

City of Salem, Massachusetts
Office of the City Clerk

Ilene Simons
City Clerk



January 8, 2019

MEETING NOTICE AND AGENDA

**“Know Your Rights Under the Open Meeting Law, M.G.L. c. 30A ss. 18-25, and
City Ordinance Sections 2-2028 through 2-2033.”**

The City Council will meet in the City Council Chamber on Thursday, January 10, 2019 at 7:00 P.M. to hold its regular meeting for the purpose of discussing any and all business.

The Agenda for this meeting is posted on the website and also listed below.

Very truly yours,

ATTEST:

ILENE SIMONS
CITY CLERK

JANUARY 10, 2019

CITY COUNCIL

REGULAR MEETING

“Know Your Rights Under the Open Meeting Law, M.G.L. Chapter 30A ss. 18-25, and City Ordinance Sections 2-2028 through 2-2033.”

Assistive Listening System Now Available for City Council Meetings.

Those interested in utilizing these devices for meetings at 93 Washington Street may contact the City Clerk Ilene Simons at 978-619-5610 or isimons@salem.com.

A Regular Meeting of the City Council held in the Council Chamber on Thursday, January 10, 2019 at 7:00 P.M. for the purpose of transacting any and all business. Notice of this meeting was posted on January 8, 2019, at 9:31 A.M. This meeting is being taped and is live on S.A.T.V.

Councillors absent:

Council President Dibble presided.

Councillor _____ moved to dispense with the reading of the record of the previous meeting.

VOTED

President Dibble requested that everyone please rise to recite the Pledge of Allegiance.

PUBLIC TESTIMONY

Public Testimony not to exceed 15 minutes

Public Testimony is not a public hearing or question and answer period

Name must be on roster 30 minutes prior to meeting

Agenda items only

How to Sign Up:

Anyone wishing to present testimony at a City Council meeting regarding a matter on the agenda, must sign the roster in person stating their name, address and subject matter. The Roster will be available in the City Clerk’s Office (Room 1) and may sign the roster From the time the agenda is posted until thirty (30) minutes prior to the start of the regular Council Meeting (by 6:30 p.m.). Only those on the roster may present testimony at the Meeting. (For complete rules for Public Testimony please refer to Council Rules Section 28C)

JANUARY 10, 2019

CITY COUNCIL

REGULAR MEETING

HEARINGS

NONE

JANUARY 10, 2019

CITY COUNCIL

REGULAR MEETING

APPOINTMENTS AND REAPPOINTMENTS

Held from the last meeting, the Mayor's appointment of Cynthia Nina-Soto, 6 Laurent Rd., Salem to serve on the Scholarship and Education Committee with a term to expire on June 1, 2019

Action Contemplated

Councillor Peterson	Moved Confirmation by RCV	Yeas	Nays	Abs
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Mayor's reappointment of Kylie Sullivan 50 Barr St. Salem to the Bicycling Advisory Committee with a term to expire on January 14, 2020

Action Contemplated

Councillor Gerard	Moved Confirmation by RCV	Yeas	Nays	Abs
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Mayor's reappointment of Eric Papetti of 11 Symonds St. Salem to the Bicycling Advisory Committee with a term to expire on January 14, 2020

Action Contemplated

Councillor Gerard	Moved Confirmation by RCV	Yeas	Nays	Abs
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JANUARY 10, 2019

CITY COUNCIL

REGULAR MEETING

APPOINTMENTS AND REAPPOINTMENTS

Mayor's reappointment of William Legault of 2 Orne St to the Salem Disabilities Commission with a term to expire on January 14, 2022

Action Contemplated

Councillor Gerard	Moved Confirmation by RCV	Yeas	Nays	Abs
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Mayor's reappointment of Kurt Ankey-Beauchamp of 19 Harbor St to the Public Art Commission with a term to expire on January 11, 2021

Action Contemplated

Councillor McCarthy	Moved Confirmation by RCV	Yeas	Nays	Abs
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Mayor's reappointment of Laurence Sprang of 125 Columbus Ave to the Salem Historical Commission with a term to expire on January 10, 2022

Action Contemplated

Councillor McCarthy	Moved Confirmation by RCV	Yeas	Nays	Abs
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JANUARY 10, 2019

CITY COUNCIL

REGULAR MEETING

APPOINTMENTS AND REAPPOINTMENTS

Mayor's reappointment of Lisa Lyons of 1 Broad St. to the Salem Beautification Committee with a term to expire on January 10, 2022

Action Contemplated

Councillor McCarthy

Moved Confirmation by RCV

Yeas

Nays

Abs

JANUARY 10, 2019

CITY COUNCIL

REGULAR MEETING

COMMUNICATION FROM THE MAYOR

ORDERED: That the sum of Fifty-Two Thousand (\$52,000.00) is hereby appropriated from the "Fund Balance Reserved for Appropriation - Free Cash" account to the "Planning Contracted Services" Account in accordance with the recommendation of Her Honor the Mayor.

Councillor	Suspension of the Rules	Councillor	Object
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Action Contemplated

Councillor Peterson	Moved Adoption Or Refer to the Comm. on Admin. and Finance under the rules	Voted
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ORDERED: That the sum of Fifteen Thousand Four Hundred and Fifty-One Dollars and Forty-four Cents (\$15,451.44) be approved within the "Retirement Stabilization Fund-Vacation/Sick Leave Buyback" account to be expended for the FY 2019 contractual buyback for Vittoria DellaMonica, Library, in accordance with the recommendation of Her Honor the Mayor.

Councillor	Suspension of the Rules	Councillor	Object
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Action Contemplated

Councillor Peterson	Moved Adoption Or Refer to the Comm. on Admin. and Finance under the rules	Voted
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JANUARY 10, 2019

CITY COUNCIL

REGULAR MEETING

COMMUNICATION FROM THE MAYOR

ORDERED: That the sum of Fifteen Thousand Dollars (\$15,000.00) is hereby appropriated from the "Fund Balance Reserved for Appropriation - Free Cash" account to the "HR Legal Services/Arbitration" Account in accordance with the recommendation of Her Honor the Mayor.

Councillor	Suspension of the Rules	Councillor	Object
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Action Contemplated

Councillor Peterson	Moved Adoption Or Refer to the Comm. on Admin. and Finance under the rules	Voted
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ORDERED: That the sum of Eight Thousand and Fifty-four Dollars and Forty Cents (\$8,054.40) be approved within the "Retirement Stabilization Fund-Vacation/Sick Leave Buyback" account to be expended for the FY 2019 contractual buyback for John Murray, DPS, in accordance with the recommendation of Her Honor the Mayor.

Councillor	Suspension of the Rules	Councillor	Object
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Action Contemplated

Councillor Peterson	Moved Adoption Or Refer to the Comm. on Admin. and Finance under the rules	Voted
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JANUARY 10, 2019

CITY COUNCIL

REGULAR MEETING

COMMUNICATION FROM THE MAYOR

ORDERED: That the sum of Three Thousand Six Hundred and Sixty-Four Dollars and Thirty-Eight Cents (\$3,664.38) be approved within the "Retirement Stabilization Fund-Vacation/Sick Leave Buyback" account to be expended for the FY 2019 contractual buyback for Mark Bates, Parking, in accordance with the recommendation of Her Honor the Mayor.

Councillor	Suspension of the Rules	Councillor	Object
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Action Contemplated

Councillor Peterson	Moved Adoption Or Refer to the Comm. on Admin. and Finance under the rules	Voted
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ORDERED: To accept the donations listed below totaling Twenty-Five Thousand Dollars (\$25,000.00) to be deposited into the North Shore Workforce Board in accordance with the recommendation of Her Honor the Mayor.

Susan Schiro & Peter Manus Foundation	\$ 5,000.00
Hartford Foundation for Public Giving	<u>\$20,000.00</u>
Total	\$25,000.00

Action Contemplated

Councillor Peterson	Moved Adoption	Voted
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JANUARY 10, 2019

CITY COUNCIL

REGULAR MEETING

COMMUNICATION FROM THE MAYOR

ORDERED: That the City of Salem Designer Selection Procedures adopted by the City Council on December 13, 1990 are hereby replaced in their entirety with new, revised City of Salem Designer Selection Procedures attached hereto. These procedures govern the selection of designers for City building projects that are subject to the Commonwealth of Massachusetts Designer Selection law, M.G.L. Ch. 7C, SS 44-58

Action Contemplated

Councillor McCarthy

Moved Adoption Or
Refer to the Comm. on Ord., Lic.
& Legal Affairs

Voted

ORDINANCE: **An Ordinance** to amend an ordinance relative to enforcement of Ch. 14, Article VII.
– Use of Disposable Plastic Bags at Retail Business Establishments.

Be it ordained by the City Council of the City of Salem, as follows:

Section 1. Chapter 14 is hereby amended by striking the last sentence of Section 14-503 in its entirety and replacing it with the following:

“This article may be enforced by any police officer, enforcement officer or agent of the board of health, licensing department or the City Engineer or his or her designees.”

Section 2. This Ordinance shall take effect as provided by City Charter.

Action Contemplated

Councillor McCarthy

Moved Adoption for first passage
OR Refer to the Comm. on Ord., Lic. &
Legal Affairs

Voted

JANUARY 10, 2019

CITY COUNCIL

REGULAR MEETING

COMMUNICATION FROM THE MAYOR

RESOLUTION: A RESOLUTION FOR STATE ACTION TO COMBAT NIP BOTTLE LITTER

WHEREAS, the growing prevalence of “nip” bottles as loose litter on our streets and sidewalks and in our parks and other open spaces contributes to the flow of trash in our waterways, rivers, and ocean; and

WHEREAS, this form of litter additionally detracts from the public’s enjoyment and diminishes the quality of life in our communities; and

WHEREAS, the Commonwealth has seen tremendous success in the elimination of other forms of bottle and can littering through the adoption of M.G.L. c. 94 sections 321-327, also called the Bottle Bill;

THEREFORE, we, the City Council and Mayor of Salem, do request of the legislature and Governor of the Commonwealth that they take action in 2019 to amend M.G.L. c. 94 and all other regulations or laws thereunder regarding the redemption of empty bottles and containers in order to extend the law to include “nip” bottles or any other small bottle of spirit, liqueur, or other alcoholic beverage, typically of 50 ml, intended to comprise an individual serving.

Action Contemplated

Councillor McCarthy

Moved Adoption
OR Refer to the Comm. on Ord., Lic. &
Legal Affairs

Voted

JANUARY 10, 2019

CITY COUNCIL

REGULAR MEETING

MAYOR'S INFORMATIONAL PAGE

NONE

JANUARY 10, 2019

CITY COUNCIL

REGULAR MEETING

MOTIONS, ORDERS, AND RESOLUTIONS

Councillor Gerard

ORDINANCE: Amending Traffic Chapter 42, Section 57A, "Parking Time limited, Unmetered Zone, Grove Street, beginning 266' South of RR Crossing and running 70' SSE, three parking space in front of the building known as 28 Goodhue Street (the parking spaces are actually on Grove St.) 15 minute time-limited parking between the hours of 7:00 A.M. and 9:00 P.M.

Action Contemplated

Councillor Gerard

Moved Adoption first passage

Voted

Councillor Peterson

ORDER: That the Fiscal Year Monthly Financial Report dated, November 30, 2018 be referred to the Committee on Administration and Finance

Action Contemplated

Councillor Peterson

Moved Adoption

Voted

Councillor Milo

ORDER: That a representative or representatives from High Rock Development, LLC appear before the City Council at one of its regularly scheduled meeting to give an update to the City Council regarding the status of the housing project abutting the Community Life Center.

Action Contemplated

Councillor Milo

Moved Adoption

Voted

JANUARY 10, 2019

CITY COUNCIL

REGULAR MEETING

MOTIONS, ORDERS, AND RESOLUTIONS

Councillor Turiel

ORDER: That the Rules and Orders of the City Council shall be amended by adding the following:

Section 30A. Committee of the Whole

The Committee of the Whole shall consist of all members of the Council, and be chaired by the President or their designee, and shall meet separately when required to address matters before it.

Action Contemplated

Councillor Turiel

Moved Held until the next meeting
(2/3 vote will be required)

Voted

Councillor Turiel

ORDER: That the Rules and Orders of the City Council shall be amended as follows:

Section 22. Numbering members' seats; determining seats; changing seat

Shall be deleted in its entirety and replaced with the following:

The seats of the members of the Council shall be numbered from one upwards, beginning at the left of the President's chair, and be determined the President at the beginning of each Council year, and no member shall change his/her seat but by permission of the President

Action Contemplated

Councillor Turiel

Moved Held until the next meeting
(2/3 vote will be required)

Voted

JANUARY 10, 2019

CITY COUNCIL

REGULAR MEETING

MOTIONS, ORDERS, AND RESOLUTIONS

Councillor Furey

ORDER: That the Committee on Administration and Finance co-posted with the Committee of the Whole meet to discuss City Ordinance Chapter 2, Section 142 – Compensation for the Mayor and that the City Solicitor and the Mayor or her representative be invited.

Action Contemplated

Councillor Furey

Moved Adoption

Voted

Councillor Furey

ORDER: That the Committee on Administration and Finance co-posted with the Committee of the Whole meet to petition the General Court (State House) for a local sales tax for entertainment ticket tax. And that the following be invited: The Mayor or Representative, City Solicitor, Kate Fox, Chamber of Commerce Representative, Salem Partnership, Council on Aging Representatives and Representatives of local neighborhood groups.

Action Contemplated

Councillor Furey

Moved Adoption

Voted

JANUARY 10, 2019

CITY COUNCIL

REGULAR MEETING

COMMITTEE REPORTS

Councillor McCarthy offered the following report for the Committee on Ordinances, Licenses & Legal Affairs to whom was referred the matter of granting certain licenses has considered said matter and would recommend that the following license be granted.

SEAWORMS:	Jose Machado, 5 Marion Ave, Beverly
SECOND HAND CLOTHING	Modern Millie, 3 Central St., Salem Re-Find, 72 Washington St, Salem
SECOND HAND VALUABLE:	Record Exchange LLC, 256 Washington St., Salem RJ Coins and Jewelry, 68 Wharf St., Salem Glass and Etc., 180 Essex St., Salem Tobies Jewelry, 140 Washington St., Salem Jacqueline A Satin at the Antiques Gallery, 69 Wharf St., Salem
TAG DAYS:	SHS Gymnastics 1/12/19, 2/23/19 SHS Girls Tennis 04/07/19, 05/04/19, 05/19/19

Accept the Report Voted

Adopt the Recommendation Voted

JANUARY 10, 2019

CITY COUNCIL

REGULAR MEETING

COMMUNICATIONS FROM CITY OFFICIALS

The City Clerk submitting three applications and resumes that were received by the deadline from residents interested in filling the vacancy on the Community Preservation Act Committee to the Committee on Government Services co-posted with the Committee of the Whole for their review and to recommend one, two or three names to the full council at the next meeting to fill such vacancy. (Per Council Order #741)

Action Contemplated

Councillor Flynn

Moved Adopted and Received and File

JANUARY 10, 2019

CITY COUNCIL

REGULAR MEETING

PETITIONS

A petition from National Grid and Verizon to install a jointly owned pole on Harbor St.

HEARING ORDERED JANUARY 24, 2019

Request from HAWC to hold their annual Walk for HAWC and use of city streets on April 28, 2019

Action Contemplated

Councillor Madore

Moved Granted

Voted

Request from SSU Inclusive Excellence Office for use of City Streets on January 19, 2019 for their annual MLK Freedom March

Action Contemplated

Councillor Turiel

Moved Granted

Voted

JANUARY 10, 2019**CITY COUNCIL****REGULAR MEETING****PETITIONS**

The Following License Applications:

LIMOUSINE: Northeast Transportation 4 Bates Terr (2 Limos)

PUBLIC GUIDES
 John Feeley, 26 South Shore Rd., Holbrook
 Ronald Olson, 50 Stony Brook Rd., Marblehead
 John "Giovanni" Alabiso, 2 Buxton St., Peabody
 Ryan Travis, 5 Curtis St., Salem
 Nicholas Pierce, 16 Garland St., Lynn
 James St. Vincent, 9 Pond St., Newton, NH
 Jill Christiansen, 57 Hathorne St., Salem
 Robert Gautreau, 10-12 Lynde St., Salem
 Holly Travis, 5 Curtis St. Salem
 David Harris, 3 Buford Rd., Peabody
 Linda Harris, 3 Buford Rd., Peabody
 Scott Aden, 14 Winthrop Shore Dr., Winthrop
 Alicia Diozzi, 40 English St., Salem
 Nancy Mades-Byrd, 190 Bridge St. Salem
 Terri Saudners, 3 ½ Essex St., Salem
 Patrick Curran, 9 Rockland Rd., Danvers
 David Breen, 215 Ocean St., Lynn
 Lori Sinatra, 116 Boston St., Salem
 Tammy Harrington, 21 Chase St., Beverly
 Joseph Maloney, 290 Washington St., Marblehead

TAXI OPERATORS
 Rudy Vargas, 14R Mason St., Salem
 Johanny Polanco, 14 Jacobs St., Peabody
 Rafael Moya, 407 Essex St., Salem
 Ramon Espinal Jr., 15 Heritage Dr., Salem
 Julio Sotano, 71 Harbor St., Salem
 Cristhian Nunez, 225 Chelsea St., Boston
 Samuel Ramirez, 157 Eutaw Ave., L
 Wildy Cespedes, 37 Harbor St., Salem
 Aaron Savino, 14 Trask St., Gloucester
 Roberto Pacheco, 26 Mill St., Danvers
 Guillermo Javier, 32 Rainbow Ter., Salem
 Eladio Pena, 38 Peabody St., Salem

LICENSE APPLICATIONS CONT'D NEXT PAGE

JANUARY 10, 2019

CITY COUNCIL

REGULAR MEETING

PETITIONS

LICENSE APPLICATIONS CONT'D

**TAXI OPERATORS
CONT'D**

- John Russo, 10 Howard St., Salem
- Juan Nunez, 11 Mason St., Salem
- Jael Pena, 52 Tremont St., Salem
- Ramon Rodriguez, 9 Prince St. Pl., Salem
- Alexis Infante, 14 Paleologos St., Peabody
- Victor Pimentel, 10 Peabody St., Salem
- Hipolito Ozoria, 10 Porter St., Salem
- Carlos de la Rosa Brito, 14 Jacobs St., Peabody
- Juan Roman, 9233 Crane Brook Way, Peabody
- Pedro Taveras, 129 Washington St., Peabody
- Cristian Toribio, 20 Dow St., Salem
- Nelson Silverio, 141 William Ave., Lynn
- Oscar Guitierrez, 24 Mason St., Salem
- Juan Pena, 52 Tremont St., Salem
- Cristian Vicioso, 52 Dow St., Salem
- Jesus Rosario, 28 Summit Ave., Salem
- Juan Rojas, 10 Porter St., Salem
- Rafeal Pena, 14 Cherry St., Salem
- Antonio Fernandez, 230 Jefferson Ave., Salem
- Jose Fabian, 10 Northey St., Peabody
- Jose Perez, 1 Colonial Ter., Salem
- Gustavo Rodriguez, 135 Lafayette St., Salem
- Esther Delos Santos, 20 Dow St., Salem
- Cirilo Brache, 3 Salem St., Salem

Action Contemplated

Councillor McCarthy

Moved Granted

Voted

JANUARY 10, 2019

CITY COUNCIL

REGULAR MEETING

PETITIONS

The Following License Applications:

TAXI OPERATOR Roberto Gutierrez, 19 Linden St., Salem

Action Contemplated

Councillor McCarthy

Moved Denied

Voted

The Following License Applications:

SEAWORM: Tomo Shiraishi, 104 Wharf St., Salem

SECOND HAND VALUABLES: Boston Street Resale, 134 ½ Boston St, Salem

TAG DAYS: Salem Youth Football & Cheering 10/12/19 & 10/19/19
Salem Little League 6/1/19, 6/15/19 & 7/13/19
SHS Band Winter Colorguard 2/2/2019
SHS Band Wind Ensemble 6/1/2019

Action Contemplated

Councillor McCarthy

Refer to Comm. on Ord., Lic. &
Legal Affairs

Voted

JANUARY 10, 2019

CITY COUNCIL

REGULAR MEETING

PETITIONS

The Following Drainlayer/Contract Operator License Application:

- Tim Demirs General Contractor 50 Valley Rd., Lynn
- JJ O'Brien & Son 5 Fern St., Waltham
- Mirra Co., Inc. 6 Norino Way, Georgetown
- Thomas Mackey & Sons, Inc. 58 Broadway, Salem
- Delulis Brothers Construction 31 Collins St Terr., Lynn
- Brennan Construction 105 Mason St., Salem
- J. Derenzo Co. 338 Howard St., Brockton,
- TDS, Inc. 2 Peter Drive, Stirling
- RB Strong Excavating 122 Western Ave., Gloucester
- Parkside Utility Co.,37 Ayer Rd, Littleton
- Geologic Earth 7 Sherwood Dr., Norfolk
- PV Barone Corp 18 Central St., Winthrop
- Meninno Construction 76 Oakville St., Lynn

Action Contemplated

Councillor McCarthy

Moved Granted

Voted

The Following Claims:

- Jeff Luszczynski, 123 Boston St., Salem
- Mayra Torres, 192 Marlborough Rd., Salem
- Margaret Ricker, 3 Island Ave., Salem
- Manuel Genzo, 4 Porter St., Salem
- Kevin Hyde, Property Manager, 43 Dow St., Salem
- Douglas Crowell, 58 Lynn Fells Pkwy, Melrose

Action Contemplated

Councillor McCarthy

Refer to Comm. on Ord., Lic. &
Legal Affairs

Voted

JANUARY 10, 2019

CITY COUNCIL

REGULAR MEETING

UNFINISHED BUSINESS

SECOND PASSAGE: An Ordinance Amending an Ordinance relative to Ch. 43, - Trees

(See page #35 for the end)

In the year Two Thousand and Eighteen

An Ordinance Relative to Chapter 43 – Trees

Be it Ordained by the City Council of the City of Salem, as follows:

Section 1. Chapter 43. Trees is hereby amended by adding this section in its entirety

ARTICLE I. GENERAL

Sec. 43-01. Findings

The City of Salem has determined that trees have been lost due to natural causes, environmental hazards such as methane (natural gas) leaks near trees or insufficient replacement after the construction process or have been severely damaged or disfigured through excessive or improper pruning. The result is a net loss of trees.

A well-managed urban forest serves a wide variety of functions:

- Enhancing the quality of life, our environment, and the overall appearance of the City;
- Enhancing visual and aesthetic qualities that attract visitors and businesses;
- Defining public spaces and creating civic identity;
- Contributing to the distinct visual character of neighborhoods;
- Protecting and increasing real property values;
- Providing natural privacy among neighbors;
- Preserving the character of wooded and natural areas;
- Conserving and reducing energy consumption by providing shade and evaporative cooling through transpiration;
- Reducing direct sun and reflected glare;
- Improving local and global air quality by absorbing carbon dioxide, ozone, and particulate matter, and by producing oxygen;
- Reducing wind speed and directing air flow;
- Reducing and baffling noise pollution;
- Providing habitat for birds, small mammals, other wildlife, and beneficial insects;
- Reducing storm water runoff and soil erosion; and
- Providing natural flood and microclimate control.

Sec. 43-02. Intent

The City resolves to plant more trees than are removed to compensate for past tree losses and the length of time required for a tree to achieve maturity; to plant judiciously to ensure that all new trees are planted where the chance of survival is optimal; and to maintain well and regularly to ensure a long, healthy, and fruitful life.

Sec. 43-03. Statement of Purpose; Effective Date

Statement of Purpose. The City Council hereby finds that the preservation of existing trees and the promotion of new tree planting is a public purpose that protects the public health, welfare, environment, and aesthetics for the City of Salem and its residents.

The provisions of this ordinance reinforce, enhance, and expand existing legal vehicles to ensure that future development and public policy adequately preserve, protect, and provide for replacement of Public Trees as well as increasing the Public Tree Inventory.

The provisions of this ordinance pertain to private property when there is construction or demolition and when any tree within the setback area of non-exempt private property meets the definition of a Protected Tree. This Ordinance does not apply to properties with single, double or triple residential units.

JANUARY 10, 2019

CITY COUNCIL

REGULAR MEETING

UNFINISHED BUSINESS

This ordinance:

- A. Ensures that Salem sustains its designation as Tree City USA by meeting or exceeding the four core standards of sound urban forestry management: maintaining a Tree Commission, having a City tree ordinance, spending at least \$2 per capita on urban forestry, and celebrating Arbor Day.
- B. Protects and preserves Public Trees pursuant to Mass General Law Chapter 87;
- C. Encourages private property owners to plant or to accept a tree from the City to be planted within the setback area of their lot instead of in the tree lawn, if the Warden so recommends;
- D. Allows the Tree Warden, or a private organization acting with the written consent of the Warden, to plant trees acquired with public or private funds in the Public Rights-of-Way or within the setback from such Public Rights-of-Way with acceptance by the property owner for the purpose of improving, protecting, shading, or ornamenting the land.
- E. Establishes and empowers a Tree Commission, working with the Tree Warden, to regulate the removal and replacement of trees and to promote the planting, maintenance, and protection of trees throughout the City.

Effective Date. Each Article of this Ordinance, except Article IV, shall take effect upon adoption as provided by City Charter. Article IV shall be in effect on July 1, 2019.

ARTICLE II. TREE COMMISSION AND TREE WARDEN
DIVISION 1. TREE COMMISSION

Sec. 43-10. Tree Commission

The Salem Tree Commission is hereby established and shall be charged with advising and assisting the Tree Warden in carrying out his duties and responsibilities. It shall advise the Mayor, the City Council, and the general public on all matters concerning existing and new Public and Protected Trees, including the selection of trees for planting, planting and pruning of trees, the treatment of disease, and the preservation and regular maintenance of trees. In addition, the Commission shall be charged with overseeing tree removal appeals regarding Protected Trees located within setback areas of non-exempt properties, and advising the City on maintaining Salem's status as a "Tree City USA" community. The Tree Commission shall also promote best practices and technologies consistent with Americans with Disabilities Act rules and regulations in order to accommodate trees within sidewalks throughout the City.

Sec. 43-11. Powers and Duties

- A. **Responsibilities** The Tree Commission shall have the following duties and responsibilities as may be further specified in this ordinance:
 1. Development of rules, regulations, Tree Inventory, manuals, and other data, in conjunction with the Warden, to carry out the purposes and intent of this ordinance;
 2. Whenever a hearing is required in regard to cutting down or removal of a Protected Tree, the Commission may offer written recommendations to the Tree Warden;
 3. Upon appeal by an owner or abutter, the Tree Commission shall review the Warden's grant or denial of Tree Permits to remove Protected Trees on private property within the setback areas, with the required public legal notice to be made at the appellant's expense;
 4. Through the Tree Warden, if City funds are or become available, offer to offset the loss of any eight-inch-plus (8+) DBH tree located within a setback area with a replacement tree from the City either on applicant's land or on an abutter's setback with the abutter's express approval; or encourage the mitigation of the loss through a contribution to the Tree Donation Fund;
 5. Whenever the Tree Warden prepares an impact statement on the effect of any construction project on existing trees or the ability to plant trees in that area in the future, the Tree Commission may submit its advice as part of a submission to appropriate City boards or departments and/or to the City Council for its review of the project;
 6. Work in conjunction with the Planning and Engineering Departments to identify methods to include new and to protect existing trees in every City sidewalk and/or roadway project;
 7. Advocacy, public education, and coordination with other City boards or committees and civic groups to promote the purposes and intent of this ordinance;
 8. Work in conjunction with the Warden to seek grants or other assistance concerning the preservation and maintenance of trees in the City.
 9. Upon request by the Mayor or the City Council, consider, investigate, make findings, report, and recommend upon any special matter or question coming within the scope of its work.

JANUARY 10, 2019

CITY COUNCIL

REGULAR MEETING

UNFINISHED BUSINESS

- B. **Annual Plan.** It shall be the further responsibility of the Tree Warden, in conjunction with the Tree Commission and the Director of Public Services, to update annually a plan for the care, preservation, pruning, planting, replanting, removal, or disposition of trees and shrubs along streets and in other public areas. The Warden shall also work with the Commission and the Director of Public Services to develop an annual budget. Such plan and budget shall be presented annually, by February first, to the Mayor's office for review and comment and then proceeding to the City Council. Upon the Mayor's acceptance and approval, the plan shall constitute the official comprehensive Annual City Tree Plan for the City of Salem.

Sec. 43-12. Composition and Meetings

- A. **Composition.** All members and alternates of the Tree Commission shall be Salem residents and shall serve for a term of three (3) years, with appointments to be staggered to ensure continuity. The composition of the Commission and the appointing authority for the seven (7) Commission members and two (2) alternates is set forth below. Alternates, when appointed shall be designated as first alternate and second alternate, and shall be called upon to vote on a rotating basis in the event of a member's absence or inability to vote.
1. One member of the Planning Board as designated by the board or, if no member of the board is available, an interested individual selected by the board, confirmed by majority vote of the City Council;
 2. One member of the LORAX committee or is such Committee shall no longer exist, an interested individual selected by the commission, confirmed by majority vote of the City Council;
 3. One member who is a licensed landscape architect or certified arborist appointed by majority vote of the City Council;
 4. One member of the general public and one alternate of the general public to be appointed by majority vote of the City Council;
 5. One member who is a licensed landscape architect or certified arborist appointed by the Mayor, confirmed by majority vote of the City Council;
 6. One member of the general public and one alternate of the general public to be appointed by the Mayor, confirmed by majority vote of the City Council; and
 7. One member who is a licensed civil engineer or who has extensive experience in heavy equipment or roadway operations appointed by the Mayor, confirmed by majority vote of the City Council.
- B. **Meetings.** The Tree Commission shall schedule meetings as needed. The Tree Warden or his/her designee shall participate in the meetings.

DIVISION 2. TREE WARDEN

Sec. 43-13. Tree Warden; Duties and Responsibilities

The duties and responsibilities of the Tree Warden shall conform to General Law Chapter 87 and shall include, but not be limited to, the following and as may be further specified in this ordinance:

1. Management of all trees within Public Rights-of-Way and adjacent to City buildings and commons; care and control of trees on City property if so requested by the City Council, and on City property owned by other departments such as Schools, Park and Recreation, and Conservation, if so requested by the respective department, board, or commission;
2. Development of an Annual Work Plan, using the Tree Inventory as a resource, for submission to the Tree Commission for systematic tree maintenance, replacements, plantings, and removals for each fiscal year. The plan shall include locations of work, designated work to be accomplished, and resources including funds required.
3. Expending funds, in coordination with the Tree Commission, appropriated for planting trees on land under the jurisdiction of the Tree Warden;
4. With recommendations from the Tree Commission, granting or denying permits and attaching thereto reasonable conditions required under this ordinance;
5. Working in conjunction with the Tree Commission and other City Departments to seek grants or other assistance concerning the preservation, maintenance, planting of trees in City;
6. Development of rules, regulations, Tree Inventory, manuals, and other data, in conjunction with the Tree Commission and other City Departments, to carry out the purposes and intent of this Chapter;
7. Ensuring the regular maintenance of and updating of The City of Salem Tree Inventory to track removal and replacement of trees in order to replace lost trees in an orderly fashion;
8. Appointment of designee to serve in the absence of the Tree Warden.
9. Coordinate with any private organization that creates a program for the planting or pruning of Public Trees in the Public Rights-of-Way or within the setbacks with acceptance by the property owner;

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10. With authorization by the Council, undertaking other responsibilities consistent with the purposes and intent of this ordinance;
11. Enforcement of this ordinance.

ARTICLE III. PUBLIC TREE PRESERVATION

Sec. 43-20. Findings

The Public Tree canopy contributes to the quality of life, the environment, and the overall appearance of the City, enhances visual and aesthetic qualities that attract visitors and businesses, and as well, defines public spaces and creates civic identity.

Sec. 43-21. Definitions

Aggregate Diameter. The combined diameter of a multiple trunk tree measured at breast height.

Caliper. The measure of a newly installed tree. Caliper measurement of a trunk shall be taken six (6) inches above ground level for trees of up to and including four (4) inch caliper size. If the caliper at six (6) inches above the ground exceeds four (4) inches, the caliper should be measured at twelve (12) inches above ground level.

Certified Arborist. An arborist certified by Massachusetts Arborists Association (MAA), its successor organization, or the International Society of Arboriculture (ISA).

Diameter at Breast Height (DBH). The diameter of a tree trunk at 4½ feet above the existing grade at the base of the tree.

Dripline. A vertical line running through the outermost portion of the crown of a tree and extending to the ground.

Person. Any person, firm, partnership, association, corporation, company or organization of any kind including, but not limited to, the person removing a Public Tree.

Pruning Standards. Standards for pruning as defined in the City of Salem Tree Manual and any future amendments or revisions to the same.

Public Tree.

- A. Any tree along Public Rights-of-Way within City limits or within a public park or public space under the jurisdiction of the City Council, Park and Recreation, Cemetery or Conservation Commissions as well as on public school grounds, or on any other City-owned land, or on property of the Commonwealth which the City has authority to plant or maintain.
- B. In addition, any tree may be determined by the Tree Warden to be a Public Tree if its growth has encroached from the setback area into the space above a Public Right-of-Way between the height of six (6) inches and four and a half (4½) feet above grade. A Public Tree may not be cut or pruned except at the direction of the Warden or pertinent commission.

Remove (including removing and removal). The cutting down of any Public Tree and all other acts which cause the actual removal or the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of a Public Tree, including, but not limited to, excessive or improper pruning.

Tree Donation Fund. Voluntary contributions may be made to benefit tree planting and maintenance in Salem. See Section 43-62.

Tree Manual. The City of Salem Tree Manual prescribing the preferred species and the proper manner of planting and maintenance of trees.

Tree Replacement. The Tree Warden shall require the replacement of a removed sound Public Tree, which shall be planted by the City or by the applicant's contractor as approved by the Tree Warden in accordance with Standards cited in Section 43-60.

Tree Replacement Fund. Payments required by this ordinance for planting at the same site or at another location shall be deposited into this fund. See Section 43-61.

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Tree Warden. The individual who holds this title shall be an arborist certified by the Massachusetts Arborists Association (MAA) or such successor organization. This position shall be appointed by the Mayor and confirmed by the City Council.

Sec. 43-22. Applicability

The terms and provisions of this ordinance shall be administered by the Tree Warden and shall apply to any Public Tree located on land owned and managed by the City of Salem, with the exception of the land under the auspices of the Park and Recreation, Cemetery, or Conservation Commissions.

Sec. 43-23. Permit

No person other than the Warden shall remove, prune, or alter a Public Tree located on land subject to the provisions of this ordinance without first obtaining a Tree Permit from the Warden. Applications shall be made in writing on forms specified by the Warden.

Sec. 43-24. Activities Requiring a Tree Permit

A Tree Permit issued by the Tree Warden is required prior to any of the following activities:

1. Any exterior work that requires the removal of a Public Tree;
2. Any construction on City or private property within the dripline of a Public Tree;
3. Construction within that portion of the dripline of a Public Tree that is located over the Public Right-of-Way;
4. Removal of a Public Tree. Additionally, a hearing is required, as per MGL c. 87 s. 3., prior to the issuance of a Tree Permit, with appropriate and timely notices to the public at the expense of the applicant;
5. Pruning or treatment for the benefit of the health, safety, or overall well-being of a Public Tree, by anyone other than the Warden or his/her designee as provided in MGL c. 87 and additionally requires the oversight of the Warden;
6. Planting of a tree in the Public Right-of-Way or on City property by anyone other than the Warden or his/her designee as outlined under MGL c. 87 with the exception of a person or private organization working in concert with the Warden;
7. Pruning or altering of a Public Tree for the purposes of overhead utility line clearance. A work plan shall be submitted sixty (60) days prior to the work permit approval as provided in MGL c. 87 s. 14;
8. Affixing or hanging anything from a Public Tree;
9. Excavation: All Public Trees on public property near the excavation or construction of any building, structure, or street, or in the vicinity of utility work:
 - a. Shall be sufficiently guarded and protected by those responsible for such work so as to prevent injury to said trees.
 - b. Shall not excavate any ditches, tunnels, or trenches, or install pavement within the dripline of any Public Tree without a permit from the Tree Warden.

Sec. 43-25. Permit Application; Fee

No application fee shall be charged. An application for a Tree Permit shall be submitted to the Tree Warden on the appropriate form. The application shall include any materials or information required based on the nature of the activity for which application is made.

Sec. 43-26. Review of Permit Applications

The Tree Warden **shall** review applications for Tree Permits in accordance with the provisions of this ordinance and with any rules or regulations promulgated hereunder;

1. The Warden shall date stamp or otherwise record the date of filing of each application for a Tree Permit;
2. The Warden shall complete the review of each Tree Permit application no later than ten (10) business days after the submission of a completed application to the Warden except in the case of a request to remove a Public Tree which shall be subject to the procedures for a hearing as set forth in MGL c. 87.

Sec. 43-27. Conditions

The Tree Warden may impose conditions upon a Tree Permit as he deems necessary to protect existing Public Trees. The conditions shall be in writing. The Tree Warden shall make a determination that the prescribed protective measures have been adequately provided before any disturbance of the site related to the permitted activity may begin.

Sec. 43-28. Construction

Except as provided in a Tree Permit, construction activities on City-owned property and Public Right-of-Ways under the dripline of a Public Tree is prohibited. Prohibited construction activities include, but are not limited to, trenching or grading, storage of materials or equipment, passage of heavy equipment and spillage of chemicals or other materials, which are damaging to trees.

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Sec. 43-29. Suspension or Revocation

The Tree Warden may suspend or revoke a Tree Permit at any time upon written notice to the permit holder for failing to comply with this ordinance, or with conditions of the permit. Written notice shall be sent by mail, return receipt requested, or by hand delivery and shall provide an opportunity for the permit holder to correct the noncompliance and to apply for a renewal of the Tree Permit upon compliance, where practicable. The suspension or revocation of a Tree Permit shall not affect the validity of a Building Permit or be cause for withholding a Certificate of Occupancy.

Sec. 43-30. Removal of a Sound Public Tree

The Tree Warden shall notify the Tree Commission and the Ward Councilor upon receipt of an application to cut down or remove a sound Public Tree. All Public Tree hearings shall comply with the applicable requirements set forth in MGL c. 87, s. 3. When a Public Tree is to be taken down, a public hearing shall be scheduled. The hearing will be advertised twice in a local newspaper during the fourteen (14) days prior to the hearing, posted on the city website, the City Hall bulletin board, and a notice is affixed to the tree itself. The resident owner requesting the removal of a Sound Public Tree shall pay for:

1. Notices for the hearing, and for an appeal if there is one;
2. The removal of the tree;
3. The replacement cost of the Public Tree on the tree lawn of the owner or on the tree lawn of another property. The replacement shall be equal to the DBH inches of the tree to be removed either as one or multiple trees.
4. The costs of planting. The Tree Warden shall provide the City's current tree planting costs.

Sec. 43-31. Tree Removal Waiting Period; Exemption

No Public Tree shall be removed pursuant to a permit until five (5) days after its issuance.

No waiting period is required to remove a public shade tree pursuant to a permit if the removal of the tree(s) is necessary based on a determination by the Tree Warden that one of the following conditions is met:

1. The Public Tree is dead, diseased, injured, in danger of falling, dangerously close to existing structures, is causing disruption of public utility service, is causing drainage or passage problems upon Public Rights-of-Way, or poses a threat to pedestrian or vehicular safety;
2. The removal of the Public Tree is necessary and desirable in order to enhance or benefit the health or condition of other trees on the same site as confirmed by the owner's certified arborist to the Warden.

Sec. 43-32. Appeal

Any person aggrieved by a decision of the Tree Warden regarding a Public Tree Removal may file an appeal with the Mayor or his/her designee. The appeal must be in writing and must be received within five (5) business days of issuance of the Warden's decision. Upon receipt of the appeal, the Mayor or his/her designee shall provide a copy to the City Clerk and to the ward Councilor for the ward in which the tree is located. Notice of the appeal hearing shall be posted on the city website, the City Hall bulletin board, and a notice shall be affixed to the tree itself. The appellant shall pay for two advertisements in a local newspaper during the fourteen (14) days prior to the hearing. A final decision shall be made on the matter within thirty (30) days from the date of receipt of the appeal request and the rationale for the decision shall be stated. A copy of the final decision shall be provided to the appellant, the City Clerk, and to the Councilor. There shall be no further appeal of the matter. No Public Trees shall be removed while an appeal is pending.

Sec. 43-33. Duration of Permit

Any permit issued by the Tree Warden shall be valid for ninety (90) days from issuance. The warden, following an email or written request by the applicant, may extend the length of the permit for any length of time, as he deems necessary and appropriate.

Sec. 43-34. Emergencies

A Public Tree may be removed without first obtaining a written permit as otherwise required by this section only if the Tree Warden or his/her designee determines that the condition of the Public Tree is hazardous and immediately endangers the public health, safety or welfare or causes an immediate disruption of public services such that immediate removal is required. If such determination is made, the Warden or his/her designee may remove the tree or provide oral authorization for its removal, utilizing such professional criteria and technical assistance, as he deems necessary. The Warden shall memorialize in writing each such oral authorization to remove a hazardous tree and keep a record of it.

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Sec. 43-35. Recording

Public Trees that are removed through this emergency provision shall be recorded in the City Tree Inventory.

Sec. 43-36. Waiver

The requirements of this section may be waived by the Warden during the period of an emergency such as a hurricane, windstorm, tornado, flood, or other act of God.

Sec. 43-37. Tree Replacement

The Tree Warden shall require the replacement of a removed sound Public Tree, which shall be planted by the City or by the applicant's contractor as approved by the Warden in accordance with Standards cited in Section 43-60.

Sec. 43-38. Payment in Lieu of Planting Replacement Tree(s)

In lieu of planting a replacement tree as provided in Section 43-30, a person who has been granted a Tree Permit shall make a contribution to the Tree Replacement Fund established in Section 43-61 in an amount equal to the cost to replace the tree in accordance with Section 43-61, which cost shall be determined by the Warden who shall provide the City's current tree planting costs.

Sec. 43-39. Rules and Regulations

The Warden is authorized to promulgate reasonable rules and regulations to implement administration of this ordinance.

Sec. 43-40. Enforcement

The Tree Warden shall be authorized to enforce the provisions of this section. The Warden shall provide written notice to the offender of the specific violation and provide a reasonable time for compliance. Such notice shall be sent by mail, return receipt requested, or by hand delivery. Thereafter, the Warden may impose the fines described in Section 43-42.

Sec. 43-41. Tree Vandalism

No person shall without written permit from the Tree Warden, in the case of a tree or shrub on public property, do or cause to be done by others any of the following acts:

1. Secure, fasten or run any rope, wire, sign, unprotected electrical installation, or other device or material to, around or through a tree or shrub, except to secure leaning or newly planted trees;
2. Break, injure, mutilate, deface, poison, kill, or destroy any tree or shrub including during snow plowing;
3. Remove any guard, stake, or other device or material intended for the protection of a Public Tree or shrub, or close or obstruct any open space above the base of a Public Tree or shrub designed to permit access of air, water, and fertilizer;
4. Attach any sign, poster, notice, or other object on any tree, or fasten any guy wire, cable, rope, nails, screws, or other device to any tree, except that the City may authorize tying temporary signs to trees if necessary; or
5. Cause or encourage any fire or burning near or around any tree.

Sec. 43-42. Penalties

1. Tree Vandalism: Each instance of vandalism shall constitute a violation of this ordinance and shall be subject to a fine of up to \$300.
2. Removal Without A Permit: Each instance in which a Public Tree is removed without a permit shall constitute a violation of this ordinance and shall be subject to a fine in the amount of \$200 per DBH inch as determined by the Tree Warden for each tree removed;
3. Failure to Make Payment to Replace Trees: Each failure to make a payment into the Tree Replacement Fund beyond the timeframe of the Tree Permit shall constitute a separate violation of this ordinance and shall be subject to a fine in the amount of \$300. Each day such violation continues shall constitute a separate offense;
4. Failure To Comply With A Condition, including Tree Replacement, Contained In a Tree Permit: Each instance where there is a failure to comply with a condition contained in a Tree Permit shall be subject to a fine in the amount of \$300;
5. Failure To Comply With A Stop Work Order: Each instance where there is a failure to comply with a Stop Work Order shall constitute a violation of this ordinance, which shall be subject to a fine in the amount of \$300. Each day such violation continues shall constitute a separate offense;
6. Public Trees: Nothing herein shall be construed to require the City to make a payment into the Tree Replacement Fund for any tree(s) that it removes.

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Sec. 43-43. Severability

The provisions of this ordinance are severable. If any section, provision, or portion of this ordinance is determined to be invalid by a court of competent jurisdiction, then the remaining provisions of this ordinance shall continue to be valid.

Sec. 43-44. Conflict of Laws

Nothing in this ordinance shall be construed to restrict, amend, repeal, or otherwise limit the application or enforcement of existing municipal or state law.

ARTICLE IV. PROTECTED TREE PRESERVATION

Sec. 43-50. Findings

Trees contribute to the distinct visual character of neighborhoods, protect and increase real property values, improve air quality, provide shade and evaporative cooling through transpiration as well as natural privacy among neighbors, and reduce and baffle noise pollution.

Sec. 43-51. Definitions

Aggregate Diameter The combined diameter of a multiple trunk tree measured at breast height.

Caliper The measure of a newly installed young tree. Caliper measurement of a trunk shall be taken six (6) inches above ground level for trees of up to and including four (4) inch caliper size. If the caliper at six (6) inches above the ground exceeds four (4) inches, the caliper should be measured at twelve (12) inches above ground level.

Certified Arborist An arborist certified by Massachusetts Arborists Association (MAA), its successor organization, or the International Society of Arboriculture (ISA).

Diameter at Breast Height (DBH) The diameter of the trunk of a tree at 4½ feet above the existing grade at the base of the tree.

Dripline A vertical line running through the outermost portion of the crown of a tree and extending to the ground.

Exempt Lot The lot is occupied and used primarily as a residence for up to three (3) dwelling units at the time any Protected Tree is proposed for removal. The Ordinance is not applicable to properties with single, double or triple residential units.

Exterior Work Permit A building permit or approval, which is required in order to perform work on the exterior of a building or a lot, including, but not limited to the following: a building permit; a demolition permit; certificates of appropriateness, non-applicability, or hardship; curb cut and street opening permits; an order of conditions; site plan approval; subdivision approval; a special permit; a review of an alteration of contour of land; a comprehensive permit.

Occupied Lot A lot containing a legally constructed, permanent structure, used primarily as a dwelling that is currently being legally occupied and lived in and used as a residence by a person or persons. The dwelling must have a functioning, legally permitted, permanent water, sanitary, and electrical services.

Person Any person, firm, partnership, association, corporation, company or organization of any kind including, but not limited to, the person removing a Protected Tree as well as the owner of the real property from which the tree is removed. The definition of "person" shall not include the City of Salem.

Protected Tree

- A. A tree, with trunk dimensions DBH of eight (8) inches or greater or any multiple trunk tree with an aggregate DBH of fifteen (15) inches or greater located in the setback area bordering a Public Right-of-Way of non-exempt private land, requires a Tree Permit before it may be removed. Permits to remove such trees shall not be unreasonably denied.
- B. The Tree Warden may also designate a tree as Protected, as defined above, if its growth has encroached into the setback area of non-exempt private land, between the height of six (6) inches and four and a half (4½) feet above grade, whether the growth is from the owner's land or the Public Right-of-Way; provided that the tree is not hazardous or undesirable as defined in the Tree Manual.

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Pruning Standards Standards for pruning as defined in the City of Salem Tree Manual.

Remove (including removing and removal) The cutting down of any Protected Tree and all other acts which cause the actual removal or the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of a Protected Tree, including, but not limited to, excessive or improper pruning.

Setback

A. For non-residential lots, the minimum setback shall be that which meets the requirement in the Table of Dimensional Requirements in Salem's Zoning Ordinances.

B. For residential properties, the setback for Protected Trees shall be 20 feet from property line at the Public Rights-of-Way.

Tree Donation Fund Voluntary contributions may be made to benefit tree planting and maintenance in Salem. See Section 43-62.

Tree Manual The City of Salem Tree Manual prescribing the preferred species and the proper manner of planting and maintenance of trees.

Tree Replacement The Tree Warden shall require the replacement of a removed sound Public Tree, which shall be planted by the City or by the applicant's contractor as approved by the Tree Warden in accordance with Standards cited in Section 43-60.

Tree Replacement Fund Payments required by this ordinance for planting at the same site or at another location shall be deposited into this fund. See Section 43-61.

Tree Warden The individual who holds this title shall be an arborist certified by the Massachusetts Arborists Association (MAA) or such successor organization. This position shall be appointed by the Mayor and approved by the City Council.

Sec. 43-52. Permit or Certificate of Exemption Required

A. Applicability The terms and provisions of this ordinance shall apply to:

1. Any Protected Tree located in the setback area of private land bordering Public Rights-of-Way;
2. Except Protected Tree(s) located on an Exempt Lot as described in sub-section C below. Applications for Tree Permits and Certificates of Exemption shall require no filing fee.

B. Permit or Certificate of Exemption

1. On a Non-Exempt Lot, no person shall remove a Protected Tree within the setback area without a Tree Permit,
2. On any lot, no person shall commence legally permitted exterior work without first obtaining either a Tree Permit or a Certificate of Exemption from the Tree Warden.

C. Exempt Lot The owner of an Exempt Lot who seeks an Exterior Work Permit shall apply for a Certificate of Exemption from the Warden if a Protected Tree within the setback will be affected by the project.

Sec. 43-53. Permit Application

A. Contents; Fee

An application for a Tree Permit shall be submitted to the Tree Warden concurrently with an application for a building permit to the Director of Inspectional Services. No application fee shall be charged. The completed application shall include information the Tree Commission shall so determine, in consultation with the Tree Warden, pursuant to its power and duties set forth in Sec. 43-11.

B. Review of Permit Applications

1. The Tree Warden or his/her designee shall review applications for Tree Permits in accordance with the provisions of this ordinance. The Warden shall date stamp or otherwise record the date of filing of each Tree Permit application. The Warden shall complete the review of each application no later than ten (10) business days after receiving the finished submission.
2. In cases where a construction project will impact a Protected Tree, the Warden shall report whether the Tree Permit was granted or denied to the Director of Inspectional Services within the same ten (10) business days. If the Director receives no such report about a Tree Permit for the property within the above-stated time period, he shall accept a building permit application without that report.

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- C. Conditions** Upon the issuance of a Tree Permit, the Tree Warden may prescribe in writing such protective measures for existing Protected Trees, as he deems necessary. The Warden shall make a determination that the prescribed protective measures have been adequately provided before any disturbance of the site related to the permitted activity may begin.
- D. Construction** Except as provided in a Tree Permit, construction activities under the dripline of a Protected Tree are prohibited. Activities include, but are not limited to: trenching or grading, storage of materials or equipment, passage of heavy equipment within the dripline and spillage of chemicals or other materials, which are damaging to trees.
- E. Suspension or Revocation** A Tree Permit may be suspended or revoked at any time by the Warden upon written notice to the permit holder that the permit holder has failed to comply with either this ordinance or the conditions of the Tree Permit. The written notice shall be sent by certified mail, return receipt requested, or by hand delivery and shall provide an opportunity for the permit holder to correct the non-compliance and apply for a renewal of the Tree Permit upon compliance, where practicable. The suspension or revocation of a Tree Permit shall not affect the validity of a building permit nor be the cause for withholding the issuance of a Certificate of Occupancy.
- F. Removal of A Protected Tree**
1. A Tree Permit shall be issued when a Protected Tree will be:
 - a) Replaced or relocated on site or on an abutter's setback with the abutter's express approval; or
 - b) Replaced by payment into the Tree Replacement Fund.
 2. A permit shall also be granted when:
 - a) The Protected Tree is dead, diseased, injured, in danger of falling, dangerously close to existing structures, is causing disruption of utility service, is causing drainage or passage problems upon Public Rights-Of-Way, or poses a threat to pedestrian or vehicular safety; or
 - b) The removal of the Protected Tree is necessary and desirable in order to enhance or benefit the health or condition of other trees on the same site as certified to the Tree Warden by a certified arborist.
- G. Appeal** If a permit has been denied, the applicant must receive a written notice of the appeals process. Any person aggrieved by a decision of the Tree Warden regarding the removal of a Protected Tree may file an appeal with the Tree Commission. The appeal must be in writing and must be received within five (5) business days of issuance of the Warden's decision. Upon receipt of the appeal, the Commission shall provide a copy to the City Clerk and to the Councilor for the ward in which the tree is located. Notice of the appeal hearing shall be posted on the city website, the City Hall bulletin board, and a notice shall be affixed to the tree itself. The appellant shall pay for two advertisements in a local newspaper during the fourteen (14) days prior to the hearing. A final decision shall be made on the matter within thirty (30) days from the date of receipt of the appeal and the rationale for the decision shall be stated. A copy of the final decision shall be provided to the appellant, the City Clerk, and to the Councilor. There shall be no further appeal of the matter. No Protected Trees shall be removed while an appeal is pending.
- H. Duration of Permit** Any permit issued by the Warden shall be valid for ninety (90) days from issuance. The warden, following an email or written request by the applicant, may extend the length of the permit for any length of time, as he deems necessary and appropriate.

Sec. 43-54. Activities Not Requiring A Permit

- A. Pruning** A permit is not required for the pruning of Protected Trees. However, in order to prevent excessive pruning and topping of trees that will be hazardous to the health and natural appearance of the tree, compliance with approved pruning standards is strongly recommended. The Tree Warden shall maintain on file at all times a copy of the current edition of the Tree Manual and shall make copies of it available for the cost of reproduction upon request. The Tree Manual shall also be available on the City website.
- B. Emergencies** If any Protected Tree shall be determined to be in a hazardous condition so as to immediately endanger the public health, safety or welfare or cause an immediate disruption of public services and require immediate removal without delay, oral authorization may be given by the Warden or his/her designee to remove such tree, utilizing such professional criteria and technical assistance as he/she deems necessary, and the Protected Tree may be removed without obtaining a written permit as otherwise required by this ordinance. The Warden shall memorialize in writing each such oral authorization to remove a tree and keep a record of the same.
- C. Recording** Protected Trees that are removed through this emergency provision shall be recorded in the City Tree Inventory and the opportunity for replacement offered by the Tree Warden.
- D. Waiver** The Warden may waive the requirements of this ordinance during the period of an emergency such as a hurricane, windstorm, tornado, flood, or other act of God.

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Sec. 43-55. Rules and Regulations

The Tree Warden is authorized to promulgate reasonable rules and regulations to implement administration of this ordinance.

Sec. 43-56. Enforcement

A. Notice of Violation

Any person who violates any of the provisions of this ordinance shall be notified by the Warden or his/her designee of the specific violation by certified mail, return receipt requested, or by hand delivery. The notice shall set forth the nature of the violation and a reasonable time period within which compliance must be had. The Warden shall send notice of violation of the Tree Replacement Fund regulations. The notice shall include the date by which trees were to be replaced or payment was to be made for purposes of computing the per day violation fine, in accordance with the Penalty provisions of this Ordinance.

B. Stop Work Order

1. Upon notice from the Warden or his/her designee that work on any Protected Tree, or property on which a Protected Tree is located is being performed contrary to any provision of this ordinance, such work shall be immediately stopped. The Stop Work Order shall be in writing and shall be delivered to the owner of the property involved, or to the owner's agent, or to the person doing the work; and shall state the conditions under which work will be permitted to resume;
2. The Tree Warden is also authorized to request, to the extent permissible by law, that the city department that has granted an exterior work permit to order the owner cease any activity that might affect a Protected Tree while a Stop Work Order is pending;
3. Any person who shall continue any work in or about the Protected Tree or property on which a Protected Tree is located after having been served with a Stop Work Order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not more than \$300 for each such violation. Each day during which a violation exists shall constitute a separate offense.

C. Injunctive Relief

1. Whenever there exists reasonable cause to believe that a person is violating this ordinance or any standards adopted pursuant to this ordinance or any term, condition or provision of an approved Tree Permit, the City may, either before or after the institution of any other action or proceeding authorized by this ordinance, institute a civil action in the name of the City for a mandatory or prohibitory injunction and an order of abatement demanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property.
2. Upon determination of a court that an alleged violation is occurring, it shall enter such order or judgment as is necessary to abate the violation. The institution of an action for injunctive relief under this subsection shall not relieve any party to such proceedings from any civil penalty prescribed for violation of this ordinance.

Sec. 43-57. Tree Vandalism

No person shall, without the consent of the owner of a private tree or shrub, do or cause to be done by others any of the following acts:

- A. Secure, fasten or run any rope, wire, sign, unprotected electrical installation, or other device or material to, around or through a tree or shrub, except to secure leaning or newly planted trees;
- B. Break, injure, mutilate, deface, poison, kill, or destroy any tree or shrub including during snow plowing;
- C. Remove any guard, stake, or other device or material intended for the protection of a tree or shrub, or close or obstruct any open space above the base of a tree or shrub designed to permit access of air, water, and fertilizer;
- D. Attach any sign, poster, notice, or other object on any tree, or fasten any guy wire, cable, rope, nails, screws, or other device to any tree, except that the City may authorize tying temporary signs to trees if necessary; or
- E. Cause or encourage any fire or burning near or around any tree.

Sec. 43-58. Penalties

A. Tree Vandalism Each instance of mayhem shall constitute a violation of this ordinance and shall be subject to a fine of up to \$300.

B. Removal Without a Permit Each instance in which a Protected Tree is removed without a permit shall constitute a violation of this ordinance and shall be subject to a fine in the amount of \$200 per DBH inch as determined by the Tree Warden for each tree removed;

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- C. Failure to Make Payment to Replace Trees** Each failure to replace a tree or make a payment into the Tree Replacement Fund beyond the timeframe of the Tree Permit shall constitute a separate violation of this ordinance and shall be subject to a fine in the amount of \$300. Each day such violation continues shall constitute a separate offense.
- D. Failure to Comply with a Condition Contained in a Tree Permit** Each instance where there is a failure to comply with a condition contained in a Tree Permit shall be subject to a fine in the amount of \$300.
- E. Failure to Comply with a Stop Work Order** Each instance where there is a failure to comply with a Stop Work Order shall constitute a violation of this ordinance, which shall be subject to a fine in the amount of \$300. Each day such violation continues shall constitute a separate offense;
- F. Public Trees** Nothing herein shall be construed to require the City to make a payment into the Tree Replacement Fund for any tree that it removes.

Sec. 43-59. Severability; Effect on Other Laws

- A. Severability** The provisions of this ordinance are severable. If any section, provision, or portion of this ordinance is determined to be invalid by a court of competent jurisdiction, then the remaining provisions of this ordinance shall continue to be valid.
- B. Conflict of Laws** Nothing in this ordinance shall be construed to restrict, amend, repeal, or otherwise limit the application or enforcement of existing municipal or state law.

ARTICLE V. REFERENCES FOR PUBLIC AND PROTECTED TREES

Sec. 43-60. Tree Replacement

- A. Required** Whenever a Public Tree or a Protected Tree in the setback is removed without a Tree Permit from land which required a Permit or Certificate of Exemption, it shall be replaced in the manner provided in B. below.
- B. Standards**
1. A replacement tree shall be planted within eighteen (18) months, or prior to transfer of property ownership whichever comes first from the date the Tree Permit is issued, with planting and location to be approved by the Tree Warden;
 2. A replacement tree shall be of the same or similar species or such other species as deemed advisable by the Warden in accordance with the Tree Manual.
 3. The replacement tree shall have the same or equivalent size as measured in DBH inches as that of the tree that has been removed. In the event that a tree of the same or equivalent size as measured in DBH inches cannot be planted, then multiple smaller replacement trees may be planted provided that, wherever practicable, as determined by the Warden, the cumulative total DBH of the replacement trees shall equal or exceed the cumulative total DBH of the trees that are proposed to be removed. Planting is permitted either on applicant's land or on land abutting applicant's land with the express approval of the owner of the abutting land. The Warden may specify that replacement trees be of a minimum caliper consistent with current accepted practice as stated in the Tree Manual.
 4. A replacement tree shall be required to survive in a healthy state for two years, at which time, if it is not thriving, it shall be replaced in kind with another appropriate and same-size or larger tree.

Sec. 43-61. Tree Replacement Fund

- A.** There is hereby established a Tree Replacement Fund which shall be held by the City Treasurer in a separate, identifiable revolving account and administered in accordance with applicable provisions of the General Laws. Any payments into the Tree Replacement Fund required by this ordinance for planting at the same site or at another location shall be deposited into the fund. It shall be used solely for the purpose of buying, planting, and maintaining trees in the City. The Tree Warden, with input from the Tree Commission, shall request use of these funds for tree planting, transplanting, and other tree-related needs. Allocation of these funds shall be approved by the City Council during the annual budget process.
- B. Payment in Lieu of Planting Replacement Trees:** When a healthy Public Tree is removed at the request of a property owner, or agent thereof, the requesting party shall make a contribution to a Tree Replacement Fund in an amount deemed equal to the cost to replace the tree plus the value of the tree to be replaced. The cost to remove, replant and purchase new trees shall be determined by the Warden who shall provide the City's current tree planting costs.

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CITY COUNCIL

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Sec. 43-62. Tree Donation Fund

Collection of voluntary contributions under this ordinance shall be deposited into the Tree Donation Fund, a separate, identifiable revolving account, provided such fund is annually reauthorized, and administered by the City to be dedicated solely for the planting and maintenance of new trees. The Tree Warden, with input from the Tree Commission and commensurate with the reasonably practicable suggestions of any donor, shall request use of these funds for tree planting, and other tree-related needs. Allocation of these funds shall be approved by the City Council during the annual budget process.

Section 2. This Ordinance shall take effect as provided by City Charter

Action Contemplated

Councillor McCarthy

Moved for second and final passage

Voted

On the motion of Councillor

the meeting adjourned at

P.M.