HOUSE DOCKET, NO. 1352 FILED ON: 1/20/2011

HOUSE . . . . . No. 1839

The Commonwealth of Massachusetts

PRESENTED BY:

Jonathan Hecht

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act to update the public shade tree law.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Jonathan Hecht	*29th Middlesex*
Thomas M. Stanley	*9th Middlesex*
Jason M. Lewis	*31st Middlesex*
Carl M. Sciortino, Jr.	*34th Middlesex*
Thomas P. Kennedy	☐ *[District]* ☐
Chris Walsh	*6th Middlesex*
Denise Provost	*27th Middlesex*
William N. Brownsberger	☐ *[District]* ☐

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By Mr. Hecht of Watertown, a petition (accompanied by bill, House, No. 1839) of Jonathan Hecht and others for legislation to regulate the powers of tree wardens in municipalities in the Commonwealth. Municipalities and Regional Government.

The Commonwealth of Massachusetts

An Act to update the public shade tree law.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 2 of Chapter 87 of the General Laws is hereby amended by striking out the sentence "He shall have the care and control of all public shade trees, shrubs and growths in the town, except those within a state highway, and those in public parks or open places under the jurisdiction of the park commissioners, and shall have care and control of the latter, if so requested in writing by the park commissioners, and shall enforce all the provisions of law for the preservation of such trees, shrubs and growths" and inserting in place thereof the following sentence: "He shall have the care and control of all public shade trees, shrubs and growths in the town, except those in public parks or open places under the jurisdiction of the park commissioners, and shall have care and control of the latter, if so requested in writing by the park commissioners, and shall provide a formal, written consultation regarding actions to those trees, shrubs and growths within a state highway under state jurisdiction, and shall enforce all the provisions of law for the preservation of such trees, shrubs and growths."

SECTION 2. Said Section 2 of said Chapter 87 of the General Laws is hereby further amended by striking out the sentence "He may make regulations for the care and preservation of public shade trees and establish fines and forfeitures of not more than twenty dollars in any one case for violation thereof; which, when posted in one or more public places, and, in towns, when approved by the selectmen, shall have the effect of town by-laws" and inserting in place thereof the following sentence: "He may make regulations for the care and preservation of public shade trees which, when posted in one or more public places, and, in towns, when approved by the selectmen, shall have the effect of town by-laws, and may establish fines and forfeitures for violations thereof pursuant to rules and regulations promulgated under section 15."

SECTION 3. Section 5 of said Chapter 87 of the General Laws is hereby amended by striking out the section and inserting in place thereof the following section:

Section 5. Tree wardens and their deputies, but no other person, may, without a hearing, trim, cut down or remove trees, less than four inches in diameter one foot from the ground, and bushes, standing in public ways; and, if ordered by the mayor, selectmen, road commissioners or highway surveyor, shall trim or cut down trees and bushes that, following an inspection based on accepted industry or government arboricultural standards for the determination of hazardous or dangerous trees, are deemed to obstruct, endanger, hinder or incommode persons traveling thereon or to obstruct buildings being moved pursuant to the provisions of section eighteen of chapter eighty-five. Nothing contained in this chapter shall prevent the trimming, cutting or removal of any tree which endangers persons traveling on a highway, or the removal of any tree, if so ordered by the proper officers after securing a formal, written consultation from the tree warden for the purpose of widening the highway and nothing herein contained shall interfere with the suppression of pests declared to be public nuisances by section eleven of chapter one hundred and thirty-two, including the Dutch elm disease.

SECTION 4. Section 6 of said Chapter 87 of the General Laws is hereby amended by striking out the section and inserting in place thereof the following section:

Section 6. Violations of any provision of the three preceding sections shall be punished by forfeiture of not more than the professionally assessed value of the tree or trees pursuant to rules and regulations promulgated under section 15. Such monies shall be collected to the use of the city or town.

SECTION 5. Section 9 of said Chapter 87 of the General Laws is hereby amended by striking out the sentence “Whoever affixes to a tree in a public way or place a notice, sign, advertisement or other thing, whether in writing or otherwise, or cuts, paints or marks such tree, except for the purpose of protecting it or the public and under a written permit from the officer having the charge of such trees in a city or from the tree warden in a town, or from the department in the case of a state highway, shall be punished by a fine of not more than fifty dollars” and inserting in place thereof the following sentence: “Whoever affixes to a tree in a public way or place a notice, sign, advertisement or other thing, whether in writing or otherwise, or cuts, paints or marks such tree, except for the purpose of protecting it or the public and under a written permit from the officer having the charge of such trees in a city or from the tree warden in a town, or from the department in the case of a state highway, shall be punished by a fine pursuant to rules and regulations promulgated under section 15.”

SECTION 6. Section 12 of said Chapter 87 of the General Laws is hereby amended by striking out the sentence “Whoever wantonly injures, defaces or destroys a shrub, plant or tree, or fixture of ornament or utility, in a public way or place or in any public enclosure, or negligently or wilfully suffers an animal driven by or for him or belonging to him to injure, deface or destroy such shrub, plant, tree or fixture, shall be punished by a fine of not more than five hundred dollars, and shall in addition thereto be liable to the town or any person for all damages to its or his interest in said shrub, plant, tree or fixture caused by such act” and inserting

62 in place thereof the following sentence: “Whoever wantonly injures, defaces or destroys a shrub,
63 plant or tree, or fixture of ornament or utility, in a public way or place or in any public enclosure,
64 or negligently or wilfully suffers an animal or vehicle driven by or for him or belonging to him to
65 injure, deface or destroy such shrub, plant, tree or fixture, shall be punished by a fine of not more
66 than five hundred dollars, and shall in addition thereto be liable to the town or any person for all
67 damages to its or his interest in said shrub, plant, tree or fixture caused by such act.”

68 SECTION 7. Section 13 of said Chapter 87 of the General Laws is hereby amended by
69 adding the following sentence: “In accordance with section 106 of chapter 41, the tree warden in
70 any city or town which exceeds 10,000 inhabitants shall be qualified by training and experience
71 in the field of arboriculture and licensed with the department of food and agriculture in
72 accordance with the provisions of section 10 of chapter 132B. A qualified tree warden shall be
73 defined as a person who has 1) completed a degree in a forestry or natural resource management
74 field, or 2) attained ISA, MCA or other equivalent professional certification or, 3) for
75 communities with less than 10,000 inhabitants, completed a full series of Professional
76 Development courses offered by the Massachusetts Tree Wardens and Foresters Association or
77 equivalent training.”

78 SECTION 8. Said Chapter 87 of the General Laws is hereby amended by adding the
79 following section:

80 Section 15. The State Forester’s Office of the Department of Conservation and
81 Recreation shall promulgate and periodically review as necessary all rules and regulations
82 pertaining to this chapter.