

## **CEMETERIES AND PARKS**

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## CHAPTER 6. CEMETERIES AND PARKS

### ARTICLE 1. GENERAL PROVISIONS

#### Section 6-1. Duties of Superintendent.

The Superintendent of Burials and Burial Grounds shall be entrusted with and be responsible for all City property used in cemetery operations and for the maintenance of such cemeteries; shall be subject to the direction of the City Manager, and shall administer the provisions of this Chapter. (Ord. 8/15/49 10; amended 2/16/77.)

#### Section 6-2. Adoption of rules by Superintendent.

A. The Superintendent of Burials and Burial Grounds may adopt such rules, regulations and charges as in his judgment may be necessary for the government of the. cemeteries owned by this City, provided that:

1. Such rules, regulations and charges are not inconsistent with the laws of the State or the Ordinances of the City; and
2. They are approved in advance by the City Council; and
3. They are in writing and filed in the office of the City Clerk, where they shall be available for public inspection at any reasonable time. (Ord.8/15/49, 11, Ord.4/26/89) Res. 6/7/06)

B. Cremation Lot Sections. Monuments on cremation lots must be flush with the ground. They cannot exceed thirty-six (36) inches in length and fifteen (15) inches in width. No shrubs, perennial plants, fences or other boundary markers may be planted or erected on \*cremation lots. *\*Cremation lots are designated to specific areas and are three (3) feet wide by five (5) feet wide.*

**Note: All cremation lots purchased prior to July 1, 2006 are not subject to these rules. (6/7/06)**

#### Section 6-3. Superintendent as special policeman.

A. The Superintendent of Burials and Burial Grounds may be sworn as a special policeman with full power to arrest all intruders or depredators.

B. Any person willfully violating any of the provisions of this Chapter or any cemetery rules and regulations lawfully promulgated there under may be ordered to leave or be ejected from the grounds by the Superintendent. Any such person refusing to leave when so ordered to leave shall be guilty of a crime punishable by a fine not to exceed One Hundred Dollars (\$100.00) and/or imprisonment not to exceed Thirty (30) days. Fines are payable to the City of Bath. (Ord. 8/15/49, 16 amended 10/23/76.)

Section 6-4. Decorations restricted; improper monuments.

A. In City cemeteries, no curb, decoration, design, embellishment or improvement of any sort (cut flowers, wreaths, and potted plants excepted) shall be placed on any burial lot or shall any alterations of the surface of the grounds be made, or any labor be done unless the same shall have been approved by the Superintendent. If any person feels aggrieved by the decision of the Superintendent, he may appeal to the City Manager. Under no conditions will glass containers or artificial flowers with stems containing wire be permitted in any of the City Cemeteries.

B. If any monument or structure, or any inscription thereon that may be placed in or upon any burial lot in City cemeteries, is determined by the Superintendent to be improper, and such decision is concurred in by the City Manager, the owner shall be notified by mail if possible, or by public notice that the offensive or improper object must be removed by the owner forthwith. If the owner fails to do so within the time limit specified in a written notice by the Superintendent, the City shall have the right to enter upon the premises and remove the offensive or improper object.

C. Monument and marker size, construction (design and material) and placement on a lot are subject to the approval of the Superintendent of Cemeteries. Permission must be secured before placement on a lot.

1) Basic size requirements are as follows;

(a) Single grave lot markers or monuments are not to exceed twenty-four (24) inches in length, fifteen (15) inches in width, and twenty-five (25) inches in height.

(b) Two and three grave lot monuments and markers are not to exceed forty-two (42) inches in length, fifteen (15) inches in width and thirty-two (32) inches in height.

(c) Four or more grave lot monuments or markers are not to exceed sixty (60) inches in length, fifteen (15) inches in width and sixty (60) inches in height.

2) All monuments or markers shall be constructed of a durable substance such as marble, granite or bronze. Exceptions must be approved by the Superintendent prior to placement upon a lot. (Ord. No. 85-7, 5-1-85; Ord. No. 86-4, 3-5-86)

Section 6-5. Removal of trees and shrubs as nuisances.

If any trees or shrubs in or upon any lot in any City cemetery which, in the judgment of the Superintendent, by means of their roots, branches or otherwise, become detrimental to the adjacent grounds or unsightly or inconvenient to the public, the city shall have the right to enter upon the premises and remove such trees or shrubs or any part thereof. (Ord. 8/15/49, 13)

Section 6-6. Conduct prohibited on cemetery grounds.

A. No person shall, in any City cemetery:

Carry any alcoholic liquor or narcotics (controlled substances) into such cemetery or consume or use any such liquor or narcotics therein.

Carry any firearms therein, except in connection with funerals or Memorial Day or similar exercises;

3. Explode any fireworks;
4. Trespass upon any cemetery lot;
5. Make use of any loud, threatening, abusive or indecent language;
6. Throw stones or other missiles therein;
7. Exhibit any show or play any game of chance therein;
8. Post any bill, notice or other device on any tree or structure; or
9. Do any obscene or indecent act whatever upon or within such cemetery.

B. All dogs within any cemetery shall at all times be controlled by the means of a leash. Any feces deposited by any dog in any City Cemetery shall be immediately removed by the owner and disposed of in a safe and healthful manner.

C. Any person violating any of the provisions of this Section for which a specific penalty is not otherwise provided by State Law, shall be guilty of a crime punishable by a fine not to exceed One Hundred Dollars (\$100.00) and/or imprisonment not to exceed Thirty (30) days. Fines are payable to the City of Bath.

D. For the purpose of this section the word "Cemetery" shall mean those areas as defined in Section 6-20 of this Chapter. (Ord. 8/15/49, 14 amended 10/13/76)

Section 6-7. Injuring monuments.

A. No person shall willfully destroy any tomb, grave stone, monument, or other object placed or designed as a memorial to the dead, or any fence, railing or other thing placed about or enclosing a burial place or willfully injure, remove or destroy any tree, shrub or plant within such enclosure.

B. Any person violating this Section shall be guilty of a crime, punishable by a fine not to exceed One Hundred Dollars (\$100.00) and/or imprisonment not to exceed thirty (30) days. Fines are payable to the City of Bath. (Ord. 8/15/49, 15 amended 10/13/76).

Section 6-8. Cemetery Hours.

City cemeteries shall be closed to the public between the hours of 9:00 p.m. to 5:00 a.m. each day and when posted closed during the winter season No person shall enter said cemeteries during closed hours except by permission of the Superintendent or the City Manager. (Ord. 8/15/49, 17 amended 2/2/55, 10/13/76)

Section 6-9. Bicycle, motorcycle, recreational vehicle and horseback riding prohibited.

No person shall ride a bicycle, motorcycle, recreational vehicle or ride horseback in any City cemetery, unless permission shall have been given by the Superintendent of Burials and Burial Grounds, the City Manager or the Council. (Ord. 8/15/49, 18.)

Section 6-10. Use of City funds for cemeteries restricted.

The Council shall not appropriate any funds for, nor shall any City funds be expended in any cemetery not owned by the City, except as required in 13 M.R.S.A. §1101, which imposes municipal responsibility for ancient or public veterans burying grounds. (Ord. 8/15/49, 20. - Ord. 3-7-90)

Section 6-11. Private cemeteries within the City.

Any person owning any cemetery within the City shall furnish to the superintendent of Burials and Burial Grounds a map showing the location and number of each lot therein and the name of every person buried therein so far as known to the owner. Such owner shall, in writing within Thirty (30) days, notify the Superintendent of any burials or other changes to said owned cemeteries so as to allow the Superintendent to keep his records current. (Ord. 8/15/49, 21.)

Section 6-12. Applicability to any cemeteries acquired by City.

The provisions of this Chapter shall also apply to any cemeteries, the ownership and control of which may be acquired by the City. (Ord. 8/15/49, 19.)

**ARTICLE 2. BURIALS**

Section 6-13. Burial Permits and Authorization.

A. No interment or disinterment of any dead human body shall be made without a permit from the City Clerk where such person died, or is buried.\* (Ord. 8/15/49, 24)

B. No person, except the Superintendent of Burials and Burial Grounds, or his assistant acting in his behalf, shall in City Cemeteries bury or cause to be buried, or moved, the body of any deceased person.

\*State law reference: As to obtaining a burial permit, see 22 M.R.S.A. §2843

#### Section 6-14. Records of Burials.

The Superintendent shall record and maintain a record of each interment made within the City limits, together with the name, age, sex, date and place of death, date and place of burial, and the number of the lot or tomb where buried. Such record shall be kept safely and with the utmost care in the office of the Superintendent. The Superintendent shall keep all records in a fireproof vault at all times when not in use. (Ord. 8/15/49, 26.)

#### Section 6-15. Utilization of burial record permits.

The Superintendent of Burials and Burial Grounds shall compare burial permit records with all cemetery maps in his office, keep such maps currently correct, and report any possible violations of law to the City Solicitor. (Ord. 8/15/49, 25.)

#### Section 6-16. Burial Hours.

A. Burial Hours will be from 8:00 a.m. to 3:00 p.m. (Ord. 6-22-94)

#### Section 6-17. Burial and monument foundation fees.

A. The expense for burial services is determined to be a fixed charge as follows:

1. Opening of grave, removal of excess material, refilling and sodding:

- (a) Grave openings for adults (not including outer-burial containers [vaults or liners]), authorized by the Superintendent after the cemeteries are closed to vehicular traffic in the winter months will be six hundred fifty-four dollars (\$654.00); Saturday, Sunday or legally authorized days of cemetery closure, will be eight hundred fifty dollars (\$850.00). (Res. 8/06/03)(Res. 9/3/03)(Res. 6/7/06)(Res. 8/6/08)(Res. 6/6/12)
- (b) Graves for cremation receptacles (not including outer-burial containers [vaults]) one-half the size of a single adult grave opening or less two hundred fifty dollars (\$250.00). Saturday, Sunday or legally authorized days of cemetery closure, shall be charged at the rate of three hundred twenty-five dollars (\$325). (Res. 4/04/01)(Res. 9/3/03)(Res. 6/6/12)
- (c) Graves for children, (not including outer burial containers (vaults or liners) one-half of the size of a single grave opening or less, two hundred dollars (\$200.00); Saturday, Sunday or legally authorized days of cemetery closure, burial of children shall be at the rate of three hundred fifty dollars (\$350.00). (Res. 4/04/01)(Res. 6/6/12)
- (d) In the case of adult graves for any person who, at the time of his or her death, was a bona-fide recipient of City general assistance, there shall be no charge. (Ord. 4/18/01)
- (e) Winter burials between November 1 and April 1, additional twenty-five dollars (\$25.00); Cremations additional twenty-five dollars (\$25.00). (This additional cost to be assessed if weather conditions require additional work, as determined by the Superintendent.) (Res. 4/04/01)(Res. 6/6/12)

- (f) An extra fee of one hundred dollars (\$100.00) will be charged for any labor required in completion of a burial beyond 3:30 p.m., regardless of time of commencement of burial. (Res. 4/04/01)(Res. 8/6/08)(Res. 6/6/12)
- (g) An entombment charge of one hundred dollars (\$100.00) will be charged for any entombment not buried in Bath. There will be no charge for entombments buried in Bath in a City facility. (Ord. 4-26-89) (Res. 4/04/01)(Res.8/6/08)(Res. 6/6/12)

Other charges: (Res. 8/6/08)(Res. 6/6/12)

Liner Boxes - three hundred sixty dollars \$360.00

Cremation O.B.C. – one hundred fifteen dollars \$115.00

Minimum Man-Hour Rate – seventeen dollars and fifty cents \$17.50

Minimum Charge for any Work Done – fifty dollars \$50.00

Truck Usage Charge (one hour minimum) – twenty-eight dollars \$28.00/hr.

Shrub Removal – 2 shrubs with roots reseed – two hundred twenty-five dollars \$225.00 (2):

Flush Cut – seventy-five dollars \$75.00

2. Foundation charges for monument stones; seventy-five cents (\$.75) per square surface inch for full foundations, which includes all materials and labor. Minimum charge of Seventy-Five Dollars (\$75.00) for any single foundation. Foundation removal thirty cents (\$.30) per square inch. Minimum charge of Sixty-Three Dollars (\$63.00) for any single foundation. Crushed stone foundation greater than 12”x24” charged at thirty cents (\$.30) per square inch. Setting of flat markers in crushed stone forty-two (\$42.00). The charge for foundation repairs such as caps; twenty-five cents (\$.25) per square inch with a minimum of Thirty-One Dollars (\$31.00). There will be no charge for setting markers provided by the U. S. Government. The method by which these markers are set will be at the Superintendent's discretion. (Ord. 4-26-89 & 1994) (Res. 4/04/01)(Res. 6/7/06)(Res. 8/6/08)(Res. 6/6/12)

A. Removals: Opening grave to permit removal, which does not include the cost of reburial, if desired, shall be charged at the rate of seven hundred seventy-five dollars (\$775.00); Saturday, Sunday or legally authorized days of cemetery closure shall be at the rate of eight hundred seventy-five dollars (\$875.00). (Res. 4/04/01)(Res.6/7/06)(Res.8/6/08)(Res.6/6/12)

B. Burial fees are payable by check to the City of Bath at the time of burial. A receipt shall be issued for any such payment.

C. Any of the fixed charges for burial services, or other charges delineated in this Section may, from time to time, be revised or adjusted and established by Resolution of the City Council of the City of Bath.

#### Section 6-18. Burial receptacles and cremains scattering.

A. All burials shall be made in outer burial containers (vaults or liners). These containers are subject to the approval of the Superintendent of Cemeteries and Parks.

1. Adult burials shall be made in outer burial containers (vault or liners) constructed of steel, concrete or stone.



2. Small children and baby burials shall be made in puncture proof rigid outer burial containers made of concrete, stone, steel or fiberglass that is designed to resist deterioration. The container shall be constructed so as to facilitate underground detection by probing (sounding).

3. Ground burials of cremains shall be in puncture proof rigid outer burial containers (cremation vaults) made of concrete, stone, steel, bronze or fiberglass that is designed to resist deterioration. The container shall be constructed with at least one flat surface so as to facilitate underground detection by probing (sounding). (Ord. 4-26-89)

B. The scattering of cremains over a cemetery lot is permitted, but is subject to the following procedures and restrictions:

1. A proper cremation certificate must be presented to the Superintendent.

2. Cremains must be scattered on a lot in the City cemeteries. The location of the lot must be approved by the Superintendent of Cemeteries and Parks.

3. The Superintendent of Cemeteries and Parks must be notified 3 days prior to scattering of cremains and must supervise the said scattering.

4. The scattering of cremains must be in accordance with State law.

5. Cremains must be pulverized.

6. Cremains must be released as close to the ground as possible to prevent drift.

7. Cremains will not be allowed to be scattered on lots which are 100 feet or closer to inhabited buildings.

Section 6-19. Burial of unembalmed remains.

For reasons of sanitation, all dead human remains interred in any cemetery owned by the City of Bath must be embalmed by a licensed embalmer unless cremated or buried in a water repellent, airtight outer burial container. Unembalmed remains may not be stored in the City receiving vault while awaiting burial.

### **ARTICLE 3. CEMETERY LOTS**

Section 6-20. Laying out of cemetery lots.\*

It shall be the duty of the Superintendent of Burials and Burial Grounds to lay out in Sections and/or ranges, divided into lots of suitable size, and with avenues of such width for the passage of vehicles, on land hereafter purchased or acquired by the City for use for the burial of the dead. (Ord. 8/15/49, 1 amended 10/13/76).

\*State law reference: As to power of City to purchase land for cemeteries, see 13 M.R.S.A. Chapter 83 (1964).

Section 6-21. Map of cemetery layout.

The Superintendent shall make or procure a map or plan of said new cemetery, with the streets, avenues, sections and/or ranges and lots properly designated and numbered, and place the map on file for the use of the City. The Superintendent shall keep this map currently correct. (Ord. 8/15/49, 2 amended 10/13/76)

Section 6-22- Supervision by Superintendent.

The Superintendent of Burials and Burial Grounds shall see that all burials in City cemeteries are made in proper conformity to the ranges and division of such cemeteries. It shall also be the duty of said Superintendent to have at all times a correct map of said cemeteries showing the location and number of each lot and the name and location of every person buried therein. (Ord. 8/15/49, 9 amended 10/13/76).

Section 6-23. Prices for burial rights.(Ord. 6/21/06)

A. When available in any City cemetery, burial rights in perpetuity shall be sold as lots at the following rates per grave space, payable in advance of a burial to the City of Bath. The Superintendent of Cemeteries and Parks shall issue appropriate documentation of the transfer of burial rights. (Ord. 6/21/06)

(1) Adult grave spaces shall be sold to residents of Bath, Maine, or individuals who upon determination by the Superintendent, have been deemed to have been a resident of Bath for a majority of their lives at a rate of seven hundred thirty-five dollars (\$735.00) of which five hundred eighty-eight dollars (\$588.00) is for perpetual care. (Res. 4/04/01)(Ord.4/18/01) (Res. 9/3/03)(Ord. 6/21/06)(Res. 6/6/12)

(2) Adult grave spaces shall be sold to non-residents of Bath, Maine at a rate of one thousand dollars (\$1,000.00) which includes eight hundred dollars (\$800.00) for perpetual care. (Res.4/04/01)(Res.9/3/03)(Ord. 6/21/06)(Res. 6/6/12)

(3) A child's grave space (3'X5') shall be sold to residents of Bath, Maine, or individuals who, upon determination by the Superintendent, have been deemed to have been a resident of Bath for a majority of their lives at a rate of one hundred forty dollars (\$140.00) per grave space which includes one hundred twelve dollars (\$112.00) for perpetual care. (Res. 4/04/01) (Ord. 04/18/01) (Ord. 6/21/06)(Res. 6/6/12)

(4) A child's grave space shall be sold to non-residents of Bath, Maine at a rate of two hundred ten dollars (\$210.00) per grave space (3' x 5') which includes one hundred sixty-eight dollars (\$168.00) for perpetual care. (Res. 4/04/01) (Ord. 6/21/06)(Res. 6/6/12)

(5) The standard cremation lot will be five (5) feet long and three (3) feet wide and will accommodate no more than four (4) burials. Cremation lots (3' x 5') shall be sold to residents of Bath, Maine, or individuals who, upon determination by the Superintendent, have been deemed to have been a resident of Bath for a majority of their lives at a rate of three hundred seventy dollars (\$370.00) which includes two hundred ninety-six dollars (\$296.00) for perpetual care.

(Res. 4/04/01) (Ord. 4/18/01)(Res.9/3/03) (Ord. 6/21/06)(Res. 6/6/12)

(6) Cremation lots shall be sold to non-residents of Bath, Maine at a rate of five hundred seventy-five dollars (\$575.00) which includes four hundred sixty dollars (\$460.00) for perpetual care. (Res. 4/04/01)(Res.9/3/03) (Ord. 6/21/06)(Res. 6/6/12)

(7) The following additional charge for burial rights will be billed for burials on grave space that are already occupied:

Regular full burials: one hundred sixty-five dollars (\$165.00)

Cremation burials: one hundred two dollars (\$102.00)

\* a lot is defined as one or multiple grave spaces

B. The proceeds of such sales of lots,\* half lots and single graves collected by the Superintendent of Burials and Burial Grounds, shall be turned over by him to the City Treasurer. Such proceeds shall be applied solely to the management, superintendence, improvement and maintenance of the cemeteries and the avenues, paths and structures situated therein, for the purchase of additional cemetery land and for the accumulation of a permanent care and improvement fund. (Ord. 8/15/49)

\*State law reference: As to the use of proceeds from sales of lots, see 13 M.R.S.A. 1305 (1964).

C. Resales or conveyances and purchase by the City will be in accordance with the following:

1. No person shall sell, transfer or convey any burial lot, half lot or single grave in a City cemetery except to the City. The City shall pay for the lot, half lot or single grave at a price not to exceed the then current price in effect for equivalent lot sizes.

2. The City, acting through the Superintendent of Burials and Burial Grounds, shall have the sole right to repurchase any burial lot, half lot or single grave, or any parts thereof or interest therein, from any person desiring to sell one. No sale, transfer or conveyance shall be effectual to confer any title or right of possession to any person other than the City.

3. Upon repurchase, the City will give no refund to the owners of existing lots who wish to resell them to the City for perpetual care already purchased by the sellers. (Ord. 2/16/77.)

D. Any of the prices for cemetery lots, or any other charges delineated in this section, may from time to time be revised or adjusted and established by Resolution of the City Council of the City of Bath.

Section 6-24. Deeds; Approval by City Solicitor; Restrictions.

All deeds to any City cemetery lot shall bear thereon, approval as to form and as to compliance with law, by the City Solicitor. Such deed shall provide for use of lots for burial of dead human bodies only, any use or attempted use otherwise to make the deed null and void. The deed is subject to and with full notice of all ordinances, rules and regulations of the City pertaining to cemeteries now in force or as may thereafter be adopted by the cemetery, or accepted by Grantee, recognized as covenants running with the land expressly made part of deed and binding upon Grantee, his heirs and assigns. (Ord. 8/15/49, 3; amended 10/13/76).

Section 6-25. Records of lot sales.

The Superintendent of Burials and Burial Grounds shall maintain a record of all lot sales, giving the number, section, name of purchaser, price and date of every lot sold, transferred or exchanged. He shall also keep a complete record of all such perpetual care and annual maintenance agreements. (Ord. 8/15/49, 6.)

Section 6-26. Perpetual Care and Trust Funds.

A. Perpetual care may be obtained on any lot or parcel within any cemetery under the jurisdiction of the City. Perpetual care trust funds can be established by tender to the City and acceptance by the City Treasurer on behalf of the City. These funds will be in the amount of eleven dollars and twenty-four cents (\$11.24) for each square foot of area purchased. Rates for perpetual care may from time to time be revised or adjusted and established by Resolution of the City Council of the City of Bath. (Ord. 4-26-89)(Res.9/3/03)

B. All lots, half lots or single graves sold in any new City cemeteries laid out in the future, in compliance with Section 6-20 and lots repurchased pursuant to Section 6-23D, when they are resold, shall be provided with "Perpetual Care" at the rate provided by this Section. To accommodate persons of limited income the Superintendent will have the option to waive Perpetual Care charges.

C. Any new area laid out and developed shall, for the purpose of this Section, be considered as a new part and/or section of the City cemeteries, whether on newly acquired land or land presently owned by the City of Bath, but not laid out as lots.

D. An agreement form prepared by the City Solicitor shall be executed and delivered as evidence of such arrangement and shall specifically provide for agreement to the provisions of this thereof and any rules thereunder. (Ord. 8/15/49, 4; amended 9/7/60; 10/13/76; 2/16/77).

E. Trust funds\* officially accepted by the Council prior to August 14, 1949, for the care of lots in cemeteries owned by the City, shall be retained by the City in perpetuity in accordance with the trust originally reposed in the City. Such funds shall be separately recorded, but may be invested jointly with other like funds. Interest thereunder shall be expended according to the terms thereof under the control of the City Manager by the Superintendent of Burials and Burial Grounds, the work to be performed by him or under his direction. Trust funds officially accepted by the City Council on or after August 15, 1949, for the care of lots and improvements thereon in cemeteries owned by the City shall be accepted on the following terms:

\*State law reference: As to the use of trust funds, see 13 M.R.S.A. 1261 et seq. (1964).

No such funds shall be less than five thousand dollars (\$5000.00).(Res. 6/6/12)

Such funds must be retained by the City in perpetuity.

Such funds shall be entered on the books of the City Treasurer and invested and held in accordance with the provisions of State Law. It shall not, however, be required that each fund be invested separately. Any fund may be merged with other similar funds for joint investment.

Unless otherwise specifically provided by the terms of the grant or bequest, the annual income (actually earned only shall be expended in performance of the requirements of the trust, and only such portion thereof as is necessary, in the opinion of the Superintendent, to do so. A reasonable portion of the annually earned income may be gradually reserved for extraordinary repairs.

All expenditures for cemetery lot care must be for work actually performed, under the control of the City Manager, but all under the direction of the superintendent.

Consent in writing shall be given to all applicable provisions of this Chapter, or any amendments thereof, and any rule adopted under authority thereof. (Ord. 8/15/49, 23).

F. The price for perpetual care may from time to time be revised or adjusted and established by Resolution of the City council of the City of Bath.

Section 6-27. Annual maintenance.

A. The City will maintain lots in City cemeteries which are not under perpetual care for the following rates, payable in advance: Fourteen cents (14¢) per square foot, per year, for lots, half lots and single graves.

The charges for maintenance of lots not under perpetual care may from time to time be revised or adjusted and established by Resolution of the City Council of the City of Bath.

B. A receipt form prepared by the City Solicitor shall be executed and delivered as evidence of such maintenance arrangement and shall specifically provide for agreement to the provisions of this Chapter, any amendments thereof and any rules thereunder. (Ord. 8/15/49, 5; amended 9/7/60; 10/13/76).

## ARTICLE 4. PARK AREAS PROHIBITIONS

### Section 6-28. Park Areas - Prohibited Activities.

The following shall be prohibited activities in all designated City park areas:

A. Destroying or Removal at Park Areas Property. No person shall willfully mark, deface, disfigure, injure, tamper with or displace or remove any structure, table, bench, paving or paving material, water lines, public utility or any part or appurtenance to a public utility, sign, notice or placard whether temporary or permanent, monuments, stakes, posts or other boundary markers, any equipment, park facility or other property or appurtenance whatsoever, whether said property is real or personal. No person shall dig or remove any sand or soil, whether submerged or not, or any rocks, stones, trees, shrubs or plants by any means or agency whatsoever.

B. Construction Prohibited. No person shall construct or erect any building or structure of whatever kind, whether permanent or temporary in character, or run or string any public service utility into, upon or across such land except upon written permission granted by order of the City Council. However, any construction or erection for a period of three (3) days or less may be approved by the Superintendent.

C. Injuring or Trees and Vegetation; Attachment to Trees. No person shall damage, cut, carve, transplant or remove any tree or plant or injure the bark or pick the flowers or seeds of any tree or plant or dig in or otherwise disturb grass areas or in any other way injure or impair the natural beauty, usefulness or utility of the area. No person shall attach any rope, wire or other contrivance to any tree, plant, structure, facility or equipment.

D. Depositing Trash - Use of Receptacles. No person shall bring in, dump, deposit, throw, discharge, leave or otherwise place any bottles, broken glass, ashes, paper, boxes, cans, dirt, rubbish, waste, garbage or refuse or any other trash upon any park area facility. No refuse or trash shall be placed in any waters or left anywhere on the grounds but shall be placed in proper receptacles where such receptacles are provided. Where receptacles are not so provided, all such rubbish or waste shall be carried away from the park facility by the person responsible for its presents, and properly disposed of elsewhere.

E. Camping Prohibited. No person shall set up any tent, shack or any other temporary shelter for the purpose of overnight camping, or leave in any park facility area any movable structure or special vehicle to be used or that could be used for such purpose, such as a house trailer, camp trailer, camp wagon or any other structure or vehicle of like nature.

F. Fires and Fireworks Prohibited. No person shall bring or have in his possession or set off or otherwise cause to explode, discharge or burn any firecrackers, torpedoes, rockets or other fireworks or explosives or inflammable material onto any park facility area nor shall any person discharge them or throw them into any such park area from land or highway adjacent thereto. This prohibition includes any substance, compound, mixture or article that in conjunction with any substance or compound would be dangerous from any of the foregoing standpoints. No person shall build or attempt to build a fire upon property designated as a park area.

G. Disorderly Conduct Prohibited. No person shall engage in loud, boisterous, threatening, abusive, insulting or indecent language, or engage in disorderly conduct or behavior tending to be a breach of the peace in any park area.

H. Illegal Drugs Prohibited. No person in a park area shall be in possession of or use any illicit, illegal or scheduled drugs, as defined under the Laws of the State of Maine or the Laws of the united States of America.

I. Closing Hours. The hours of operation of designated park areas shall be determined by the Superintendent of Cemeteries and Parks and/or City Council as applicable and posted as to give reasonable notice to the public as to the hours of operation and closing time of such facility. It shall be a violation of this Section for any person to be in or upon a park area beyond the posted closing time.

J. Alcoholic Beverages. Alcoholic beverages shall be prohibited from all park areas and it shall be a violation of this Section to carry onto such areas or consume on such areas any such alcoholic beverage. Scheduled events as may be permitted by the City at the Library Park and/or Waterfront Park may allow the sale and consumption of alcoholic beverages in connection with that event. Such sale and consumption shall be in accordance with applicable State Liquor Laws and Regulations. (Ord. 4/6/2016)

K. Firearms. No person shall carry a firearm onto a park area except for duly authorized law enforcement officials.

L. Dogs. Cross reference with Dog Ordinance (Chapter 4, Article I, Section 4.07 g & h)

M. Stones and Missiles. No person shall throw or cause to be thrown any stone or other missile while located upon a park area.

N. Bills and Notices Prohibited. No person shall post any bill, notice or any other devise on any tree or structure within a park area except for the kiosk at the waterfront park, subject to prior approval of the Harbormaster.

(Cross-reference - see Section 17-352 regarding the prohibition of motor bikes and all-terrain vehicles within park areas).

Section 6-29. Penalties.

Any person convicted of violating any of the prohibitions designated in Section 11.01 shall be subject to a fine not to exceed Two Hundred Dollars (\$200.00) for the first offense and not to exceed Five Hundred Dollars (\$500.00) on any second or subsequent offense, all fines being payable to the City of Bath. These penalties are in addition to any penalties, criminal or civil, which may be imposed for such behavior under applicable State Law.

## **ARTICLE 5. BATH COMMUNITY FORESTRY ORDINANCE (Ord. 6/24/09)**

### **Section 6-101 Purpose**

The purpose of this ordinance is to promote and protect the public health, safety and general welfare by providing for the regulation of the planting, protection, maintenance, and removal of trees, shrubs, and other plants on property of the City of Bath, including city-owned rights-of-way.

### **Section 6-102 Administration and Enforcement**

It shall be the duty of the Director of Cemeteries, Parks and Recreation and/or his designee to enforce and administer the provisions of this ordinance. Any person may appeal, in writing, any ruling or order issued by the Director of Cemeteries, Parks and Recreation and/or his designee by filing a notice of appeal with the City Manager within seven (7) days of date of the ruling or order.

### **Section 6-103 Bath Community Forestry Committee (1/3/2018\*)**

A. Establishment: There is hereby established a Bath Community Forestry Committee.

B. Duties: The Committee shall have the duty and responsibility to oversee the administration and implementation of this ordinance, the purposes and activities of the Bath Community Forestry Trust, the Bath Community Forestry Management Plan and such other activities as affect the Bath community forest.

\*C. Members: The Bath Community Forestry Committee shall consist of no fewer than five (5) members, and no more than eleven (11) members who shall serve three (3) year terms. One (1) of the members shall be a member of the Bath City Council and all members shall be appointed by the Bath City Council. The members shall also constitute the Board of Trustees of the Bath Community Forestry Trust. The terms of the Committee members shall coincide with the terms of the Trustees, and an appointment as a member of the Bath Community Forestry Committee shall constitute an appointment as a Trustee of the Bath Community Forestry Trust. Terms shall run through September 30<sup>th</sup>. The term of the City Council Representative shall be a one (1) year term and coincide with the Council year and with Council appointments made in January of each year. Reference shall be made to Section 1(a) of the Bath Community Forestry Trust.

D. Ex Officio Members: The Director of Cemeteries, Parks and Recreation and the City Arborist serve the Committee as non-voting ex officio members.

E. Compensation: All members of the Committee shall serve without compensation.

### **Section 6-104 Applicability**

The terms and provisions of this ordinance shall apply to all public trees and shrubs



located on public property, including city rights-of-way.

Section 6-105

Definitions

For purposes of this Article, the following terms shall have the meaning indicated. Terms not defined shall have their usual and customary meaning unless otherwise indicated by their use and context. Where the word "shall" is used, it is considered mandatory and not merely directory.

*Abutter*

is one whose property touches or adjoins along a border boundary or with a projecting part theof the property of another.

*Forestry Division*

is the designated agency of the municipality of Bath under whose jurisdiction the public trees fall. trees, shrubs and plants known as "public trees" fall. This is a Division of the Cemeteries, Parks and Recreation Department.

*Person*

is any individual, firm, partnership, association, corporation, company, organization, or legally organized entity of any kind.

*Property Owner*

shall mean the person owning such property as shown by the City of Bath tax assessor's records, or the most recent transferee(s) as reflected in the indices or records of the Sagadahoc Country Registry of Deeds., unless proof to the contrary is available.

*Public Hazard*

is a condition of any public tree or any other non-public tree, shrub or plant or any substantial portion of a public tree or any other non-public tree, shrub or other plant which constitutes a hazard to life natural persons or and property or harbors insects or disease which constitutes a potential threat to other public trees or any other non-public trees, shrubs, or plants within the City.

*Public Property*

shall include all property owned, leased, or occupied by the City of Bath.

*Public Tree*

shall include all trees, shrubs and other plants on public property, including City rights-of-way.

*Skeletal Soils* are defined as

a soil matrix mixture of gap-graded gravels composed of: crushed stone narrowly graded from ¾ - 1 ½", highly angular and with no fines; clay loam based on USDA soil classification system, with organic matter ranging between 2% and 5%; and a hydrogel added in a small amount to act as a tackifier, preventing the separation of the stone and soil during mixing and installation. The mixture ratio shall be 4:1.4 of stone:clay loam. The mixture shall be installed and compacted to achieve a compaction density to within 95% Proctor density.

*Street or Highway*

is the entire width of every public way or right-of-way when all or any part thereof is open to the use of the public, as a matter of right, for the purposes of vehicular or pedestrian traffic.

*Topping is*

the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

*Tree Sizes:*

*Large Trees*

are designated as those tree species that habitually attain a mature height of forty-five (45') feet (45') or more.

*Medium Trees*

are designated as those tree species that habitually attain a mature height of thirty (30') to forty-five (45') feet (45').

*Small Trees*

are designated as those tree species that habitually attain a mature height of thirty (30') feet (30') or less.

Section 6-106

Permits

A. 1. Permit Required: Any person engaged in the business or occupation of pruning, planting, transplanting, treating, or removing public trees shall be required to secure a permit in advance of any such activity, said permit to be issued by the Director of Cemeteries, Parks and Recreation and/or his designee.

B. 2. Permit Requirements:

o(1) Each applicant shall possess and show proof of a current Maine Arborist License, and be a Certified Nurseryman, or show evidence of proficiency in the care of trees. Tree Care Industry Association (TCIA) accredited, or International Society of Arboriculture (ISA) certified.

(2) Each applicant shall carry insurance furnishing benefits in accordance with the State of Maine General Laws or such other worker's compensation requirement as may pertain. The applicant shall also carry insurance coverage for employer's liability, general liability, including broad form coverage, and automobile liability, in an amount of not less than One Million Dollars (\$1,000,000.00), as well as insurance covering property damage in an amount not less than One Hundred Thousand Dollars (\$100,000.00) indemnifying the City or any person injured or damaged resulting from the pursuit of such endeavor as herein described.

(3) Any permit issued pursuant to this Section shall be revoked if the applicant's

licensure identified in Section 6-106(B)(1) above is suspended or otherwise terminated, or if the applicant's required insurance coverage identified in Section 6-106(B)(2) above expires or lapses.

3.(4) 3. Any permit issued shall run for a period of no longer than one (1) year from the date of issue, unless otherwise specified or terminated pursuant to Section 6-106(B)(3) above..

4.C. 4. Notice Requirement: Prior to initiating any activity, the permittee shall notify the [Superintendent of Cemeteries and Parks](#) or Director of Cemeteries, Parks and Recreation and/or his designee as to the location of work on any public tree no less than forty-eight (48) hours prior to of the commencement of the work.

5.D.5. Exception: Pruning, planting, removing or any other tree work done on public trees by volunteers or City employees under the supervision and operation of the [Superintendent of Cemeteries and Parks](#) or Director of Cemeteries, Parks and Recreation and/or his designee, shall not require a permit under this section. Work on public trees by an electric utility company shall not require a City permit.

#### Section 6-107 Contract Supervision and Inspection

It shall be the duty of the Director of Cemeteries, Parks and Recreation and/or his designee to supervise and enforce all provisions of any contracts executed by or on behalf of the City concerning work within the scope of this ordinance.

#### Section 6-108 Landscaping

Landscape plans and landscaping on Public Property and landscape plans and landscaping submitted for approval by the Bath Planning Board shall be reviewed by the Director of Cemeteries, Parks and Recreation and/or his designee with the assistance of the Bath Community Forestry Committee. Any landscaping plans submitted for approval by the Bath Planning Board shall include a Tree Preservation Plan reviewed and approved by the Director of Cemeteries, Parks and Recreation and/or his designee. with the assistance of the Bath Community Forestry Committee Tree Preservation Plans submitted shall follow the City's Tree Preservation Guidelines.

#### Section 6-109 Specifications and Standards

American National Standards Institute (ANSI) and [Maine Landscape & Nursery Association Landscape](#) (MeLNA) Contract Specifications or any amendments or substitutes therefore shall be followed and enforced as a minimum standard for planting. All pruning shall meet, as a minimum standard, the Pruning Standards for Shade Trees published by the National Arborist Association or similar national organization. The Forestry Division may establish policies, procedures, or regulations which shall also be followed. Copies of these materials will be available to the general public at the Office of the Director of Cemeteries, Parks and

Recreation.

Section 6-110

Tree Planting, Maintenance, and Removal

Authority to Plant or Remove Trees on Public Property

A.

Trees planted on public property by abutting property owners or other persons shall be selected and located in accordance with Tree Planting, Section 6-110(B-G)( of this ordinance and in accordance with Forestry Division policy. Notification shall be made to the Director of Cemeteries, Parks and Recreation and/or his designee and approval given, prior to any planting. In addition, Dig Safe, the Bath Public Works Department and the Bath Water District shall be consulted before any planting.

2.B. Tree Species To Be Planted On Public Property

The Recommended Tree Species List published by the Maine Urban & Community Forestry Council or its successor shall be used.. These resourcesThis list shall be made available to the general public at the Office of the Director of Cemeteries, Parks and Recreation, and theitsir use shall be encouraged for private planting. At the discretion of the Director of Cemeteries, Parks and Recreation and/or his designee resources identifying trees in similar hardiness zones may be relied upon by the City Arborist.

3.C. Spacing and Minimum Area/Volume For Planting On Public Property

(1) a. Except in special plantings designed or approved by the Director of Cemeteries, Parks and Recreation and/or his designee, the spacing of City-owned trees shall be in accordance with the species sizes listed under Definitions, Section 6-105, of this ordinance, and no trees may be planted closer together than the following:

Species Size	No less than: tree spacing:
Small Trees	20 ft.
Medium Trees	30 ft
Large Trees	40 ft.

b.(2) Except in special plantings designed or approved by the Director of Cemeteries, Parks and Recreation and/or his designee, any tree planted must have an area of unrestricted soil surface open to air and water as follows:

Species Size	No less than: area
Small Trees	36 sq. ft.
Medium Trees	48 sq. ft.
Large Trees	60 sq. ft.

c.(3) Except in special plantings designed or approved by the Director of Cemeteries, Parks and Recreation and/or his designee, any tree planted within a City right of way or adjacent to a sidewalk, shall have an adequate soil volume in relation to the tree’s mature size as follows:

Species Size	No less than: soil volume
Small Trees	36 cu. ft.
Medium Trees	48 cu. ft.
Large Trees	60 cu. ft.

These soil volumes can be achieved by using skeletal soils, as defined in 6-105, in the engineering of sidewalk design or renovation. The City Arborist shall approve all such designs. All such designs shall be submitted to the Director of Cemeteries, Parks and Recreation and/or his designee for approval prior to any plantings.

D. 4. Distance from Curb, Sidewalk, Street Corner, Driveway and Building on Public Property

The distance trees may be planted from curbs or curb-lines, sidewalks, street corners, driveways, buildings and sidewalks shall be in accordance with the species sizes listed in Definitions, Section 6-105, of this ordinance. No trees may be planted closer to any curb, sidewalk, driveway, building or street corner than the following:

Species Size	Distance to Curb or Sidewalk	Distance to Driveway or Building	Distance to Street Corner
Small Tree	2 ft.	10 ft.	15 20 ft.
Medium Tree	3 ft.	10 ft.	15 20 ft.
Large Tree	4 ft.	10 ft.	15 20 ft.

4.5. E. Utilities and Hydrants

No public tree shall be planted within ten feet (10') of any hydrant or any underground utilities. Only small trees may be planted under or within 10 feet (10') of any overhead utility wire.

6.

F. Public Tree Care

(1) b. The Forestry Division shall have the right to prune, spray, maintain, and remove public trees as may be necessary to ensure public safety or to preserve or enhance the beauty of public places. Spraying shall be undertaken in accordance with State laws. Notice of intent to remove, extensively prune or spray any public tree in a City-owned right-of-way shall be made in writing to abutters of that right-of-way. Any objecting person shall be allowed seven (7) days from the date of notice to request in writing a public hearing concerning the proposed work. Upon receipt of written request from any such abutter, the Director of Cemeteries, Parks and Recreation and/or his designee shall hold a public hearing concerning the proposed work within 14 days of the date of said request. Said work shall not occur until after said public hearing.

c.(2) c. The Forestry Division shall have the right to prune any public tree if, in the opinion of the Director of Cemeteries, Parks and Recreation and/or his designee, it interferes with visibility of any traffic control device or intersection, or interferes with pedestrian or

vehicular traffic. A clearance of fourteen feet (14') above street surface or eight feet (8') above the sidewalk surface shall be maintained. If such obstructing public tree is on private property, the Director of Cemeteries, Parks and Recreation and/or his designee shall notify the property owner of the intent to prune. The property owner shall have a right to object in writing in accordance with the requirements of Section 6-110(F)(1) above, and a public hearing shall be held in accordance with the terms thereof.

(3) d. The Forestry Division may remove any public tree or part thereof which by reason of its nature damages or otherwise impairs sewers, electric power lines, gas lines, water lines, or other services, or is affected by an injurious fungus, disease, insect, or other pest. In each case, the abutters will be notified within twenty-four (24) hours in advance. The abutters shall have a right to object in writing in accordance with the requirements of section 6-110(F)(1) above and a public hearing shall be held in accordance with the terms thereof.

e. (4) In case of an emergency as determined by the Director of Cemeteries, Parks and Recreation and/or his designee, work may be performed without written notification.

### 6.7. G. Tree Topping

It shall be unlawful for any person or the City to top any public tree. Trees severely damaged by storms or other causes may be exempted from this prohibition at the determination of the Director of Cemeteries, Parks and Recreation and/or his designee. In lieu of topping, public trees under utility wires or other obstructions where other pruning practices are impractical or not considered aboriculturally sound may be removed by the Director of Cemeteries, Parks and Recreation and/or his designee.

## Section 6-111 Protection of Trees on Public Property

### 1.A. During Excavation or Construction

All trees near any excavation or construction of any building, structure, or street work, shall be guarded with a substantial fence, frame, or box centered around the tree not less than four feet (4') high and enclosing an area of sixty-four square feet (64 sq. ft.), or at a distance in feet from the tree equal to the diameter of the trunk in diameter breast height (D.B.H.), whichever is greater, and all building material, dirt, or other debris shall be kept outside the barrier.

No person shall excavate any ditches, tunnels, trenches, or lay any drive within the radius of ten feet (10') from any city-owned tree without first obtaining a written permit from Director of Cemeteries, Parks and Recreation and/or his designee.

### 2.B. Placing Materials on Public Property

No person shall deposit, place, store, or maintain upon any public property anything which may impede the free passage of water, air or fertilizer to the roots of any tree growing

therein, except by written permit of the Director of Cemeteries, Parks and Recreation and/or his designee.

3.

#### 4. C. Abuse or Mutilation of Trees On Public Property

Under no circumstance shall any person

a. cut, carve, transplant, or remove any public tree;

b. attach any rope, wire, nails, advertising posters, or other contrivance to any public tree;

c. allow any gaseous, liquid or solid substance which is harmful to trees to come in contact with any public tree; or

d. set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any public tree.

#### 4.D. Destruction of Trees on Public Property

Any public tree deemed a public hazard or destroyed as a consequence of negligence, gross negligence, or intentional acts shall be valued by the Director of Cemeteries, Parks and Recreation and/or his designee as the sum of any removal and disposal costs, plus the replacements costs of a minimum two inch (2") caliper tree, its installation, care and maintenance, including watering, for the first three (3) years after planting. If the location of the destroyed tree does not meet the planting requirements of 6-110, the Director of Cemeteries, Parks and Recreation and/or his designee may replace the public tree at another location of his choosing.

### Section 6-112 Interference With Forestry Division Employees

It shall be unlawful for any person to prevent, delay, or interfere with any Forestry Division employee, volunteer, or contractor hired by the Forestry Division, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any public tree, as authorized in this ordinance Section 6-110.

### Section 6-113 Violations

Any failure to comply with the terms, conditions, provisions, or any notice issued pursuant to this ordinance, shall constitute a violation.

### Section 6-114 Penalties

Any person who violates any provision of this ordinance shall be subject to a fine payable to the City of Bath of up to \$100.00 each day of the violation. No penalty shall be assessed for failure to act during any notice period, unless remediation ordered by any notice is not accomplished within the designated timeframe.

In addition, if, as a result of the violation of any provision of this ordinance, the injury, mutilation, or death of a public tree occurs, the penalty shall include the replacement value of the

public tree as calculated in accordance with Section 6-111(D) hereof.

#### Section 6-115 Severability

Should any section, clause, or provision of this ordinance be declared by the Courts to be invalid, the same shall not affect the validity of the ordinance as a whole, or parts thereof, other than the part so declared to be invalid.

#### REFERENCES:

1. Buchanan, Tim, City Forester, City Forestry Standards and Specification. 1986. [Municipal Code Fort Collins, Colorado](#).
  2. 1919 Code of the [City of Bath, Maine](#) re: City Forester.
  3. Memo from Bath, Maine City Manager, Larry D. Cilley, to Therriault & Golin, City Solicitors, dated 5/9/78, re: Clarification of City Forester's Responsibilities and Authorities.
  4. Memo from City Manager, Duncan Ballantyne, to [Denis Hebert](#), dated 6/27/93, re: Transfer of Forestry Division to [Cemeteries and Parks Department, Bath, Maine](#).
  5. Municipal Tree Ordinance Manual. Revised Edition 1990. [International Society of Arboriculture](#) in cooperation with the Municipal Arborist and Forester Society, Savoy, IL.
  6. Sample Municipal Tree Ordinance designed for mid-western communities. (General)
  7. Sample Municipal Tree Ordinance for [Stevens Point, Wisconsin](#).
  8. [South Portland, Maine](#), Tree Ordinance. 1975.
  9. [Maine State Law](#) Title 30-A, Sections 3101, 3252-3264, 3282-3291; Title 12, Sections 8101-8305; Title 23, Sections 2702 and 2952.
  10. Tree City USA Bulletin, No. 9, How to Write a Municipal Tree Ordinance. 1993. The [National Arbor Day Foundation](#), Nebraska City, Nebraska.
  11. [Waterville, Maine](#), Tree Ordinance. 1990.
  12. [Westbrook, Maine](#), Tree Ordinance. 1972.
  13. Tree Preservation Guidelines, 2006, and any amendments thereto
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