

## DIVISION 3. TREE PRESERVATION

### **Sec. 21-80 Findings, intent, and purpose.**

The city council has determined that many trees are being lost due to demolition of existing buildings in order to construct new buildings and lot clearing in connection with the construction of new buildings on both developed and previously undeveloped land. The city council has further determined that trees have been lost, severely damaged or disfigured through excessive or improper pruning or other than natural causes. The result is a net loss of the tree population in the city. The city council recognizes that climate change has already brought about significant changes to Newton's weather patterns especially in the form of more extreme heat, more frequent drought, and more intense rain-storms leading to flooding, and these impacts will only grow. Mature trees mitigate these weather extremes by absorbing stormwater, cooling the air, and sequestering carbon dioxide. Additional benefits of mature trees include better air quality, habitat for wildlife, and improved physical and mental health for residents. The city council has further determined that the city has insufficient legal vehicles to adequately preserve, protect existing trees and provide for replacement of trees.

Preservation of private tree canopy and the planting of replacement trees is intended to enhance the quality of life and the environment of the city; to protect public health against climate change impacts such as heat, drought, and flooding; to preserve the character of wooded and natural areas; to reduce energy consumption; to protect air quality; to baffle noise; to preserve and enhance habitat for wildlife; to reduce topsoil erosion; to protect and increase property values; and to enhance the overall appearance of the city. (Ord. No. A-38, 05-05-14)

### **Sec. 21-81. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

*Building:* The term "building" shall be as defined in section 30-1.

*Certified arborist:* An arborist certified by the Massachusetts Arborists Association or International Society of Arboriculture, or any successor organization.

*Diameter breast height (DBH):* The diameter of the trunk of a tree 4½ feet above the existing grade at the base of the tree.

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

*Exterior work permit:* A permit or approval which is required in order to perform work on a vacant lot or to the exterior of a building on a lot, including, but not limited to the following: a building permit; a review of an alteration of contour of land if required pursuant to section 30-5(c)(1); curb cut and street opening permits; an order of conditions; certificates of appropriateness, nonapplicability, or hardship; a demolition permit pursuant to section 22-44; site plan approval pursuant to section 30-23; subdivision approval; a special permit pursuant to section 30-24; a comprehensive permit.

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\***Cross references** – Cultural affairs committee, Ch. 2, Art. VI, Div. 3

**State law reference**—Parks and playgrounds generally, G.L. c. 45

*Hedge:* A line of closely spaced trees, typically spaced less than 10 feet apart, planted to form a barrier or to mark the boundary of an area.

*Landmark Tree:* Any tree having a diameter larger than 40" DBH but not larger than 55" and which is located on land subject to the provisions of section 21-82.

*Legacy Tree:* Any tree having a diameter larger than 55" DBH and which is located on land subject to the provisions of section 21-82.

*Lot:* The real property contained within front, rear and side lot lines, as established by a plan filed in the registry of deeds, which divide the property from adjoining properties.

*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 service, permanent sanitary service, and permanent electrical service.

*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 Newton.

*Protected tree:* Any tree having a diameter of eight inches 6"DBH or larger and which is located on land subject to the provisions of section 21-82.

*Pruning standards:* Standards for pruning as defined in the most current American National Standard Institute (ANSI) A300 Pruning Standards and as defined by the Tree Warden.

*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.

*Risk Tree Evaluation:* The process by which a tree is evaluated to determine the level of risk it poses to the existing property and public at the time of inspection. All risk tree evaluations shall be conducted by a qualified Certified Arborist using a systematic process that identifies, analyzes, and evaluates risk. All tree risk evaluations are to follow the most current ANSI A300 Part 9 Tree Risk Assessment protocol. All tree risk assessments are to be done utilizing industry accepted protocols, forms, and other documentation required by the Tree Warden.

*Significant Tree:* Any tree having a diameter larger than 25" DBH but not larger than 40" DBH and which is located on land subject to the provisions of section 21-82. Or is a replacement tree as described in 21-85 (e).

*Tree Plan:* A plan showing (1) the location, type, and size of each tree 5" DBH and larger; (2) which tree(s) are to be removed; and (3) the location, type, and size of replacement trees. The tree plan should also show the location, estimated size, and tree type of any trees that were removed from the lot within the prior 24 months leading up to the application date.

*Tree Protection Plan:* A plan developed by a Certified Arborist, following the most current version of the ANSI A300 standards including Part 5, management standards for the site planning and development. This plan shall set out measures for protecting all trees on the lot during construction as well as trees adjacent to the lot that may be impacted by the construction activity on the applicant's lot.

*Tree Save Area:* Area within the dripline of a tree or the area within a radius around the tree trunk of 1.5 feet for every inch of DBH, whichever is greater.

*Tree Warden:* The commissioner of parks, recreation and culture or his designee. (Rev. Ord. 2007, § 20-31; Ord. No. A-38, 05-05-14; Ord. No. B-53, 03-02-20)

**Sec. 21-82. Applicability, permit or certificate of exemption required.**

(a) *Applicability:* The terms and provisions of this article shall apply to any protected tree located on land within the city not owned by the city, the commonwealth, or any independent authority of the commonwealth, or by the federal government Except on single or two family residential occupied lots where no exterior construction is presently underway or planned to take place during the 24 months following the removal of trees, the trees to be removed do not meet the Landmark tree designation, and the owner obtains an exemption permit from the tree warden.

(b) *Permit:* No person shall remove a protected tree on a lot located on land subject to the provisions of this article, or commence legally permitted exterior work on any lot without first obtaining a tree permit from the tree warden. Applications shall be made in writing on forms specified by the tree warden.

(c) In the case where tree(s) were removed from a single or two family residential occupied lot where no exterior construction was planned but construction did not take place within the 24 months following the removal of tree(s) the current property owner will be required to comply with the replacement requirements of sec. 21-85

**Sec. 21-83. Permit application.**

(a) *Contents:* An application for a tree permit shall be submitted to the tree warden. and shall include, but not be limited to, the following:

- (1) A plan showing the shape and dimensions of the parcel of real property to be developed, together with the existing and proposed locations of structures and improvements, if any, and showing the limit of work;
- (2) A tree plan showing the location, type and size of each tree 5" in DBH and larger indicating which tree(s) are to be removed, and the location, type and size of replacement trees. The tree plan should also show the location, estimated size, and tree type of any trees that were removed from the lot within the prior 24 months leading up to the application date;
- (3) Documentation from a Certified Arborist if any trees are dead, diseased, injured, in danger of falling, dangerously close to existing structures, disrupting public utility services, causing drainage or passage problems on rights-of-way, or posing a threat to public safety
- (4) The proposed relocation of any existing protected tree with a statement prepared by a certified arborist explaining how each such protected tree is to be relocated and maintained;
- (5) The location of existing and proposed underground or overhead utility services, existing and proposed roadways, bikeways, walkways and parking areas;
- (6) Any proposed grade changes which might adversely affect or endanger any Protected Tree or is within the Tree Save Area of any protected tree on the applicant's lot or any abutting lot requires a statement prepared by a Certified Arborist explaining how each such protected tree shall be protected and maintained;
- (7) The proposed method of protecting the remaining protected trees on the applicant's lot and any abutting lots during the course of the construction or tree removal shall be prepared by a Certified Arborist;

- (8) For any activity requiring Exterior Work Permit or involving tree removal, where Protected Trees are to remain on the lot or where the Tree Save Area of Protected Trees on adjacent lots come onto the applicant's lot, a Tree Protection Plan must be completed by a Certified Arborist (as specified in 21-81);
- (9) The Tree Warden may waive the above listed requirements when an applicant is seeking to remove a protected tree, but no exterior work is planned. The Tree Warden shall still require a tree permit application be filed and supporting documentation provided.

(b) *Fee:* The application for a tree permit shall be accompanied by a fee in the amount(s) listed below.

- (1) The fee for an exemption permit or tree permit for the removal of a dead or significantly compromised tree(s) that a certified arborist has attested to on forms required by the City shall be \$0.
- (2) The administrative fee for processing a tree permit for all tree removal work or Exterior work with the exception of (b)(1) shall be \$200.

(c) *Review of permit applications:* The tree warden shall review applications for tree permits in accordance with the provisions of this article. The tree warden shall date stamp or otherwise record the date of filing of each application for a tree permit. The tree 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 tree warden and shall report to the commissioner of inspectional services within ten (10) business days of a request with respect to any tree permit application submitted in connection with a building permit as to whether said tree permit has been granted or denied. If no such report is received by the commissioner within the above-stated time period, the commissioner shall accept an application for a building permit without receipt of such report.

The City shall use the online permitting system to automatically generate notifications of Tree Permit applications to abutters of the lot on which the Protected Tree is located.

(d) *Standards for grant or denial:* No tree permit shall be issued unless one of the following conditions exists:

- (1) The protected tree will be relocated or replaced on site per section 21-85, Tree Replacement.
- (2) The protected tree will be replaced by payment in lieu of planting replacement trees as outlined in section 21-86.
- (3) The protected tree is interfering with existing structures, utilities, streets, sidewalks or other existing improvements. Documentation of the interference and damage being currently caused shall be provided to the Tree Warden as part of the permit application, per section 21-83(a)(3).
- (4) The protected 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 rights-of-way, or poses a threat to pedestrian or vehicular safety. Documentation shall be provided by a Certified Arborist utilizing industry approved Risk Tree Evaluation method and any additional forms or documentation required by the Tree Warden.
- (5) 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.
- (6) No protected tree(s) are to be removed from the site and appropriate tree protection measures will be in place where necessary as determined by the tree warden.

(e) *Conditions:* Upon the issuance of a tree permit, the tree warden may prescribe in writing additional parameters and requirements related to the protection of trees to remain on the lot and trees within a reasonable distance from the lot.

No Exterior Work, site disturbance, or tree removal work shall take place on a lot until all tree protective measures are approved and in place. The Tree Permit holder must provide documentation from a Certified Arborist on the form(s) provided by the Tree Warden that all protective measures are in place, the Tree Warden will provide written documentation to the property owner that Exterior Work may commence.

A copy of the Tree Permit must be displayed on site such that it is visible from the adjacent roadways and must be in place no later than the day after issuance and remain in place for the duration of the permit-related activities.

(f) *Construction:* Except as provided in a tree permit, construction activities within the Tree Save Area of a protected tree, including those on adjoining lots, are prohibited. Activities include, but are not limited to, excavation, trenching or grading, storage of materials or equipment, passage of heavy equipment within the Tree Save Area and spillage of chemicals or other materials, which are damaging to trees. Tree Protection Plans provided by the Certified Arborist must also include protective measures for protected trees on adjoining lots.

(g) *Suspension or revocation:* A tree permit may be suspended or revoked at any time by the tree warden upon written notice to the permit holder that the permit holder has failed to comply with either this article or the conditions of the permit. The written notice shall be sent by certified or registered mail, return receipt requested, or by hand delivery and shall provide an opportunity for the permit holder to correct the noncompliance and apply for a renewal of the tree permit upon compliance, where practicable. The suspension or revocation of a tree permit in accordance with this subsection shall not affect the validity of a building permit issued in reliance upon the issuance (granting) of such tree permit and the Commissioner of Inspectional Services may review a suspension or revocation of a tree permit for consideration of issuing a stop-work order or to withhold the issuance of a certificate of occupancy.

(h) *Appeal:* Any person aggrieved by a decision of the tree warden may file an appeal with the mayor or his designee. Said appeal must be in writing and must be received by the mayor or their designee within five (5) business days of issuance of the tree warden's decision. Upon receipt of such appeal, the mayor or their designee shall provide a copy to the clerk of the city council and to each councilor for the ward in which the trees are located. The mayor shall seek input and consult with the councilors from the ward which the trees are located. The mayor or their designee shall make a final decision on the matter within thirty (30) days from the date of receipt of the appeal. The mayor or the mayor's designee shall include in the decision the rationale therefor. Upon issuance of the final decision, the mayor or the mayor's designee shall provide a copy to the clerk of the city council and to each abutter. There shall be no further appeal of the matter decided by the mayor or the mayor's designee. No protected trees shall be removed while an appeal is pending. (Ord. No. V-275, 12-6-99; Ord. No. X-202, 04-03-06; Rev. Ord. 2007, § 20-33; Ord. No. A-38, 05-05-14)

#### **Sec. 21-84. 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 and to prevent pruning that will be hazardous to the health and natural appearance of the tree, compliance with ANSI A300 pruning standards is required, and failure to meet these standards is a violation of this article.

(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 tree warden to remove such tree, utilizing such professional criteria and technical assistance as the tree warden deems necessary, and the protected

tree may be removed without obtaining a written permit as otherwise required by this article. The tree warden shall memorialize in writing each such oral authorization to remove a tree and keep a record of the same.

(c) *Waiver:* The requirements of this article may be waived by the tree warden during the period of an emergency such as a tornado, windstorm, flood or other act of God. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-34; Ord. No. A-38, 05-05-14)

### **Sec. 21-85. Tree replacement.**

(a) *Required:* A protected tree shall be replaced in the manner provided in subsection (b) hereof in each instance in which a protected tree was removed from land subject to the provisions of section 21-82 without a tree permit.

(b) *Standards:* A person who has removed a protected tree and is required to replace such tree pursuant to subsection (a) hereof or as a condition of granting a tree permit in accordance with section 21-83, shall replace such tree within eighteen (18) months, or prior to transfer of property ownership whichever comes first from the date the tree permit is issued and in accordance with the following standards:

- (1) A replacement tree shall be of the same or similar species or such other species as deemed advisable by the tree warden. Trees planted as hedges shall not count as replacement trees unless otherwise permitted by the Tree Warden.
- (2) 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 tree warden, the total DBH of the replacement trees shall, Conform to the following:
  - (a) For every protected tree removed, that does not qualify as a Significant, Landmark, or Legacy Tree, the total DBH of the replacement trees shall, when added together, equal the total DBH of the protected tree that has been removed.
  - (b) For every protected tree removed that also meets the Significant Tree definition, but is not a Landmark or Legacy Tree, the total DBH of the replacement trees shall, when added together equal 1.5 times the total DBH of the Significant Tree that has been removed.
  - (c) For every protected tree removed that also meets the Landmark Tree definition, but is not a Legacy Tree the total DBH of the replacement trees shall, when added together, equal 2 times the total DBH of the Landmark Tree that has been removed.
  - (d) For every protected tree removed that also meets the Legacy Tree definition, the total DBH of the replacement trees shall, when added together, equal 3 times the total DBH of the Legacy Tree that has been removed.
- (3) A replacement tree shall be considered a Significant Tree regardless of trunk diameter, health or condition, unless the replacement tree meets the definition of Landmark or Legacy Tree. The Tree Permit holder shall provide documentation as to the date of planting and file the same with the tree warden within fifteen (15) days of the planting of said replacement tree. Documentation shall be provided by a Certified Arborist on form(s) provided by the Tree Warden that the trees are in place.
- (4) No replacement tree shall be removed without a Tree Permit. The Tree Permit applicant will be required to meet the replacement requirements of a Significant Tree, Landmark Tree or Legacy Tree, as applicable, any time a replacement tree is to be removed.

(5) A replacement tree shall be planted on the same lot from which the tree was removed. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-35, Ord. No. A-38, 05-05-14)

(c) *Cemetery Exemption*: This Section 21-85 shall not apply to Protected Trees that are removed in a cemetery if the following criteria are met:

- (1) The cemetery is accredited as a Level II, Level III, or Level IV Arboretum by the Arbnet Arboretum Accreditation Program;
- (2) The cemetery submits a report annually that lists the current inventory of trees on the property; lists the number of species of removed and newly planted trees in that time period. The report shall describe means to maintain the newly planted trees;
- (3) The report is submitted to the Tree Warden for review; and
- (4) The cemetery employs a Certified Arborist on its staff.

If the Tree Warden determines that the cemetery is not in compliance with any of the above, they shall notify the cemetery to comply within twelve months. If the Cemetery fails to comply, to the satisfaction of the TreeWarden, the Tree Warden may impose remedies, including the requirement to comply with this Section 21-85.

#### **Sec. 21-86. Tree replacement fund.**

(a) *Established*: There is hereby established a tree replacement fund which shall be held in a separate identifiable account and administered in accordance with applicable provisions of the General Laws. Any payments into the tree replacement fund required by this article shall be deposited in the tree replacement fund and shall be used in accordance with subsection (c) hereof.

(b) *Payment in lieu of planting replacement tree(s)*: In lieu of planting a replacement tree as provided in section 21-85, a person who has been granted a tree permit may make a contribution to a tree replacement fund in an amount equal to the cost to replace the tree in accordance with the provisions of section 21-85, which cost shall be determined by the tree warden based on the City's current cost to purchase, install, maintain trees for the first five years, and includes the environmental impact of the removed trees. The Tree Warden will update and publish this cost annually.

(c) *Maintenance of tree replacement fund*: The tree replacement fund shall be maintained in a separate account in accordance with state law. All sums deposited into such fund shall be used solely for the purpose of buying, planting and maintaining trees in the city. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-36; Ord. No. A-38, 05-05-14)

#### **Sec. 21-87. Rule and regulations.**

The tree warden is authorized to promulgate reasonable rules and regulations to implement administration of sections 21-80 through 21-90. (Ord. No. A-38, 05-05-14)

#### **Sec. 21-88. Enforcement.**

(a) *Notice of violation*: Any person who violates any of the provisions of this article shall be notified by the tree warden 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 tree warden shall send notice of violation of section 21-86), which 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, as provided in section 21-89.

(b) *Stop work order:*

- (1) Upon notice from the tree warden that work on any protected tree, or lot, or abutting lot, on which a protected tree is located, is being performed contrary to the provisions of this article, such work shall be immediately stopped. The stop work order shall be in writing and shall be given 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 the agency which has granted an exterior work permit to order, to the extent permissible by law, that the owner cease any activity pursuant to the exterior work permit that might affect such protected tree while a stop work order is pending.
- (3) Any person who shall continue any work in or about the protected tree or lot on which a protected tree is located, or an abutting lot, 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 three hundred dollars (\$300.00) 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 article or any standards adopted pursuant to this article 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 article, 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 article. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-37; Ord. No. A-38, 05-05-14)

**Sec. 21-89. Penalties.**

(a) *Removal without a permit:* Each instance in which a protected tree is removed without a permit shall constitute a violation of this article which shall be subject to a fine in the amount of three hundred dollars (\$300.00).

(b) *Failure to replace trees or make payment:* Each failure to replace a tree or make a payment into the tree replacement fund shall constitute a separate violation of this article which shall be subject to a fine in the amount of three hundred dollars (\$300.00). Each day such violation continues shall constitute a separate offense.

(c) *Failure to comply with a condition contained in a tree permit or stop work order:* Each instance where there is a failure to comply with a condition contained in a tree permit or stop work order shall constitute a violation of this article which shall be subject to a fine in the amount of three hundred dollars (\$300.00). Each day such violation continues shall constitute a separate offense.



(d) *City trees*: Nothing herein shall be construed to require the city to make a payment into the tree replacement fund for any tree(s) which it removes. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-38; Ord. No. A-38, 05-05-14)

**Sec. 21-90. Severability, effect on other laws.**

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

(b) *Conflict of laws*: This article shall not apply to any public shade tree as that term is defined by the General Laws, Chapter 87 or any amendments thereto. Nothing herein is intended to conflict with the General Laws, Chapter 87 and to the extent that any provision hereof conflicts with said Chapter 87, such provision shall not be valid. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-39; Ord. No. A-38, 05-05-14)

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