



Programs & Services Committee Agenda

City of Newton **In City Council**

Wednesday, October 4, 2023

7:00 PM

The Programs & Services Committee will hold this meeting as a virtual meeting on Wednesday, October 4, 2023 at 7:00 pm. To view this meeting using Zoom use this link: <https://newtonma-gov.zoom.us/j/84606092752> or call 1-646-558-8656 and use the Meeting ID: 846 0609 2752.

Items Scheduled for Discussion:

Referred to Programs & Services and Finance Committees

#411-22

Request for Amendment to Chapter 21, Art III Trees to extend tree protection and update permits

COUNCILORS MALAKIE, NORTON, LEARY, RYAN, WRIGHT, LUCAS, HUMPHREY, BOWMAN, MARKIEWICZ, OLIVER, DOWNS, LAREDO, AND GROSSMAN requesting revisions and amendments to Chapter 21, Art. III Trees (sec. 21-60 through 21-89) to extend tree protection to all trees 6 inches DBH (diameter at breast height) and greater within the City (with no exempt lots); to update tree removal permits, fees, and compensation; and to strengthen protection for existing and replacement trees.

Programs & Services Held 7-0 on 09/20/23

Referred to Programs & Services and Finance Committees

#412-22

Request for Review and Amendments to Chapter 21, Art. III, Division 3

HER HONOR THE MAYOR requesting review and amendments to Chapter 21, Art. III, Division 3, Tree Preservation to increase replacement requirements for larger trees, add protections for smaller trees, limit removal of trees without replacement, enhance procedures for protecting trees, increasing payment required for trees cut without replacement, protect trees on lots adjacent to

The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the City of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

construction, provide Tree Warden with additional professional input on trees on private properties.

Programs & Services Held 7-0 on 09/20/23

**Respectfully Submitted,
Josh Krintzman, Chair**

Items to Revisit and Proposed Amendments to Tree Ordinance

Sec. 21-81

Protection for all trees 6" DBH or larger. (Wright)

Sec. 21-82

Increase the number of privately owned lots covered under this ordinance by not exempting single and two-family lots with no planned construction in the next 24 months. (Wright)

Lower the threshold from 40" to 25" DBH for any tree, on any privately owned lot to require mitigation/compensation – by changing "landmark" to "significant" in Sec. 21-82(a). (Malakie)

Ensure that trees over 40" DBH on any privately owned lot require mitigation by changing "Landmark tree designation" to "Landmark tree designation or greater" in 21-82(a). (Humphrey)

Increase requirements for mitigation/compensation for developers by having a lower threshold for when the removal of a tree requires mitigation/compensation on non-occupied lots in Sec 21-82(a). (Humphrey)

Increase the time that no construction can be planned for from 24 months to 36 months in Sec. 21-82(a). (Ryan)

Sec. 21-83

Increase the notification radius when a tree permit application is filed from direct abutters to abutters within a 200 ft radius in Sec. 21-83(c). (Wright)

Sec. 21-85

Allow cemeteries within Newton to not plant the full amount of replacement trees required in Sec. 21-85 – by allowing them to get credit for 4 previous years and 2 future years of planting or obtaining Level IV Arboretum accreditation. This would replace the current cemetery exemption in Sec. 21-85(c). (Wright)

Incentivize the planting of native species as replacement trees by adding language to Sec. 21-85(b)(1) that would incentivize the planting of native species. (Wright)

Sec. 21-86

Allow residents with a fixed or low income to not incur a financial burden from removing a tree by exempting them from Sec. 21-86(b) Payment in lieu of planting replacement tree(s). (Wright)

Other

How will the Urban Forestry division keep track of construction up to two years after tree removal when "no construction is planned"? (Wright)

Would new owners be responsible for fees/replacement for trees that were cut and not replaced in the two years before they purchased the house? (Wright)

Tree Ordinance Summary

21-80 – Findings, intent, and purpose

- Updated the findings section of the ordinance to reference the effects of climate change, the benefit of mature trees, and protecting public health.

21-81 – Definitions

- Removed the definitions of “Exempt Lot” (*but see* section 21-82, which articulates exemptions).
- Removed the definition of “Tree Manual” (but updated references throughout the ordinance)
- Changed minimum DBH (Diameter at Breast Height) of a Protected Tree from 8” to 6”.
- Replaced reference to Tree Manual in Pruning Standards with the “most current ANSI A300 Pruning Standards.”
- Added the following definitions:
 - Hedge
 - Landmark Tree (trees larger than 40” DBH to 55” DBH)
 - Legacy Tree (trees larger than 55” DBH)
 - Lot
 - Risk Tree Evaluation
 - Significant Tree (trees larger than 25” DBH to 40” DBH)
 - Tree Plan
 - Tree Protection Plan
 - Tree Save Area

21-82 – Applicability, permit or certificate of exemption required

- The current tree ordinance exempts property owners, who continuously own and occupy the property for 18 months after tree removal, from tree replacement requirements. The tree warden may waive the requirement to continuously own and occupy the lot for 90 days prior to tree removal, as long as the owner intends to own the lot for 21 months after certificate of occupancy is issued after construction on the property.

- The updated draft of the ordinance would exempt:
 - I. single and two family residential occupied lots where no exterior construction is underway or planned for the next 24 months;
 - II. no trees to be removed meet the Landmark tree designation; and
 - III. the owner obtains an exemption permit.
- If construction does take place within 24 months following the removal of the trees the current property owner will be required to comply with replacement requirements.
- Publicly owned trees are exempt under the current ordinance, and continue to be exempt under the proposed ordinance.

21-83 – Permit Application

- The current ordinance requires an administrative fee for processing a tree permit of \$150.
 - The proposed ordinance increases the fee from \$150 to \$200, but creates an exemption permit for the removal of a dead or significantly compromised tree being, for which there is no charge. (Updated ordinance requires documentation of a dead, diseased, injured or dangerous tree to be provided to the Tree Warden by a certified arborist.)
- The current ordinance contains several requirements for tree permit applications. Updates to the requirements are shown in parentheses below.
 - A plan of the parcel being developed that shows the existing conditions and limit of proposed work; (Updated to include “plan”)
 - Tree plan that shows the location, type and size of each tree to be removed. (Plan must now include all trees 5” DBH or larger and all trees removed within the last 24 months);
 - (Updated to include requirement of documentation from a Certified Arborist if any trees are dead, diseased, injured, or a threat to public safety);
 - A statement from a Certified Arborist detailing how each tree will be protected and maintained if any grade changes will affect or endanger any protected tree (Updated to included the Tree Save Area of a protected tree on the applicant’s lot or an abutting lot);

- The method of protecting the remaining protected trees on the lot (Updated to add protection of trees on abutting lots during construction or tree removal); and
- (Updated ordinance adds requirement for exterior work involving tree removal that a certified arborist must prepare a Tree Protection Plan, which will be filed with the tree permit application)
- (Updated to allow the Tree Warden to waive any of the permit application requirements if no exterior construction is planned, but an application with supporting documentation must still be filed)
- Abutters to a lot applying for a tree permit will be automatically notified.
- The current ordinance requires the tree warden to consider, when deciding to grant or deny an application, whether an existing tree interferes with existing structures, utilities, streets, sidewalks or other existing improvements. The updated ordinance requires documentation of the interference to be filed with the Tree Warden.
- The updated ordinance clarifies that the Tree Warden may prescribe additional parameters and requirements around the protection of trees remaining on the lot or within a reasonable distance from the lot.
- Under the proposed ordinance, a certified arborist must acknowledge that all protective measures are in place before exterior work, site disturbance, or tree removal may begin.
- A copy of the tree permit must be displayed in a visible location on the worksite.
- The current ordinance prohibits the Commissioner of Inspectional Services from withholding a certificate of occupancy due to the suspension or revocation of a tree permit.
 - The updated ordinance allows the Commissioner of Inspectional Services to consider the suspension or revocation of a tree permit for issuing a stop-work order or to withhold issuing a certificate of occupancy.
- Regarding an appeal of a decision by the Tree Warden to grant or deny a permit, the updated ordinance requires the Mayor to consult with all Councilors from the ward where the trees are located. The updated

ordinance also requires notice of the decision to be provided to the Clerk of the Council and each abutter.

21-84 – Activities not requiring a permit

- The current ordinance exempts tree pruning from requiring a tree permit. The updated ordinance updates a tree manual reference to ANSI A300 pruning standards.

21-85 – Tree Replacement

- Replacement trees must be of the same or similar species (as advisable by the Tree Warden). Change to the ordinance clarifies that, unless approved by the Tree Warden, hedges will not count as replacement trees.
- Replacement tree DBH currently has to match the DBH (cumulatively) of the removed trees, which have a DBH of 8" or greater.
 - Updated ordinance would amend that requirement according to the following:
 - Trees with a DBH of 6" to 25" must be replaced 1:1
 - Trees with a DBH of greater than 25" and up to 40" must be replaced 1.5:1
 - Trees with a DBH of greater than 40" and up to 55" must be replaced 2:1
 - Trees with a DBH of greater than 55" must be replaced 3:1
- Replacement trees were previously required to live for 18 months. Updated ordinance prohibits the removal of a replacement tree without a permit and requires all replacement trees to be treated as if they are between 6-25" unless they are larger. (See replacement requirements)
- Updated ordinance exempts, from the tree replacement requirements, a cemetery meeting the following conditions:
 - Cemetery is a Level II, Level III, or Level IV arboretum;
 - The cemetery submits an annual report on the trees on the property to the Tree Warden; and
 - The cemetery employs a Certified Arborist on its staff.

21-86 Tree Replacement Fund

- The tree ordinance establishes a tree replacement fund and allows those responsible for planting replacement trees to contribute to a fund in lieu of planting the replacement trees. The current ordinance requires the payment to equal the amount to replace the trees being removed. Updated ordinance would require the payment to include the cost to replace the trees (in accordance with the enhanced schedule), adds the cost to maintain the trees for the first five years, and adds the environmental impact of the removed trees. The updated ordinance would also require the tree warden to annual publish the cost chart.

21-88 Enforcement

- The tree warden is authorized to enforce the ordinance, including notifying violators of the violation.
 - If the tree ordinance is being violated, the tree warden may also issue a stop-work order on any protected tree, or lot on which a protected tree is located. The updated ordinance brings abutting lots under the purview of enforcement because the ordinance has been expanded to protect trees on abutting lots to work being done.

DIVISION 3. TREE PRESERVATION

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

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

~~The p~~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 protect public health against climate change impacts such as heat, drought, and flooding; 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.~~

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

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

~~(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.~~

~~(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.

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

Landmark Tree: Any tree having a diameter larger than 40" DBH to 55" and which is located on land subject to the provisions of section 21-82.

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

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

Occupied Lot: A lot containing a legally constructed, permanent structure, used primarily as a dwelling that is currently being legally occupied and lived in and used as a residence by a person or persons. The dwelling must have a functioning, legally permitted, permanent water service, permanent sanitary service, and permanent electrical service.

Person: Any person, firm, partnership, association, corporation, company or organization of any kind including, but not limited to, the person removing a protected tree as well as the owner of the real property from which the tree is removed. The definition of "person" shall not include the City of Newton.

Protected tree: Any tree having a diameter of eight inches ~~(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.

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.

Remove (including removing and removal): The cutting down of any protected tree and all other acts which cause the actual removal or the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of a protected tree, including, but not limited to, excessive or improper pruning.

Risk Tree Evaluation: The process by which a tree is evaluated to determine the level of risk it poses to the existing property and public at the time of inspection. All risk tree evaluations shall be conducted by a qualified Certified Arborist using a systematic process that identifies, analyzes, and evaluates risk. All tree risk evaluations

are to follow the most current ANSI A300 Part 9 Tree Risk Assessment protocol. All tree risk assessments are to be done utilizing industry accepted protocols, forms, and other documentation required by the Tree Warden.

Significant Tree: Any tree having a diameter larger than 25" DBH to 40" DBH and which is located on land subject to the provisions of section 21-82, ~~or is~~ a replacement tree as described in 21-85 (b)(3), which is not a landmark tree or a legacy tree.

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

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

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

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

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

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

(b) ~~Permit, 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.~~

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

Sec. 21-83. Permit application.

~~(a) Contents, 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 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;~~

(3) Documentation from a Certified Arborist if any trees are dead, diseased, injured, in danger of falling, dangerously close to existing structures, disrupting public utility services, causing drainage or passage problems on rights-of-way, or posing a threat to public safety

(34) 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;

(45) The location of existing and proposed underground or overhead utility services, existing and proposed roadways, bikeways, walkways and parking areas;

(56) Any proposed grade changes which might adversely affect or endanger any ~~P~~protected ~~T~~tree ~~with or is within the Tree Save Area of any protected tree on the applicant's lot or any abutting lot requires~~ a statement prepared by a ~~C~~ertified ~~A~~arborist explaining how each such protected tree shall be protected and maintained;

(76) The proposed method of protecting the remaining protected trees on the applicant's lot and any abutting lots during the course of the construction or tree removal shall be prepared by a Certified Arborist;-

(8) For any activity requiring an ~~e~~Exterior ~~W~~ork ~~p~~Permit or involving tree removal, where Protected Trees are to remain on the lot or where the Tree Save Area of Protected Trees on adjacent lots come onto the applicant's lot, a Tree Protection Plan must be completed by a Certified Arborist (as specified in 21-81);

(9) The Tree Warden may waive the above listed requirements when an applicant is seeking to remove a protected tree, but no exterior work is planned. The Tree Warden shall still require a tree permit application be filed and supporting documentation provided.

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

(1) The fee for an exemption permit or tree permit for the removal of a dead or significantly compromised tree(s) that a certified arborist has attested to on forms required by the City shall be \$0.

(2) The administrative fee for processing a tree permit for all tree removal work or ~~E~~xterior work with the exception of (b)(1) shall be \$200.

(~~c~~b) *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~~the commissioner shall accept an application for a building permit without receipt of such report.

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

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

(1) The protected tree will be relocated or replaced on site per section 21-85, Tree Replacement.

(2) The protected tree will be replaced by payment in lieu of planting replacement trees as outlined in section 21-86.

- (3) The protected tree is interfering with existing structures, utilities, streets, sidewalks or other existing improvements. Documentation of the interference and damage being currently caused shall be provided to the Tree Warden as part of the permit application, per section 21-83(a)(3).
- (4) The protected tree is dead, diseased, injured, in danger of falling, dangerously close to existing structures, is causing disruption of public utility service, is causing drainage or passage problems upon rights-of-way, or poses a threat to pedestrian or vehicular safety. Documentation shall be provided by a Certified Arborist utilizing industry approved Risk Tree Evaluation method and any additional forms or documentation required by the Tree Warden.
- (5) The removal of the protected tree is necessary and desirable in order to enhance or benefit the health or condition of other trees on the same site as certified to the tree warden by a certified arborist.
- (6) No protected tree(s) are to be removed from the site and appropriate tree protection measures will be in place where necessary as determined by the tree warden.

~~(ed)~~ *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 make a determination that the prescribed protective measures have been adequately provided.~~ additional parameters and requirements related to the protection of trees to remain on the lot and trees within a reasonable distance from the lot.

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

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

~~(fe)~~ *Construction:* Except as provided in a tree permit, construction activities ~~under within~~ 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.

~~(gf)~~ *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, and the Commissioner of Inspectional Services may review a suspension or revocation of a tree permit for consideration of issuing a stop-work order or to withhold the issuance of a certificate of occupancy.~~

~~(hg)~~ *Appeal:* Any person aggrieved by a decision of the tree warden may file an appeal with the mayor or ~~his~~ the mayor's designee. Said appeal must be in writing and must be received by the mayor or ~~his~~ ~~their~~ the mayor's designee within five (5) business days of issuance of the tree warden's decision. Upon receipt of such appeal, the mayor or ~~his~~ ~~their~~ the mayor's designee shall provide a copy to the clerk of the city council and to each councilor ~~for from~~ the ward in which the trees are located. The mayor shall seek input and consult with the councilors from

the ward which the trees are located. The mayor or ~~his~~ the mayor's 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~~ the mayor's designee shall include in the decision the rationale therefor. Upon issuance of the final decision, the mayor or ~~his~~ the mayor's 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 and to each abutter.~~ There shall be no further appeal of the matter decided by the mayor or ~~his~~ the mayor's designee. No protected trees shall be removed while an appeal is pending. (Ord. No. V-275, 12-6-99; Ord. No. X-202, 04-03-06; Rev. Ord. 2007, § 20-33; Ord. No. A-38, 05-05-14)

Sec. 21-84. Activities not requiring a permit.

(a) *Pruning:* A permit is not required for the pruning of protected trees. However, in order to prevent excessive pruning and topping of trees and to prevent pruning that will be hazardous to the health and natural appearance of the tree, compliance with ANSI A300 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.~~

(b) *Emergencies:* If any protected tree shall be determined to be in a hazardous condition so as to immediately endanger the public health, safety or welfare or cause an immediate disruption of public services and require immediate removal without delay, oral authorization may be given by the tree warden to remove such tree, utilizing such professional criteria and technical assistance as the tree warden ~~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.

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

Sec. 21-85. Tree replacement.

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

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

(1) A replacement tree shall be of the same or similar species or such other species as deemed advisable by the tree warden. ~~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. Trees planted as hedges shall not count as replacement trees unless otherwise permitted by the Tree Warden.~~

(2) In the event that a tree of the same or equivalent size as measured in DBH inches cannot be planted, then multiple smaller replacement trees may be planted provided that, wherever practicable, as determined by the tree warden, the total DBH of the replacement trees shall, ~~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. Conform to the following:~~

(a) For every protected tree removed, that does not qualify as a Significant, Landmark, or Legacy Tree, the total DBH of the replacement trees shall, when added together, equal the total DBH of the protected tree that has been removed.

(b) For every protected tree removed that also meets the Significant Tree definition, but is not a Landmark or Legacy Tree, the total DBH of the replacement trees shall, when added together equal 1.5 times the total DBH of the Significant Tree that has been removed.

(c) For every protected tree removed that also meets the Landmark Tree definition, but is not a Legacy Tree the total DBH of the replacement trees shall, when added together, equal 2 times the total DBH of the Landmark Tree that has been removed.

(d) For every protected tree removed that also meets the Legacy Tree definition, the total DBH of the replacement trees shall, when added together, equal 3 times the total DBH of the Legacy Tree that has been removed.

(3) ~~(3)~~ A replacement tree shall be considered a Significant Tree regardless of trunk diameter, health or condition, unless the replacement tree meets the definition of Landmark or Legacy Tree. ~~required to survive for a minimum of eighteen (18) months from the date it is planted. The Tree Permit holder 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. Documentation shall be provided by a Certified Arborist on form(s) provided by the Tree Warden that the trees are in place.

(4) No replacement tree shall be removed without a Tree Permit. The Tree Permit applicant will be required to meet the replacement requirements of a Significant Tree, Landmark Tree or Legacy Tree, as applicable, any time a replacement tree is to be removed.

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

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

(1) The cemetery is accredited as a Level II, Level III, or Level IV Arboretum by the Arbnet Arboretum Accreditation Program;

(2) The cemetery submits a report annually that lists the current inventory of trees on the property; lists the number of species of removed and newly planted trees in that time period. The report shall describe means to maintain the newly planted trees;

(3) The report is submitted to the Tree Warden for review; and

(4) The cemetery employs a Certified Arborist on its staff.

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

Sec. 21-86. Tree replacement fund.

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

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

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

Sec. 21-87. Rule and regulations.

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

Sec. 21-88. Enforcement.

(a) *Notice of violation*: Any person who violates any of the provisions of this article shall be notified by the tree warden of the specific violation by certified mail, return receipt requested, or by hand delivery. The notice shall set forth the nature of the violation and a reasonable time period within which compliance must be had. The tree warden shall send notice of violation of section 21-86), which notice shall include the date by which trees were to be replaced or payment was to be made for purposes of computing the "per day" violation fine, as provided in section 21-89.

(b) *Stop work order*:

- (1) Upon notice from the tree warden that work on any protected tree, or lot, or abutting lot, on which a protected tree is located, is being performed contrary to the provisions of this article, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work; and shall state the conditions under which work will be permitted to resume.
- (2) The tree warden is also authorized to request the agency which has granted an exterior work permit to order, to the extent permissible by law, that the owner cease any activity pursuant to the exterior work permit that might affect such protected tree while a stop work order is pending.
- (3) Any person who shall continue any work in or about the protected tree or lot on which a protected tree is located, or an abutting lot, after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not more than three hundred dollars (\$300.00) for each such violation. Each day during which a violation exists shall constitute a separate offense.

(c) *Injunctive relief*:

- (1) Whenever there exists reasonable cause to believe that a person is violating this article or any standards adopted pursuant to this article or any term, condition or provision of an approved tree permit, the city may, either before or after the institution of any other action or proceeding authorized by this article, institute a civil action in the name of the city for a mandatory or prohibitory injunction and an order of abatement demanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property.

- (2) Upon determination of a court that an alleged violation is occurring, it shall enter such order or judgment as is necessary to abate the violation. -The institution of an action for injunctive relief under this subsection shall not relieve any party to such proceedings from any civil penalty prescribed for violation of this article. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-37; Ord. No. A-38, 05-05-14)

Sec. 21-89. Penalties.

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

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

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

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

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

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

(b) *Conflict of laws:* This article shall not apply to any public shade tree as that term is defined by the General Laws, Chapter 87 or any amendments thereto. Nothing herein is intended to conflict with the General Laws, Chapter 87 and to the extent that any provision hereof conflicts with said Chapter 87, such provision shall not be valid. ~~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)

Tree Ordinance Tree Replacement Cost Options, Draft 4-14-2023

Tree DBH						Alternatives for discussion			
	Current Ordinance	Tree Warden Proposal	Councilor Base Value of \$13	Councilor Base Value of \$25	Councilor Base Value of \$50	30 year Environmental Value Lost	Cost to Replace Environmental Value	Combined 30 year Enviro value/ Replacement Cost	Per Inch Replacement Incl. 5yr Maintenance
6"	na	\$ 1,650	\$ 367	\$ 707	\$ 1,413	\$ 2,385	\$ 690	\$ 3,075	\$ 1,650
7"	na	\$ 1,925	\$ 500	\$ 962	\$ 1,923	\$ 2,606	\$ 754	\$ 3,360	\$ 1,925
8"	\$ 2,000	\$ 2,200	\$ 653	\$ 1,256	\$ 2,512	\$ 2,827	\$ 818	\$ 3,645	\$ 2,200
9"	\$ 2,250	\$ 2,475	\$ 827	\$ 1,590	\$ 3,179	\$ 3,048	\$ 882	\$ 3,930	\$ 2,475
10"	\$ 2,500	\$ 2,750	\$ 1,021	\$ 1,963	\$ 3,925	\$ 3,269	\$ 946	\$ 4,215	\$ 2,750
11"	\$ 2,750	\$ 3,025	\$ 1,235	\$ 2,375	\$ 4,749	\$ 3,490	\$ 1,010	\$ 4,500	\$ 3,025
12"	\$ 3,000	\$ 3,300	\$ 1,470	\$ 2,826	\$ 5,652	\$ 3,711	\$ 1,074	\$ 4,785	\$ 3,300
13"	\$ 3,250	\$ 3,575	\$ 1,725	\$ 3,317	\$ 6,633	\$ 3,932	\$ 1,138	\$ 5,071	\$ 3,575
14"	\$ 3,500	\$ 3,850	\$ 2,000	\$ 3,847	\$ 7,693	\$ 4,153	\$ 1,202	\$ 5,356	\$ 3,850
15"	\$ 3,750	\$ 4,125	\$ 2,296	\$ 4,416	\$ 8,831	\$ 4,374	\$ 1,266	\$ 5,641	\$ 4,125
16"	\$ 4,000	\$ 4,400	\$ 2,612	\$ 5,024	\$ 10,048	\$ 4,596	\$ 1,330	\$ 5,926	\$ 4,400
17"	\$ 4,250	\$ 4,675	\$ 2,949	\$ 5,672	\$ 11,343	\$ 4,817	\$ 1,394	\$ 6,211	\$ 4,675
18"	\$ 4,500	\$ 4,950	\$ 3,306	\$ 6,359	\$ 12,717	\$ 5,038	\$ 1,458	\$ 6,496	\$ 4,950
19"	\$ 4,750	\$ 5,225	\$ 3,684	\$ 7,085	\$ 14,169	\$ 5,259	\$ 1,522	\$ 6,781	\$ 5,225
20"	\$ 5,000	\$ 5,500	\$ 4,082	\$ 7,850	\$ 15,700	\$ 5,480	\$ 1,586	\$ 7,066	\$ 5,500
21"	\$ 5,250	\$ 5,775	\$ 4,500	\$ 8,655	\$ 17,309	\$ 5,701	\$ 1,650	\$ 7,351	\$ 5,775
22"	\$ 5,500	\$ 6,050	\$ 4,939	\$ 9,499	\$ 18,997	\$ 5,922	\$ 1,714	\$ 7,636	\$ 6,050
23"	\$ 5,750	\$ 6,325	\$ 5,398	\$ 10,382	\$ 20,763	\$ 6,143	\$ 1,778	\$ 7,922	\$ 6,325
24"	\$ 6,000	\$ 6,600	\$ 5,878	\$ 11,304	\$ 22,608	\$ 6,364	\$ 1,842	\$ 8,207	\$ 6,600
25"	\$ 6,250	\$ 10,313	\$ 6,378	\$ 12,266	\$ 24,531	\$ 6,585	\$ 1,906	\$ 8,492	\$ 6,875
26"	\$ 6,500	\$ 10,725	\$ 6,899	\$ 13,267	\$ 26,533	\$ 6,807	\$ 1,970	\$ 8,777	\$ 7,150
27"	\$ 6,750	\$ 11,138	\$ 7,439	\$ 14,307	\$ 28,613	\$ 7,028	\$ 2,034	\$ 9,062	\$ 7,425
28"	\$ 7,000	\$ 11,550	\$ 8,001	\$ 15,386	\$ 30,772	\$ 7,249	\$ 2,098	\$ 9,347	\$ 7,700
29"	\$ 7,250	\$ 11,963	\$ 8,582	\$ 16,505	\$ 33,009	\$ 7,470	\$ 2,162	\$ 9,632	\$ 7,975
30"	\$ 7,500	\$ 12,375	\$ 9,185	\$ 17,663	\$ 35,325	\$ 7,691	\$ 2,226	\$ 9,917	\$ 8,250
31"	\$ 7,750	\$ 12,788	\$ 9,807	\$ 18,860	\$ 37,719	\$ 7,912	\$ 2,290	\$ 10,202	\$ 8,525
32"	\$ 8,000	\$ 13,200	\$ 10,450	\$ 20,096	\$ 40,192	\$ 8,133	\$ 2,354	\$ 10,488	\$ 8,800
33"	\$ 8,250	\$ 13,613	\$ 11,113	\$ 21,372	\$ 42,743	\$ 8,354	\$ 2,418	\$ 10,773	\$ 9,075
34"	\$ 8,500	\$ 14,025	\$ 11,797	\$ 22,687	\$ 45,373	\$ 8,575	\$ 2,482	\$ 11,058	\$ 9,350
35"	\$ 8,750	\$ 14,438	\$ 12,501	\$ 24,041	\$ 48,081	\$ 8,796	\$ 2,546	\$ 11,343	\$ 9,625
36"	\$ 9,000	\$ 14,850	\$ 13,226	\$ 25,434	\$ 50,868	\$ 9,018	\$ 2,610	\$ 11,628	\$ 9,900
37"	\$ 9,250	\$ 15,263	\$ 13,971	\$ 26,867	\$ 53,733	\$ 9,239	\$ 2,674	\$ 11,913	\$ 10,175
38"	\$ 9,500	\$ 15,675	\$ 14,736	\$ 28,339	\$ 56,677	\$ 9,460	\$ 2,738	\$ 12,198	\$ 10,450
39"	\$ 9,750	\$ 16,088	\$ 15,522	\$ 29,850	\$ 59,699	\$ 9,681	\$ 2,802	\$ 12,483	\$ 10,725
40"	\$ 10,000	\$ 22,000	\$ 16,328	\$ 31,400	\$ 62,800	\$ 9,902	\$ 2,866	\$ 12,768	\$ 11,000
41"	\$ 10,250	\$ 22,550	\$ 17,155	\$ 32,990	\$ 65,979	\$ 10,123	\$ 2,930	\$ 13,053	\$ 11,275
42"	\$ 10,500	\$ 23,100	\$ 18,002	\$ 34,619	\$ 69,237	\$ 10,344	\$ 2,994	\$ 13,339	\$ 11,550
43"	\$ 10,750	\$ 23,650	\$ 18,869	\$ 36,287	\$ 72,573	\$ 10,565	\$ 3,058	\$ 13,624	\$ 11,825
44"	\$ 11,000	\$ 24,200	\$ 19,757	\$ 37,994	\$ 75,988	\$ 10,786	\$ 3,122	\$ 13,909	\$ 12,100
45"	\$ 11,250	\$ 24,750	\$ 20,665	\$ 39,741	\$ 79,481	\$ 11,007	\$ 3,186	\$ 14,194	\$ 12,375
46"	\$ 11,500	\$ 25,300	\$ 21,594	\$ 41,527	\$ 83,053	\$ 11,229	\$ 3,250	\$ 14,479	\$ 12,650
47"	\$ 11,750	\$ 25,850	\$ 22,543	\$ 43,352	\$ 86,703	\$ 11,450	\$ 3,314	\$ 14,764	\$ 12,925
48"	\$ 12,000	\$ 26,400	\$ 23,512	\$ 45,216	\$ 90,432	\$ 11,671	\$ 3,378	\$ 15,049	\$ 13,200
49"	\$ 12,250	\$ 26,950	\$ 24,502	\$ 47,120	\$ 94,239	\$ 11,892	\$ 3,442	\$ 15,334	\$ 13,475
50"	\$ 12,500	\$ 27,500	\$ 25,513	\$ 49,063	\$ 98,125	\$ 12,113	\$ 3,506	\$ 15,619	\$ 13,750
51"	\$ 12,750	\$ 28,050	\$ 26,543	\$ 51,045	\$ 102,089	\$ 12,334	\$ 3,570	\$ 15,904	\$ 14,025
52"	\$ 13,000	\$ 28,600	\$ 27,594	\$ 53,066	\$ 106,132	\$ 12,555	\$ 3,634	\$ 16,190	\$ 14,300
53"	\$ 13,250	\$ 29,150	\$ 28,666	\$ 55,127	\$ 110,253	\$ 12,776	\$ 3,698	\$ 16,475	\$ 14,575
54"	\$ 13,500	\$ 29,700	\$ 29,758	\$ 57,227	\$ 114,453	\$ 12,997	\$ 3,762	\$ 16,760	\$ 14,850
55"	\$ 13,750	\$ 45,375	\$ 30,870	\$ 59,366	\$ 118,731	\$ 13,218	\$ 3,826	\$ 17,045	\$ 15,125

Tree Ordinance Tree Replacement Cost Options, Draft 4-14-2023

