



**LEBANON TREE ADVISORY BOARD
JULY 25, 2023 - 5:30 PM
MEETING ROOM 2, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM
LEBANONNH.GOV/LIVE**

-
- 1. Call to Order**
 - 2. Approval of Minutes**
 - A. July 10, 2023
 - 3. Old Business**
 - 4. New Business**
 - A. Discuss the proposed Code Chapter 55
 - B. Discuss the proposed companion DPW policy relative to trees that dovetails with Chapter 55
 - C. Further discuss legal comments to the TAB draft ordinance
 - 5. Future Agenda Items**
 - 6. Adjournment**

Meetings are open for in-person and remote attendance. Members of the public that wish to attend remotely may do so by going to LebanonNH.gov/Live where you will find instructions on how to enter the meeting. Members of the public will be able to participate and ask questions through the City's virtual platform or by phone. Please note: Should technical difficulties occur during the meeting that disrupts virtual or phone connection(s), the meeting will continue without remote access capabilities.

AGENDA
Tree Advisory Board
July 25, 2023

AGENDA ITEM 2
Approval of Minutes

July 10, 2023

City of Lebanon
Tree Advisory Board
Draft* Minutes, Monday, July 10, 2023 at 5:30pm
Meeting Room 1, City Hall or remote via virtual platform lebanonnh.gov/live

MEMBERS PRESENT (7/7): Kathleen Corrigan, Charlie DePuy, Andrew Garthwaite, Kelsey Haigh, Susan Johnson, Mary Maxfield, Sarah Riley

STAFF PRESENT: Paul Coats (Director Parks and Rec, TAB)

GUEST PRESENT: Shaun Mulholland (City Manager)

MEMBERS/STAFF ABSENT: Patrick McCarthy (DPW/TAB)

- I. CALL TO ORDER: The meeting was called to order at the usual time
- II. APPROVAL OF MINUTES: Minutes of our meeting on 6/5/23 were approved.
- III. OLD BUSINESS
 - A. IRA Grant Update (Susan)
 - 1. We expect to hear by October.
 - 2. But the funds will probably not be “live” until Spring.
 - B. Tree Policy Draft Update
 - 1. Our [draft tree ordinance](#) was commented on (in the text) by Shaun.
 - 2. Shaun said that the next steps would be:
 - a) Developing a tree “code”, which he is working on with city attorney Matt Decker. **(Towns have ordinances; cities have codes.)**
 - (1) On the city website, the city **charter** is a “constitution”
 - (2) Our **code** would be there as “**Chapter 55**” and would essentially consist of laws.
 - (3) Companion **policies** would be established for various things such as how to plant trees. Shaun suggests that we have a video that DPW could watch. DPW

currently has no actual policies. Our policies would be their first.

- b) Shaun will try to get his tree code to us within the week.
(Read it prior to our next meeting on Tues 7/25!)
 - c) We would then **revise the document**.
 - d) The document would then go to the **City Council**.
- 3. The city would be required to follow the Tree Code (Ordinance), and the Code/Ordinance is required to follow state law.
 - 4. Another relevant read suggested previously by Kelsey and Andrew: selected pages (19-23 among others) from [A Hard Road to Travel on NH Law of Local Highways, Streets, and Trails](#)
 - 5. A peripherally related topic is site plan violations. Shaun offered that they are usually inadvertent, but regardless, the city currently has no one to enforce site plan agreements. A tree warden could potentially be that person. If a site plan offered X number of trees, we could ask them to be responsible for that.

C. Urban Heat Island Study

- 1. Charlie noted that Lebanon had a day with an over-100°F heat index last week. This imposes serious health issues for many of our most vulnerable community members.
- 2. Andrew: Maybe a tree master plan should be our next project.
- 3. Shaun: We need an urban forestry plan in place by this coming spring. This plan would provide policies and guidelines for city staff to use. It would cover:
 - a) How many trees?
 - b) What kinds of trees?
 - c) What staff would be needed?
 - d) What areas would be targeted?
 - (1) Shaun: Kimball Street is being torn up. We should use that as an opportunity to plant trees there. Patrick McCarthy would be our liaison.
 - (2) Sarah shared links to three relevant city documents, that would complement the urban forestry plan and could eventually include info such as extreme heat zones, places where trees are targeted, etc:
 - (a) [Walk, Bike, Ride](#): Multimodal and complete streets implementation plan
 - (b) [Complete Streets Policy](#): One policy to improve mobility and safety for all users

(c) [Maps](#) of proposed pedestrian and bicycle network

4. Susan, referring to planting trees this fall (especially around bus stops):
 - a) Locations: we know we can do plantings on city properties.
 - b) Shaun would give us a form letter for easements on private property.

D. Tree Inventory

1. The city's asset management program used to be Beehive, but that will be replaced soon by a program to be determined. Trees would be inventoried there.
2. City-owned urban trees (but not privately owned trees) would be inventoried in this new system (along with the already-inventoried bridges, roads, sidewalks, etc.)
Cemeteries would also be included.
3. The new inventory system would have info for each tree such as a QR code, treatment history, etc.
4. Volunteers would probably use a city device in order to complete the various inventory tasks (e.g. take photo of tree, estimate height of tree, nail a plastic tag into tree)
5. Mark Goodwin would use this new system to incorporate tree information onto maps, too.
6. We would probably have layers of key info such as heat islands, walkability, a possible site of a future tree.
7. Amy Gomo is the person in charge of the tree inventory system.
 - a) City can print own QR codes.
 - b) Shaun hopes volunteers will do the bulk of the tree inventory.
8. Shaun hopes to have the tree inventory system ready for this Friday.
9. The walkability maps are not of survey quality. With iphones we can locate a spot +/- 3 meters.
10. The numbering system needs to be figured out ahead of time.

E. The Tree Warden position is still open.

1. Paul interviewed a candidate, Andrew _____, who is currently with a tree company in the Corinth area. He seems interested and is a strong candidate, but DPW still needs to meet him.
2. Since Andrew's interview, another candidate has come forward.

3. Although the TAB is responsible for the job definition, the tree warden would be answerable to DPW and would be a paid employee.

IV. NEW BUSINESS:

A. Environmental Justice Task Force (EJTF)

1. DEI reached out to TAB, Sustainable Lebanon, and the Conservation Commission to brainstorm what environmental justice looks like in our city.
2. TAB brainstormed relevant city topics briefly: underserved neighborhoods, urban heat islands, bus stops, air quality, Richard's list, privately owned places such as bus stop in the Walmart parking lot.
3. Mary (as rep from TAB) and Sarah (as rep for Conservation Commission) will serve on the EJTF.

B. Planting trees at bus stops

1. Susan prepared a spreadsheet list of 21 bus stops at which we could plant trees.
2. At each site, we would need to specify exactly where to put a tree and how to prepare the surface.
3. Adams Carroll recommended that we find maybe 5 locations that would be easy, visible, and high success. He emphasized that highly visible success would be important for future endeavors.
 - a) So find our top 5-10 locations with map overlays so that we'd know where the sewage and water mains are.
 - b) Then get input from DPW.
 - c) We'd also need to eventually invite Adams Carroll or AT facilities manager people after we identified our 5-10 locations and X-marks-the-spots.

C. Budget–Shaun wants to have an Urban Forestry Fund and wants to fund it from the Lost Fund—which is a controversial thought.

1. The Lost Fund is controlled by the Conservation Commission's Land Use Trust Fund. It currently contains ~\$1.4 million.
2. The Lost Fund's money is used for conserving open spaces, i.e. protecting land from development.
3. If the Lost Fund is used for Urban Forestry expenses, there would be less money for the originally intended purposes.
4. Andrew: perhaps money from Rotary (assuming we get it) could be applied toward the Urban Forestry Fund.

D. Assignments:

1. Contact Rotary re our application (Mary)

2. Identify the top 5 sites for bus stop tree plantings. Patrick wants us to mark the spots, and he'll check them out from the DPW perspective.

V. MEETING ADJOURNED AT 7:15.

VI. NEXT MEETING: Tuesday July 25 at 5:30pm at City Hall and online

Respectfully submitted,

Mary Maxfield, Recording Secretary

AGENDA
Tree Advisory Board
July 25, 2023

AGENDA ITEM 4.A
Discuss the proposed Code Chapter 55

Discuss the proposed Code Chapter 55

ORDINANCE 2023-**

AN ORDINANCE TO AMEND the Code of the City of Lebanon, Chapter 55, Trees, to establish regulations for trees in public spaces.

Be it ordained by the Council of the City of Lebanon as follows:

Section 1.

The Code of the City of Lebanon is hereby amended by adding §55, Trees.

§ 55-1. PURPOSE/INTENT

To enhance the quality of life and the present and future health, safety, and welfare of all residents, and to ensure proper planting and care of trees on public property and within City rights-of-way, the City Council herein delegates the authority and responsibility for managing public trees.

§ 55-2. DEFINITIONS

Ornamental Tree- a tree planted or valued chiefly for its aesthetic value.

Shade Tree- a tree planted or valued chiefly for its shade from sunlight.

Tree - a woody perennial plant having a single usually elongated main stem generally with few or no branches on its lower part.

§ 55-3. AUTHORITY AND RESPONSIBILITIES

- A.** The Public Works Director is responsible for planting, care and maintenance of trees located within the City's public rights of way as well as other City-owned properties under the management of the Department of Public Works. All other trees located on City property or to be planted on City property shall be the responsibility of the director of the department which manages the property the tree is located on, except subject to provisions regarding the removal of trees as detailed in § 55-5, A, unless otherwise proscribed in the Code of the City of Lebanon or applicable State law.
- B.** The City shall have control of all shade trees, ornamental trees and shrubs situated within the limits of the City's public ways, village commons, parks, cemeteries, and other public grounds, which have been or may be acquired by gift or purchase, or planting by or with the advice of the Public Works Director, or by condemnation by the Public Works Director as provided in RSA 231:140.
- C.** Trees located within the City's right-of-way but located on private property are controlled by the property owner not the City other than the exceptions discussed below and as interpreted by the Courtsⁱ

§ 55-4. PLANTING OF TREES

- A. **Taking Tree Rights.** – In accordance with the provisions of RSA 231:154, when any highway shall be laid out damages may be assessed to the abutting owners to provide for the maintenance or planting, from time to time, within the limits of such highway, of such shade and ornamental trees as may be necessary for the preservation and improvement of such highway. Damages may be assessed to abutting owners on any existing highway upon petition therefor, and such proceedings had as in the laying out of highways by the City Council to provide for the maintenance and planting from time to time, of such trees within the limits of such highways as may be necessary for the preservation and improvement of the same. When such damage shall be assessed and paid there shall be, in addition to the right of travel over such highway, a public easement to protect, preserve and renew the growth thereon for the purposes aforesaid.

§ 55-5. REMOVAL OF TREES

- A. **Shade and Ornamental Trees-** Whoever desires the cutting and removal in whole or in part of any public shade or ornamental tree owned by the City may apply to the Public Works Director, who shall give a public hearing, upon the application, at some suitable time and place, after publishing and posting notices of the hearing in 2 or more public places and also upon the tree or trees which it is desired to cut and removed. No tree shall be cut, except to trim it, or removed by the City staff, without such hearing. The decision of the Public Works Director shall be subject to review by the City Manager.
- B. **Hazardous Trees-** Notwithstanding the provisions of other sections of this Chapter and subject to the provisions of RSA 231:157 and RSA 231:158, the Public Works Director on class IV, V, and VI highways and City maintained portions of class II highways may declare any tree, either alive or dead, situated within the limits of City property, highways, roads, or streets to be a public nuisance by reason of danger to the general or traveling public, spread of tree disease, or the reliability of equipment installed at or upon utility facilities authorized under RSA 231:160 or RSA 231:160-a. After such declaration by the Public Works Director and notice to the abutting landowner on whose property such tree is located the said authority shall within a reasonable time remove the same without compensation or cost to the abutter. However, no such declaration and notice shall be required when the delay entailed by such declaration and notice would pose an imminent threat to the safety or property, including electric transmission and distribution lines. Nothing in this subdivision shall be construed to relieve the public utility companies of their accepted responsibility of tree trimming and tree removal for the protection of their lines, or for the construction of new lines, or to alter the provisions of RSA 231:150-182 in any manner. The Public Works Director may require of the public utilities owning lines which pass through or near a tree or trees which are condemned for removal as a public nuisance to assist in their removal at their expense by either the temporary removal of their lines or by causing to be removed at their expense the top portion of said tree or trees from a point below their lines.
- C. **Notice-** as detailed in RSA 231:146, notice to the abutting landowner of a tree declared a public nuisance shall be given by delivery at his place of residence or by sending by registered mail to his last known address and it shall clearly state the intention of removal of such tree. The landowner may appeal to the superior court as to the validity of such declaration within 30 days of delivery or mailing of said notice, and shall be entitled to a speedy hearing. The final judgment upon every appeal shall be a decree dismissing the appeal, or vacating the declaration complained of in whole or in part, as

the case may be; but in case such declaration is wholly or partly vacated the court may also, at its discretion, remand the matter to the City for such further proceedings, not inconsistent with the decree, as justice may require. Following expiration of the aforesaid 30-day period of appeal, or following waiver of said right of appeal, the abutting landowner is relieved of any liability or responsibility in connection with the tree or trees declared a public nuisance and similarly is relieved of any liability or responsibility in connection with any stump or stumps left remaining.

- D. **Clearing Highways** – In accordance with the provisions of RSA 231:150, the Public Works Director shall annually, and at other times when advisable, cause to be cut and disposed of, from within the limits of City maintained highways, all trees and bushes that may cause damage or pose a safety hazard to such highways or to the traveling public; provided however that no tree which has a circumference of 15 inches or more at a point 4 feet from the ground shall be removed in the absence of notice to the abutter in the same manner as provided above, except when the delay entailed by such notice would pose an imminent threat to safety or property. Shade and fruit trees that have been set out or marked by the abutting landowners or by the Public Works Director, and young trees standing at a proper distance from the highway and from each other, shall be preserved, as well as banks and hedges of bushes that serve as a protection of the highway, or that add to the beauty of the roadside.
- E. **Scenic Roads**- The management of trees along scenic roads shall be conducted in accordance with the provisions of RSA 231:158 except that, only with the written permission of the Public Works Director, remove trees or portions of trees which have been declared a public nuisance pursuant to RSA 231:145 and 231:146, when such trees or portions of such trees pose an imminent threat to safety or property, and provided, further, that a public utility when involved in the emergency restoration of service, may without such hearing or permission of the Public Works Director, perform such work as is necessary for the prompt restoration of utility service which has been interrupted by facility damage and when requested, shall thereafter inform the Public Works Director of the nature of the emergency and the work performed, in such manner as the Public Works Director may require.

§ 55-6. ROLE OF THE TREE ADVISORY BOARD AND TREE WARDEN

- A. The Tree Advisory Board in accordance with the provisions of its charge may provide guidance to the Public Works Director regarding the planting, care, maintenance and removal of trees on public property or within public rights of way. Notices of public hearings under section § 55-5 shall be provided on or before the time of posting or in the case of Section § 55-5, B and C on or before the time of notice to the Tree Advisory Board. The Public Works Director shall take into consideration recommendations made by the Tree Advisory Board relative to the tree(s) that are under consideration for removal.
- B. The Tree Warden shall provide guidance and recommendations to the Public Works Director relative to the planting, care, maintenance and removal of trees on public property.

§ 55-6 INJURY OR DEFACEMENT OF TREES

As detailed in the provisions of RSA 231:147, It shall be unlawful to cut, destroy, injure, deface, or break any public shade or ornamental tree; or to affix to any such tree a play bill, picture, announcement, notice, advertisement, political or otherwise, or other device or thing, or to paint or mark such tree, except for the purpose of protecting it and under a written permit from the Public Works Director. Additionally, persons responsible for the injury or defacement of trees shall make restitution for the replacement and/or mitigation of trees injured or defaced.

§ 55-7. SEVERABILITY

The provisions of this ordinance are declared to be severable, and if any section, subsection, sentence, clause, or part thereof is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdictions, such decision shall not affect the validity of any remaining sections, subsections, sentences, clauses, or part of this ordinance.

§ 55-8. EFFECTIVE DATE

This ordinance shall become effective *****, 2023.

ⁱ *Graves vs. Shattuck*, 35 N.H. 257 (1857); *Laconia vs. Morin*, 92 N.H. 314 (1943)

AGENDA ITEM 4.B

Discuss the proposed Companion DPW policy relative to trees that dovetails with Chapter 55

**Discuss the proposed
Companion DPW policy
relative to trees that
dovetails with Chapter
55**



City of Lebanon
New Hampshire

ADMINISTRATIVE POLICIES & PROCEDURES

Urban Tree Management Policy

<i>Policy Number</i>	<i>Effective Date</i>	<i>Last Revision</i>	<i>Page No.</i>
DPW-501			Page 1 of 4
<i>Approved by:</i>			

SECTION 1.0: PURPOSE

Urban trees enhance the quality of life and the present and future health, safety, and welfare of all residents. Trees are critical to the protection of our environment. This policy provides guidance regarding the planting and care of trees on public property, including City rights-of-way. Chapter 55 of the City Code provides the authority and responsibility for managing public trees.

SECTION 2.0: SCOPE

This policy applies to all departments that are responsible for managing trees on City property as well as the interaction with the Tree Advisory Board and the role of the Tree Warden.

SECTION 3.0: DEFINITIONS

SECTION 4.0: POLICY DETAIL

4.1 Benefits of Urban Trees

Urban and Street Trees are an important aspect of the City's urban infrastructure. Trees and greenspace contribute significantly to reducing heat in areas with concrete and asphalt surfaces of the City and the character of its neighborhoods. Trees are a critical tool in reducing urban heat islands, as they cool their surroundings through transpiration and provide shade; they contribute to the health of our residents as extreme heat events become more common.

Trees provide environmental and economic benefits. They:

- reduce pollutants in the air and water
- provide wind breaks
- provide shelter and food for wildlife and pollinators
- enhance property values
- and attract visitors for recreational activities

4.2 Goals and Objectives



City of Lebanon
New Hampshire

ADMINISTRATIVE POLICIES & PROCEDURES

Urban Tree Management Policy

<i>Policy Number</i>	<i>Effective Date</i>	<i>Last Revision</i>	<i>Page No.</i>
DPW-501			Page 2 of 4
<i>Approved by:</i>			

The following procedures and guidelines focus on maintaining and enhancing the City's valuable public trees so they remain a prominent part of the community's identity, culture, and history, while also providing shade, habitat, ecosystem services, and beauty. This policy is intended to improve care and management of ornamental and shade trees in the City. The policy out the procedures for tree-planting on City property, supporting tree planting in areas that directly involve pedestrians, especially vulnerable populations: sidewalks, streets with no sidewalks, bus stops, and parking lots. Saving and creating parks and green spaces in the urban core areas of the City will help to preserve the health of our community.

SECTION 5.0: PROCEDURES

5.1 Tree Species

The City will utilize professional guidance from federal and state agencies as well as from private or non-profit organizations regarding the appropriate species of trees to plant on City property. The objective is to avoid planting invasive species and trees that are less likely to survive in some of the harsher urban locations. See the links in Section 6.0 for the UNH Cooperative Ext List of NH Native Trees, and Tree Advisory Board Guide for Trees to Consider When Planting.

5.2 Procedures for Planting

The City will utilize professional guidance as indicated above in **5.1** regarding the planting of trees. Techniques regarding planting, mulching, watering, staking are available through these resources. Tree placement must also be carefully considered. The use of the links below may be helpful in this regard. See the links below as a source of information. There may be additional sources of information available that may be utilized.

5.3 Care of Trees

The DPW shall be responsible for planting, pruning, and maintaining trees, plants, and shrubs along public rights-of-way, cemeteries and all other DPW managed



City of Lebanon
New Hampshire

ADMINISTRATIVE POLICIES & PROCEDURES

Urban Tree Management Policy

<i>Policy Number</i>	<i>Effective Date</i>	<i>Last Revision</i>	<i>Page No.</i>
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<i>Approved by:</i>			

properties/facilities as needed to ensure public safety, and to preserve or enhance the beauty of such public spaces and the health of the vegetation. All trimming shall be done in accordance with professional guidelines as established by federal, state, private or non-profit organizations. Trees on City property managed by other departments shall be managed in accordance with this policy.

5.4 Inventory of Urban Trees

Trees planted or existing in the Rights of Way of the City's urban core areas, cemeteries, public parks and those that are a component of the landscaping of City buildings shall be inventoried in the City's fixed asset management system. This shall include the species of tree, its location and condition. Maintenance conducted on the trees shall be updated in the system as well as inspections conducted.

5.5 Training

All volunteers/personnel with a role in the design, installation, and maintenance of street trees, as well as those involved with drafting bids or RFPs that involve work around or with street trees, shall be provided with training or have licensing or certifications relative to the work being conducted.

5.6 Tree Warden

The Public Works Director may employ a Tree Warden who shall carry out their duties as detailed in the job description and as assigned by the Public Works Director. In the absence of a Tree Warden the Public Works Director may utilize the services of licensed foresters, arborists or appropriate officials from other governmental organizations for guidance. The purpose of the Tree Warden is the following;

1. Provide training and guidance to City Staff.
2. Provide guidance to the Tree Advisory Board as well as other boards/committees/commissions of the City.
3. Assist in educating the general public regarding the care and maintenance of trees.
4. Assist or lead tasks as assigned by the Public Works Director to achieve the goals and objectives of this policy and City Code 55 Trees.



City of Lebanon
New Hampshire

ADMINISTRATIVE POLICIES & PROCEDURES

Urban Tree Management Policy

<i>Policy Number</i>	<i>Effective Date</i>	<i>Last Revision</i>	<i>Page No.</i>
DPW-501			Page 4 of 4
<i>Approved by:</i>			

5.7 Tree Advisory Board

The Tree Advisory Board was created by the City Manager to provide support to City staff regarding trees in general. This includes public trees and those on private property as well. See the TAB charter for further delineation of those duties. DPW will provide staff liaison support to TAB.

SECTION 6.0: REFERENCES (Charter/Code/State Statutes)

1. Tree Advisory Board Charter created on 8/19/2021 and revised on 6/1/2023.
2. RSA Chapter 231, subsections 139-158, 172
3. Chapter 134 Scenic Roads of the City Code
4. NH Administrative Rule, Chapter Agr. 3800 Invasive Species
5. Tree Care Industry Association, ANSI A300 Standards
6. Guide to Local Tree Bylaws for Communities in Massachusetts
7. Guidelines for Developing and Evaluating Tree Ordinances, International Society of Arboriculture
8. UNH Cooperative Extension List of Native Trees [List of New Hampshire Native Trees | Extension \(unh.edu\)](#)
9. UNH Cooperative Extension, Landscape Trees and their Susceptibility to Invasive Insects. [brocfinal.indd \(unh.edu\)](#)

SECTION 7.0: POLICY & PROCEDURE REVISION HISTORY

	Section	Revisions	Date
Original Adoption			
Amendment			
Amendment			
Amendment			

AGENDA ITEM 4.C
Further discuss legal comments to the TAB draft ordinance

Further discuss legal comments to the TAB draft ordinance

Current as of May 1, 2023

City of Lebanon Tree Ordinance - DRAFT

1. Purpose

To enhance the quality of life and the present and future health, safety, and welfare of all residents, and to ensure proper planting and care of trees on public property, including City rights-of-way, the City Council herein delegates the authority and responsibility for managing public trees, establishes practices governing the planting and care of trees on public property, and makes provision for the emergency removal of trees on private property under certain conditions.

2. Policy Statement

Urban and Street Trees are an important aspect of Lebanon's infrastructure, not mere decorations. Trees and greenspace contribute significantly to the walkability of the City and the character of its neighborhoods. Trees are a critical tool in combating urban heat islands, as they cool their surroundings through transpiration and provide shade; they will contribute to the health of our residents as extreme heat events become more common.

Trees provide environmental and economic benefits. They:

- reduce pollutants in the air and water
- provide wind breaks
- provide shelter and food for wildlife and pollinators
- enhance property values
- and attract visitors for recreational activities

3. Goals

The following policies and guidelines focus on maintaining and enhancing Lebanon's valuable public and private trees so they remain a prominent part of the community's identity, culture, and history, while also providing shade, habitat, ecosystem services, and beauty. This ordinance will improve care and management of single trees and tree populations in Lebanon. The ultimate goal of this ordinance is to increase tree density in "urban" Lebanon to 30% coverage. The ordinance lays out the benefits of a comprehensive tree-planting plan in identified heat islands, supporting tree planting in areas that directly involve pedestrians, especially vulnerable populations: sidewalks, streets with no sidewalks, bus stops, and parking lots. Saving and creating parks and green spaces in urban Lebanon, even while population increases, will preserve the health of our community.

Commented [SM1]: Seems to conflict with C419:30 Powers and Duties of the Manager

Commented [MD2]: General comments for drafting of local tree ordinance:

1. NH is not a 'home rule' state. Instead, all powers of local govt must be granted by the state legislature, either explicitly or necessarily or fairly implied by express grant. (Dillon's Rule).
2. Tree ordinance may not conflict with state law (RSAs) or other City ordinances.
3. The City Charter is state law, passed and amended by the legislature.

Commented [MD3]: Sources of state law (RSA) relevant to a tree code:

1. 47:17 - City councils may make ordinances for purposes incl. (I) "[t]o carry into effect all the powers by law vested in the city", (VII) "[t]o regulate all streets and public ways... and the use thereof", (XV) "[r]elative... to trees planted for shade, ornament, convenience, or use, and the fruit of the same"
2. 31:51 - "Towns may make regulations from time to time for the planting, protection and preservation of the shade and ornamental trees situated upon any lands within the limits of the town appropriated to public uses.
3. 231:139 to :156 (trees within public rights of way)
4. 231:158 (trees along scenic roads)
5. 231:172 (utilities' cutting of trees)

Commented [MD4R3]: Other sources of law relevant to tree code:
Graves v. Shattuck,
35 N.H. 257 (1857) (trees within ROW remain property of title owner)

Commented [MD5]: The Council cannot make a delegation that would violate state law, i.e. the City Charter. Charter sec. C419:30 grants to the City Manager the responsibility for "administration of all affairs of the city", "including the preservation of the public health, the public safety of all citizens and their

Commented [MD6]: This is likely already covered by RSA 231 and going beyond state law with regard to acts on private property would be likely to run afoul of the Dillon Rule.

Commented [MD7]: See prior comments - state law is fairly limited as to what can be done about trees on private property (unless within a ROW and acquired by the City through gift or condemnation and payment of damages), so it is preferable for the ordinance to steer clear of language re: private property.

Commented [MD8]: Not necessarily void/unenforceable since it is a statement of an aspirational goal, but not a proper part of an ordinance. A tree density goal would be more appropriate in a master plan or other planning or conservation related plan document.

Commented [SM9]: What is the present coverage and what would it take to achieve 30%

Increased tree inventories ultimately increase the health of residents and visitors, mitigate heat islands and improve the function and health of our environment.

4. Definitions

Arborist

An arborist is a licensed and ISA Certified tree expert.

ANSI Standards

Tree industry best practices, found in the most current edition of the *ANSI A300 Standards*.

DBH or Diameter at Breast Height

Method of taking a standard diameter measurement of a tree, in inches, 4.5 ft above the ground.

Drip line

A vertical line running through the outermost portion of the outer branch tips of a tree and extending to the ground.

Nuisance Tree or Shrub

A nuisance tree or shrub is any tree determined by the City to be dead, diseased, noxious, invasive, hazardous, or otherwise unsuitable to people and/or property on the public right-of-way.

Protected Tree

A Protected Tree has been designated as valuable due to certain characteristics, such as historical significance, age or size, or species.

Public Places

Includes all streets, highways, parks, pocket parks, cemeteries, easements, or other grounds owned by the City.

Public Tree

Any tree or woody vegetation being rooted on land owned by the City of Lebanon, including trees in rights-of-way, public parks, cemeteries, and other public grounds.

Right-of-Way

Confirm definition with COL language indicating city's right to take back certain property

Scenic Road

The state of New Hampshire's regulations for roads designated as Scenic can be found in [NH Rev Stat § 231:158 \(2015\)](#) and the City's definitions and rules are contained in [Chapter 134](#) of the City Code

Shade Tree

A tree which can provide shade at maturity. The City's [Site Plan Regulations](#) specify "a tree that can attain a height of more than 30 feet."

Street Tree

Any tree or woody vegetation planted within the City's right-of-way, whose purpose is to provide greenery and shade along a public street. (Need legal advice for defining it as public property v. right-of-way)

Tree Advisory Board

The City established a Tree Advisory Board in 2021 to facilitate the goals of this ordinance (<https://lebanonnh.gov/1531/Tree-Advisory-Board>).

Tree Topping

Commented [MD10]: Consider deleting "on the public right-of-way", as definition would apply equally to city-owned property?

Commented [MD11]: I don't find this definition used elsewhere in the ordinance. Consider deleting if not used. (Same comment for all defined terms.). Also, who designates a "protected" tree? Would have to be City Manager or CM's designee.

Commented [MD12]: This definition is problematic, in that trees within the ROW are still owned by the abutting property owners (see Graves case cited above), so they are not 'public' trees unless otherwise acquired by City (see e.g. RSA 231:141)

Commented [SM13]: See Graves v. Shattuck, 35 N.H. 257 (1857), Laconia v. Morin 92 N.H. 314 (1943). RSA 31:52

Commented [14]: I need this term defined so that I and perhaps other people better understand how it is applied with regard to tree care, plantings, etc.

Commented [15]: _Marked as resolved_

Commented [16]: _Re-opened_ Confirming with COL language and legal input seems right!

Commented [17]: interesting article, distinguishing between prescriptive and fee-owned roads in nh: <https://www.nhmunipal.org/town-city-article/municipal-road-files-why-are-they-important-what-should-they-contain>

Commented [MD18]: Most (but not necessarily all) rights-of-way are public easements across private property. The public has an easement for all "vatic" uses within the ROW boundaries. But the owner of underlying land continues to own trees within the ROWs unless acquired by the municipality under state law or unless removed by authority of state law.

Commented [SM19]: See article in NHMA Hard Road to Travel.

Commented [MD20]: See prior comments re private ownership of trees within the ROW. It may be simpler to distinguish between city-owned trees within a ROW (of which I assume there are few, but over which the City may exert more control), and privately owned trees within the ROW (most street trees, over which the City may exert limited rights per the RSAs listed above)

Commented [MD21]: Definition missing

Tree Warden

The City will strive to appoint a Tree Warden to facilitate the goals of this ordinance. This position may be volunteer or funded by a stipend for a part-time position. The Tree Advisory Board shall be responsible for writing the job description for the Tree Warden.

Commented [MD22]: City Manager would have authority to appoint. "Strive" to appoint is ambiguous. "Shall" or "may" would be clearer.

Urban Forest - Lebanon

All land within the City limits served by sidewalks

Urban Forestry

Care and management of single trees and tree populations in urban settings for the purpose of improving the urban environment.

Commented [SM23]: Contrary to the separation of powers of the Council and the City Manager.

Commented [MD24]: Subject to review and approval by City Manager.

5. Planting

5a Tree Species to be Planted

All species planted by the City on public property as Street Trees or in parks or other green spaces shall be from the approved list for the City of Lebanon ([Appendix A](#)), a copy of which shall be maintained in the Planning & Development Department. The planting of nonconforming species can be appealed to the Tree Warden.

Commented [SM25]: This will run afoul of RSA 31:52 and the court cases indicated above.

Commented [MD26]: Whether to plant, and which trees to plant, would fall under the Charter delegation of authority to the City Manager's office.

Also, should clarify that species of trees planted within the ROWs by private property owners are not regulated (unless specifically forbidden by a state law or other regulation)

5b Planting Technique

The base of the City of Lebanon Tree Planting Requirements is the *ANSI A300 Part 6 Standard Practices for Planting and Transplanting*.

All agents of the city shall be informed of the correct planting technique for trees and shrubs.

Commented [MD27]: Sections 5b through 5e inclusive are problematic to the extent they dictate actions of city staff (under CM authority).

5c Mulching

If the City or its agents apply mulch around public trees to prevent damage from lawn equipment and/or to preserve moisture, they shall follow best practices: applying no more than 3" of mulch to the ground surface under the tree dripline, and taking care to prevent any mulch from touching the tree itself. (may be moved to Appendix)

Also, I recommend that specifics of tree care be placed in a policy document rather than an ordinance. Ordinances are intended to be enforced on their letter, but tree care is not a one-size-fits-all situation. For example, if the ordinance requires all states to be removed "after one growing season" and only for new plantings, then tree supports for established trees are technically outlawed.

5d Watering

New trees and shrubs should be checked and watered every other day for the first two weeks, taking rain into account, and once a week for the next month. Water bags can be used as an alternative. (may be moved to Appendix)

Commented [SM28]: This is directing staff which is not within the authority of the Tree Board or the City Council.

Commented [SM29]: This is means and methods which should be addressed in policy not code.

5e Staking (may be moved to Appendix)

Tree stakes are not required in new plantings, but may be used as extra protection from high winds or when a tree is planted in an area with heavy foot traffic. Any tree support used shall be removed after one growing season. Proper stake and tie placement: straps should not be tight around the trunk. The opposition of two to four straps should be tight enough to hold a tree upright, but loose enough so that the tree can move slightly in a breeze. The straps should reach the tree no more than two thirds up the trunk.

6. Street Tree Placement

6a Distance from Curb and Sidewalk.

Currently covered in [Appendix A](#).

6b Distance from Street Corners and Fire Hydrants.

Currently covered in [Appendix A](#).

6c Utilities

Currently covered in [Appendix A](#).

6d Tree Pit Size

Currently covered in [Appendix A](#).

6e Other Considerations

Consider abutting property context, i.e., don't plant immediately in front of the most important features of a building, like its main entrance and/or in a high traffic area that would result in a bottleneck or reduced accessibility (e.g., not at the narrowest section of streetscape/sidewalk).

6f Tree Replacement

Healthy street trees $\geq 6"$ DBH that are approved for removal shall be replaced with two trees of at least 2.5" DBH. When street improvements are made to partially or fully unimproved streets, healthy trees $\geq 12"$ DBH which are removed shall be replaced with two trees of at least 2.5" DBH. If space is inadequate at the site, the additional trees shall be planted in other public locations agreed upon by the Tree Advisory Board.

7. Maintenance

7a-1 Care of Public Trees

The City shall be responsible for planting, pruning, and maintaining trees, plants, and shrubs on public property and along public rights-of-way as needed to ensure public safety, and to preserve or enhance the beauty of such public spaces and the health of the vegetation. All trimming shall be done in accordance with ISA guidelines (add link here). (Need legal input here)

7a-2 The Tree Advisory Board may remove or cause or order to be removed any tree or part thereof which is in an unsafe condition or which is proven injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect, or other pest. A tree already placed in the vicinity of underground utilities shall not be removed in order to prevent possible damage to those utilities. Roots will only grow into sewer and water lines that are broken.

Commented [SM30]: Means and methods should be in policy not code.

Commented [MD31]: More appropriate for a policy document.

Commented [MD32]: Unenforceable as superseding CM authority

Commented [SM33]: Means and methods should be in policy not code. We do not have the present resources to carry out this task. See RSA 31:52 and court cases.

Commented [34]: return to row question

Commented [MD35]: Unenforceable as superseding CM authority

Commented [SM36]: NH is not a home rule state. It is a Dillon's Rule state. Municipalities do not have the authority to enact such ordinances to this effect on private property without specific statutory authorization.

See RSA 231:145 and 146. See power of governing bodies and City Charter C419:23. All powers not exercised by the Council and delegated to the manager.

This would run afoul of RSA 231:172

Commented [MD37]: This section, and most of section 7, is unenforceable as superseding CM authority and unenforceable to the extent inconsistent with sections of RSA 231

7a-3 Any plan to remove any tree located on City property shall be announced to the Tree Advisory Board and to the public at least two weeks ahead of time, and the reasoning behind the plan shall be explained. Objections to that removal can be brought by any City resident to the Tree Warden or the Tree Advisory Board, at which time the removal shall be delayed until further investigation has been done. An exception to this regulation is any tree which shows imminent danger of collapse after a storm or other partial breakage. (Timing of notice and method of notification TBD.)

Commented [SM38]: See proposed new draft City code to partially mirror RSA 231:144 and 145 with hearing in before the CM.

7a-4 The City shall have the right to prune any tree or shrub on private property when it interferes with visibility of any traffic control device or sign, or impedes pedestrian traffic on sidewalks, or interferes with winter sidewalk clearing by plow.

Commented [SM39]: Follow statutory provisions

Commented [MD40]: Superseded by RSA 231:144, 231:145 and 231:150

7b Cutting/trimming of limbs

No person, aside from the Tree Warden, members of the Tree Advisory Board, staff of the Department of Public Works or persons deputized by these groups, may cut or trim any publicly owned trees without permission from the Tree Warden or Tree Advisory Board.

Commented [MD41]: Superseded by Charter/CM authority and by RSA 231:147

Commented [SM42]: See proposed new draft City code.

7c Removal of Privately Owned Trees

Any tree that falls into the City right-of-way from private property shall have those parts on public land removed by the Department of Public Works. The remainder of the tree is the responsibility of the tree (or land?) owner.

Commented [MD43]: Superseded by RSA 231

The City shall have the right to cause the removal of any dead or diseased trees on private property within the City, when such trees constitute a hazard to life and property, or harbor insects or disease that constitute a potential threat to other trees within the City. The Tree Advisory Board will notify in writing the owners of such trees. Removal shall be done by said owners at their own expense within sixty days after the date of service of notice. In the event of failure of owners to comply with such provisions, the City shall have the authority to remove such trees and charge the cost of removal on the owners property tax notice. (Need legal advice as to who pays.)

Commented [SM44]: See comment above regarding the lack if home rule provisions.

7d Inventory Maintenance

An ongoing tree inventory of species, size (DBH), location and condition, shall be created and kept up to date, so that maintenance schedules can be created, and trees vulnerable to new disease threats can be monitored efficiently. Tree inventories will aid in identifying heat islands - areas with significantly fewer trees. The tree inventory database shall remain accessible to the Tree Advisory Board and/or the Department of Recreation, Arts, and Parks, for editing, additions, and removals.

Commented [SM45]: Should be in policy not code.

7e Training

All volunteers/personnel with a role in the design, installation, and maintenance of street trees, as well as those involved with drafting bids or RFPs that involve work around or with street trees, shall be provided with training which at minimum comprises the planting instructions contained in this ordinance, to be provided by the State Urban or Community Forester and

Commented [SM46]: Policy not code.

associates at the NH Urban Forestry Center (or a local tree professional if that is not possible) (frequency and other details TBD). This shall include City staff who inspect development projects approved by the Planning Board to ensure that Site Plan Review Regulations for landscaping have been properly followed.

8. Nuisance Tree Removal

Any invasive species listed in Appendix A (which is to be maintained by the tree warden and/or the Tree Advisory Board) that is found on City property shall be considered for removal. Any work where prohibited invasive plants are encountered shall comply with the Invasive Species Rules, [Agr 3800](#). Best management practices shall be followed for disposal of all invasive plant material.

Any healthy tree or shrub can be brought before the Tree Warden or Tree Advisory Board if a resident subjectively considers it a nuisance and wants to request its removal. The default result shall be to retain the tree unless the complainant can persuade the Warden and/or Board of the extent of the nuisance.

Commented [SM47]: Not sure I fully understand this section.

Commented [MD48]: This is a mushy standard. CM's office may establish policy of defining invasive species and their removal from City-owned land by DPW.

9. General Provisions

9a Public Accountability

It shall be a violation of the provisions of this ordinance for any person to abuse, mutilate, or destroy any tree on public property; to attach any wire, rope (except to support a broken tree or young sapling), sign, or poster; or allow any gaseous, liquid, or solid substance which is harmful to such trees to come in contact with their roots, trunks, or leaves.

Commented [SM49]: See draft code with modified version of RSA 231:147.

Commented [MD50]: This is already partially covered by RSA 231:147. City could make additional actions against trees a violation per RSA 47:17, XV

9b Construction in Vicinity of City Trees

Based on https://www.cityofportsmouth.com/sites/default/files/2020-09/TreeProtectionPlan_0.pdf

Any construction within 10 lateral feet of Public Trees requires consultation with the City Tree Warden who may provide specific written recommendations for additional protection of trees, based on ANSI A300 or the current version available in the Planning and Development Department.

9c Arborist and Bond

Before securing a contract with the City for arboricultural services, a contractor must have possession of liability insurance in the minimum amounts of \$1,000,000 aggregate, general liability per occurrence indemnifying the City or any person injured or damage resulting from the pursuit of such endeavors as herein described. All tree work performed on Public Trees must conform to the most recent ANSI A300 Standards.

Commented [SM51]: Policy not code. This will not meet our needs.

Commented [MD52]: Setting this dollar amount in stone could be inconvenient for the City or unreasonably drive up its costs. I recommend that the City administration should have flexibility to determine appropriate liability protections commensurate with the work to be performed.

Any licensed arborist paid for consultation with the Department of Public Works has authority equal to the city Tree Warden as described in this ordinance in the event that the Tree Warden position is unoccupied. Any licensed arborist who volunteers their services to the City via the Department of Public Works or the Department of Recreation, Arts, and Parks can be given the authority to make similar decisions as described. Conservation rangers and trail stewards engaged by the City to maintain forested or conserved lands in the City are not required to consult with the Tree Warden, but are welcome to.

Commented [MD53]: I suggest wording this differently. A contracted licensed arborist might be designated as an acting tree warden if the position is vacant, but this should be affirmatively decided on a case-by-case basis.

Commented [SM54]: This could result in many unintended consequences.

9d Penalties

Any private person violating any provision of this ordinance shall be subject to a fine of \$50.00 for each offense, with each affected tree considered a separate offense; and a separate offense shall be deemed committed on each day on which a violation occurs or continues. (Need legal advice for details, and for staff violations)

Commented [MD55]: Superseded by RSA 231:156? I suggest mirroring this language, including responsibility for damages. A 'violation' is defined in the criminal RSAs, 651:2.

Commented [SM56]: Concerns relative to juveniles treated as an adult. Missing provisions for restitution and restoration. Also, missing corporate entities.

Commented [SM57R56]: See RSA 169-B:32

Commented [SM58R56]: See RSA 169-B:45

Commented [SM59R56]: See RSA 169-B:46

Commented [MD60]: Staff/employee violations of a tree ordinance should be dealt with as an employee disciplinary matter

9e Severability

If any section, paragraph, or part of this ordinance is for any reason declared invalid or unconstitutional by any court, every other section, paragraph, and part shall continue in full force.

10. APPENDIX A

The tree lists and the setback measurements are being gathered in a separate document. Find the updated content for these lists at [Where to plant next](#). Tabs at the bottom of that spreadsheet will take you to "Planting Criteria," Tree List," and "Prohibited Species."

Short list of Tree Ordinance References

Best, most thorough:

- https://www.isa-arbor.com/education/resources/educ_TreeOrdinanceGuidelines.pdf

An awesome guide, even if it's from out of state:

- <https://www.mass.gov/doc/tree-bylaw-and-ordinance-guide/download>

A how-to from the Arbor Day Organization:

- <https://www.arborday.org/trees/bulletins/coordinators/resources/pdfs/009.pdf>

Out-of-state or generic examples:

- <https://www.portland.gov/code/11>
- <https://www.arborday.org/programs/treecityusa/graphics/sample-tree-ordinance.pdf>
- San Francisco Guidelines for Planting Street Trees (Reiskin, Edward D. "Regulating The Planting, Maintenance, Or Removal Of Trees And Landscape Material On Public Sidewalk Areas And Superceding." Department of Public Works, City & County of San Francisco, CA: 2010.) <https://nacto.org/references/san-francisco-department-of-public-works-2/>

Some examples from NH/New England:

- https://www.somersworth.com/sites/g/files/vyhlif1226/f/uploads/chapter_33-tree_ordinance.pdf
- [Lawrence, MA Green Streets Program](#)
- Portsmouth NH:
 - https://www.cityofportsmouth.com/sites/default/files/2020-09/TreeProtectionPlan_0.pdf
 - <https://www.cityofportsmouth.com/sites/default/files/2019-03/City%20of%20Portsmouth%20Tree%20Planting%20Requirements%202017.pdf>
 - https://www.cityofportsmouth.com/sites/default/files/2020-01/Tree%20Planting%20Detail_0.pdf

From Rebecca Owens: check out the nutrition label and cross-section "benefits" images

<https://www.pewtrusts.org/-/media/assets/external-sites/health-impact-project/gwl-green-streets-hia-report-final-with-appendices.pdf>

Other Notes:

<https://lebanonnh.gov/DocumentCenter/View/2084/2017-02-07-Complete-Streets-Policy-PDF->

measure of success: number of street trees planted

checking Zoning Ordinance, Subdivision Regulations, and Site Plan Review Regulations

Perhaps register for <https://livingarchitectureacademy.com/p/street-trees-and-community-wellbeing>

City of Lebanon Policy Statement on Design and Construction Standards for Streetscapes (June 27, 2012)

<https://www.arborday.org/trees/bulletins/coordinators/resources/pdfs/009.pdf> :

"there should be an appended *standards and specifications document*. This presents detailed guidelines for arboricultural practices such as planting and pruning, tree care, removal, landscaping, contracting, and similar activities that are important in any community forestry program. It is recommended that the standards and specifications section be a separate but companion part of a municipal ordinance. This is because including such a large amount of detail directly in the ordinance itself is cumbersome and difficult to change."

https://cdn.ymaws.com/www.asca-consultants.org/resource/resmgr/tree_ordinances/urban_tree_conservation_a_wh.pdf

Reasonable ordinance provisions can be struck down by courts if they are not clear enough. Terms such as —minimal disturbance to the natural topography,|| —protection of the maximum number of mature trees,|| and —minimized to the greatest degree possible under the particular circumstances|| have been struck down for being too subjective.¹⁶ This concern, however, should not lead to an ordinance draft with too much technical detail. Such specifics can change quickly and should be included in a management strategy or plan that is more easily modified without having to go through the legislative process.

Setback Trees on private property <https://www.mass.gov/doc/tree-bylaw-and-ordinance-guide/download>

<https://www.portland.gov/sites/default/files/2020/street-tree-planting-standards-2-26-20.pdf>

Commented [61]: Here is the justification for having the external appendices.

Commented [62]: 