



**GARDINER CITY COUNCIL  
AGENDA ITEM INFORMATION SHEET**



<b>Meeting Date</b>	01/23/2019	<b>Department</b>	Code Enforcement
<b>Agenda Item</b>	4.7 Possibly Adopt Amendments to Title 26 Trees/Chapter 1 Oversight of Trees and Chapter 2 Protection of Public Trees		
<b>Est. Cost</b>	n/a		

<b>Background Information</b>	<p>This is the possible adoption of Title 26 Trees/ Chapter 1 Oversight of Trees and Chapter 2 Protection of Public Trees.</p> <p>Proposed changes are attached.</p>
	<p>CEO Barb Skelton and Public Works Director Tony LaPlante will be present to help facilitate the discussion.</p>

<b>Requested Action</b>	"I move to approve and adopt the Proposed Amendments as presented and waive the publication of the amendments in the newspaper (as allowed by City Charter Article 11 Section 9)."
<b>City Manager and/or Finance Review</b>	The City Manager recommends the above action.
<b>Council Vote/ Action Taken</b>	
<b>Departmental Follow-Up</b>	City must update ordinance and website on effective date (30 days after approval). City Clerk must publish ad per Charter Article II Section 9.

<b>City Clerk Use Only</b>	1 <sup>st</sup> Reading	01/09/2019	Advertised	12/24/2018	<b>EFFECTIVE DATE</b> 02/22/2019	
	2 <sup>nd</sup> Reading	01/23/2019	Advertised	02/07/2019		
				w/in 15 Days		
	Final to Dept		Updated Book		Online	

“Proposed Ordinance”

Revised ~~November-December 1624~~, 2018

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## Draft of a Possible Code Amendment To Establish a Tree Ordinance

Amend the City’s Code of Ordinances by adopting a new Title 26 Trees which shall read:

### Title 26 Trees

#### Chapter 1 Oversight of Trees

##### 1.1 Appointment of the Tree Warden

1.1.1 The City Manager shall appoint a Tree Warden for a one-year term beginning on January 1 of each year.

1.1.2 The City Manager may appoint an Assistant Tree Warden for a similar term. The Assistant Tree Warden shall assist the Tree Warden in carrying out the responsibilities set forth in 1.2 and shall serve as the acting tree warden if the position of Tree Warden is vacant or the Tree Warden is otherwise unavailable.

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##### 1.2 Responsibilities of the Tree Warden

The Tree Warden shall be responsible for the administration of this chapter including, but not limited to:

1.2.1 The review of the planting of public trees in accordance with 1.4 including providing advice to the Planning Board for tree plantings that are part of a project that requires Planning Board approval

1.2.2 The oversight and supervision of the removal and/or trimming of public trees in accordance with 1.5

1.2.3 The oversight and supervision of the removal and/or trimming of boundary trees in accordance with 1.6

1.2.4 The oversight and supervision of the removal and/or trimming of hazard trees on private property in accordance with 1.7

1.2.5 The oversight and supervision of the correction of public safety concerns through the removal or pruning of vegetation in accordance with 1.8

1.2.6 The protection of public trees from damage in accordance with Chapter 2, Protection of Public Trees

1.2.7 Any other duties or responsibilities designated by law (e.g., 30-A M.R.S. sec. 3282) or by the City Council.

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##### 1.3 Tree Oversight Committee

1.3.1 The Tree Oversight Committee shall consist of the Public Works Director, the City Manager, Finance Director, ~~and the Police Chief~~ and a citizen member with tree expertise.

1.3.2 The Tree Oversight Committee shall be responsible for overseeing the actions of the Tree Warden as set forth in this Chapter.

#### 1.4 Planting of Public Trees

The Tree Warden shall be responsible for overseeing the planting of any tree on public property within the City by any City department, other governmental body, or private individual or organization. This includes planting within the rights-of-way of public streets, parks, playgrounds and other recreational areas, and public buildings or facilities other than public school properties owned by the school district. If the tree planting is part of a project that has been approved by the Planning Board, the Tree Warden shall assure that all plantings are consistent with the approved plan. If the proposed planting is not part of a project requiring Planning Board approval, the following procedure shall apply:

1.4.1 Any party proposing to plant a public tree shall notify the Tree Warden of the species and location of the planting.

1.4.2 The Tree Warden shall review the proposed planting to evaluate the suitability of the species and the planting location and shall provide the party with his/her recommendations.

1.4.3 If there is concern or disagreement over a proposed planting, the Tree Warden may engage a licensed arborist to review the proposed planting and provide recommendations as to the suitability of the species and location.

#### 1.5 Removal or Trimming of Public Trees

The Tree Warden shall be responsible for overseeing and supervising the removal and/or trimming of public trees.

1.5.1 Any party proposing to remove or trim a public tree shall notify the Tree Warden of the location of the tree and the need for the removal or trimming.

1.5.2 The Tree Warden shall review the proposed removal/trimming to evaluate the need for the removal/trimming and shall provide the party with his/her recommendations.

1.5.3 If the Tree Warden determines that the need for the removal or trimming is to accommodate a public improvement or to avoid damage to an existing public improvement or facility, the department, agency, or person proposing the removal or trimming shall be responsible for the cost of the work. If a public tree is removed, the department, agency or person shall also be responsible for planting a replacement tree of a species and size and at a location determined in consultation with the Tree Warden.

1.5.4 If the Tree Warden determines that a public tree constitutes a hazard tree or is storm-damaged, the Tree Warden shall begin the process to have the tree removed. If the tree's condition represents an immediate threat to public safety or is impeding the recovery from a storm or other emergency event, the Tree Warden with approval of the City Manager may move forward with the removal of the tree. In other situations, the Tree Warden shall seek the approval of the Tree

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Oversight Committee for the removal of the tree. In these situations, the cost for removal shall be borne by the City.

### 1.6 Removal of Boundary Trees

The Tree Warden shall be responsible for overseeing and supervising the removal or trimming of boundary trees.

1.6.1 Any party proposing to remove or trim a boundary tree shall notify the Tree Warden of the location of the tree and the need for the removal or trimming.

1.6.2 The Tree Warden shall review the proposed removal or trimming to evaluate the need for the work and shall provide the party with his/her recommendations.

1.6.3 If the Tree Warden determines that the need for the removal/trimming is to accommodate a public improvement or to avoid damage to an existing public improvement or facility, the department, agency, or person proposing the removal/trimming shall be responsible for the cost of the work. If a boundary tree is removed, the department, agency or person shall also be responsible for planting a replacement tree of a species and size and at a location determined in consultation with the Tree Warden.

1.6.4 If the Tree Warden determines that the removal/trimming of the tree is being proposed primarily to benefit a private property owner, the Tree Warden shall move forward with the removal/trimming of the tree only with agreement with the benefitting property owner to pay the cost of the work.

1.6.5 If the Tree Warden determines that a boundary tree constitutes a hazard tree or is a storm-damaged, the Tree Warden shall begin the process to have the tree removed. If the tree's condition represents an immediate threat to public safety or is impeding the recovery from a storm or other emergency event, the Tree Warden with approval of the City Manager may move forward with the removal of the tree. In this situation the cost for the removal shall be borne by the City.

1.6.6 In other situations involving boundary hazard trees, the Tree Warden shall seek the approval of the Tree Oversight Committee for the removal of the tree. The Tree Oversight Committee shall notify the abutting property owner(s) in writing of the recommendation of the Tree Warden and shall hold a public hearing on the request. If the Tree Oversight Committee determines that the boundary tree will be removed, the cost of the removal shall be split fifty percent (50%) by the City and fifty percent (50%) by the abutting property owner(s) unless the Committee by vote makes other cost sharing arrangements.

1.6.7 The property owner shall be given the opportunity to retain the wood from the tree.

### 1.7 Removal of Hazard Trees on Private Property

The Tree Warden is responsible for the oversight and supervision of the removal and trimming of hazard trees on private property.

1.7.1 If the Tree Warden becomes aware of a hazard tree on private property, he/she shall notify the property owner in writing of such determination and shall provide the property owner with a reasonable period but not more than sixty (60) days within which to have the tree removed or the hazard eliminated.

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1.7.2 If the property owner contests the Tree Warden's determination, the Tree Warden [after consultation with the Tree oversight Committee](#) may at the City's cost engage a licensed arborist to review the situation. If the arborist determines that it is a hazard tree, the action shall move forward.

1.7.3 If the property owner has not complied with the Tree Warden's order to remove the hazard tree or eliminate the hazard within the specified time, the Tree Warden shall refer the action to the Tree Oversight Committee.

1.7.4 The Tree Oversight Committee shall notify the property owner(s) in writing of the review of the order of the Tree Warden and shall hold a public hearing on the proposed action. If the Committee determines that the tree is a hazard and will be removed, the Committee may have the Tree Warden arrange for the removal of the tree. The property owner shall be responsible for all costs associated with the removal [including any services by a licensed arborist for determining the condition of the tree.](#)

1.7.5 The property owner shall be given the opportunity to retain the wood from the tree.

#### 1.8 Removal/Pruning of Vegetation for Public Safety

The Tree Warden is responsible for the correction of public safety concerns through the removal or pruning of vegetation.

1.8.1 If the Tree Warden determines, in consultation with the Tree Oversight Committee, that vegetation on public or private property constitutes a threat to the public safety including but not limited to impairing the visibility of drivers, creating unsafe walking or driving conditions, or obscuring public safety signs or traffic control devices, the Tree Warden may cause action to be taken to correct or eliminate the unsafe condition.

1.8.2 If the unsafe condition is the result of vegetation that is located on public property including within street rights-of-way, the Tree Warden may direct the Public Works Director to prune or remove or otherwise alter the vegetation to eliminate the hazard.

1.8.3 If the unsafe condition is the result of vegetation that is located on private property, the Tree Warden shall notify the property owner in writing of such determination and shall provide the property owner with a reasonable period but not more than fifteen (15) days within which to correct the situation.

1.8.4 If the property owner contests the Tree Warden's determination, the Tree Warden together with the Tree Oversight Committee shall review the situation on-site with the property owner. If the Tree Warden determines that a hazard exists, the action shall move forward.

1.8.5 If the property owner has not complied with the Tree Warden's order to eliminate the hazard within the specified time, the Tree Warden shall refer the action to the Tree Oversight Committee.

1.8.6 The Tree oversight Committee shall notify the property owner(s) in writing of the review of the order of the Tree Warden and shall hold a public hearing on the proposed action. If the Committee determines that the vegetation is a hazard and will be removed, the Committee may have the Tree Warden arrange for the

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removal of the tree. The property owner shall be responsible for all costs associated with the removal.

## 1.9 Definitions

**1.9.1 Boundary Tree:** A tree located on the property line between City or other publically-owned property and private property such that the trunk of the tree is located over the property line.

**1.9.2 Hazard Tree:** A tree with a structural defect, combination of defects, or disease resulting in a structural defect that under the normal range of environmental conditions at the site exhibits a high probability of failure and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include meteorological anomalies, such as, but not limited to: hurricanes; hurricane-force winds; tornados; microbursts; or significant ice storm events. Hazard trees also include those trees that pose a serious and imminent risk to bank stability. A target is the area where personal injury or property damage could occur if the tree or a portion of the tree fails. Targets include roads, driveways, parking areas, structures, campsites, and any other developed area where people frequently gather and linger.

**1.9.3 Private Tree:** A tree that is located on private property.

**1.9.4 Public Tree:** A tree that is located on public property including but not limited to the rights-of-way of public roads or streets, public parks, playgrounds, and recreational facilities, and public buildings and facilities.

## Chapter 2 Protection of Public Trees

### 2.1 Care of Newly Planted Public Trees

Any City department, other governmental body, or private individual or organization that plans to plant a public tree shall prepare a plan of care for the newly planted tree. A care plan for a public tree planted by a City department or other governmental body shall be prepared in consultation with the Tree Warden. A care plan for a public tree planted by a private individual or organization shall be reviewed and approved by the Tree Warden. The care plan shall be in writing and ~~shall be reviewed with the Tree Warden.~~ The care plan shall set out how the tree will be cared for for a minimum of two years after it is planted. The care plan shall address the watering and fertilizing of the tree, its protection, and its maintenance including the removal of any guy wires or similar supports.

### 2.2 Replacement of Newly Planted Trees

If a newly planted public tree does not survive for two years from the date of planting or if the Tree Warden determines that the tree is diseased or damaged so that its survival is unlikely, the Tree Warden shall review the suitability of the location and the likely cause

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for its demise. If the Tree Warden determines that the location is suitable, he/she may require the department, organization, or person who planted the tree shall to be responsible for planting a replacement tree. The Tree Warden may as an alternative require the department, organization or person to plant a tree at another suitable location.

### 2.3 Protection of Public Trees

2.3.1 All trees near any excavation or construction of any building, structure, or street work, shall be protected with a substantial fence, frame, or box centered around the tree. The protective barrier shall be at least four (4) feet high and shall enclose an area extending a minimum of four feet in all directions from the trunk of the tree or a distance in feet from the tree trunk equal to the diameter of the trunk in inches measured at breast height (diameter breast height: 4.5 feet), whichever is greater. All construction equipment, building material, dirt, or other debris shall be kept outside the barrier.

2.3.1.2 Prior to any planned excavation excavating within ten (10) feet (10') of any public tree, the department, organization or person undertaking the excavation shall discuss the project with the Tree Warden to determine how to minimize the impact of the work on the tree. The Tree Warden may consult with a licensed arborist to evaluate the impact of the proposed action on the tree. If the tree is damaged by the excavation, the department, organization or person shall also be responsible for planting a replacement tree of a species and size and at a location determined in consultation with the Tree Warden.

2.3.2 When an emergency excavation is required within ten (10) feet of any public tree, the department, organization or person undertaking the excavation shall contact the Tree Warden as soon as possible to discuss how to minimize the impact of the work on the tree. The Tree Warden may consult with a licensed arborist to evaluate the impact of the proposed action on the tree. If the tree is damaged by the excavation, the department, organization or person shall be responsible for planting a replacement tree of a species and size and at a location determined in consultation with the Tree Warden.

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