



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Office of the Mayor

Telephone
(617) 796-1100
Fax
(617) 796-1113
TDD/TTY
(617) 796-1089
Email
rfuller@newtonma.gov

August 1, 2022

Honorable City Council
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Honorable City Councilors:

I am pleased to submit this docket item to this Honorable Council requesting updates to the City's Tree Preservation Ordinance. The updates are the result of careful work by City Forester Marc Welch over the past year with the Law Department, City Councilors and Tree Commission members. Marc Welch and I believe this proposal is the right mix and pace of changes that are needed to protect our City's tree canopy.

Enacted over twenty years ago with updates in 2014, the City of Newton's Tree Preservation Ordinance was one of the first such regulations in the Commonwealth. Our Ordinance continues to be one of the most comprehensive tree protection ordinances in Massachusetts, one that other municipalities emulate.

The majority of Newton's tree canopy is made up of private trees, and, when combined with the City's trees, our urban forest enhances the quality of life and the City's environment. The presence of trees on private property reduces energy needs, improves air quality, mitigates the effects of stormwater runoff, and enhances the overall sense of community residents and visitors to Newton experience. It is important that we protect this canopy and ensure responsible stewardship.

The Tree Preservation Ordinance was created to help mitigate the effects of the loss of trees from private property. Our Ordinance has resulted in the protection of many private trees, the planting of thousands of trees, and supported the City's urban forestry program.

The changes presented in this draft revised ordinance represent the next evolution of the Tree Preservation Ordinance. Building on the existing ordinance language, the key areas where improvements have been made are:

- Increases replacement requirements for larger trees to address their greater environmental importance
- Adds protections for smaller trees
- Limits significantly the removal of trees without replacement
- Adds effective language that enhances procedures for protecting trees
- Increases the payment required for trees cut without replacement
- Provides the Tree Warden with additional professional input on trees on private property
- Protects trees on lots adjacent to construction

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The City Forester will also be coming forward with a Street Tree Master Plan in the next few months to address how the City can further advance the management of our own trees.

Please see the attached memo from Mr. Welch, a one-page summary of proposed changes, and a red-line strike-out version of the ordinance with margin comments.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in blue ink that reads "Ruthanne Fuller". The signature is written in a cursive, flowing style.

Mayor Ruthanne Fuller

Newton Parks, Recreation & Culture Department
246 Dudley Road, Newton, MA 02459
Office: (617) 796-1500
parks@newtonma.gov
Nicole Banks, Commissioner



July 22, 2022

Honorable Mayor Ruthanne Fuller
Newton City Hall
1000 Commonwealth Ave
Newton, MA 02459-1449

Dear Honorable Mayor Fuller:

Attached please find for your consideration an update to the City's Tree Preservation Ordinance. Included is a summary review of the major and notable changes as well as the proposed ordinance language in red line format.

Enacted over twenty years ago with updates in 2014, the City of Newton's Tree Preservation Ordinance was one of the first such regulations in the Commonwealth. Our Ordinance continues to be one of the most comprehensive tree protection ordinances in Massachusetts, one that other municipalities emulate.

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- Provides the Tree Warden with additional professional input on trees on private property
- Protects trees on lots adjacent to construction

I have been working with the Law Department, City Councilors and members of the Tree Commission over the past year on this ordinance update. I have also been consulting with staff from other City departments such as Conservation. I believe this is the right mix and pace of changes that are needed at this time to protect our City's tree canopy. As you know, I will also be coming forward with a Street Tree Master Plan in the next few months to address how the City can further advance the management of our own trees.

Please reach out to me if you have questions and thank you for our consideration.

Respectfully,

A handwritten signature in blue ink that reads "Marc R. Welch".

Marc R. Welch
Deputy Commissioner
City Forester
Newton Parks, Recreation & Culture

Cc: Nicole Banks, PRC Commissioner

Major and Notable proposed changes to Tree Preservation Ordinance (7-22-2022)

Change	Sec.	Purpose of Change	Consequence of Change
Removed Exempt Lot and Occupied Lot	21-81	To better insure trees are protected regardless of who owns property and the intent of the property. It will trigger the need for anyone removing protected trees to seek a permit.	Will require all property owners in the City to file for a tree permit, including average residential properties that are having trees removed. Will dramatically increase the number of tree permits reviewed by the City.
Expanded protected tree classes. Added Significant, Landmark & Legacy Tree	21-81	Expanding the classifications of Protected Trees allows for increased value to be attributed to large trees. The replacement requirements of these larger trees is greater than before.	Will require applicants to plant larger number of trees or pay for larger number of replacement inches. This will increase the cost to applicants.
Reduced size of Protected Tree from 8" to 6"	21-81	Increase the number of trees protected by the Ordinance.	Increases the number of trees applicants will need to note on their plans and if removed will increase the number of replacement plantings.
Created Tree Save Area	21-81	Increases the area around a protected tree that construction can not take place in. This will allow trees to have a better chance at survival.	Applicants will need to take additional measures to insure trees are protected during construction. More scrutiny will be placed to protect trees along with added cost of protecting trees.
Allows some tree removal without replacement under limited specific circumstances	21-82, (a)	Reduce the number of trees removed and not replaced during construction by eliminating the current exemptions.	Trees on single family and two family lots can be removed without replacement, ONLY when there is no exterior construction planned for 24 months, the trees fall below the Legacy Tree designation, and a permit has been issued.
Add method for determining a tree's risk to the property	21-82, 21-83 (c)(4)	Insures industry standards are being used to determine if a tree is currently a high risk and would therefore determine if replacement is required. Allows uniformity when reviewing trees and removes subjectiveness.	Requires applicants to hire qualified individuals to review trees on the property. Some applicants don't presently do this and would increase their costs due to hiring a professional.
Strengthened Tree Protection language	21-83 (a)(6) (e)	Improved language more clearly defines the required steps to protect trees during construction on the lot AND trees adjacent to the lot where work is to take place. Adds layer of insurance that protective measures are in place.	Applicants will need to work with qualified people to insure tree protection is properly done. Many applicants do not currently do this. The addition of this step will likely increase costs for the applicant.
Updated appeal language	21-83 (g)	Language added that guides the Mayor to seek input from Ward Councilor during appeal.	Will add an extra step in the appeal process, however few appeals are received.
Increase and improved tree replacement requirements	21-85	Increase in replacement requirements. Protected Trees require inch for inch replacement as before. Significant Trees require a replacement rate of 1.5 times the inches removed, Landmark Trees require a replacement rate of 2 times the inches removed. Legacy Trees require a replacement Protections have been put in place to protect replacement trees after planting. Fees paid in lieu of planting will increase to more accurately reflect costs. Cost will include the first five years of maintenance. Cost will also be based on required replacement inches. (i.e. if a Significant Tree is removed payment is 1.5 times the per inch replacement cost, if a Landmark Tree is removed payment is 3 times the per inch replacement cost.	The increase in required replacement inches will encourage applicants to consider not removing existing trees. If they are removed the increase number of require plantings will better mitigate the environmental impacts. Where trees are not replaced an increase in replacement costs will require higher payments for individuals that choose to make a payment in lieu of planting.

DRAFT 7/22/2022

PROPOSED AMENDMENT TO NEWTON ORDINANCES — PARKS, RECREATION AND CULTURE, PUBLIC GROUNDS AND TREES Chapter 21, Article III, Division 3 Tree Preservation

DIVISION 3. TREE PRESERVATION

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

The city council has determined that many trees are being lost without replacement incident to demolition of existing buildings in order to construct new buildings and lot clearing in connection with the construction of new buildings on 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 has further determined that the city has insufficient legal vehicles to assure that such development adequately preserves, protects and provides for replacement of trees.

The preservation of the private tree canopy and the planting of replacement trees is intended to enhance the quality of life and the environment of the city; to preserve the character of the 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 and storm water runoff; 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.

~~*Exempt lot:* A lot which meets all of the following criteria:~~

- ~~(1) The lot is occupied and used primarily as a dwelling for up to four families at the time any protected tree(s) are removed.~~
- ~~(2) The lot owner at the time of protected tree removal has owned the lot continuously for a minimum of ninety (90) days prior to the removal of any protected tree(s).~~
- ~~(3) The existing structure on the lot remains occupied as a dwelling with a person or persons living in it for eighteen consecutive months from the date any protected tree(s) are removed.~~

Commented [MW1]: Removed Exempt Lots from Ordinance. Essentially requiring all tree removal (of trees 6" in trunk diameter and larger) work to be done after filing for a permit.

~~(4) The lot remains owned by the same person for eighteen consecutive months from the date any protected tree(s) are removed.~~

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.

~~Landmark Tree:~~ Any tree having a diameter of 40" DBH to 54" and which is located on land subject to the provisions of section 21-82.

Commented [MW2]: Added definitions for different size trees (Significant, Landmark, and Legacy). These definitions connect with replacement requirements cited elsewhere.

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

Commented [MW3]: Added definitions for different size trees (Significant, Landmark, and Legacy). These definitions connect with replacement requirements cited elsewhere.

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 8" DBH or larger or having an aggregate diameter of fifteen inches (15") 6" DBH or larger and which is located on land subject to the provisions of section 21-82.

Commented [MW4]: Reduce the size of trees covered by the ordinance to better capture the losses of established trees.

~~Pruning standards:~~ Standards for pruning as defined in the City of Newton Tree Management Manual, 1995 and any future amendments or revisions to the same. ~~most current American National Standard Institute (ANSI) A300 Pruning Standards and as defined by the Tree Warden.~~

Commented [MW5]: Replaced mention of Newton Tree Manual with language that references industry standards to more accurately reflect the most professional approach and current research

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.

~~*Tree Manual:* The City of Newton Tree Management Manual, 1995, and any future amendments and revisions to the same. (Ord. No. V-275, 12-6-99)~~

~~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.

Commented [MW6]: Added details on how the level of risk will be assessed in trees. By referencing industry standards better insures that all applicants are on the same page.

Significant Tree: Any tree having a diameter of 25" DBH to 39" 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).

Commented [MW7]: Added definitions for different size trees (Significant, Landmark, and Legacy). These definitions connect with replacement requirements cited elsewhere

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.

Commented [MW8]: Clearly defines the documentation expected from the applicant and helps insure uniformity from applicants

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 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.

Commented [MW9]: Defines what is expected from a tree protection plan and uses industry standards to insure uniformity for all applicants.

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.

Commented [MW10]: Enhanced language to create larger areas around a tree that is to remain that is to be protected.

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 protected tree(s) located on an exempt lot pursuant to paragraphs (c) and (d) below.~~ 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 Legacy tree designation, and the owner obtains an exemption permit from the tree warden.

Commented [MW11]: Removes discussion of blanket exemptions. Requires anyone wishing to remove a tree to file for a permit from the Tree Warden. Requires replacement plantings for all construction related work. Non construction related tree removals on single and two family lots may not require replacement trees provided they meet specific criteria.

(b) *Permit, ~~certificate of exemption~~*: No person shall remove a protected tree on a ~~non-exempt~~ 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 ~~or a certificate of exemption~~ from the tree warden. Applications shall be made in writing on forms specified by the tree warden.

~~(c) *Exempt lot, certificate of exemption*: The owner of an exempt lot shall not be required to apply for a tree permit, provided however, that an owner of an exempt lot who seeks an exterior work permit must certify to the tree warden on form(s) provided by the tree warden, that as of the date on the form(s) the lot qualifies as an exempt lot and will remain an exempt lot for eighteen months following tree removal. There shall be no fee for filing a certificate of exemption.~~

Commented [MW12]: Exempt Lot designation removed completely and associated language.

~~(1) The tree warden shall determine whether a property is an occupied lot for the purposes of establishing exempt lot status. The property owner shall, if requested by the tree warden provide proof of ownership as well as a written statement confirming ownership and that a person or persons are living in the property.~~

~~(2) If lot ownership changes during the eighteen consecutive months following the removal of any protected tree(s) on an exempt lot, the new owner must apply for a tree permit and shall be required to replace any protected tree(s) that were removed. If, however, a change of ownership occurs on a lot for which an extension of exempt lot status for non-occupancy during construction has been issued within the eighteen months prior to the change in ownership, the person issued such extension shall apply for a tree permit and shall be required to replace any protected tree(s) that were removed.~~

~~(d) Extension of exempted lot status: If at any point during the eighteen consecutive months following the removal of any protected tree(s) the property is no longer an occupied lot, the current owner of the lot must apply for a tree permit. If the non-occupancy is due to legally permitted construction, the tree warden may grant an extension of exempt lot status for the duration of the construction, provided:~~

- ~~(1) The owner intends to own the lot for eighteen consecutive months from the date a certificate of occupancy is issued for the construction for which the extension was issued; and~~
- ~~(2) The property remains an occupied lot for eighteen consecutive months from the date a certificate of occupancy is issued for the construction for which the extension was issued.~~
- ~~(3) Upon request of an applicant for exempt lot status extension, the tree warden may also waive the requirement that the lot be continuously owned by the same owner for ninety (90) days prior to protected tree removal provided the owner intends to own the lot for twenty-one months from the date a certificate of occupancy is issued for the construction for which the extension is granted.~~
- ~~(4) If at any time during the applicable eighteen or twenty-one month period the lot ownership changes or the lot is not occupied, the tree warden shall revoke the tree permit and exempt lot status extension. The person issued the extension shall file a new tree permit application and shall replace any protected trees that were removed.~~
- ~~(5) Any person issued an extension of exempt lot status must report to the tree warden any change of ownership and any change of occupancy status within fifteen (15) days of the change if that change takes place during the applicable eighteen (18) month or twenty-one (21) month period following the date the certificate of occupancy issued. (Ord. No. A-38, 05-05-14)~~

~~(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 take place within the 24 months following the removal of tree(s) the current property owner will be required to file for a tree permit and will be required to comply with the replacement requirements of sec. 21-85~~

Commented [MW13]: Requires that in the cases where tree removal is to take place not associated with construction, on one and two family lots, that a permit application be filed.

Sec. 21-83. Permit application.

~~(a) Contents-fee: An application for a tree permit shall be submitted to the tree warden. The application for a tree permit shall be accompanied by a fee in the amount of one hundred fifty dollars (\$150.00) 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 protected tree 5" in DBH and larger indicating which protected 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;~~

Commented [MW14]: Improved language regarding what is to be contained in application.

Commented [MW15]: Improved language regarding what is to be contained in application.

- (3) 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;
- (4) The location of existing and proposed underground or overhead utility services, existing and proposed roadways, bikeways, walkways and parking areas;
- (5) Any proposed grade changes which might adversely affect or endanger any protected tree ~~with or within~~ the Tree Save Area requires a statement prepared by a certified arborist explaining how each such protected tree shall be protected and maintained;
- (6) The proposed method of protecting the remaining protected trees during the course of the construction.

For any project where exterior work is to take place, and Protected Trees are to remain on the lot a Tree Protection Plan must be completed by a Certified Arborist following the most current version of the ANSI A300 standards including Part 5, management standards for 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. No Exterior work or tree removal work shall take place on a lot until all tree protective measures are approved and in place. Tree Permit holder must notify the Tree Warden once all protective measures are in place, at which time the Tree Warden will provide written documentation that Exterior Work may start. This written documentation may also include additional parameters and requirements related to the protection of trees to remain on the lot and trees within a reasonable distance from the lot.

Commented [MW16]: Enhanced language and requirements for tree protection plan. Language standardizes the materials provided by applicants and is based on industry standards. It will also require that tree protection be in place prior to any work commencing.

(7) 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.

Commented [MW17]: Provides some leeway for non construction

(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 if there is no pending or planned Exterior Work on the lot.
- (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.

Commented [MW18]: Fee structure for permits slightly revised. Made fee for the removal of a dead or dangerous tree, not associated with construction, \$0. Increased the other tree permit fee by \$50. Fee was last updated in 2014.

(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, he shall accept an application for a building permit without receipt of such report.

(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 at the request of the Tree Warden.

Commented [MW19]: Creates process for applicant to demonstrate if an existing tree is interfering with an already existing structure.

(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 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.

Commented [MW20]: Defines and standardizes the required documentation provided by the applicant if they feel an existing tree is a high risk.

(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 such protective measures for existing protected trees as he deems necessary. Before site disturbance may begin, the tree warden ~~may~~ shall make a determination that the prescribed protective measures have been adequately provided. Documentation shall be provided by a Certified Arborist on form(s) provided by the Tree Warden that the tree protective measures are in place. Once the tree warden has received confirmation that the tree protection measures are in place 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 be in place till the project is closed out.

Commented [MW21]: Requires that proof be provided that protective measures for trees is in place. Also requires tree permit be displayed to the public.

(f) *Construction:* Except as provided in a tree permit, construction activities ~~underwithin the drip-line~~ 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 ~~drip-line~~ 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.

Commented [MW22]: Further strengthen tree protection language and requires closer professional oversight.

(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 nor shall such suspension or revocation be cause for withholding 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~~ their designee. Said appeal must be in writing and must be received by the mayor or his designee within five (5) business days of issuance of the tree warden's decision. Upon receipt of such appeal, the mayor or ~~his~~ 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 or his~~ The mayor shall seek input and consult with the Ward councilor in which

Commented [MW23]: Adds language that the Mayor is to seek

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 his~~is~~their designee shall include in the decision the rationale therefor. Upon issuance of the final decision, the mayor or his~~is~~their designee shall provide a copy to the clerk of the city council and to each ward councilor for the ward in which the trees are located. There shall be no further appeal of the matter decided by the mayor or his 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 approved ANSI A300 pruning standards is required, and failure to meet these standards is a violation of this article. ~~The tree warden shall maintain on file at all times a copy of the current edition the Tree Manual and shall make copies of the Tree Manual available for the cost of reproduction upon request.~~

(a) *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 he 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

(b) *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:

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:

1) 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.

2) 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.

Commented [MW24]: Tree replacement section significantly updated to address changes in tree size categories
Section also protects replacement trees into the future to prevent their removal before they reach maturity.

3) 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.

4) 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. A replacement tree shall be of the same or similar species or such other species as deemed advisable by the tree warden in accordance with the Tree Manual and shall have the same or equivalent size as measured in DBH inches as that of the protected tree that has been removed.

(a)(c) Replacement tree(s) shall be of the same or similar species or such other species as deemed advisable by the tree warden. Trees planted as hedges, or bush/shrub forms shall not count as replacement trees unless otherwise permitted by the Tree Warden. 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, when added together, equal the total DBH of the protected tree that has been removed. The tree warden may specify that replacement trees be of a minimum caliper when consistent with current accepted practice as stated in the Tree Manual.

(d) A replacement tree shall be considered a Significant Trees regardless of trunk diameter, health or condition. Required to survive for a minimum of eighteen (18) months from the date it is planted. The person planting the tree 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.

(b)(e) No replacement tree shall be removed without a Tree Permit. Tree Permit applicant will be required to meet the replacement requirements of a Significant Tree any time a replacement tree is to be removed.

(f) 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)

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 and install trees, install, and maintain trees for the first five years. The Tree Warden will update this cost annually.

Commented [MW25]: To better address cost to City to establish newly planted trees the cost of establishing and maintaining the new trees for the first five years will be included into the per tree price.

(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, 0505-14)

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 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 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, 05-0514)

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. Nothing herein is intended to conflict with existing special permit procedures as provided in section 30-24 and to the extent that any provision hereof conflicts with said special permit procedures, 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)