

CITY OF NEWTON
IN BOARD OF ALDERMEN
FINANCE COMMITTEE AGENDA

MONDAY, DECEMBER 6, 2010

7 PM

Room 202 **Note Room Change**

ITEMS SCHEDULED FOR DISCUSSION:

- #320-10 HIS HONOR THE MAYOR requesting authorization to expend eight thousand five hundred eighty-eight dollars and ninety cents (\$8,588.90) from the Law Department's Judgments and Settlements account as full and final settlement of a civil claim filed against the City as a result of a collision between a City backhoe and a private vehicle. [11/08/10 @ 6:46 PM]
- #321-10 HIS HONOR THE MAYOR requesting authorization to expend the sum of forty thousand dollars (\$40,000) from the Workers' Compensation School Lump Sum Account for the purpose of settling a Workers' Compensation claim for an injury sustained by an employee of the Parks and Recreation Department on August 18, 2007. [11/08/10 @ 6:44 PM]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

- #322-10 HIS HONOR THE MAYOR requesting authorization to transfer the sum of forty thousand dollars (\$40,000) from the FY11 Budget Reserve Account to the Department of Veterans Services for the purpose of supplementing the FY11 budget for veterans' benefits. [11/08/10 @ 6:42 PM]
PROGRAMS AND SERVICES

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

- #125-09 THE POST AUDIT & OVERSIGHT COMMITTEE requesting creation of a public tree protection ordinance and amendment of the current tree ordinance as recommended in the Tree Preservation Ordinance Report. [04/17/09 @ 9:14 PM]
PROG & SERV APPROVED 7-0 (Merrill not voting) on 10/6 /10

ITEMS NOT SCHEDULED FOR DISCUSSION:

REFERRED TO PUBLIC FACILITIES, PROG&SERV AND FINANCE COMMITTEES

- #312-10 ALD. LENNON, LAPPIN, SCHNIPPER, SANGIOLO requesting a discussion with the School Committee on its plans to address space needs in the Newton public schools. [10-27-10 @ 11:07 AM]

The location of this meeting is handicap accessible, and reasonable accommodations will be provided to persons requiring assistance. If you have a special accommodation need, please contact the Newton ADA Coordinator Kathleen Cahill, 617-796-1125, via email at KCahill@newtonma.gov or via TDD/TTY at (617) 796-1089 at least two days in advance of the meeting date.

REFERRED TO PS&T, PUB. FACIL. AND FINANCE COMMITTEES

- #310-10 ALD. DANBERG, ALBRIGHT, BAKER, BLAZAR, CROSSLEY, FISCHMAN, FREEDMAN, HESS-MAHAN, JOHNSON, LINSKY, MERRILL, RICE AND SCHNIPPER requesting that §26-8 and §20-21 of the City of Newton Rev. Ords., 2007, be amended to establish criteria and provisions for requiring removal of snow in all districts by property owners, occupants, and property managers to sidewalks abutting their property and to review and amend enforcement provisions including structure of fines, for snow removal violations. [10/25/10 @ 4:39 PM]
PS&T
PUBLIC FACILITIES

REFERRED TO FINANCE AND APPROPRIATE COMMITTEES

- #311-10 HIS HONOR THE MAYOR submitting the FY'12-FY'16 Capital Improvement Program, totaling \$174,246,135 pursuant to section 5-3 of the Newton City Charter and the FY'11 Supplemental Capital budget which require Board of Aldermen approval to finance new capital projects over the next several years. [10/18/10 @5:24PM]

REFERRED TO PROGRAMS AND SERVICES AND FINANCE COMMITTEES

- #307-10 PROGRAMS AND SERVICES COMMITTEE proposing a RESOLUTION to the Interim Director of Health and Human Services to increase the tobacco seller's license fee. [10/25/210 @ 4:34pm]

REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES

- #264-10 ALD. CROSSLEY, SCHNIPPER & FULLER requesting a discussion of the status of new water meter installations, and to consider payment mechanisms to help customers if they receive an extraordinary, one-time, water bill from an accurate accounting of past usage over an extended period of time. [09/16/10 @11:59 am]
- #259-10 COMPTROLLER transmitting Annual Financial Report for the audit of fiscal year ending June 30, 2010 for Board of Aldermen review/acceptance. [09/13/10 @ 12:26 PM]
- #78-10 ALD. FULLER, GENTILE, FREEDMAN, JOHNSON, DANBERG AND BAKER requesting a review of the elements of the Financial Management Guidelines of January 2008, together with the Mayor's Office, to ensure they meet the current needs of the City. [03/09/10 @8:23 AM]

REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES

- #391-09(2) ALD. DANBERG, MANSFIELD, VANCE & HESS-MAHAN requesting the establishment of a municipal parking mitigation fund whose proceeds, derived from payments-in-lieu of providing off-street parking spaces associated with special permits, will be used solely for expenses related to adding to the supply of municipal parking spaces, improving existing municipal parking spaces, or reducing the demand for parking spaces.

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#363-09 ALD. SANGIOLO requesting a discussion to increase the tobacco seller license fee. [09/13/09 @ 1:07 PM]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#87-09 ALD. SANGIOLO, BRANDEL, FREEDMAN AND HESS-MAHAN requesting a Home Rule Petition to allow the City of Newton to require elected officials to contribute a higher percentage rate for health insurance benefits than is required for other employee groups. [03-10-09 @ 9:17 AM]

PROGRAM & SERVICES APPROVED 5-1-1 (Baker opposed; Merrill abstaining; Parker not voting) on 4/15/09

RECOMMITTED TO FINANCE ON 07/12/10

REFERRED TO COMM. PRES., PUB FAC & FINANCE COMMITTEES

#147-08 COMMUNITY PRESERVATION COMMITTEE recommending that the sum of \$359,400, including \$2,000 for legal costs, be appropriated from the FY'08 Community Preservation Fund's historic resources and general reserves, for a project to rehabilitate and expand storage space for the research library and archives at the Newton History Museum, to preserve the existing collections, and enhance public access to the collections. [04-01-08 @ 4:10 PM]

COMMUNITY PRESERVATION APPROVED 6-0 on 4-29-08

(A) DESIGN FUNDS ESTIMATE \$37,500.00 – BOA APPROVED ON 07/21/08

(B) BALANCE OF PROJECT ESTIMATE \$321,900.00 – HELD PUBLIC FACILITIES VOTED NO ACTION NECESSARY ON PART B 8-0 on 05/05/10

#207-07(4) ALD. COLETTI proposing that the city's Financial Management Guidelines adopted under board order #207-07 be amended to allow the adjustment of self-funded health insurance plan rates in the event that rates and any accumulated excess resources not meet actual resource requirements. [07-02-08 @ 12:12 PM]

#207-07(2) ALD. COLETTI proposing that the city's Financial Management Guidelines adopted under board order #207-07 be amended, effective FY10, as follows:
(A) total resources devoted to all forms of employee compensation shall not exceed the estimated growth in total general fund revenue for the following fiscal year;
(B) funds for salary and wage adjustments shall not exceed the difference between total estimated revenue growth and resources needed to fund growth in health/dental and life insurance benefits and growth in the actuarial required contribution for the city's retirement system for each fiscal year;
(C) if collective bargaining contracts are not resolved at the time of budget submission, funds budgeted for such contracts shall be held in "municipal and compensation" reserve. [07-02-08 @ 12:12 PM]

Respectfully submitted,

Leonard J. Gentile, Chairman



SETTI D. WARREN
MAYOR

City of Newton, Massachusetts
Office of the Mayor

#320-10

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October 20, 2010

Honorable Board of Aldermen
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to expend the amount of \$8,588.90 from Account #0110893-5725 Legal Settlements for the purpose of full and final settlement of Claim # 09-256 filed by Plymouth Rock Assurance Co. a/s/o/ Eleanora Ansty, Sarah Ansty and Leah Ansty v. City of Newton.

The attached letter from Donnalyn Kahn, City Solicitor, details the fact that on May 19, 2009, a backhoe owned by the City of Newton and operated by a City of Newton employee was involved in a collision at the intersection of Webster and Waltham Streets in West Newton. An investigation into the incident was conducted and it was determined that the City would likely be found liable for damages in a court of competent jurisdiction. As a result of successful negotiations, the requested amount satisfies all claims made by Plymouth Rock Assurance Co. against the City arising out of this accident.

Thank you for your consideration of this matter.

Very truly yours,

Setti D. Warren
Mayor

AUTHORIZATION TO SETTLE CLAIM
ONLY - NO SUPPLEMENTAL FUNDING.

30 NOV - 8 P 6:46
CITY CLERK
NEWTON, MA.

1000 Commonwealth Avenue Newton, Massachusetts 02459

www.newtonma.gov



DEDICATED TO COMMUNITY EXCELLENCE

LAW DEPARTMENT



CITY OF NEWTON, MASSACHUSETTS

CITY HALL

1000 COMMONWEALTH AVENUE

NEWTON CENTRE, MA 02459

TELEPHONE (617) 796-1240

FACSIMILE (617) 796-1254

CITY SOLICITOR
DONNALYN B. LYNCH KAHN

ASSOCIATE CITY SOLICITOR
QUIDA C.M. YOUNG

ASSISTANT CITY SOLICITORS

EILEEN M. MCGETTIGAN
MARIE M. LAWLOR
ANGELA BUCHANAN SMAGULA
ROBERT J. WADDICK
MAURA E. O'KEEFE
JEFFREY A. HONIG

October 26, 2010

Mayor Setti D. Warren and Board of Aldermen
City of Newton
1000 Commonwealth Avenue
Newton Centre, MA 02459

RE: *Plymouth Rock Assurance Co. a/s/o Eleanora Ansty, Sarah Ansty and Leah Ansty
v. City of Newton*
File No. 09-256

Dear Mayor Warren and Honorable Board of Aldermen:

On May 19, 2009, a backhoe owned by the City of Newton and operated by a City of Newton employee was involved in a collision at the intersection of Webster and Waltham Streets in West Newton. An investigation into the incident was conducted and it was determined that the City would likely be found liable for damages in a court of competent jurisdiction.

On that day, the City driver was traveling east along Webster Street, operating a backhoe. The City operator stopped the backhoe at the stop sign. At this location, Webster Street ends in a "T" shaped intersection with Waltham Street. The City operator looked both ways along Waltham Street, then proceeded into the intersection. At the same moment, a vehicle operated by Sarah Ansty was traveling south along Waltham Street. Ms. Ansty had the right of way at this intersection. The vehicles collided as the City backhoe made contact with the right side of Ms. Ansty's vehicle. The force of the collision pushed Ms. Ansty's vehicle across Waltham Street to the curbing on the opposite side of Waltham Street.

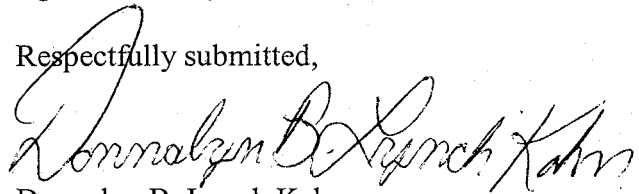
Ms. Ansty's vehicle, a 2004 Honda Accord, sustained substantial damage and was declared a total loss by the insurance adjuster for Plymouth Rock Assurance Co. Ms. Ansty, and her daughter, who was a passenger in the back seat of the vehicle at the time of the accident, both received medical treatment for minor injuries.

Mayor Setti D. Warren and Honorable Board of Aldermen
October 26, 2010
Page 2 of 2

Plymouth Rock Assurance Co., as subrogee of Eleanora Ansty, Sarah Ansty and Leah Ansty, made a timely and proper claim pursuant to M.G.L.c. 258 and filed suit in Suffolk Superior Court seeking \$11,451.86 for personal injury and property damages. The City entered into negotiations with the insurance company and offered \$8,588.90 in full and final settlement of the claim. This amount satisfies all claims made by Plymouth Rock Assurance Co. against the City arising out of this accident. This offer was accepted.

Therefore, I respectfully request that you docket this item seeking to appropriate \$8,588.90 from the Reserve Account and authorize the expenditure thereof as full and final settlement of Plymouth Rock Assurance Co.'s claim against the City of Newton.

Respectfully submitted,



Donnalyn B. Lynch Kahn
City Solicitor

cc: Robert R. Rooney, Chief Operating Officer
Maureen Lemieux, Chief Financial Officer



SETTI D. WARREN
MAYOR

City of Newton, Massachusetts
Office of the Mayor

#321-10

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swarren@newtonma.gov

November 8, 2010

Honorable Board of Aldermen
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to expend the amount of \$40,000 from the Workers' Compensation Trust Fund for the purpose of the settlement of a Workers' Compensation claim for a former employee of the Parks & Recreation Department.

Agreement was reached between the employee's attorney and the City of Newton for the amount of \$40,000. This settlement will close out all portions of the former employee's compensation claim, including the following sections of Mass General Law, Chapter 152, Sections 34, 35, 34A, and 36.

Thank you for your consideration of this matter.

Very truly yours,

Setti D. Warren
Mayor

AUTHORIZATION TO EXPEND
ONLY - NO APPROPRIATION

11/09/2010

10 NOV - 8 P 6:44
CITY CLERK
NEWTON, MA 02159

1000 Commonwealth Avenue Newton, Massachusetts 02459

www.newtonma.gov



DEDICATED TO COMMUNITY EXCELLENCE

City of Newton



Setti D. Warren
Mayor

DEPARTMENT OF HUMAN RESOURCES

1000 Commonwealth Avenue
Newton Centre, MA 02459-1449

Telephone (617) 796-1260

Fax (617) 796-1272

TTY (617) 796-1089

Dolores M. Hamilton, Director

October 25, 2010

Mayor Setti D. Warren and
Honorable Board of Aldermen
City of Newton
1000 Commonwealth Avenue
Newton Centre, MA 02459

RE: Josette Porcena
City of Newton/self-Insurer
Lump Sum Settlement/Sections 34, 35, 34A, 36, and Attorney's Fees
DOI: 8/18/07

Dear Mayor Warren and Honorable Board of Aldermen:

I respectfully recommend and request your approval to expend the amount of \$40,000.00 to be expended from the Worker's Compensation School Lump Sum Account Number 42A109B-5725 as a settlement of all of this employee's workers' compensation claims against the City of Newton relevant to her injury of 8/18/07.

I would appreciate your docketing this item on the agenda for the Board meeting scheduled for November 8, 2010.

Respectfully Submitted,

Dolores Hamilton,
Director of Human Resources
Workers' Compensation Agent

DH/lb



City of Newton, Massachusetts
Office of the Mayor

#322-10

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SETTI D. WARREN
MAYOR

November 8, 2010

Honorable Board of Aldermen
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to transfer the sum of \$40,000.00 from the FY11 Budget Reserve Account to the Department of Veterans Services for Veterans Benefits.

Benefits in the amount of \$25,687 have already been disbursed this fiscal year as compared to just under \$15,000 disbursed at this point last year. Per the attached memo, this account has been on an upward trend over the past few years, with more veterans needing assistance. Please note, 75% of the annual benefits' disbursement will be reimbursed to the City by the Commonwealth of Massachusetts in the form of FY2012 Cherry Sheet Aid.

Thank you for your consideration of this matter.

Very truly yours,

Setti D. Warren
Mayor

From: Budget Reserve		
0110498-5790	\$40,000	
To: Veteran Benefits		
0150301-5709	\$40,000	

AW
H/09/10

10 NOV -8 P 6:42
CITY CLERK
NEWTON, MA 02159

1000 Commonwealth Avenue Newton, Massachusetts 02459

www.newtonma.gov



DEDICATED TO COMMUNITY EXCELLENCE

October 28, 2010

To: Setti Warren
Mayor
From: John M. MacGillivray
Veterans Service Officer
Subj.: Explanation of Request for Supplemental Increase

The Department of Veterans Services needs a Supplemental Increase for Veterans Benefits which is line item 0150301-5709 for Fiscal Year 2011. This increase is necessary to allow us to continue to help veterans and their dependents through the remainder of the fiscal year. It appears that Fiscal Year 2011 is following the trend set in Fiscal Year 2009. The following depicts the previous 4 fiscal years and indicates a trend towards an increase in Veterans Benefits:

	<u>FY' 11</u>	<u>FY' 10</u>	<u>FY' 09</u>	<u>FY' 08</u>	<u>FY' 07</u>
Original	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000
Supplemental		\$30,000	\$16,000	0	\$30,000
Transfer			\$500	0	0
Expended		\$57,047	\$43,363	\$24,529	\$43,071

It is difficult to accurately predict the need for Veterans Benefits as you can see from the above. Veterans and their dependents who are on fixed incomes are frequently long term recipients of Veterans Benefits. The amount(s) that they receive are usually small in nature. Veterans who receive short term Veterans Benefits (for instance, someone who was injured or unemployed) usually receive a larger amount of assistance. Finally, we frequently assist in the burial of indigent veterans by contributing \$2000 to the cost of the funeral and burial. All of the above is unpredictable. However, one can see that the expenditure of Veterans Benefits is trending upwards. That is because in difficult economic times we will encounter more applicants for Veterans Benefits. Also, it is my opinion that given that the US population is aging that we will see an increase in the number of elderly veterans and their dependents who apply for veterans benefits. Therefore, we should anticipate continued increases in Veterans Benefits for the near future.

Please note that the budget that we use to determine eligibility for Veterans Benefits is set by the Department of Veterans Services for the Commonwealth and frequently increases. This means that even with no increase in our case load our expenditures for Veterans Benefits could increase. It should also be noted that the Commonwealth reimburses Newton 75% of these funds.

#125-09

DRAFT FOR DISCUSSION PURPOSES ONLY 12/2/2010

Chapter 20

Insert a new ARTICLE X REGULATION OF PUBLIC TREES

Sec. 20-72 Public Tree Regulation

(a) Purpose

The purpose of this ordinance is to promote a diverse, healthy and sustainable urban forest in order to provide for the general welfare of Newton's citizens. A healthy urban forest improves the quality of air and water, controls erosion, moderates air temperature, absorbs carbon, reduces noise, enhances appearance and increases property values. Public trees also define public spaces and create civic identity. This ordinance sets out measures to protect trees located on city property and on public rights of way from construction and other preventable damage; to establish conditions for long-term preservation and expansion of the urban forest; to extend the protections afforded by the Tree Preservation Ordinance to city-owned trees and supplement Chapter 87 of the Massachusetts General Laws.

(b) Definitions

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.

Caliper: The measure of a newly installed tree and is determined in the following manner - Caliper measurement of the trunk shall be taken six inches above the ground up to and including four-inch caliper size. If the caliper at six inches above the ground exceeds four inches, the caliper should be measured at twelve inches above the ground.

Certified arborist: An arborist certified by the Massachusetts Arborists Association, 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.

Person: Any person, firm, partnership, association, corporation, company or organization of any kind including, but not limited to, the person removing a Public Tree or public shade tree.

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.

Public tree: Any tree having a diameter of eight inches (8") DBH or larger or having an aggregate diameter of fifteen inches (15") DBH or larger and which is located on land owned by the City of Newton.

Public Shade Tree: Any tree within the City that fits the definition of Public Shade Tree under MGL Ch. 87

Remove (including removing and removal): The cutting down of any Public Tree or Public Shade 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 Public 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)

Tree warden: The commissioner of parks and recreation or his designee.

(c) *Applicability:* The terms and provisions of this article shall apply be administered by the tree warden and shall apply to any public shade tree as defined in G.L. c. 87 and to any public tree located on land owned and managed by the City of Newton, with the exception of the land under the auspices of the Conservation Commission.

(d) *Permit:* No person other than the tree warden shall remove, prune, or alter a public tree or public shade tree located on land subject to the provisions of this article without first obtaining a tree permit from the tree warden. Applications shall be made in writing on forms specified by the tree warden.

(e) *Activities requiring a Tree Permit:* A tree permit issued by the tree warden is required prior to any of the following activities:

1. Any exterior work that requires the removal of a public tree;
2. Any construction on City property within the dripline of a public tree;
3. Removal of a public shade tree. This requirement is in addition to the requirements of G.L. c. 87 pertaining to removal of a public shade tree;
4. Construction within that portion of the dripline of a public shade tree that is located over the public right of way.
5. Pruning or treatment for the benefit of the health, safety, or overall well being of a Public Shade Tree and/or Public Tree, as deemed appropriate by the tree warden, by anyone other than the tree warden or his designee as provided in G.L. Ch. 87;
6. Planting of a tree in the public right of way or on City property by anyone other than the tree warden or his designee as outlined under G.L. Ch. 87;
7. Pruning or altering of a public shade tree and/or public tree for the purposes of overhead utility line clearance;
8. Affixing or hanging anything from a public shade tree or public tree.

(f) *Permit application; fee:* An application for a tree permit shall be submitted to the tree warden. Such application shall be on a form prescribed by the tree warden and shall include any materials or information required by the tree warden based on the nature of the activity for which application is made. The application for a tree permit shall be accompanied by an administrative fee of \$150.00. Such fee shall be waived if the applicant is a city department, agency, commission or other public instrumentality of the city or if the tree warden determines in writing that the proposed activity will benefit the health of the tree or the wellbeing of the public.

(g) *Review of permit applications:* The tree warden shall review applications for tree permits in accordance with the provisions of this article and with any rules or regulations promulgated hereunder. 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 except in the case of a request to remove a public shade tree which shall be subject to the procedures set forth in G.L. c. 87.

(h) *Conditions:* The tree warden may condition issuance of a tree permit upon such measures as he deems necessary to protect existing public trees or public shade trees. Such conditions shall be in writing. The tree warden shall make a determination that the prescribed protected measures have been adequately provided before site disturbance related to the permitted activity may begin.

(i) *Construction:* Except as provided in a tree permit, construction activities on City owned property and public right of ways under the drip line of a public tree or public shade tree are prohibited. Prohibited construction activities include, but are not limited to, trenching or grading, storage of materials or equipment, passage of heavy equipment within the drip line and spillage of chemicals or other materials, which are damaging to trees.

(j) *Suspension or revocation:* The tree warden may suspend or revoke a tree permit at any time upon written notice to the permit holder that the permit holder has failed to comply with any provisions of this section, or with any rules or regulations promulgated hereunder, or with conditions of the permit. Written notice shall be sent by certified 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 of such tree permit nor shall such suspension or revocation be cause for withholding the issuance of a certificate of occupancy.

(k) *Public Tree Removal:* The tree warden shall notify the Urban Tree Commission upon receipt of an application to cut down or remove a public tree, and no public tree shall be removed pursuant to a permit until five (5) days after its issuance unless such removal of the tree(s) is necessary based on a determination by the Tree warden that at least one of the following conditions are met.

1. The public tree is interfering with existing structure, utilities, streets, sidewalks or proposed necessary improvements, and there is no alternative to removal;
2. The public 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.
3. The removal of the public 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.

(l) 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 his designee within five (5) business days of issuance of the tree warden's decision. Upon receipt of such appeal, the mayor or his designee shall provide a copy to the clerk of the board of aldermen and to each alderman for the ward in which the trees are located. The mayor or his designee shall make a final decision on the matter within thirty (30) days from the date of receipt of the appeal request. The mayor or his designee shall include in the decision the rationale there for. Upon issuance of the final decision, the mayor or his designee shall provide a copy to the clerk of the board of aldermen and to each ward alderman 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 public trees shall be removed while an appeal is pending.

(m) Permit length: Any permit issued by the tree warden shall be valid for sixty (60) days from issuance. Length may be extended by tree warden following written request by the applicant. The tree warden may grant the extension for any length of time as he deems necessary and appropriate.

(n) Emergencies: A public tree or public shade tree may be removed without first obtaining a written permit as otherwise required by this section only if the tree warden determines that the condition of the public tree or public shade tree is hazardous and immediately endangers the public health, safety or welfare or causes an immediate disruption of public services such that immediate removal is required. If such determination is made, the tree warden may remove the tree or provide oral authorization for its removal, utilizing such professional criteria and technical assistance as he deems necessary. The tree warden shall memorialize in writing each such oral authorization to remove a hazardous tree and keep a record of same.

(o) Waiver: The requirements of this section may be waived by the tree warden during the period of an emergency such as a tornado, windstorm, flood or other act of God.

(p) Tree replacement: The tree warden may require that replacement of a removed public tree or public shade tree in the manner required in section 20-35 of these ordinances and in any rule or regulation or the tree warden

(q) Payment in lieu of planting replacement tree(s): In lieu of planting a replacement tree as provided in section (p) above, a person who has been granted a tree permit may make a

contribution to the tree replacement fund as established in section 20-36 in an amount equal to the cost to replace the tree in accordance with the provisions of section 20-35, which cost shall be determined by the tree warden who shall maintain on file the City's current tree planting costs.

(r) *Rules and regulations:* The tree warden is authorized to promulgate reasonable rules and regulations to implement administration and enforcement of this section

(s) *Enforcement:* The commissioner of parks and recreation, in his capacity as tree warden, or such other municipal official as may hereafter be assigned the duties of tree warden, shall be authorized to enforce the provisions of this section. The tree warden shall provide written notice to the offender of the specific violation and provide a reasonable time for compliance. Such notice shall be sent by certified mail, return receipt requested, or by hand delivery. Thereafter, the tree warden may impose the fines described in (t) below.

(t) *Penalties:* Violations of any portion of this section, including violations of any regulation promulgated hereunder, or failure to comply with conditions of a permit, or failure to replace any removed tree as required by the tree warden, or failure to pay the required amount into the tree replacement fund shall be punishable by a fine of three hundred dollars (\$300.00) for each day during which the violation continues. Nothing herein shall be construed to require the city to make a payment for violation of this section; however the city agency that caused the violation shall be responsible for the costs of replacement or repair of the tree(s) which were damaged or removed.

(u) *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.

(v) *Conflict of laws:* 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. Nothing herein is intended to conflict with any state law regulating public utilities and to the extent that any provision hereof conflicts with state law, such provision shall not be valid.

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, MAY 20, 2009

Present: Ald. Johnson (Chairman), Baker, Brandel, Freedman, Hess-Mahan, Merrill, Parker and Sangiolo

Also present: Ald. Harney

Others Present: Dan Funk (City Solicitor), Karyn Dean (Committee Clerk)

#125-09 THE POST AUDIT & OVERSIGHT COMMITTEE requesting creation of a public tree protection ordinance and amendment of the current tree ordinance as recommended in the Tree Preservation Ordinance Report. [04-17-09 @ 9:14 PM]

ACTION: **HELD 7-0 (Merrill not voting)**

NOTE: Ald. Sangiolo explained that this item came out of a discussion in the Post Audit and Oversight Committee. The Committee wanted more information regarding the tree ordinance and how the tree funds were being spent. Marc Welch, Director of Urban Forestry, put together a very comprehensive report that made several recommendations. Post Audit then decided to docket an item to move forward with a public tree ordinance which was one of the recommendations. The Urban Tree Commission completed a draft of a public tree ordinance that was distributed to the committee at the meeting. Excerpts from the report were attached to the meeting's agenda and copies of the entire report were distributed at the meeting. Ald. Sangiolo said that the tree ordinance had not been officially put forward yet and the Law Department still had to review it. Marie Lawlor will be working on this.

Ald. Johnson said she would like the Committee to take the time to read the report and have Marie Lawlor come to the next discussion of this item to address this in more detail.

The Committee voted to hold this item.

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, SEPTEMBER 22, 2010

In Attendance: Ald. Sangiolo (Chairman), Baker, Fischman, Merrill, Linksy, Hess-Mahan, Blazar

Absent: Ald. John Rice

City Staff: Marc Welch (Director of Urban Forestry)

#125-09 THE POST AUDIT & OVERSIGHT COMMITTEE requesting creation of a public tree protection ordinance and amendment of the current tree ordinance as recommended in the Tree Preservation Ordinance Report. [04/17/09 @ 9:14 PM]

HELD 6-0 (Hess-Mahan not voting)

NOTE: Marc Welch, Director of Urban Forestry, joined the Committee to discuss the draft of the Public Tree Protection Ordinance. Mr. Welch began by addressing Ald. Baker's question about what this ordinance would provide that the state law does not. He explained that the state law, Chapter 87, outlines certain rules and regulations about what can and can't be done with a Public Shade Tree (also known as a Street Tree). Our ordinance, of course, could not alter or void anything outlined in the state law. The adoption of this ordinance would have three key additions to the state law. First, it would make the repercussions of damage to Public Shade Trees more significant by increasing the fines associated with that damage. Currently the fines are so insignificant that they don't provide a disincentive to damage. Second, it would provide the same protections to Public Trees that are applied to Public Shade Trees under state law.

Public Trees are trees located on any city-owned property (parks and schools for example). Third, it would solidify a permitting process for work on Public Trees and Public Shade Trees; this is especially important for avoiding excessive trimming by utility companies. Under this ordinance the utility companies would be required to obtain a permit for the area that they plan to work on should they believe that those trees need to be trimmed, removed, or altered.

Under the proposed ordinance, the Tree Warden has authority to determine whether there is a hazard on any city property and then waive the permit process in order to quickly address those hazards. Furthermore, the Tree Warden can establish the format of permits and have different permits for different purposes.

Ald. Baker questioned how this proposed ordinance would affect Golf Courses in the city. Mr. Welch explained that the Commonwealth Golf Course is city property and therefore subject to the permit requirements outlined in this proposal. All other golf courses are private property and are regulated by the existing Tree Preservation Ordinance. Ald. Blazar questioned the fine associated with failure to replace a tree. Mr. Welch explained to the Committee that the fine outlined in the proposed ordinance is fashioned after existing ordinances. This ordinance would require that if you remove a tree you must then plant a tree within 1 year from the date of removal. Should that not occur, the person would pay a penalty fee of \$300 per tree for each day that they have gone over the 1 year mark.

Mr. Welch closed the discussion by ensuring the Committee that in no way is the permit process intended to be burdensome. There are no hearings required and there is nothing to prohibit removal. A person must simply submit a permit application to Parks and Recreation for any alterations, removal, trimming or pruning of trees, and should a tree be removed, replace it in 1 year's time.

Actions to be taken:

1) Mr. Welch made it clear that the permit fee would not apply to the City or to citizens who are doing something good (pruning or planting a tree that the City would not otherwise prune or plant). He and Attorney Lawlor will discuss the possibility of including a waiver in this proposed ordinance.

2) Ald. Baker would like Mr. Welch to talk with the groundskeeper at the

Commonwealth Golf Course. He'd also like Mr. Welch to look into conservation restrictions.

3) Attorney Lawlor is looking into whether or not this item needs to be addressed in the Finance Committee as well.

The Committee voted to hold this item

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, OCTOBER 6, 2010

Present: Ald. Sangiolo(Chairman), Merrill, Linksy, Hess-Mahan, Rice, Blazar, Baker, Fischman
Also Present: Ald. Yates, Johnson, Albright, Danberg, Freedman, Fuller, Salvucci
City Staff: Marc Welch (Director of Urban Forestry), Bob DeRubeis(Commissioner of Parks and Recreation), Marie Lawlor (Assistant City Solicitor), David Olson (City Clerk), Rebecca Smith (Committee Clerk)

#125-09 THE POST AUDIT & OVERSIGHT COMMITTEE requesting creation of a public tree protection ordinance and amendment of the current tree ordinance as recommended in the Tree Preservation Ordinance Report. [04/17/09 @ 9:14 PM]

ACTION **APPROVED AS AMENDED 7-0 (Merrill not voting)**
REFERRED TO FINANCE COMMITTEE 7-0 (Merrill not voting)

NOTE: Marc Welch, Director of Urban Forestry, Marie Lawlor, Assistant City Solicitor, and Robert DeRubeis, Commissioner of Parks and Recreation joined the table to discuss the proposed tree ordinance which has been edited since the last Committee meeting. One significant change to the proposed ordinance is the addition of a “catch all” sentence to waive the permit fee for City departments and to allow the Tree Warden the authority to waive the fee for an activity that would “benefit the health of the tree or the wellbeing of the public”. Per Ald. Baker’s request, Ms. Lawlor will rework this sentence slightly to convey that the Tree Warden must document, in writing, his reasons for waiving the permit fee.

Ms. Lawlor shared that it is unclear how much we are able to regulate public utilities. Should it not be possible to charge a permit fee to the utility companies then the Tree Warden may use his authority to waive the fee by citing the “catch-all” sentence mentioned in the above paragraph. Ald. Hess-Mahan questioned the permit process, as it relates to utility companies, should there be an emergency. If there is an emergency then the permit process could be waived pursuant to section (n) *Emergencies* in the ordinance, but ideally Mr. Welch would like to issue 2 year-long permits to the utility companies: one permit for emergencies and routine maintenance, and one permit for line clearance.

At our previous meeting there was a question about enforcement. Enforcement would be the responsibility of the Tree Warden. Ms. Lawlor explained that the enforcement of this ordinance would follow the structure of other ordinances in this city, most of which revolve around the date of notice. Should someone violate the ordinance the Tree Warden would issue a written notice of violation with a specific time frame for compliance. Should that person not

comply within the time frame given, the \$300 per day and per tree fine would accrue from the date the original notice was issued.

The Committee voted 7-0 to approve this item as amended and refer the item to the Finance Committee. Ms. Lawlor will provide the final ordinance to the Committee, and to the Finance Committee, at her earliest convenience.

Private

Public

Purpose

	<p><u>The purpose of this ordinance is to promote a diverse, healthy and sustainable urban forest in order to provide for the general welfare of Newton's citizens. A healthy urban forest improves the quality of air and water, controls erosion, moderates air temperature, absorbs carbon, reduces noise, enhances appearance and increases property values. Public trees also define public spaces and create civic identity. This ordinance sets out measures to protect trees located on city property and on public rights of way from construction and other preventable damage; to establish conditions for long-term preservation and expansion of the urban forest; to extend the protections afforded by the Tree Preservation Ordinance to city-owned trees and supplement Chapter 87 of the Massachusetts General Laws.</u></p>
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Definitions

<p><i>Aggregate diameter</i> : The combined diameter of a multiple trunk tree measured at breast height.</p>	<p><i>Aggregate diameter</i> : The combined diameter of a multiple trunk tree measured at breast height.</p>
<p><i>Building</i> : The term "building" shall be as defined in section 30-1.</p>	<p><i>Building</i> : The term "building" shall be as defined in section 30-1.</p>
	<p><u>Caliper: Is the measure of a newly installed tree and is determined in the following manner - Caliper measurement of the trunk shall be taken six inches above the ground up to and including four-inch caliper size. If the caliper at six inches above the ground exceeds four inches, the caliper should be measured at twelve inches above the ground.</u></p>
<p><i>Certified arborist</i> : An arborist certified by the Massachusetts Arborists Association, or any successor organization.</p>	<p><i>Certified arborist</i> : An arborist certified by the Massachusetts Arborists Association, or any successor organization.</p>
<p><i>Diameter breast height (DBH)</i> : The diameter of the trunk of a tree 4½ feet above the existing grade at the base of the tree.</p>	<p><i>Diameter breast height (DBH)</i> : The diameter of the trunk of a tree 4½ feet above the existing grade at the base of the tree.</p>
<p><i>Drip line</i> : A vertical line running through the outermost portion of the crown of a tree and extending to the ground.</p>	<p><i>Drip line</i> : A vertical line running through the outermost portion of the crown of a tree and extending to the ground.</p>
<p><i>Exempt lot</i> : A lot which meets either of the following criteria at the time that the tree removal permit application is filed or an exterior work permit is sought or at the time that trees are being removed: (a) the lot is occupied and used primarily as a dwelling for up to four (4) families; or (b) the lot is vacant and is adjacent to a lot used solely as an owner occupied dwelling for up to four (4) families and owned by the same person and the owner of such vacant lot wishes to remove trees from such vacant lot in order to construct a dwelling for up to four (4) families which said owner will occupy.</p>	

Private

Public

<p><i>Exterior work permit</i> : 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 special permit for grade change of more than three (3) feet pursuant to section 30-5(b)(4); 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.</p>	
<p><i>Person</i> : 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.</p>	<p><i>Person</i> : Any person, firm, partnership, association, corporation, company or organization of any kind including, but not limited to, the person removing a Public Tree as well as the owner of the real property from which the tree is removed.</p>
<p><i>Protected tree</i> : Any tree having a diameter of eight inches (8") DBH or larger or having an aggregate diameter of fifteen inches (15") DBH or larger and which is located on land subject to the provisions of section 20-32.</p>	
<p><i>Pruning standards</i> : Standards for pruning as defined in the City of Newton Tree Management Manual, 1995 and any future amendments or revisions to the same.</p>	<p><i>Pruning standards</i> : Standards for pruning as defined in the City of Newton Tree Management Manual, 1995 and any future amendments or revisions to the same.</p>
	<p><u>Public tree: Any tree having a diameter of eight inches (8") DBH or larger or having an aggregate diameter of fifteen inches (15") DBH or larger and which is located on land owned by the City of Newton.</u></p>
	<p><u>Public Shade Tree: Any tree within the City that fits the definition of Public Shade Tree under MGL Ch. 87</u></p>
<p><i>Remove (including removing and removal)</i> : 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.</p>	<p><i>Remove (including removing and removal)</i>: The cutting down of any protected Public Tree or Public Shade 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 Public Tree, including, but not limited to, excessive or improper pruning.</p>
<p><i>Tree Manual</i> : The City of Newton Tree Management Manual, 1995, and any future amendments and revisions to the same.</p>	<p><i>Tree Manual</i> : The City of Newton Tree Management Manual, 1995, and any future amendments and revisions to the same.</p>
<p><i>Tree Warden</i> : The commissioner of parks and recreation or his designee.</p>	<p><i>Tree Warden</i> : The commissioner of parks and recreation or his designee.</p>
<p><i>Applicability</i> : 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.</p>	<p><i>Applicability</i>: The terms and provisions of this article shall <u>apply be administered by the Tree Warden and shall apply to any Public Shade Tree as defined in G.L. c. 87 and to any Public Tree located on land owned and managed by the City of Newton, with the exception of the land under the auspices of the Conservation Commission.</u></p>
<p><i>Permit, certificate of exemption</i> : No person shall remove a protected tree located on land subject to the provisions of this article without first obtaining a tree removal permit or a certificate of exemption from the tree warden. Applications shall be made in writing on forms specified by the tree warden. An owner of an exempt lot shall not be required to apply for a tree removal permit, provided, however, that an owner of an exempt lot who seeks an exterior work permit must certify to the tree warden on forms provided by the tree warden that the owner intends to own such exempt lot for at least twelve</p>	<p><u>Permit: No person shall remove, prune or alter a Public Tree or Public Shade Tree located on land subject to the provisions of this article without first obtaining a tree permit from the tree warden. Applications shall be made in writing on forms specified by the tree warden.</u></p>

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<u>Permit Application</u>	
	<u>(d) Permit: No person shall remove, prune or alter a Public Tree or Public Shade Tree located on land subject to the provisions of this article without first obtaining a tree permit from the tree warden. Applications shall be made in writing on forms specified by the tree warden.</u>
	<u>(e) Activities requiring a Tree Permit: A Tree Permit issued by the tree warden is required prior to any of the following activities:</u>
	<u>1. Any exterior work that requires the removal of a Public Tree;</u>
	<u>2. Any construction on City property within the dripline of a Public Tree;</u>
	<u>3. Removal of a Public Shade Tree. This requirement is in addition to the requirements of G.L. c. 87 pertaining to removal of a Public Shade Tree;</u>
	<u>4. Construction within that portion of the dripline of a Public Shade Tree that is located over the public right of way.</u>
	<u>5. Pruning or treatment for the benefit of the health, safety, or overall well being of a Public Shade Tree and/or Public Tree, as deemed appropriate by the tree warden, by anyone other than the tree warden or his designee as provided in G.L. Ch. 87;</u>
	<u>6. Planting of a tree in the public right of way or on City property by anyone other than the tree warden or his designee as outlined under G.L. Ch. 87;</u>
	<u>7. Pruning or altering of a Public Shade Tree and/or Public Tree for the purposes of overhead utility line clearance;</u>
	<u>8. Affixing or hanging anything from a Public Shade Tree or Public Tree.</u>
<u>(a) Contents, fee :</u> An application for a tree removal permit shall be submitted to the tree warden. The application for a tree removal permit shall be accompanied by a fee in the amount of fifty dollars (\$50.00) and shall include, but not be limited to, the following:	<u>(f) Permit application; fee: An application for a Tree Permit shall be submitted to the tree warden. Such application shall be on a form prescribed by the tree warden and shall include any materials or information required by the tree warden based on the nature of the activity for which application is made. The application for a Tree Permit shall be accompanied by a fee of \$150.00. Such fee shall be waived if the applicant is a city department, agency, commission or other public instrumentality of the city.</u>
(1) 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;	
(2) A tree plan showing the location, type and size of each protected tree indicating which protected tree(s) are to be removed, and the location, type and size of replacement trees;	
(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;	

Private

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<p>(4) The location of existing and proposed underground or overhead utility services, existing and proposed roadways, bikeways, walkways and parking areas;</p>	
<p>(5) Any proposed grade changes which might adversely affect or endanger any protected tree with a statement prepared by a certified arborist explaining how each such protected tree shall be protected and maintained;</p>	
<p>(6) The proposed method of protecting the remaining protected trees during the course of the construction in accordance with section 20-34, subsection (a).</p>	
<p>(b) Review of permit applications: The tree warden shall review applications for tree removal 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 removal permit. The tree warden shall complete the review of each tree removal 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 removal permit application submitted in connection with a building permit as to whether said tree removal 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.</p>	<p>(g) Review of permit applications: The tree warden shall review applications for <u>Tree Permits</u> in accordance with the provisions of this article <u>and with any rules or regulations promulgated hereunder</u>. The tree warden shall date stamp or otherwise record the date of filing of each application for a <u>Tree Permit</u>. The tree warden shall complete the review of each <u>Tree Permit</u> application no later than ten (10) business days after the submission of a completed application to the tree warden <u>except in the case of a request to remove a Public Shade Tree which shall be subject to the procedures set forth in G.L. c. 87.</u></p>
<p>(c) Standards for grant or denial: No tree removal permit shall be issued unless one of the following conditions exists:</p>	
<p>(1) The protected tree will be relocated or replaced on site.</p>	
<p>(2) The protected tree will be replaced by the off-site planting of tree(s) of the same or equivalent size as measured in DBH inches. 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. Off-site plantings shall be made in accordance with written priorities established by the tree warden as stated in the Tree Manual. 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.</p>	

Private

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<p>(3) The protected tree is interfering with existing structures, utilities, streets, sidewalks or other existing improvements and the relocation of the protected tree is not feasible as certified to the tree warden by a certified arborist.</p>	
<p>(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.</p>	
<p>(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.</p>	
<p>(d) Conditions: Upon the issuance of a tree removal 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 make a determination that the prescribed protective measures have been adequately provided.</p>	<p><u>(h) Conditions: The tree warden may condition issuance of a Tree Permit upon such measures as he deems necessary to protect existing Public Trees or Public Shade Trees. Such conditions shall be in writing. The tree warden shall make a determination that the prescribed protected measures have been adequately provided before site disturbance related to the permitted activity may begin.</u></p>
<p>(e) <i>Construction</i>: Except as provided in a tree removal permit, construction activities under the drip line of a protected tree are prohibited. Activities include, but are not limited to, trenching or grading, storage of materials or equipment, passage of heavy equipment within the drip line and spillage of chemicals or other materials, which are damaging to trees.</p>	<p><u>(i) Construction</u> : Except as provided in a <u>Tree Permit</u>, construction activities on <u>City owned property and public right of ways</u> under the drip line of a <u>Public Tree or Public Shade Tree</u> are prohibited. Prohibited construction activities include, but are not limited to, trenching or grading, storage of materials or equipment, passage of heavy equipment within the drip line and spillage of chemicals or other materials, which are damaging to trees.</p>

Private

Public

<p>(f) <i>Suspension or revocation</i> : A tree removal 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 removal permit upon compliance, where practicable. The suspension or revocation of a tree removal 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 removal permit nor shall such suspension or revocation be cause for withholding the issuance of a certificate of occupancy.</p>	<p>(j) Suspension or revocation: <u>The tree warden</u> may suspend or revoke a <u>Tree Permit</u> at any time upon written notice to the permit holder that the permit holder has failed to comply with any provisions of this section, or with any rules or regulations promulgated hereunder, or with the conditions of the permit. 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 <u>Tree Permit</u> upon compliance, where practicable. The suspension or revocation of a <u>Tree Permit</u> in accordance with this subsection shall not affect the validity of a building permit issued in reliance upon the issuance of such <u>Tree Permit</u> nor shall such suspension or revocation be cause for withholding the issuance of a certificate of occupancy.</p>
	<p><u>(k) Public Tree Removal: The Tree Warden shall notify the Urban Tree Commission upon receipt of an application to cut down or remove a public tree, and no public tree shall be removed pursuant to a permit until five (5) days after its issuance unless such removal of the tree(s) is necessary based on a determination by the Tree Warden that at least one of the following conditions are met.</u></p>
	<p><u>1. The public tree is interfering with existing structure, utilities, streets, sidewalks or proposed necessary improvements, and there is no alternative to removal;</u></p>
	<p><u>2. The public 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.</u></p>
	<p><u>3. The removal of the public 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.</u></p>

Private

Public

(g) 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 his designee within five (5) business days of issuance of the tree warden's decision. Upon receipt of such appeal, the mayor or his designee shall provide a copy to the clerk of the board of aldermen and to each alderman for the ward in which the trees are located. The mayor or his designee shall make a final decision on the matter within thirty (30) days from the date of receipt of the appeal request. The mayor or his designee shall include in the decision the rationale therefor. Upon issuance of the final decision, the mayor or his designee shall provide a copy to the clerk of the board of aldermen and to each ward alderman 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.

(g) 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 his designee within five (5) business days of issuance of the tree warden's decision. Upon receipt of such appeal, the mayor or his designee shall provide a copy to the clerk of the board of aldermen and to each alderman for the ward in which the trees are located. The mayor or his designee shall make a final decision on the matter within thirty (30) days from the date of receipt of the appeal request. The mayor or his designee shall include in the decision the rationale therefor. Upon issuance of the final decision, the mayor or his designee shall provide a copy to the clerk of the board of aldermen and to each ward alderman 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 public trees shall be removed while an appeal is pending.

Private

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	<p><u>(m) Permit length: Any permit issued by the Tree Warden shall be valid for sixty (60) days from issuance. Length may be extended by Tree Warden following written request by the applicant. The tree Warden may grant the extension for any length of time as he deems necessary and appropriate.</u></p>
<p>Sec. 20-34. 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 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.</p>	
<p>(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 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.</p>	<p>(b) Emergencies: If any <u>Public or Public Shade</u> 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 <u>Public or Public Shade</u> 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.</p>
<p>(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.</p>	<p>(c) Waiver: The requirements of this <u>section</u> may be waived by the tree warden during the period of an emergency such as a tornado, windstorm, flood or other act of God.</p>
<p><u>Tree Replacement</u></p>	
	<p><u>(p) Tree replacement: The tree warden may require that replacement of a removed public tree or public shade tree in the manner required in section 20-35 of these ordinances and in any rule or regulation or the tree warden</u></p>
<p>(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 removal permit in accordance with section 20-33, shall replace such tree within one year from the date of removal and in accordance with the following standards:</p>	
<p>(1) 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.</p>	

Private

Public

<p>(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, 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.</p>	
<p>(3) A replacement tree shall be required to survive for a minimum of one (1) year from the date it is planted. The person planting the tree 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.</p>	
<p>(4) A replacement tree shall be planted on the same lot from which the tree was removed or at a location determined by the tree warden in accordance with the priorities stated in the Tree Manual.</p>	
<p><u>Tree Replacement Fund</u></p>	
<p>(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.</p>	
<p>(b) Payment in lieu of planting replacement tree(s): In lieu of planting a replacement tree as provided in section 20-35, a person who has been granted a tree removal 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 20-35, which cost shall be determined by the tree warden who shall obtain written estimates from at least two (2) tree companies.</p>	<p><u>(g) Payment in lieu of planting replacement tree(s): In lieu of planting a replacement tree as provided in section (g) a person who has been granted a tree permit may make a contribution to the tree replacement fund as established in section 20-36 in an amount equal to the cost to replace the tree in accordance with the provisions of section 20-35, which cost shall be determined by the tree warden who shall maintain on file the City's current tree planting costs.</u></p>
<p>(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.</p>	
	<p><u>(r) Rules and regulations: The tree warden is authorized to promulgate reasonable rules and regulations to implement administration and enforcement of this section</u></p>

Private

Public

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 or registered 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 20-36, subsection (c), 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 20-38, subsection (c).

(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 removal 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.

Private

Public

<p>(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.</p>	
<p>Penalties</p>	
<p>(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).</p>	<p>1. Removal without a permit: Each instance in which a Public 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). Each day such violation continues shall constitute a separate offense.</p>
<p>(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.</p>	<p>2. 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.</p>
	<p><u>3. Damage to Public Tree or Public Shade Tree: Carving, breaking of limbs, poisoning, shaving of roots, girdling, nailing, topping or otherwise damaging, injuring or putting a Public Tree or Public Shade Tree at risk is prohibited and may be subject to a penalty of \$300.00 and/or corrective actions shall be required. Each day such violation continues shall constitute a separate offense.</u></p>
	<p><u>4. Failure to obtain a permit: Each instance in which an action requiring a permit under this ordinance is conducted without a permit shall constitute a violation of this ordinance which shall be subject to a fine in the amount of three hundred dollars (\$300). Each day such violation continues shall constitute a separate offense.</u></p>
	<p><u>5. Failure to comply with the Tree Warden Regulations: Each instance in which an action violates the Tree Warden Regulations shall constitute a violation of this ordinance which shall be subject to a fine in the amount of three hundred dollars (\$300). Each day such violation continues shall constitute a separate offense.</u></p>
<p>(c) 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.</p>	<p><u>6. Nothing herein shall be construed to require the city to make a payment for violation</u></p>
	<p>(t) Enforcement: The commissioner of parks and recreation, in his capacity as tree warden, or such other municipal official as may hereafter be assigned the duties of tree warden, shall be authorized to enforce the provisions of this section and issue written notice of the following violations:</p>

Private

Public

(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.

(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.

(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.