

# CASTINE ELM TREE ORDINANCE



ENACTED BY THE TOWN IN MEETING ASSEMBLED

THE 4<sup>TH</sup> DAY OF APRIL 2009

(AND AS THEREAFTER AMENDED)

ATTEST: THIS IS A TRUE DOCUMENT. THE *CASTINE ELM TREE ORDINANCE*, HAS BEEN IN EFFECT WITHOUT CHANGE FROM 4 APRIL 2009 TO THE DATE HEREOF, EXCEPT AS AMENDED THROUGH 4 APRIL 2009, AS SHOWN.

DATED: 4 APRIL 2009

SIGNATURE: \_\_\_\_\_

AFFIX SEAL

SUSAN M. MACOMBER  
CASTINE TOWN CLERK

## CASTINE ELM TREE ORDINANCE

### 1. GENERAL PROVISIONS

- 1.1. **Title and Effective Date:** This Ordinance shall be known as the “Castine Elm Tree Ordinance” and shall be referred to herein as the “Ordinance”. It shall become effective on the date of its adoption by the voters of the Town of Castine, Maine.
- 1.2. **Repeal of Other Ordinances:** Any municipal elm tree ordinance or policy in existence at the time of the adoption of this Ordinance is hereby repealed.
- 1.3. **Authority:** This Ordinance is adopted pursuant to Article VIII-A of the Maine Constitution and Title 30-A M.R.S.A. § 3001.
- 1.4. **Purpose:** This Ordinance is adopted for the purpose of maintaining the historic green canopy of the Town of Castine by providing for the care and maintenance of its elm trees and significant streetscape trees.
- 1.5. **Applicability:** This Ordinance shall apply to all land areas within the Town of Castine.
- 1.6. **Relationship to Other Ordinances:** Whenever a provision of this Ordinance is inconsistent with another provision of this Ordinance or any other ordinance, regulation, or statute, the more restrictive provision shall control.
- 1.7. **Validity and severability:** Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.
- 1.8. **Administration and Enforcement:** The Tree Committee shall administer and the Tree Warden shall enforce this Ordinance.

### 2. TREE COMMITTEE

- 2.1. There shall be a five member Tree Committee consisting of the Tree Warden (see Section 3) and four Castine residents or property owners, at least three of whom shall be year-round residents, appointed by the Board of Selectmen for three-year staggered terms. For the initial committee, two members shall serve a one-year term, two members shall serve a two-year term and the Tree Warden shall serve a three-year term. In the event that a vacancy shall occur during the term of any member, the Board of Selectmen shall appoint a successor for the unexpired portion of the term. In addition, there shall be one non-voting, ex-officio member representing Maine Maritime Academy appointed by the President of Maine Maritime Academy.
- 2.2. The Tree Committee shall have oversight on behalf of the Board of Selectmen for the care and maintenance of the Town’s elms and significant streetscape trees.

- 2.3.** Specific responsibilities of the committee are to: **a)** research and recommend the selection of a Consulting Arborist (see Section 4); **b)** review reports submitted by the Consulting Arborist; **c)** determine a prioritized plan of action utilizing the recommendations of the Consulting Arborist; **d)** prepare an annual budget for recommendation to the Board of Selectmen for the use of Town funds for elm tree care and donated funds for preservation and replanting of trees; **e)** maintain records of all elms and significant streetscape trees and document the status and needs for their preservation; **f)** advise individual property owners of the recommendations of the Consulting Arborist; **g)** inform and educate the citizens of Castine on the preservation of the Town's historic green canopy; and **h)** approve requests to cut down any elm tree located in the public tree area, any elm tree ten (10) inches or more in diameter measured at four and one-half (4 ½) feet above ground level located within the boundaries of the Town or any significant streetscape tree.

**3. TREE WARDEN**

- 3.1.** There shall be a Tree Warden appointed by the Board of Selectmen for a three-year term. The Tree Warden shall be a member of the Tree Committee and serve as the liaison between the committee and the Town Manager.
- 3.2.** Specific responsibilities are to: **a)** refer violations of this Ordinance to the Board of Selectmen for enforcement; **b)** participate regularly in the work of the Tree Committee and keep the Town Manager informed of its deliberations and recommendations; **c)** respond to requests to examine any elm tree, whether on public or private property or any significant streetscape tree and report findings to the Tree Committee; **d)** approve requests to substantially prune or disturb roots of any elm tree located in the public tree area or any significant streetscape tree; and **e)** prepare the Annual Report to the Town.

**4. CONSULTING ARBORIST**

Annually, the Town may hire a Consulting Arborist as recommended by the Tree Committee to inspect all elm trees and significant streetscape trees and report their condition and suggested care and maintenance to the Tree Committee. The Consulting Arborist may review the completed work of the Contractor Arborist (see Section 5) and regularly update the Tree Committee.

**5. CONTRACTOR ARBORIST**

The Town may hire arborists to carry out work recommended by the Tree Committee on an annual or project basis. The Contractor Arborist, in any given year, shall not be the same individual or firm as the Consulting Arborist without the approval of the Board of Selectmen.

**6. RESPONSIBILITY FOR ELMS AND SIGNIFICANT STREETScape TREES**

- 6.1.** Any elm tree located in the public tree area or any significant streetscape tree shall not be substantially pruned or have any of its major roots disturbed without the written approval of the Tree Warden. Any elm tree located in the public tree area or

any elm tree ten (10) inches or more in diameter measured at four and one-half (4 ½) feet above ground level located within the boundaries of the Town or any significant streetscape tree shall not be cut down without the written approval of the Tree Committee. Failure to comply with this section is a violation of this Ordinance subject to enforcement under Section 9.

- 6.2. At its discretion, the Town may prune and fertilize any tree within the public tree area.
- 6.3. Elm trees not located in the public tree area are the responsibility of the property owner and the costs associated with maintenance and, if necessary, removal and disposal shall be borne by the property owner and not the Town. Property owners will be advised by the Tree Committee of needed work recommended by the Consulting Arborist.
- 6.4. The Town Manager may offer for sale by sealed bid any Town owned elm tree being removed and, with the owner's permission, any privately owned elm tree being removed and sell the tree to the highest bidder.

## **7. RESPONSIBILITY FOR DISEASED OR DAMAGED ELM TREES**

- 7.1. The Town shall be responsible for the treatment or removal and disposal of any diseased or damaged elm tree within the public tree area.
- 7.2. When the Tree Warden notifies a property owner that an elm tree located on their property outside of the public tree area is diseased or requires action to mitigate the spread of disease, the owner shall complete the work at their expense within fifteen (15) days. The Board of Selectmen may consider alternative funding if the property owner is unable to afford the required work. Failure to complete the required work shall be considered a nuisance and a violation of this Ordinance subject to enforcement under Section 9.
- 7.3. Any diseased elm tree shall be handled and disposed of by a professionally recognized method that is acceptable to the Tree Warden to prevent the spread of the infection to healthy trees in the Town.

## **8. REPLANTING**

The species of trees and locations for replanting trees within the public tree area shall be recommended by the Tree Committee, approved by the Board of Selectmen and carried out by the Town to the extent of funds available for that purpose. Property owners may plant trees on their property that enhance the streetscape but are encouraged to consult with the Tree Committee concerning species that are compatible with the existing historic canopy.

## **9. ENFORCEMENT; INSPECTION; PENALTIES & COSTS; CONSENT AGREEMENTS**

- 9.1. The Tree Warden, Tree Committee and Consulting Arborist are hereby authorized to enter upon any property at any reasonable time after notification to property owner(s) to monitor the condition of an elm tree, to inspect the premises for

compliance with the terms of this Ordinance and to investigate any violations.

- 9.2. If the Tree Warden shall find that any provision of the Ordinance is being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary and the time limit to correct it. A copy of such notices shall be submitted to the Board of Selectmen and be maintained as a permanent record. Any such notice is not a prerequisite to bringing any legal action and the failure to give notice shall not in any way affect such legal action.
- 9.3. The Board of Selectmen, upon notice from the Tree Warden that the person responsible for the violation has not resolved the violation within the time specified, shall institute any and all actions and proceedings, either legal or equitable, including seeking injunctions against violators and the imposition of civil penalties, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the Inhabitants of the Town of Castine.
- 9.4. For each violation, the violator shall pay the civil penalty stated in Title 30-A M.R.S.A. § 4452(3), as it may be amended, and the violator shall pay the Town's attorney fees, expert witness fees and costs. The minimum penalty shall be \$100; the maximum penalty shall be \$2,500. Each day of violation constitutes a separate violation.
- 9.5. The Board of Selectmen is authorized to enter into administrative consent agreements with the owner(s) of the property or other violator for the purpose of resolving violations of this Ordinance and collecting civil penalties and/or fees without court action. An agreement may provide for a civil penalty that is less than the civil penalty called for in the statute.

## 10. APPEALS

Except for a decision related to a violation of this Ordinance, a party aggrieved by the decision of the Tree Committee may appeal it to Superior Court within thirty (30) days from the date of said decision pursuant to Maine Rules of Civil Procedure, Rule 80B.

## 11. DEFINITIONS

For purposes of this Ordinance, the following terms shall have the following definitions. If no term used in this Ordinance is so defined, its customary dictionary definition shall be applied:

**Arborist:** An individual holding a current First Class Arborist License issued by the Maine Department of Agriculture.

**Public Tree Area:** All land, except State owned land, within a Town right-of-way or within thirty-five (35) feet from the centerline of a Town road, whichever is greater, and all Town owned land.

**Significant Streetscape Tree:** Any species of tree forty (40) inches or more in diameter measured at four and one-half (4 ½) feet above ground level and located within the public tree area.

**Town Elm:** Any elm tree within the boundaries of the Town.

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