



Programs & Services Committee Report

City of Newton **In City Council**

Wednesday, October 4, 2023

Present: Councilors Krintzman (Chair), Noel, Humphrey, Wright, Albright, Baker, Greenberg, and Ryan

Also Present: Councilors Malakie and Norton

City Staff: Jonah Temple, Deputy City Solicitor; Jennifer Wilson, Assistant City Solicitor; Marc Welch, Deputy Commissioner of Parks, Recreation and Culture; Jonathan Yeo, Chief Operating Officer; and Jaclyn Norton, Committee Clerk

For more information regarding this meeting, a video recording can be found at the following link: [Programs & Services Committee - October 4, 2023 - YouTube](#)

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.

Action: **Programs & Services Held 7-0 (Councilor Noel Not Voting)**

Note: The Chair noted that the purpose of tonight's meeting would be to resolve any unresolved questions regarding the tree ordinance for the Law Department to prepare a final draft of the ordinance. This final draft will be presented at an upcoming meeting.

A Councilor sought clarification on the fee schedule for this ordinance. Marc Welch, Deputy Commissioner of Parks, Recreation and Culture, noted that the fee schedule is based on the 30-year environmental value of the tree and the replacement cost.

21-81 Definitions

A Councilor proposed revisiting the topic of all trees 6 inches or larger being considered protected trees. This was due to a recent bill filed by State Senator Cynthia Creem that has all trees 6 inches or larger as protected trees. Another Councilor on the Committee noted that the current definition of a protected is any tree 6 inches or larger. This definition was adopted unanimously.

21-82 Applicability, permit or certificate of exemption required

A Councilor proposed not exempting single and two-family lots with no planned construction in Sec. 21-82(a) due to these lots making up a significant portion of land within the City. This was later amended to replace the exemption for single and two-family lots with no planned construction with an exemption for low-income homeowners. Mr. Welch noted that tree permits will be added to NewGov which will make tracking much easier to ensure that single- and two-family lots that received an exemption permit are complying with no planned construction for 24 months. Committee members voted 2-6 (Councilors Albright, Krintzman, Humphrey, Noel, Baker, and Ryan Opposed) on a motion to replace the exemption for no construction within 24 months on single and two-family lots with an exemption for low-income homeowners.

Multiple Councilors raised concern regarding cases where the construction being performed within 24 months does not relate to the location of the removed tree. Committee members voted 5-1-1 (Councilor Greenberg Opposed) (Councilor Humphrey Abstaining) (Councilor Baker Not Voting) on having the Law Department draft language that would require a nexus of the tree removed and the exterior work permit for tree planting/mitigation payments to be required. Later in the discussion, a Councilor proposed exempting exterior construction under 400 sf. This amendment failed 4-4 (Councilors Humphrey, Wright, Baker, and Ryan Opposed).

A Councilor requested that the 24 months of no planned construction be amended to 36 months. This amendment failed 3-4 (Councilors Greenberg, Albright, Krintzman, and Noel Opposed) (Councilor Baker Not Voting).

Multiple Councilors also raised concerns that mitigation payments might cause an undue burden for low-income individuals. The Committee voted 6-1-1 (Councilor Noel Opposed) (Councilor Albright Abstained) on creating a waiver program for low-income individuals. A Councilor also sought clarification on whether the new owner is subject to mitigation requirements if they purchase a property and do construction on the property within 24 months of the previous owner obtaining a tree permit. Mr. Welch stated that they would be responsible for tree replanting/mitigation payments.

The minimum size of a tree that is not exempt currently is a Landmark Tree (40"). A Councilor proposed to change that to a Significant Tree (25"). Jonathan Yeo, Chief Operating Officer noted that the administration would not support this change. Councilors voted 1-7 (Councilors Greenberg, Albright, Krintzman, Humphrey, Noel, Baker, and Ryan Opposed) on changing

Landmark to Significant in 21-82(a). A wording change was also suggested to add “or greater” after Landmark in 21-82(a) to close a potential loophole. This working change was approved 8-0.

21-83 Permit Application

A Councilor proposed that abutters within a 200ft radius be notified of a tree permit application. The current draft of the ordinance has direct abutters being notified of a tree permit application. Jonah Temple, Deputy City Solicitor, raised concern with this provision citing that abutter notices are frequently challenged, and Mr. Yeo noted that this provision would create a significant administrative burden on the Department. Attorney Temple recommended that if a notification is done to abutters it be performed by the applicant and not the City. A Councilor also proposed that this provision be removed from the ordinance.

During the discussion, Councilors sought clarification on how enforcement would work if the applicant had to send out the notification. Attorney Temple stated that it can be part of the application process. A Councilor also requested that property directly across the right of way from the applicant is considered an abutter.

The Committee took the following straw votes relating to abutter notification:

Expansion of abutter notification to 200ft radius.

The motion failed 1-7 (Councilors Greenberg, Albright, Krintzman, Humphrey, Noel, Baker, and Ryan Opposed)

Removal of abutter notification provision.

The motion failed 3-5 (Councilors Greenberg, Wright, Humphrey, Noel, and Baker Opposed)

Transferring the responsibility of notifying abutters from the City to the applicant.

The motion was approved 4-3-1 (Councilors Humphrey, Baker, and Wright Opposed) (Councilor Noel Abstaining)

Considering parcel directly across the right of way as a direct abutter.

The motion was approved 4-3-1 (Councilors Noel, Krintzman, and Albright Opposed) (Councilor Greenberg Abstaining).

Later in the discussion Attorney Temple recommended that the language in 21-83(h) be amended so that the applicant needs to be aggrieved for an appeal of the tree warden’s decision. This recommendation was based on these appeals being limited to process and this ordinance adding abutter notifications. Committee members voted 4-2-1 (Councilors Wright and Baker Opposed) (Councilor Ryan Abstaining) (Councilor Noel Not Voting) on Attorney Temple’s recommendation. Attorney Temple also recommended that the second paragraph of 21-83(e) be reworded to allow for more discretion. This recommendation was adopted unanimously.

21-85 Tree Replacement

A Councilor proposed changing the cemetery exemption in 21-85(c) to allow the cemetery to get credit for 4 years of prior plantings and 2 years of future plantings when obtaining a tree permit or being exempt from tree planting requirements if a Level IV Arboretum. A Councilor raised concern about the inability of Newton Cemetery and Arboretum to meet the requirements for a Level IV Arboretum. The proposing Councilor withdrew the part of the proposal that would allow the Newton Cemetery & Arboretum to get credit for prior and future plantings. Committee members voted 1-7 (Councilors Greenberg, Albright, Krintzman, Humphrey, Noel, Baker, and Ryan Opposed) on requiring the Cemetery to obtain Level IV Arboretum status to be exempt.

Committee members voted 7-0 (Councilor Noel Not Voting) on a motion to hold from Councilor Humphrey.

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

Action: **Programs & Services Held 7-0 (Councilor Noel Not Voting)**

Note: This item was discussed concurrently with item #411-22. A written report can be found with item #411-22.

The meeting adjourned at 10:05 pm.

Respectfully Submitted,
Josh Krintzman, Chair