the environment of the Town; increase property values; and enhance the overall appearance of the community. The Town of Lynnfield (the “Town”) deems that the preservation and protection of certain trees on private property, and the requirement either to replant trees to replace those removed or collect financial contributions to support the Town’s tree-planting and maintenance efforts are public purposes that protect the Town’s public health, welfare, environment and aesthetics. No part of this Bylaw shall discourage the removal of Hazardous Trees (as defined below), an act which may be important to public health and safety, nor shall any part of this Tree Bylaw discourage the removal of a tree that, by size or otherwise, is not subject to the protections set forth herein.

§ 225-2. Applicability.

- a. The terms and provisions of this Bylaw shall apply to any Protected Tree located within a Tree Border during new Building Activity as defined in subsection 225-13(b) that is not owned by the Commonwealth, or any independent authority of the Commonwealth, with the following exception:
 - i. The terms and provisions of this Bylaw shall not apply to parcels with more than 50 percent of land permanently conserved as open space pursuant to Article 97 of the Articles of Amendment to the Constitution of the Commonwealth of Massachusetts or a perpetual restriction under G.L. Chapter 184, §§ 31-33.
- b. No person shall commence Building Activity (as defined in subsection 225-13(b) below) on any lot without first obtaining a Tree Permit or a Certificate of Exemption from the Planning Board

or its authorized enforcement agent. The location of the Tree Border is defined by Table 1 below.

- c. In the case of a new subdivision, the Tree Border shall be based on the new lot lines approved for the subdivision.

Table 1: Location of Tree Border in Each Zoning District

Zoning District	Tree Border (distance in feet from lot lines)		
	Front	Side	Rear
Residential A	30	15	20
Residential B	40	20	20
Residential C	40	25	20
Residential D	40	30	20
Elderly Housing	50	25	30
Limited Business	40	15	20
General Business	40	15	20
Commercial	40	15	20
Limited Industrial	100	100	40
Office Park	50	50	50
Notes: The Tree Border is equal to the setbacks in the zoning district.			

§ 225-3. Activities That Do Not Require a Tree Permit.

- a. Exempt Building Activity:
 - i. Any activity that does not fall within the narrow definition of Building Activity set forth in subsection 225-13(b), below, is exempt from this Bylaw.
 - ii. A Tree Permit is not required if a Certificate of Exemption has been granted by the Planning Board or its authorized enforcement agent.
 - iii. Granting a Certificate of Exemption is at the discretion of the Planning Board and its authorized enforcement agent based on whether the Building Activity has the potential to harm a Protected Tree. The Planning Board or its authorized enforcement agent shall issue a Certificate of Exemption if the proposed Building Activity does not have potential to harm a Protected Tree.
- b. Pruning: A Tree Permit is not required for the pruning of Protected Trees. However, excessive pruning may be considered Tree Removal.
- c. Emergencies: If any Protected Tree shall be determined to be in a hazardous condition so as to immediately endanger the public health, safety or welfare or cause an immediate disruption of public services and require immediate removal without delay, the landowner shall seek authorization from the Planning Board if conditions allow and oral authorization may be given by the Tree Warden, Planning Board or its authorized enforcement agent to remove such tree, utilizing such professional criteria and technical assistance as he/she deems necessary. If the

emergency condition does not allow time or opportunity to seek prior authorization then the emergency work shall proceed without it.

- d. Waiver: The requirements of this Bylaw may be waived by the appropriate Town officials during the period of an emergency such as a tornado, windstorm, flood, or other act of God.

§ 225-4. Tree Preservation.

When a Tree Permit is granted, tree-preservation measures are prescribed as follows:

- a. Tree Save Area:
 - i. Each Protected Tree to be retained on property planned for a Building Activity Permit shall be protected by the establishment of a Tree Save Area, which at a minimum must include the Critical Root Zone of the Protected Tree(s).
 - ii. The Tree Save Area must be adequately marked prior to the commencement of Building Activity and maintained in place until work is completed on the property.
 - iii. An applicant may choose to encroach within the CRZ 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 Permit application. Under these instances, the Tree Save Area may be reduced to protect only those areas of the CRZ not proposed for encroachment.
- b. Maintenance of Protected Trees: Should such tree die within a twenty-four (24) month period from the date of issuance of a Certificate of Occupancy, if applicable, of the Building Activity, 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.

§ 225-5. Mitigation Through Planting of Replacement Tree(s).

When Protected Tree removal is permitted, mitigation through planting of replacement trees is prescribed as follows:

- a. No mitigation measures are required for the permitted removal of Hazardous Trees or for the removal of any tree not within the definition of Protected Tree.
- b. For each inch of DBH of the tree(s) removed, at least one inch of Caliper of new tree(s) must be replaced in accordance with the following:
 - i. Each new tree must have a minimum Caliper of two (2) inches.
 - ii. 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.
 - iii. Replanting shall occur no later than 18 months after Tree Removal.
 - iv. A replacement tree shall be planted on the same lot from which the tree was removed or on land abutting the said lot with the express written approval of the owner of such abutting land.
 - v. A replacement tree must not be an Invasive Species.
- c. Maintenance of 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 replace it.

§ 225-6. Mitigation Through Contribution to Tree-Replacement Fund.

When Protected Tree removal is permitted, mitigation may be effected through contribution to the Tree-Replacement Fund, as prescribed as follows:

- a. The Tree-Replacement Fund is a revolving fund already established under Chapter 10 the Code of the Town. Any payments into the Tree-Replacement Fund required by this Bylaw shall be deposited in the Tree-Replacement Fund and shall be used in accordance with subsection (c) of this section 225-6.
- b. Payment in lieu of planting replacement tree(s): In lieu of planting a replacement tree as provided in section 225-5, a person who has been granted a Tree Permit may make a contribution to the Tree-Replacement Fund in an amount equal to the cost to replace the tree, which shall be determined by the Tree Warden based on the Town's current cost to purchase and install trees.
- c. Maintenance of Tree-Replacement Fund: All sums deposited into the Tree-Replacement Fund pursuant to this Bylaw shall be used at the express direction of the Planning Board, and only after Board discussion and public commentary at a public meeting of the Board, solely for the purposes of buying, planting and maintaining trees on public or private property in Lynnfield, and for no other purpose whatsoever. Any Town resident wishing to be eligible for receipt of a tree or trees for planting may submit their interest to the Planning & Conservation staff, and that staff shall maintain a list of such residents. In addition, at least once each year the Town Accountant shall audit the receipts and expenses of the Tree-Replacement Fund to ensure the accuracy and propriety of its transactions.

§ 225-7. Authority.

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes.

§ 225-8. Administration.

The Planning Board or its authorized enforcement agent shall administer, implement, and enforce this Bylaw, and any rules and regulations adopted thereunder. Any powers granted to or duties imposed upon the Planning Board may be delegated to its employees or agents under the Board's direct supervision.

§ 225-9. Regulations.

The Planning Board may promulgate rules and regulations to effectuate the purposes of this Tree Bylaw. Failure by the Planning Board to promulgate such rules and regulations shall not have the effect of suspending or invalidating this Tree Bylaw. 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, 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. 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.

§ 225-10. Appeal.

- a. Any person aggrieved by a decision of the authorized enforcement agent may file an appeal with the Planning Board. Said appeal must be in writing and must be received by the Planning Board within ten (10) business days of issuance of the authorized enforcement agent's written decision. The Planning Board 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 300 feet of any part of the applicant's land at least 14 days before said hearing. The Planning Board shall rule within 20 days of the public hearing. No Protected Trees shall be removed while an appeal is pending.
- b. Appeals of final decisions of the Planning Board shall be pursuant to G.L. c. 249, § 4.

§ 225-11. Enforcement.

- a. Notice of violation: Any person who violates any of the provisions of this Bylaw shall be notified by the Planning Board of the specific violation by certified mail, return receipt requested, or by hand delivery. The notice shall set forth the nature of the violation and the date by which the Protected Tree(s) is to be mitigated with the planting of replacement trees or payment to the Tree-Replacement Fund, for purposes of computing the "per day" violation fine.
- b. A Tree Permit may be suspended or revoked at any time by the Planning Board or its authorized enforcement agent upon written notice to the Tree Permit holder that the Tree Permit holder has failed to comply with either this Article or the conditions of the Tree Permit. The written notice shall be sent by certified or registered mail, return receipt requested, or by hand delivery, and shall provide an opportunity for the Tree Permit holder to correct the noncompliance and apply for a renewal of the Tree Permit upon compliance, where practicable. The suspension or revocation of a Tree Permit in accordance with this subsection shall not affect the validity of a Building Activity Permit. It shall, however, be cause for levying a fine or fines for violation of the Tree Permit and, if applicable, violation of the requirement for replacement of any removed or damaged trees.
- c. Stop-work order:
 - i. Upon notice from the Planning Board that work on any Protected Tree, or lot on which a Protected Tree is located, is being performed contrary to the provisions of this Bylaw, such work shall be immediately stopped. The stop-work order shall be in writing and shall be given to the owner of the property 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.
 - ii. The Planning Board is also authorized to request the agency which has granted a Building Activity Permit, to the extent permissible by law, to require the owner to cease any activity pursuant to the Building Activity Permit that might affect such Protected Tree while a stop-work order is pending.
 - iii. Any person who shall continue any work in or about the Protected Tree or lot on which a Protected Tree is located 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(s) per the table in subsection 225-12(a). Each day during which a violation exists shall constitute a separate offense.
- d. Injunctive relief:

- i. Whenever there exists a set of facts that make it more likely than not that a person is violating this Bylaw or any term, condition or provision of an approved Tree Permit, the Town may, either before or after the institution of any other action or proceeding authorized by this Bylaw, institute a civil action in the name of the Town for a mandatory or prohibitory injunction and an order of abatement demanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property.
- ii. Upon determination of a court that an alleged violation is occurring, it shall enter such order or judgment as is necessary to abate the violation. The institution of an action for injunctive relief under this subsection shall not relieve any party to such proceedings from any civil penalty prescribed for violation of this Bylaw.

§ 225-12. Penalties.

- a. Removal without a permit: Each instance in which a Protected Tree is removed without a permit shall constitute a violation of this Bylaw which shall be subject to a fine per the table below. This shall be in addition to the required payment for the replacement of the tree(s).

Offense	Fine
1st offense	\$100
2nd offense	\$200
3rd offense & each subsequent offense	\$300

- b. Failure to replace trees or make payment: Each failure to replace a tree or make a payment into the Tree-Replacement Fund shall constitute a separate violation of this Bylaw which shall be subject to a fine per the table above. Each day such violation continues shall constitute a separate offense.
- c. Failure to comply with a condition contained in a Tree Permit or stop-work order: Each instance where there is a failure to comply with a condition contained in a Tree Permit or stop-work order shall constitute a violation of this Article which shall be subject to a fine in the amount per the table above. Each day such violation continues shall constitute a separate offense.

§ 225-13. Definitions.

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

- a. “Aggregate Diameter”: The combined diameter of a multiple-trunk tree measured at breast height.
- b. “Building Activity”: One of the following types of work performed on a lot:
 - (i) work performed pursuant to a special permit (as defined in G.L. c. 40A, § 9, and in the Lynnfield Zoning Bylaw);
 - (ii) work performed pursuant to Site Plan approval (as defined in the Lynnfield Zoning Bylaw);
 - (iii) work subject to a variance (as defined in G.L. c. 40A, § 10, and in the Lynnfield Zoning Bylaw);
 - (iv) construction of a new dwelling;

- (v) expansion of an existing dwelling by more than fifty percent (50%) of its existing square footage, excluding basements, open or screen porches or deck; or
- (vi) clearing, grading or other site preparation work performed within twelve (12) months prior to receiving any of the above.
- c. “Building Activity Permit”: A permit or approval which is required in order to perform Building Activity, including, but not limited to the following: a building permit; a demolition permit; a curb cut or street opening permit; site plan approval; subdivision approval; or a special permit.
- d. “Caliper”: Diameter of a tree trunk in inches. For trees up to and including four (4) inches in diameter, the caliper is measured six (6) inches above the existing grade at the base of the tree. For trees larger than four (4) inches in diameter, the caliper is measured twelve (12) inches above the existing grade at the base of the tree.
- e. “Certificate of Exemption”: Formal permission granted to proceed with Building Activity without need for a Tree Permit.
- f. “Certified Arborist”: An arborist certified by the Massachusetts Arborists Association or International Society of Arboriculture, or any successor organization.
- g. “Critical Root Zone” or “CRZ”: The minimum area beneath the canopy of a tree which must be left undisturbed in order to preserve a sufficient root mass to give a tree a reasonable chance of survival. The CRZ is represented by a circle centering on the tree’s trunk and extending outward towards the tree’s dripline. The minimum radius of the CRZ shall be determined by multiplying the tree’s Diameter Breast Height in inches by eighteen (18). For example: A tree with a DBH of twenty (20) inches shall have a CRZ with a minimum radius of 360 inches or 30 feet (20” x 18” = 360” or 30’).
- h. “Diameter Breast Height” or “DBH”: The diameter of the trunk of a tree 4½ feet above the existing grade at the base of the tree.
- i. “Hazardous Tree”: A tree that is interfering with existing structures, utilities, streets, sidewalks or other existing improvements; or is dead, diseased, injured, or dangerously close to existing structures; or is causing disruption of public utility service, drainage or passage problems upon rights-of-way; or poses a threat to pedestrian or vehicular safety; and/or that is harming the health or condition of other trees on the same site.
- j. “Invasive Species”: Any plant listed on the most recent version of the Massachusetts Prohibited Plant List as published by the Massachusetts Department of Agriculture.
- k. “Overstory Tree”: A tree that will generally reach a mature height of greater than forty (40) feet.
- l. “Protected Tree”: Any tree within a Tree Border having a diameter of six inches (6”) DBH or larger or having an Aggregate Diameter of twelve inches (12”) DBH or larger.
- m. “Remove”, “Removed”, “Removal” or “Removing”: The cutting down of any Protected Tree and all other acts that directly or indirectly result in the death of a Protected Tree in the prior twelve (12) months or within two (2) years thereafter, as determined by a Certified Arborist based on arboricultural practices recommended by the International Society of Arboriculture (I.S.A.) including, but not limited to, damaging, poisoning, excessive pruning or other direct or indirect actions.
- n. “Tree Permit”: Formal permission granted to remove a Protected Tree.
- o. “Tree Save Area”: The area surrounding a Protected Tree to remain undisturbed so as to prevent damage to a tree.
- p. “Tree Border”: A defined area along the perimeter of a lot.
- q. “Tree Warden”: The Director of Public Works or his/her designee.

§ 225-14. Severability, Effect on Other Laws.

- a. Severability: The provisions of this Bylaw are severable. If any section, provision, or portion of this Bylaw is determined to be invalid by a court of competent jurisdiction, then the remaining provisions of this Bylaw shall continue to be valid.
- b. Conflict of laws: This Bylaw shall not apply to any public shade tree as that term is defined by the General Laws, Chapter 87 or any amendments thereto. Nothing herein is intended to conflict with the General Laws, Chapter 87 and to the extent that any provision hereof conflicts with said Chapter 87, such provision shall not be valid. Nothing herein is intended to conflict with existing special-permit procedures and to the extent that any provision hereof conflicts with said special-permit procedures, such provision shall not be valid.
- c. Complying with the terms of this Bylaw shall not relieve the owner of the subject property from complying with any other pertinent regulation, including but not limited to all state and local wetlands-protection regulations.
- d. Nothing herein shall preclude the harvesting of timber or cordwood from properties under Mass. G.L. Chapter 61 which are being actively managed as working forest, if said cutting is part of an approved forest management plan for the property. No Tree Permits or mitigation fees shall be levied against forestry operations on such properties.

and to amend the Town’s Noncriminal Disposition general bylaw, § 58-3, by adding the following to the “Schedule of Violations, Fines and Enforcing Officers”:

“Section	Offense	Fine	Enforcement Agent
Chapter 225	Tree-Preservation Bylaw violations		Planning Board or its designee
	First offense	\$100	
	Second offense	\$200	
	Third or Subsequent Offense	\$300”	

or to take any other action in connection therewith.

Submitted by PLANNING BOARD