

Chapter 78

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*Cross references: Environment, ch. 34.

State law references: Cutting and removal of trees, 30-A M.R.S.A. §§ 3283, 3291; preservation along public ways and water, 30-A M.R.S.A. § 3281 et seq.

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ARTICLE I. IN GENERAL

Secs. 78-1--78-25. Reserved.

ARTICLE II. DUTCH ELM DISEASE*

*State law references: Municipal authority to determine the presence of the Dutch elm disease and control such disease on public or private grounds, 30-A M.R.S.A. § 5725.

Sec. 78-26. Right of entry to inspect for.

The director of public works may enter private grounds to inspect and determine the necessary control measures and sanitation measures to prevent the infection and spread of the Dutch elm disease on elm trees located thereon and to determine the presence of the Dutch elm disease. (Code 1982, § 27-16)

Sec. 78-27. Order to correct dangerous conditions.

When the director of public works shall find it necessary to order the removal of trees on private property, or of sanitation work to correct a condition not complying to standards of the elm tree program as set forth by the state forestry service, he shall serve a written order to correct the dangerous condition upon the owner, operator, occupant or other person responsible for its existence. (Code 1982, § 27-17)

Sec. 78-28. Service of order.

The order required by section 78-27 shall be served in one of the following ways:

- (1) By making personal delivery of the order to the person responsible.
- (2) By leaving the order with some person of suitable age and discretion upon the premises.
- (3) By affixing a copy of the order to the door at the entrance of the premises in violation.
- (4) By mailing a copy of the order to the last known address of the owner of the premises, by registered mail.
- (5) By publishing a copy of the order in a local newspaper once a week for three successive weeks.

(Code 1982, § 27-18)

Sec. 78-29. Compliance with order; failure to comply.

(a) The order required in this article shall set forth a time limit for compliance dependent upon the hazard and danger created by the violation. In cases of extreme danger to other trees, the director of public works shall have the authority to require compliance immediately upon service of the order.

(b) When a person to whom an order under this article is directed shall fail to comply within the time specified therein, the director of public works shall remedy the condition or contract with others for such purpose and charge the cost thereof to the person to whom the order is

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directed. The person remedying a condition under a contract made under this article shall be authorized to enter premises for that purpose. (Code 1982, § 27-19)

Sec. 78-30. Appeal from order.

A person to whom an order is directed in accordance with this article shall have the right, within 24 hours of the service of such order, to appeal to the city council, who shall review such order at its next regular meeting and file its decision thereon. Unless the order is revoked or modified, it shall remain in full force and be obeyed by the person to whom directed. No person to whom an order is directed shall fail to comply with such order within five days after a decision on such appeal shall have been determined. (Code 1982, § 27-20)

Sec. 78-31. Cost of remedying conditions, assessment.

If the cost of remedying a condition under this article is not paid within 30 days after receipt of a statement therefor from the director of public works, such cost shall be levied against the property upon which such hazard exists, as a special assessment. Such special assessment shall be certified by the director to the city treasurer and shall thereupon become and be a lien upon such property, shall be included in the next tax bill rendered to the owner or owners thereof unless paid before, and shall be collected in the same manner as other taxes against such property. (Code 1982, § 27-21)

Sec. 78-32. Disclaimer of liability; negligence.

The city shall be liable for no damages under this article except those occasioned by negligence. (Code 1982, § 27-22)

ARTICLE III. COMMUNITY FOREST

Sec. 78-40. Findings.

The City Council finds that the community forest is important in advancing the economic and ecological health of the community and in protecting and enhancing its historic and esthetic characteristics. The City Council also finds that public trees beautify our streets and neighborhoods and also serve important environmental and economic purposes in that they release oxygen into the air, absorb carbon dioxide, reduce stormwater runoff, and reduce energy costs by providing shade in warm weather and protection from cold winter winds. (Ord. No. 12-07, 7-19-12)

Sec. 78-41. Purpose.

The purpose of this ordinance is to promote these values and to provide for the public health and safety by regulating the planting, maintenance, removal, and harvesting of trees and shrubs which are part of the community forest. (Ord. No. 12-07, 7-19-12)

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Sec. 78-42. Authority.

The City has authority to enact this ordinance under its home rule powers provided in 30-A M.R.S.A. §§ 2003 and 2004. (Ord. No. 12-07, 7-19-12)

Sec. 78-43. Definitions.

- (a.) *Board*: The Lewiston-Auburn Community Forest Board as described in § 78-52 of this ordinance.
- (b.) *Community forest*: includes all trees growing on public property as well as all trees growing within the limits of any public way located within the Urban Compact Zone.
- (c.) *Forest management plan*: A written document, prepared by a Maine licensed professional forester, which, considering landowner objectives, establishes direction and goals for the management of a specific forest land area. A plan normally provides a description of the woodlot including maps, timber inventory data, wildlife habitat, recreation potential, historic features, and special attributes. It will specify silvicultural practices and activities necessary to harvest products, improve forest health, and minimize adverse environmental impacts. The forest management plan serves as the basis for specific harvest plans.
- (d.) *Pruning*: systematic trimming or cutting branches throughout a tree or plant to enhance its health.
- (e.) *Public tree*: any tree or other woody vegetation which is located within the limits of any public way situated within the Urban Compact Zone.
- (f.) *Shrub*: any woody vegetation likely to grow to a mature height of fifteen (15) feet or less.
- (g.) *Topping*: the severe cutting back of tree limbs to stubs larger than three (3) inches in diameter within the tree's crown to such a degree as to reduce the height of the tree by removing or substantially diminishing the normal canopy and disfiguring the tree.
- (h.) *Trimming*: includes pruning

(Ord. No. 12-07, 7-19-12)

Sec. 78-44. Management.

The broad objectives stated in § 78-40 "Findings" and § 78-41 "Purpose" will be achieved by the active management of the community forest, using best known practices and, within the guidelines of a forest management plan, to promote public safety, forest health, species diversity, and environmental benefit to the community. Harvesting trees may be part of the overall management objectives of this plan.

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Sec. 78-45. Harvest revenues.

If and when revenues generated from any timber harvests exceed the expense of conducting that harvest, the surplus revenues will be distributed as outlined below:

- (a.) 80% to municipal general fund
 - (b.) 20% to designated account established for the purpose of protecting and enhancing the community forest
- (Ord. No. 12-07, 7-19-12)

Sec. 78-46. Administration.

The Municipal Arborist shall administer the management plan in coordination with such other municipal agencies/departments that now or may in the future share in the responsibility of caring for and maintaining the community forest.

(Ord. No. 12-07, 7-19-12)

Sec. 78-47. Municipal arborist.

The Director of the Department of Public Works shall appoint the Municipal Arborist who shall have a degree in forestry, arboriculture, or urban forestry from an accredited college or university or have equivalent field experience. The Municipal Arborist shall at all times during his or her employment hold a valid arborist's license issued by the State of Maine. (Ord. No. 12-07, 7-19-12)

Sec. 78-48. Duties of the municipal arborist.

- (a.) The Municipal Arborist shall have responsibility for planting, maintaining, preserving, and removing trees and plants which are part of the community forest in order to promote public safety and to protect and preserve the symmetry, health, and beauty of the community forest and the places where public trees and shrubs are located. The Municipal Arborist shall maintain a list that includes trees and shrubs which are suitable for planting as well as those which are unsuitable in general or under specific circumstances. This list shall be made readily available to members of the public.
- (b.) The Municipal Arborist may order the trimming or removal of trees or shrubs which are located within the public right of way to lessen the danger of travel or to suppress tree pests or insects as provided in 30-A M.R.S.A. § 3283. The Municipal Arborist may also order the trimming or removal of trees or shrubs located on private property outside the right of way for similar reasons by notifying the owner of the property in writing of the required action. In the event that a property owner does not initiate the requested action within 10 business days of receiving notice to do so, the Municipal Arborist may cause such action to be taken at the city's expense. The property owner may appeal the decision of the

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Municipal Arborist in the manner provided by § 78-49(e) and the Municipal Arborist shall take no action during the pendency of such appeal.

- (c.) The Municipal Arborist shall develop rules and regulations as well as standards of practice governing the planting, placement, maintenance, removal, fertilization, pruning, and bracing of trees in public rights of way and other public sites. These rules shall be reviewed by the Lewiston-Auburn Community Forest Board which may recommend changes and additions for the Municipal Arborist and the City Council to consider. Once adopted by the City Council, the rules and regulations shall have the force of law and violators of any such rules and regulations shall be subject to the penalties established by this ordinance. Copies of such rules and regulations shall be available from the City Clerk and from the Municipal Arborist and shall be posted on the city's website. The Municipal Arborist shall be responsible for initiating proceedings to enforce such rules and regulations.

(Ord. No. 12-07, 7-19-12)

Sec. 78-49. Requests to the municipal arborist; written permits required; appeals.

- (a.) No person shall plant, prune, remove, or otherwise disturb, above or below ground, any public tree without first filing an application with and obtaining a permit from the Municipal Arborist. Any permit granted shall contain a definite date of expiration and may contain conditions attached thereto by the Municipal Arborist. Any violation of this article or the terms of the permit shall be grounds for revocation of the permit, after notice and hearing. In emergency situations, such as storm damage to trees requiring immediate pruning or removal, the work may be performed without permits; however, the Municipal Arborist shall be notified as soon as possible.
- (b.) It is the intent of this article to preserve public trees. The Municipal Arborist may issue a permit to cut down, remove, or destroy a public tree under one or more of the following circumstances:
 - (1) The tree is diseased, injured, in danger of falling too close to existing or proposed structures, interferes with existing utility services, creates unsafe vision clearance or other traffic hazard, or is otherwise dangerous to people or property.
 - (2) The tree is located in an area where a structure or other improvements will be placed in accordance with plans approved under the Land Use Ordinance.
- (c.) Requests for Tree Removal, Pruning, or Trimming

Persons owning or occupying property abutting a public way or their representatives may request the Municipal Arborist to remove or top trees located within the limits of the public way or, alternatively, for a permit authorizing them to do the work on their own. If the Municipal Arborist concludes that the request is not urgent, he may decline to do the work and issue a written permit allowing

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the property owner or his or her representative to undertake the work on their own and at their own expense. The permit may specify conditions and shall establish an expiration date. Failure to comply with the conditions specified in the permit will subject the property owner and his or her representatives to the penalties established by this ordinance. In lieu of initiating enforcement proceedings when the conditions imposed by the permit are violated, the Municipal Arborist may cause any necessary corrective work to be done at the expense of the property owner or his or her representatives.

(d.) Requests to Plant Trees or Shrubs

Persons owning land abutting a public way or their representatives may request the Municipal Arborist to issue a written permit to plant trees or shrubs within the limits of the public way. The Municipal Arborist shall issue a permit if he or she determines that the proposed planting will not be harmful to public health or safety, will not damage or encroach upon existing public trees, shrubs, or utility lines, will not damage the public street, sidewalk, or public or private utilities located in the right of way, and that suitable arrangements have been made to provide for future maintenance of the proposed tree or shrub. The Municipal Arborist may specify reasonable conditions in the permit which the property owner or his or her representatives must follow in carrying out the work. Failure to comply with the conditions in the permit will subject the property owner to the penalties established by this ordinance. In lieu of initiating proceedings to enforce the conditions stated in the permit, the Municipal Arborist may cause any necessary corrective work to be done at the expense of the abutting owner.

(e.) Appeals

Any person who is denied permission by the Municipal Arborist to act under this section or who disagrees with a restriction or condition imposed on the action to be taken may appeal the same by filing a notice of appeal to the Board within ten (10) days from the date the action appealed from was taken. The notice of appeal shall contain the name and address of the person filing the appeal, the date and nature of the action from which the appeal is being taken, and a brief description of the basis for the appeal. The notice of appeal shall be filed with the Municipal Arborist who shall promptly forward it, as well as a response to the appeal, to the Chair and Secretary of the Board. The Board shall hear and decide the appeal within thirty (30) days from the date that the appeal was taken. A majority of the members of the Board shall constitute a quorum for purposes of hearing an appeal. The Board shall develop procedures governing the processing of such appeals. Such procedures to be made available to the public.

(Ord. No. 12-07, 7-19-12)

Sec. 78-50. Notice by municipal arborist of proposed tree work; appeals.

- (a.) Except in the case of an emergency, the Municipal Arborist shall notify any abutting property owner at least ten (10) days before removing, topping, or spraying any public tree. In the case of an abutting property owner who does not

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occupy the property, notice may be given to any occupant of suitable age and discretion. Notice may be given by mail, by telephone, by electronic transmission, by leaving written notice attached to the person's door, or in person. The notice shall describe the work to be done, when it is scheduled to begin, the process by which an appeal may be taken, and how to contact the Municipal Arborist. With respect to pruning and trimming public trees, no formal notice is required, but the Municipal Arborist shall make a good faith effort when feasible to advise abutting property owners of the work to be done and to provide them with an opportunity to express any objections they may have.

- (b.) Within ten (10) days of the date when notice of the Municipal Arborist's intention to remove, top, or spray a tree is given, an abutting owner or his or her representative may give notice to the Municipal Arborist that he or she is appealing the decision to the Board. Such notice of appeal may be given in person, by telephone, mail, or electronic communication. The procedure with respect to appeals under this section shall be the same as that for appeals under § 78-49(e) of this ordinance except that the proposed action shall be held in abeyance until the appeal has been heard and the Board has rendered a decision.

(Ord. No. 12-07, 7-19-12)

Sec. 78-51. Notice of tree work by utilities.

- (a.) At least thirty (30) days before initiating any trimming, cutting, or removal of public trees, a utility company must notify the Municipal Arborist who may request the City Council to hold a public hearing to discuss the request.
- (b.) At least thirty (30) days before initiating any trimming, cutting, or removal of public trees, a utility company shall publish notice of its proposal on its website and in at least one newspaper which has daily circulation in the area in which the work is to be done. The notice shall describe the work which is proposed, the streets on which the work is scheduled to be carried out, and the dates on which the work is to be done. The notice shall be published in a display advertisement format which is easily readable and sufficiently prominent so that it is likely to come to the attention of persons whose property will be affected by the proposed tree work. The published notice shall also advise the members of the public of their right pursuant to state law to be added to a list of persons who must be consulted by the utility company before it trims, cuts, or removes trees in which they have a legal interest.

(Ord. No. 12-07, 7-19-12)

Sec. 78-52. Lewiston-Auburn community forest board.

- (a.) *Statement of purpose.* The existence of the Lewiston-Auburn Community Forest Board is formally recognized. The Board shall develop and implement a community forest program which promotes the economic, environmental, and esthetic values of the community forest.

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- (b.) *Members.* The Board shall consist of nine members appointed by the respective mayors.
- (c.) *Qualifications of members.* Members must be residents of Lewiston or Auburn, or own property in either city, and be interested in developing and preserving a healthy community forest. There shall be a minimum of four members from each city although five members shall constitute a quorum and may act regardless of whether there are vacant positions on the Board. When members of the Board are acting as a Board of Appeals, a quorum shall require the participation of at least two (2) members from each city.
- (d.) *Ex officio members.* There shall be six (6) ex officio members of the Board consisting of the Director (or Superintendent) of the Parks Department in Auburn and the Public Works Director in Lewiston, a member of each city's Planning Board or planning staff to be chosen by the respective Mayors, and the Municipal Arborist from each city. The Board may adopt a by-law regarding the election of associate members of the Board who may participate in the affairs of the Board, but they will not be eligible to vote except in the absence of a regular member of the Board.
- (e.) *Members' terms of office.* Each member shall serve for a term of three (3) years and may be reappointed by their respective mayors. Members currently serving may complete their current terms of office and may be reappointed for additional three-year terms. Terms of office will continue to be staggered to provide for continuity in the Board's program and activities.
- (f.) *Vacancies.* When vacancies occur, the Board shall take appropriate steps to recruit applicants to fill the vacant positions. Members appointed to fill vacant positions on the Board shall serve out the terms of the persons they are replacing.
- (g.) *Compensation.* Members of the Board shall serve without compensation.
- (h.) *Duties and responsibilities.* The Board shall:
 - (1) Develop a plan for and provide advice to city staff and agencies regarding the management of the community forest including the anticipated impact of proposed development;
 - (2) Raise community awareness regarding the importance of the community forest;
 - (3) Raise funds to establish a community forest trust fund;
 - (4) Hear appeals filed pursuant to this ordinance;
 - (5) Adopt by-laws to govern the internal affairs of the Board; and
 - (6) Perform such other functions as are permitted by this ordinance.

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- (i.) *Administration.* The Board shall elect a Chair, Vice Chair, Secretary, and Treasurer. Except for the Chair, the officers shall serve for renewable one-year terms. The Chair shall be elected for a renewable two-year term. The Board may allow the duties of the Secretary and Treasurer to be performed by the same person.

(Ord. No. 12-07, 7-19-12)

Sec. 78-53. Penalty.

- (a.) Any violator of any provision of this article shall be subject to a civil penalty payable to the city. Each act of violation shall constitute a separate offense.
- (b.) Should any public tree be destroyed, the person causing the destruction shall also make restitution to the city or to the abutting landowner in an amount equal to the cost of removing the destroyed tree plus its replacement value. Replacement value shall be calculated as follows:
- (1) For a tree up to and including 2 inches in diameter measured at a distance of 4.5 feet from the ground, the replacement value shall be \$200.
 - (2) The replacement value of a tree in excess of 2 inches in diameter as measured at a distance of 4.5 feet from the ground shall be calculated by using the following formula: $\text{restitution} = \$200 + (d^2 \times \$40)$ not to exceed \$2,500 where d equals the diameter of the trunk as measured in inches.
- (c.) The court may also order the violator to reimburse the city for the cost of any action which was necessary to correct violations of the ordinance. If the city is the prevailing party in an enforcement action, it shall be awarded reasonable attorneys' fees and costs.

(Ord. No. 12-07, 7-19-12)