



Programs & Services Committee Agenda

City of Newton **In City Council**

Wednesday, November 8, 2023

7:00 PM

The Programs & Services Committee will hold this meeting as a virtual meeting on Wednesday, November 8, 2023 at 7:00 pm. To view this meeting using Zoom use this link: <https://newtonma-gov.zoom.us/j/85442719908> or call 1-646-558-8656 and use the Meeting ID: 854 4271 9908.

Items Scheduled for Discussion:

- #344-23 Appointment of Andria Tieman Michney as a Newton Library Trustee**
HER HONOR THE MAYOR appointing Andria Tieman Michney, 9 Elmwood Park, Newton as a Newton Library Trustee for a term of office set to expire on June 30, 2025. (60 Days: 01/05/23)

Referred to Programs and Services and Finance Committees

- #357-23 Transfer \$446,104.67 to Health & Human Services Department**
HER HONOR THE MAYOR requesting authorization to transfer the sum of four hundred forty-six thousand, one hundred four dollars and sixty-seven cents (\$446,104.67) from June 30, 2023 Certified Free Cash (001-3240) into Health & Human Services Department for purposes of opioid mitigation.

Referred to Programs and Services and Finance Committees

- #358-23 Transfer \$130,000 to Clinical Health-Temp Staffing**
HER HONOR THE MAYOR requesting authorization to transfer the sum of one hundred thirty thousand dollars (\$130,000) into Clinical Health-Temp Staffing to address a few school nurse vacancies with agency nurses.

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.

#314-23 Discussion and Possible Creation of Ordinance Regarding Vibration Control Measures

HER HONOR THE MAYOR requesting the discussion and possible creation of an ordinance that would require control measures for construction activities that cause vibrations in both by-right and special permit projects.

Programs & Services Held 6-0 on 10/18/23

#88-22 Request for a study on construction vibration standards

COUNCILORS ALBRIGHT, BAKER, BOWMAN, DOWNS, GREENBERG, HUMPHREY, LAREDO, LEARY, MALAKIE, NORTON, RYAN based on the Washington Place Liaison Committee recommendations, requesting the study, analysis, review of vibration standards related to construction projects as they affect neighboring buildings. The outcome of this analysis could be an amendment to Chapter 20, Sec. 13-22 Noise, to include a vibration section in construction projects.

Programs & Services Held 6-0 on 10/18/23

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 (Councilor Noel Not Voting) on 10/4/23

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

Programs & Services Held 7-0 (Councilor Noel Not Voting) on 10/4/23

#343-23 Reappointment of Nancy Krintzman to the Commission on Disability
HER HONOR THE MAYOR reappointing Nancy Krintzman, 677 Winchester Street,
Newton as a member of the Commission on Disability for a term of office set to
expire on September 20, 2026. (60 Days: 01/05/23)

Respectfully Submitted,
Josh Krintzman, Chair



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Office of the Mayor

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2023 OCT 30 PM 4:51

#344-23
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rfuller@newtonma.gov

CITY CLERK
NEWTON, MA. 02459

October 30, 2023

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

To the Honorable City Councilors:

I am pleased to appoint Andria Tieman Michney of 9 Elmwood Park, Newton 02460 as a Newton Library Trustee. Her term of office shall expire on June 30, 2025 and her appointment is subject to your confirmation. The Library Trustee members have five year terms staggered over the five year period in accordance with Newton City ordinance. Ms. Michney will be serving the term expiring June 2025.

Thank you for your attention to this matter.

Warmly,

A handwritten signature in blue ink that reads "Ruthanne Fuller".

Ruthanne Fuller
Mayor

Application Form**Profile**

Andria

First Name

Tieman Michney

Last Name

Email Address

9 Elmwood Park

Home Address

Suite or Apt

Newton

City

MA

State

02460

Postal Code

What Ward do you live in?☒ Ward 2

Primary Phone

Alternate Phone

Providence College

Employer

Library Instruction Coordinator

Job Title

Which Boards would you like to apply for?

Library Trustee: Submitted

Interests & Experiences

Please tell us about yourself and why you want to serve.

Why are you interested in serving on a board or commission?

I've worked in libraries for 15+ years and understand both the unique challenges they face, and also the myriad ways they can benefit the communities they serve. I currently work in an academic library, but have worked in public and special libraries over the years, and I'm keenly aware of trends, new initiatives and struggles going on in library-land. Having worked in public libraries, I know what it's like doing the public-facing work, but would like to know more about what goes on behind the scenes.

[atieman_resume_2023.pdf](#)

Upload a Resume

ANDRIA TIEMAN MICHNEY

EDUCATION

University of Rhode Island, Kingston, RI	05.09
Master of Library and Information Sciences	
Minnesota State University Moorhead, Moorhead, MN	05.06
Master of Fine Arts – Writing Emphasis	
Certificate in Publishing	
Minnesota State University Moorhead, Moorhead, MN	12.03
Bachelor of Arts - English	

PROFESSIONAL EXPERIENCE**Providence College****Research & Education Instruction Coordinator** 10.19-present

- Coordinate library instruction classes for Research & Education department including faculty communication, scheduling, training, implementation of new programs and evaluation of current programs.
- Outreach to faculty in promotion of services and importance of research education/ different methods of delivery
- Research and implement new teaching strategies--particularly during COVID shutdown
- Create and collaborate on department policies and documents
- Collaborate with other library departments including Archives, Digital Publishing and Collections, as well as library administration
- Collaborate with First Year Experience program including teaching sections of the course and academic advising to undeclared students

Research & Education Librarian 08.13-10.19

- Serve as Interim Head of Research and Research Education 06.15-08.16
- Provide research assistance for students and faculty of Providence College
- Teach research education classes in a variety of disciplines as requested by faculty
- Collaborate with other departments campus wide including Office of Academic Services, Writing Center and Sponsored Research
- Create and execute informative workshops for faculty, staff and students
- Participate in library outreach including Friar Foundations program, Student and Faculty Orientation events, local conferences, local professional organizations
- In conjunction with Library Director and library department heads, strategically plan department goals to best serve library users including students, faculty and staff of Providence College

- Create and manage Springshare LibGuides
- Supervise part-time professional staff
- Create and manage Research Desk schedule
- Serve on Library Commons Council
- Work with Knowledge Collections group to promote and assess electronic holdings
- Coordinate with Library Marketing Group to promote services and resources to students and faculty

Providence College First Year Experience Instructor 2017 & 2022

- Teach a section of PC's First Year Experience Course Fall semester
- Serve as academic advisor to undeclared first year students until they declare a major

Providence College School of Continuing Education (SCE) 07.14-present

- Special Lecturer in Friar Foundations Program
- Teach INT 100 (Foundations for College Success) class to Friar Foundations Students as well as SCE students / Student Athletes in Fall Semester
- Partner with Office of Academic Services and School of Continuing Education to create syllabus/ course content

Bryant University Reference and Instruction Librarian 08.10- 10.15

- Serve as liaison to Science and Legal Studies Departments
- Provide research assistance to students in all disciplines
- Teach bibliographic instruction classes at faculty request
- Continued employment in an on-call capacity

Providence Community Library Adult Services Librarian 01.12- 08.13

- Provide reference and research to a diverse group of individuals at busy urban library
- Manage library collections including fiction, non-fiction, A/V, Young Adult
- Coordinate volunteers including students and community members

Warwick Public Library Reference Librarian 09.09-12.10

- Teach basic computer classes to community members including basic MS Word, Internet, Facebook, etc.
- Created in-library displays and passive programs like Six Word Stories

University of Rhode Island Distance Learning Grad Asst. 09.08 -05.09

- Assisted the Coordinator of Distance Learning with promotion of distance learning pedagogy
- Assisted faculty with transition to using WebCT online learning platform and transition to Sakai online learning platform
- Presented to Curricular Affairs Committee on instances of cheating in online education

PROFESSIONAL ASSOCIATIONS

Rhode Island Library Association	2009-2019
Communications Committee Co-Chair	2010-2017
Rhode Island Teen Book Award Committee	2010-2015
Vice Chair	2014-2015
ACRL New England	2008-2014
Human Library Rhode Island Executive Board	2013-2015
Ocean State Libraries Reference Working Group	2011-2013

PROVIDENCE COLLEGE COMMITTEES

Phillips Memorial Library Undergraduate	2014-Present
Craft of Research Prize (Chair)	
Faculty Writer's Retreat	2015-Present
School of Continuing Education Advisory Committee	2016-Present
Annual Celebration of Student Scholarship	2014-2017
Phillips Memorial Library Web Advisory Committee	2014-2020
Library Liaison to PC School of Continuing Education	2015-2022
Common Reading Program Library Sub-committee	2015-2019



RUTHANNE FULLER
MAYOR

City of Newton, Massachusetts
Office of the Mayor

2023 OCT 30 PH 4: 10

CITY CLERK
NEWTON, MA. 02459

#357-23

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rfuller@newtonma.gov

October 27, 2023

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

Councilors:

I respectfully submit a docket item to your Honorable Council requesting the authorization to transfer four-hundred forty-six thousand one-hundred four dollars and sixty-seven cents (\$446,104.67) from June 30, 2023 Certified Free Cash (0001-3240) into the Health & Human Services Department for purposes of opioid mitigation. This dollar amount represents the opioid settlement funds received by the City in Fiscal Year 2023 that will be used by HHS.

The Commonwealth of Massachusetts has signed onto the settlement agreements with Johnson and Johnson, a collective of opioid distributors, Walmart, Teva, Allergan, CVS and Walgreens. These historic settlements will bring over \$900 million into Massachusetts for substance use prevention, harm reduction, treatment, and recovery support. Each municipality within the Commonwealth has been given the option to sign on, as a party, to the settlements and Newton has chosen to do so. Sixty percent (60%) of the settlement funds will be for the statewide Opioid Recovery and Remediation Fund and 40% will be allocated to Massachusetts municipalities. Based on current settlements thus far, Newton is on track to receive \$3.8 million, distributed across seventeen payments, between 2022 and 2039.

A more detailed request from Commissioner Walsh is included, and she will also be available during the discussion of this item to answer any additional questions you may have.

Thank you for your consideration of this matter.

Sincerely,

Ruthanne Fuller
Mayor



October 27, 2023

Dear Mayor Fuller,

Please docket the acceptance of \$ 446,104.67 into the HHS budget.
These funds have been received from the opioid settlement abatement payments.

Over the last few decades, opioid addiction has ravaged communities all over the country. As such, the Department of Justice has entered into several settlements with opioid manufacturers, distributors, and retail pharmacies. The Commonwealth of Massachusetts has signed onto the settlement agreements with Johnson and Johnson, a collective of opioid distributors, Walmart, Teva, Allergan, CVS and Walgreens. These historic settlements will bring over \$900 million into Massachusetts for substance use prevention, harm reduction, treatment, and recovery support. Each municipality within the Commonwealth has been given the option to sign on, as a party, to the settlements. 60% of the settlement funds will be for the statewide Opioid Recovery and Remediation Fund and 40% will be allocated to Massachusetts municipalities. Based on current settlements thus far, Newton is on track to receive \$3.8 million, distributed across seventeen payments, between 2022 and 2039.

Per the Massachusetts Attorney General's Office, the funds must not be used to supplant existing resources and must be used to implement one or more of the following strategies:

1. Opioid use disorder treatment
2. Support people in treatment recovery
3. Connections to care
4. Harm reduction
5. Address the needs of criminal-justice- involved persons
6. Support pregnant or parenting women and their families, including babies with neonatal abstinence syndrome
7. Prevent misuse of opioids and implement prevention education

Newton's Strategy: Newton formed a substance use coalition in October of 2022. The Newton Coalition for Community Wellness consists of a variety of stakeholders from staff members from City Departments, community partners, and Newton residents. The work of the coalition focuses on youth prevention, parent support, community education and harm reduction.

We are looking forward to partnering with the Newton Wellesley Hospital substance use services clinic as they work directly with our residents and their families struggling with substance use disorder.

The expertise and lived experience of the coalition members will help guide the City's priorities in using the funds, which include:

1. Expanding treatment options for individuals for individuals with opioid use disorder
2. Increasing connections to care for individuals at risk of developing opioid use disorder
3. Enhancing support for individual who have lost someone to substance use and/or who currently have a loved one who is using substances
4. Implementing harm reduction measures such as increased access to naloxone
5. Providing school and community-based substance use education, programming and resources for community members across the lifespan

Thank-you,

Linda Walsh
Commissioner
Newton Health and Human Services



RUTHANNE FULLER
MAYOR

City of Newton, Massachusetts
RECEIVED
Office of the Mayor
2023 OCT 30 PM 4:11

CITY CLERK
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rfuller@newtonma.gov

October 27, 2023

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

Councilors:

I respectfully submit a docket item to your Honorable Council requesting the authorization to transfer a total of one-hundred thirty thousand dollars (\$130,000) into account number 0150103-531300 – Clinical Health-Temp Staffing, to address a few school nurse vacancies with agency nurses. We continue to recruit full-time NPS nurses, so we expect these funds to be needed temporarily until those vacancies are filled. The individual account transfer requests are listed below.

\$20,000	from	0150101-511001	to	0150103-531300
\$40,000	from	0150102-511001	to	0150103-531300
\$70,000	from	0150103-511001	to	0150103-531300

Commissioner of Health and Human Services, Linda Walsh, will be available to answer any questions you may have.

Thank you for your consideration of this matter.

Sincerely,

Ruthanne Fuller
Mayor



Ruthanne Fuller
Mayor

HEALTH AND HUMAN SERVICES DEPARTMENT
1000 Commonwealth Avenue
Newton, MA 02459-1544

Telephone
#358-23 617-796-1420
Fax
(617) 552-7063
TTY/TTD 617-796-1089
TTY/TRS 711

October 27, 2023

Dear Mayor Fuller,

Please docket an item to transfer funds from personnel vacancies into the temporary staffing account.

0150101-511001 - \$20,000 to 0150103-531300

0150102-511001 - \$40,000 to 0150103-531300

0150103-511001 - \$70,000 to 0150103-531300

These funds will be used for utilizing temporary school nursing staff from an agency as we continue to recruit full-time school nurses into our open positions.

Sincerely,

Linda Walsh
Commissioner
Newton Health and Human Services



Ruthanne Fuller
Mayor

City of Newton, Massachusetts

Department of Planning and Development

1000 Commonwealth Avenue Newton, Massachusetts 02459

#314-23 & #88-22

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(617) 796-1120
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(617) 796-1089
www.newtonma.gov

Barney Heath
Director

DATE: November 3, 2023

MEETING DATE: November 8, 2023

TO: Programs and Services Committee of the City Council

FROM: Barney Heath, Director of Planning and Development
Jennifer Caira, Deputy Director of Planning and Development
Katie Whewell, Chief Planner for Current Planning

CC: Jonah Temple, Deputy City Solicitor
Josh Morse, Commissioner of Public Buildings
Anthony Ciccariello, Commissioner of Inspectional Services
Lou Taverna, City Engineer, Engineering Division of Public Works

Petition #88-22 Request for a study on construction vibration standards

COUNCILORS ALBRIGHT, BAKER, BOWMAN, DOWNS, GREENBERG, HUMPHREY, LAREDO, LEARY, MALAKIE, NORTON, RYAN based on the Washington Place Liaison Committee recommendations, requesting the study, analysis, review of vibration standards related to construction projects as they affect neighboring buildings. The outcome of this analysis could be an amendment to Chapter 20, Sec. 13-22 Noise, to include a vibration section in construction projects.

Petition #314-23 Discussion and Possible Creation of Ordinance Regarding Vibration Control Measures

HER HONOR THE MAYOR requesting the discussion and possible creation of an ordinance that would require control measures for construction activities that cause vibrations in both by-right and special permit projects.

The above docket items originated from vibratory impacts of construction to neighboring buildings. This topic has been long discussed at the Land Use Committee depending on the size and scale of a project and as a result, a standard condition around vibration control was drafted. Following approval, development teams encountered unanticipated issues with the condition as written and most recently in July 2023, three projects came back to have their vibration control condition altered so they could begin the steps to apply for a building permit.

Upon review, city staff discovered issues with the way the condition is written and its applicability to only special permit projects within the city and acknowledged some measures should be applied to as of right projects dependent on unique characteristics of the land. As such, new language was drafted, to be reviewed and approved by the City Council and with the goal of adoption as an Ordinance. The intent of the Ordinance is to ensure vibration control protections would apply to both as of right projects and special permit projects within the City.

The proposed ordinance language was reviewed by the Programs and Services Committee on October 18. Based on the feedback provided by the Committee and Councilors, and after consultation with Commissioner Morse, Commissioner Ciccariello, City Engineer Lou Taverna, staff have produced a redlined version that responds to the comments and feedback from the Committee.

ATTACHMENTS

Attachment A: Draft Vibration Control Ordinance REDLINED

DRAFT ORDINANCE SECTION 5-23

Sec. 5-23 Regulation of Vibration Monitoring and Protection

(a) Prior to the issuance of a demolition or building permit by the Commissioner of Inspectional Services for any demolition, site work, or construction activities on property located in the City of Newton that requires: (i) the driving of piles or piers, (ii) the removal or alteration of ledge, or (iii) soil reinforcement or compaction by vibratory roller, other than compaction of soil for decks, patios, landscaping work, sidewalks, driveways, retaining walls or accessory buildings with a ground floor area up to and under 900700 square feet, applicants shall submit the following to the Commissioner of Inspectional Services:

~~(1)~~ A vibration control plan signed and stamped by a licensed and insured professional engineer~~geotechnical consultant~~ that determines and identifies the surrounding properties that may be affected by vibration from the proposed construction activities; the scope of preconstruction surveys needed; the basis for that determination; and the recommended vibration level limits and monitoring services to be provided for the duration of the construction activity.

~~(2)~~(1)

~~(3)~~(2) Proof of notice to all identified properties that may be affected within such scope that a preconstruction survey was offered at no cost to the property owner. The notice must also include an estimated construction timeline and contact information for the person responsible for the construction activity.

(3) A list of all properties that were surveyed. The applicant shall also provide a copy of the results of the survey to the owner of the property that is surveyed.

(4) The vibration control plan shall also identify any properties that may be affected by vibration that are landmarked or listed on the national register of historic places and state any specific protective measures or monitoring necessary to protect those properties.

(5) Any other plans or specifications as the Commissioner of Inspectional Services may require, including but not limited to revisions to the submitted vibration control plan.

- (b) As an alternative to the required vibration control plan and other required submissions set forth in Sec. 5-23(a) above, the applicant may submit a signed and stamped letter from a licensed and insured professional engineer/geotechnical consultant stating that a vibration control plan and monitoring are not necessary based on the scope of the work, site conditions or construction methods. Such letter must detail the basis of the opinion that no vibration control plan, monitoring or controls are necessary. No additional submissions will be required unless the Commissioner of Inspectional Services or their designee determines that compliance with Sec. 5-23(a) is necessary due to the nature of site or the proposed work.
- (c) The submitted vibration control plan shall be implemented and adhered to during all relevant construction activity. The applicant shall keep a record of all monitoring and shall provide copies to the Commissioner of Inspectional Services upon request.
- (d) Following construction and prior to the issuance of a certificate of occupancy, the applicant shall cause all properties that received a ~~subject to a~~ preconstruction survey ~~shall, subject to owner approval, to~~ be reinspected, subject to the property owner's approval, to determine any damages caused by vibration. The applicant shall also provide a copy of the results of the survey to the owner of the property that is surveyed.
- (e) *Penalties:* Violations of any portion of this section, including violations of any regulation promulgated hereunder, or failure to comply with a vibration control plan submitted pursuant to this section, shall be punishable by a fine of three hundred dollars (\$300.00) for each day during which the violation continues. Where non-criminal disposition of specified sections of this section by civil fine has been provided for in sections 17-22 and 17-23 of these revised ordinances, as amended, pursuant to the authority granted by G.L. c. 40, sec. 21D, said violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set forth in section 17-23(c).
- (f) *Enforcement:* The commissioner or ~~their~~his designee shall enforce all provisions of this section, including any regulation promulgated hereunder, and shall institute all necessary administrative or legal action to assure compliance.
- (g) Regulatory Authority: The commissioner has the authority to promulgate rules and regulations necessary to implement and enforce this section.

(h) *Applicability*: This section does not apply to property owned or subject to the control of the city or any of its governmental bodies.

(g)(i) *Effective Date*: The requirements of this Section 5-23 shall not apply to any building permit, special permit or comprehensive permit issued prior to the effective date of this amendment of March 1, 2024.

(h)(j) *Severability*: If any provision of this section is held to be invalid by a court of competent jurisdiction then such provision shall be considered separate and apart from the remaining provisions, which shall remain in full force and effect.

CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM

DATE: November 3, 2023

TO: All Members, Programs & Services Committee

CC: Marc Welch, Deputy Commissioner

FROM: Jennifer Wilson, Assistant City Solicitor

RE: #411-22 Request for Amendment to Chapter 21, Art III Trees
(sec. 21-60 through 21-89) to extend tree protection

Attached are the following documents: (1) an updated redline draft of the amended tree preservation ordinance; (2) a clean version of the same draft; and (3) a redline ordinance to Chapter 17 to reflect the change in permit fee.

The Law Department has made edits to clean up the most recent draft that was reviewed by the Programs and Services Committee on October 4, 2023. The intent of these edits is to modify the form of the proposed ordinance for the purpose of clarity. These edits are not intended to change the substance or policy of the ordinance as decided by the Committee. Prior to making these edits, all of the changes made by the Committee up through the last meeting were accepted. In the attached draft, the redlines represent only the Law Department's edits as to form. Below is a brief summary of the most substantial changes.

First, we removed the concept of an Exempt Lot from the ordinance and created a new definition for Exempt Trees. We think this change simplifies the application sections and helps to clarify the understanding of the ordinance, since in most cases only certain trees on a lot will be exempt, not every tree on a lot. We also divided the application section into two parts: tree permits and exemption permits. We then divided the tree permit section into two parts as well: submittals that will be required for all tree permits, and submittals that may be required depending on what the permit seeks (i.e. construction but no removal, removal of dead tree, etc.).

We removed the last two sentences from section 21-83(d) on review of tree permit applications. That language regarding tree warden notifying the commissioner of ISD is obsolete and doesn't represent how this works in practice. Deputy Commissioner Welch does not need to affirmatively notify ISD that a tree permit is issued.

We added an effective date section, under which the requirements of the amended provisions will not apply to any trees that were removed prior to the effective date or are to be removed pursuant to any permit issued prior to the effective date. Finally, we removed language that was duplicative and moved some provisions to other sections where they were better suited.

Please let me know if you have any questions. Thank you.

DIVISION 3. TREE PRESERVATION**Sec. 21-80 Findings, intent, and purpose.**

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

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

Sec. 21-81. Definitions.

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

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

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

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

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

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

Exempt Tree: A protected tree that does not meet the Landmark or Legacy tree designation that is located on a single- or two-family residential occupied lot where no exterior construction is presently underway or planned to take place during the 24 months from the date of the permit application.

Exterior work permit: A permit or approval which is required in order to perform exterior 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, non-applicability, or hardship; a demolition permit pursuant to section

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

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

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 up to 55" DBH 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-six inches (6") DBH or larger and which is located on land subject to the provisions of section 21-82, or any replacement tree as described in 21-85(a)(5).

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

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

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

Significant Tree: Any tree having a diameter of 25" DBH up to 40" DBH ~~and which is located on land subject to the provisions of section 21-82~~, or a replacement tree as described in 21-85-(ba)(35), which is not a landmark tree or a legacy tree.

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; ~~and~~ (4) ~~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 2424 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 that~~

sets out measures for protecting all trees on the lot during construction or tree removal activity, as well as trees adjacent to the lot that may be impacted by the construction or tree removal activity on the applicant's lot.

Tree Save Area: Area within the drip line 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~~ ~~their~~ designee. (Rev. Ord. 2007, § 20-31; Ord. No. A-38, 05-05-14; Ord. No. B-53, 03-02-20)

Sec. 21-82. Applicability, tree permit or ~~certificate of~~ exemption permit 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. ~~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) *Tree Permit:* No person shall remove a protected non-exempt tree ~~on a lot located on land subject to the provisions of this article~~, or commence legally permitted exterior work ~~on any lot pursuant to an Exterior Work Permit~~ without first obtaining a tree permit from the Tree Warden. ~~Applications shall be made in writing on forms specified by the Tree Warden.~~

(c) *Exemption Permit:* No person shall remove an Exempt Tree without first obtaining an exemption permit from the Tree Warden. ~~Applications shall be made in writing on forms specified by the Tree Warden.~~

~~—(c) 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) ~~—(a)~~ *Tree Permit Application*

(1) *Required Contents:* An application for a tree permit shall be submitted to the Tree Warden in the form and manner specified by the Tree Warden and shall include ~~, but not be limited to,~~ the following:

(A) ~~(1)~~ A plan showing the shape and dimensions of the parcel of real property to be developed, together with the existing and proposed locations of structures and improvements, if any, and showing the limit of work;

(2B) A tree-Tree plan-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;

(C) An affidavit, in a form provided by the Tree Warden, attesting that the applicant provided notice to the owners of all abutting properties and all properties directly across the street prior to submitting the application; and

~~(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;~~

~~(5D) A plan showing 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 protected tree within the Tree Save Area of any protected tree on the applicant's lot or any abutting lot requires a statement prepared by a Certified Arborist explaining how each such protected tree shall be protected and maintained;~~

~~(7) The proposed method of protecting the remaining protected trees on the applicant's lot and any abutting lots during the course of the construction or tree removal shall be prepared by a Certified Arborist;~~

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

~~(9) The Tree Warden may waive any of the above-listed requirements, upon written request from the applicant, in the Tree Warden's sole discretion. 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.~~

(2) *Additional Contents:* The Tree Warden will require additional documents be submitted as part of the tree permit application depending on the scope of the work, including but not limited to the following:

(A) A Tree Protection Plan;

(B) Documentation from a Certified Arborist showing the proposed relocation of any existing protected tree and how each such protected tree is to be relocated and maintained;

(C) Documentation from a Certified Arborist, utilizing industry approved Risk Tree Evaluation methods, identifying any trees that 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; and

(D) A statement prepared by a Certified Arborist explaining how any protected tree shall be protected and maintained from any proposed grade change.;

(b) *Exemption Permit Application*

(1) *Required Contents:* An application for an exemption permit shall be submitted to the Tree Warden in the form and manner specified by the Tree Warden and shall include the following:

(A) Documentation showing that the tree(s) to be removed meet the definition of exempt tree(s); and

(B) The species and size of each tree being removed, the reason for tree removal, and a diagram and/or photograph depicting the location of each tree to be removed.

The Tree Warden may waive any of the above-listed requirements, upon written request from the applicant, in the Tree Warden's sole discretion.

~~(a)~~(c) ~~(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 orf significantly compromised tree(s) that a certified arborist has attested to on forms required by the City shall be \$0.~~

(1) The application fee for a administrative fee for processing a tree permit for all tree removal work or exterior work, with the exception of tree permits described in subsection 21-83(bc)(1), shall be \$200.

(2) There shall be no application fee for an exemption permit or for a tree permit for the removal of a dead or significantly comprised tree in accordance with Section 21-83(e)(4).

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

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

~~(de)~~ *Standards for grant or denial of tree permit*: No tree permit shall be issued unless one of the following conditions exists, as determined by the Tree Warden in their sole discretion:

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

(2) ~~The applicant makes a payment in lieu of planting replacement tree(s) in accordance with 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 ~~lotsite as certified to the tree warden by a certified arborist.~~

(6) No protected tree(s) are to be removed from the ~~lotsite~~ and appropriate tree protection measures will be in place where necessary ~~as determined by the tree warden.~~

(ef) *Conditions:* Upon the issuance of a tree permit, the ~~tree-Tree warden-Warden~~ may prescribe in writing additional parameters and requirements related to the protection of trees to remain on the lot and trees ~~with a Tree Save Area extending over the lot line~~ ~~within a reasonable distance from the lot.~~

(g) *Performance of Work Pursuant to Tree Permit:* No exterior work, site disturbance, or tree removal shall take place on a lot until all ~~required~~ tree protective measures are ~~approved and~~ in place. ~~All work shall be done in accordance with the plans submitted to and approved by the Tree Warden.~~ The Tree Permit holder must ~~provide~~ ~~maintain~~ documentation from a Certified Arborist on the form(s) provided by the Tree Warden that all protective measures are in place, ~~which shall be available to the Tree Warden upon request.~~ ~~the Tree Warden will provide written documentation to the property owner that exterior work may commence.~~

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

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

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

(hj) *Appeal:* Any ~~person-applicant~~ aggrieved by a decision of the ~~tree-Tree warden-Warden~~ may file an appeal with the mayor or the mayor's designee. Said appeal must be in writing and must be received by the mayor or the mayor's designee within five (5) business days of issuance of the ~~Ttree W~~arden's decision. Upon receipt of such appeal, the mayor or the mayor's designee shall provide a copy to the clerk of the city council and to each councilor 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 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 the mayor's designee shall include in the decision the rationale therefor. Upon issuance of the final decision, the mayor or the mayor's designee shall provide a copy to the clerk of the city council and to each abutter. There shall be no further appeal of the matter decided by the mayor or the mayor's designee. No protected trees shall be removed while an appeal is pending. (Ord. No. V-275, 12-6-99; Ord. No. X-202, 04-03-06; Rev. Ord. 2007, § 20-33; Ord. No. A-38, 05-05-14)

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

(a) *Pruning:* A permit is not required for the pruning of protected trees. However, in order to prevent excessive pruning and topping of trees and to prevent pruning that will be hazardous to the health and natural appearance of the tree, compliance with ~~ANSI A300p~~ ~~Pruning standards~~ ~~Standards~~ is required, and failure to meet these standards is a violation of this article.

(b) *Emergencies:* If any protected tree shall be determined to be in a hazardous condition so as to immediately endanger the public health, safety or welfare or cause an immediate disruption of public services and require

immediate removal without delay, oral authorization may be given by the ~~tree~~Tree warden-Warden to remove such tree, utilizing such professional criteria and technical assistance as the ~~Tree~~Warden deems necessary, and the protected tree may be removed without obtaining a written permit as otherwise required by this article. The ~~T~~ree 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~~Tree warden-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 ~~in accordance with this subsection (a)~~ within eighteen (18) months ~~from the date the tree permit is issued,~~ 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) ~~(1)~~A replacement tree shall be of the same or similar species ~~as the removed tree~~ or such other species as deemed advisable by the tree warden. Trees planted as hedges shall not count as replacement trees unless otherwise permitted by the Tree Warden.

~~(1)~~(2) A replacement tree shall be planted on the same lot from which the tree was removed.

~~(2)~~(3) A replacement tree shall be ~~(2) In the event that~~ a tree of the same or equivalent size as ~~the tree being removed, as measured in DBH inches~~DBH inches ~~cannot be planted, then. If doing so is not practicable, as determined by the Tree Warden,~~ multiple smaller replacement trees may be planted to replace the tree or trees being removed provided that: ~~wherever practicable, as determined by the tree warden,~~ the total DBH of the replacement trees shall; ~~C~~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.

(4) ~~W~~The Tree Permit holder shall provide documentation as to the date of planting and file the same with the ~~tree warden~~ within fifteen (15) days after of the planting of a said replacement tree, a tree permit holder shall submit documentation to the Tree Warden prepared by ~~. Documentation shall be provided by a Certified~~

Arborist evidencing that the tree is in place and the date of planting. ~~on form(s) provided by the Tree Warden that the trees are in place.~~

~~(3)~~ A replacement tree shall be a Protected Tree and shall be considered a Significant Tree regardless of trunk diameter, health or condition, unless the replacement tree meets the definition of Landmark or Legacy Tree. ~~The Tree Permit holder 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)~~ ~~(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)

~~(eb)~~ Cemetery Exemption: This Section 21-85 shall not apply to Protected Trees that are removed from 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 to the Tree Warden for review that lists the current inventory of trees on the property; and 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)~~

~~(4)~~ (2) The report is submitted to the Tree Warden for review; and

~~(5)~~ (3) 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 Tree Warden, the Tree Warden may impose remedies, including the requirement to comply with this Section 21-85.

(d) Exempt Trees: This Section 21-85 shall not apply to Exempt Trees that are removed pursuant to an exemption permit. If construction takes place on a lot within the 24 months following the date of the exemption permit application, the current property owner will be required to comply with the replacement requirements of this Section 21-85.

Sec. 21-86. ~~Tree replacement fund~~ Payment in lieu of planting replacement trees.

~~—(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.~~

~~(ba)~~ Payment in lieu of planting replacement tree(s): In lieu of planting a replacement tree as provided required by in section 21-85, a tree permit applicant person who has been granted a tree permit may make a contribution to a tree replacement fund in an amount equal to the cost of the replacement tree to replace the tree in accordance with the provisions of section 21-85, which cost shall be determined by the ~~tree~~ Tree warden Warden based on the City's

current cost to purchase, install, and 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.

~~(a) Established Tree replacement fund:~~ 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 in lieu of planting replacement trees 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.

~~—(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~~ Tree warden 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~~ Tree warden 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. ~~If citing a violation of 21-85 or The tree warden shall send notice of violation of section 21-86), which the~~ 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~~ Tree warden Warden that work ~~on any protected tree, or lot, or abutting lot, on which a protected tree is located,~~ is being performed ~~contrary to~~ in violation of the any 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~~ Tree warden 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). **Each day such violation continues shall constitute a separate offense.**

(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 stop work order:* Any person who shall continue any work in violation of Section 21-88 after having been served with a stop work order, except such work as that person is directed to perform to remediate a violation or unsafe condition, shall be liable for 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.**

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

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

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

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

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

Sec. 21-91. Effective Date.

The effective date of the amended provisions of section 21-80 through 21-90 is January 1, 2024. The requirements of the amended provisions do not apply to any trees removed prior to the effective date or to any trees to be removed pursuant to any tree permit or building permit issued prior to the effective date of this amendment.

DIVISION 3. TREE PRESERVATION**Sec. 21-80 Findings, intent, and purpose.**

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

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

Sec. 21-81. Definitions.

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

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 Tree: A protected tree that does not meet the Landmark or Legacy tree designation that is located on a single- or two-family residential occupied lot where no exterior construction is presently underway or planned to take place during the 24 months from the date of the permit application.

Exterior work permit: A permit or approval which is required in order to perform exterior work, 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, non-applicability, 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.

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

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

Landmark Tree: Any tree having a diameter larger than 40" DBH up to 55" DBH 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 six inches (6") DBH or larger and which is located on land subject to the provisions of section 21-82, or any replacement tree as described in 21-85(a)(5).

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

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

Risk Tree Evaluation: The process by which a tree is evaluated to determine the level of risk it poses to the existing property and public at the time of inspection. All risk tree evaluations shall be conducted by a Certified Arborist using a systematic process that identifies, analyzes, and evaluates risk. All tree risk evaluations are to follow the most current ANSI A300 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 of 25" DBH up to 40" DBH, or a replacement tree as described in 21-85(a)(5) which is not a landmark tree or a legacy tree.

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; (3) the location, type, and size of replacement trees; and (4) 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 management standards for the site planning and development, that sets out measures for protecting all trees on the lot during construction or tree removal activity, as well as trees adjacent to the lot that may be impacted by the construction or tree removal activity on the applicant's lot.

Tree Save Area: Area within the drip line 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 their designee. (Rev. Ord. 2007, § 20-31; Ord. No. A-38, 05-05-14; Ord. No. B-53, 03-02-20)

Sec. 21-82. Applicability, tree permit or exemption permit 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.

(b) *Tree Permit*: No person shall remove a protected non-exempt tree or commence work pursuant to an Exterior Work Permit without first obtaining a tree permit from the Tree Warden.

(c) *Exemption Permit*: No person shall remove an Exempt Tree without first obtaining an exemption permit from the Tree Warden.

Sec. 21-83. Permit application.

(a) *Tree Permit Application*

(1) *Required Contents*: An application for a tree permit shall be submitted to the Tree Warden in the form and manner specified by the Tree Warden and shall include the following:

(A) A plan showing the shape and dimensions of the parcel of real property to be developed, together with the existing and proposed locations of structures and improvements, if any, and showing the limit of work;

(B) A Tree Plan;

(C) An affidavit, in a form provided by the Tree Warden, attesting that the applicant provided notice to the owners of all abutting properties and all properties directly across the street prior to submitting the application; and

(D) A plan showing the location of existing and proposed underground or overhead utility services, existing and proposed roadways, bikeways, walkways and parking areas.

The Tree Warden may waive any of the above-listed requirements, upon written request from the applicant, in the Tree Warden's sole discretion.

(2) *Additional Contents*: The Tree Warden will require additional documents be submitted as part of the tree permit application depending on the scope of the work, including but not limited to the following:

(A) A Tree Protection Plan;

(B) Documentation from a Certified Arborist showing the proposed relocation of any existing protected tree and how each such protected tree is to be relocated and maintained;

(C) Documentation from a Certified Arborist, utilizing industry approved Risk Tree Evaluation methods, identifying any trees that 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; and

(D) A statement prepared by a Certified Arborist explaining how any protected tree shall be protected and maintained from any proposed grade change.

(b) *Exemption Permit Application*

(1) *Required Contents:* An application for an exemption permit shall be submitted to the Tree Warden in the form and manner specified by the Tree Warden and shall include the following:

(A) Documentation showing that the tree(s) to be removed meet the definition of exempt tree(s); and

(B) The species and size of each tree being removed, the reason for tree removal, and a diagram and/or photograph depicting the location of each tree to be removed.

The Tree Warden may waive any of the above-listed requirements, upon written request from the applicant, in the Tree Warden's sole discretion.

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

(1) The application fee for a tree permit, shall be \$200.

(2) There shall be no application fee for an exemption permit or for a tree permit for the removal of a dead or significantly comprised tree in accordance with Section 21-83(e)(4).

(d) *Review of tree 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.

(e) *Standards for grant or denial of tree permit:* No tree permit shall be issued unless one of the following conditions exists, as determined by the Tree Warden in their sole discretion:

(1) The protected tree will be relocated or replaced on site in accordance with section 21-85.

(2) The applicant makes a payment in lieu of planting replacement tree(s) in accordance with section 21-86.

(3) The protected tree is interfering with existing structures, utilities, streets, sidewalks or other existing improvements.

(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.

(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 lot.

(6) No protected tree(s) are to be removed from the lot and appropriate tree protection measures will be in place where necessary.

(f) *Conditions:* Upon the issuance of a tree permit, the Tree Warden may prescribe in writing additional parameters and requirements related to the protection of trees to remain on the lot and trees with a Tree Save Area extending over the lot line.

(g) *Performance of Work Pursuant to Tree Permit:* No exterior work, site disturbance, or tree removal shall take place on a lot until all required tree protective measures are in place. All work shall be done in accordance with the

plans submitted to and approved by the Tree Warden. The Tree Permit holder must maintain documentation from a Certified Arborist on the form(s) provided by the Tree Warden that all protective measures are in place, which shall be available to the Tree Warden upon request. 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.

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

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

(j) *Appeal*: Any applicant aggrieved by a decision of the Tree Warden may file an appeal with the mayor or the mayor's designee. Said appeal must be in writing and must be received by the mayor or 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 the mayor's designee shall provide a copy to the clerk of the city council and to each councilor 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 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 the mayor's designee shall include in the decision the rationale therefor. Upon issuance of the final decision, the mayor or the mayor's designee shall provide a copy to the clerk of the city council and to each abutter. There shall be no further appeal of the matter decided by the mayor or the mayor's designee. No protected trees shall be removed while an appeal is pending. (Ord. No. V-275, 12-6-99; Ord. No. X-202, 04-03-06; Rev. Ord. 2007, § 20-33; Ord. No. A-38, 05-05-14)

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

(a) *Pruning*: A permit is not required for the pruning of protected trees. However, in order to prevent excessive pruning and topping of trees and to prevent pruning that will be hazardous to the health and natural appearance of the tree, compliance with Pruning Standards is required, and failure to meet these standards is a violation of this article.

(b) *Emergencies*: If any protected tree shall be determined to be in a hazardous condition so as to immediately endanger the public health, safety or welfare or cause an immediate disruption of public services and require immediate removal without delay, oral authorization may be given by the Tree Warden to remove such tree, utilizing such professional criteria and technical assistance as the Tree Warden deems necessary, and the protected tree may be removed without obtaining a written permit as otherwise required by this article. The Tree Warden shall memorialize in writing each such oral authorization to remove a tree and keep a record of the same.

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

Sec. 21-85. Tree replacement.

(a) *Standards:* A person who has removed a protected tree shall replace such tree within eighteen (18) months from the date the tree permit is issued, or prior to transfer of property ownership, whichever comes first, and in accordance with the following standards:

- (1) A replacement tree shall be of the same or similar species as the removed tree or such other species as deemed advisable by the tree warden. Trees planted as hedges shall not count as replacement trees unless otherwise permitted by the Tree Warden.
- (2) A replacement tree shall be planted on the same lot from which the tree was removed.
- (3) A replacement tree shall be a tree of the same or equivalent size as the tree being removed, as measured in DBH inches. If doing so is not practicable, as determined by the Tree Warden, multiple smaller replacement trees may be planted to replace the tree or trees being removed provided that the total DBH of the replacement trees shall conform to the following:
 - (a) For every protected tree removed that does not qualify as a Significant, Landmark, or Legacy Tree, the total DBH of the replacement trees shall, when added together, equal the total DBH of the protected tree that has been removed.
 - (b) For every protected tree removed that also meets the Significant Tree definition, 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, 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.
- (4) Within fifteen (15) days after planting a replacement tree, a tree permit holder shall submit documentation to the Tree Warden prepared by a Certified Arborist evidencing that the tree is in place and the date of planting.
- (5) A replacement tree shall be a Protected Tree and 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. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-35, Ord. No. A-38, 05-05-14)

(b) *Cemetery Exemption:* This Section 21-85 shall not apply to Protected Trees that are removed from 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 to the Tree Warden for review that lists the current inventory of trees on the property; and 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; and
- (3) 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 Tree Warden, the Tree Warden may impose remedies, including the requirement to comply with this Section 21-85.

(d) *Exempt Trees*: This Section 21-85 shall not apply to Exempt Trees that are removed pursuant to an exemption permit. If construction takes place on a lot within the 24 months following the date of the exemption permit application, the current property owner will be required to comply with the replacement requirements of this Section 21-85.

Sec. 21-86. Payment in lieu of planting replacement trees.

(a) *Payment*: In lieu of planting a replacement tree as required by section 21-85, a tree permit applicant may make a contribution to a tree replacement fund in an amount equal to the cost of the replacement tree in accordance with the provisions of section 21-85, which cost shall be determined by the Tree Warden based on the City's current cost to purchase, install, and 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.

(b) *Tree replacement fund*: 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 in lieu of planting replacement trees shall be deposited in the tree replacement fund. 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. If citing a violation of 21-85 or 21-86, the 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 is being performed in violation of any 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 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.

(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). Each day such violation continues shall constitute a separate offense.

(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 stop work order:* Any person who shall continue any work in violation of Section 21-88 after having been served with a stop work order, except such work as that person is directed to perform to remediate a violation or unsafe condition, shall be liable for 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.

(d) *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. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-38; Ord. No. A-38, 05-05-14)

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

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

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

Sec. 21-91. Effective Date.

The effective date of the amended provisions of section 21-80 through 21-90 is January 1, 2024. The requirements of the amended provisions do not apply to any trees removed prior to the effective date or to any trees to be removed pursuant to any tree permit or building permit issued prior to the effective date of this amendment.

Sec. 17-17. Fees to be paid to the Tree Warden.

(1) <u>Public</u> Tree Permit (Sec. 21-72).....	\$150.00
(2) <u>Tree Permit (Sec. 21-83)</u>	<u>\$200.00</u>



MEMORANDUM

Date: November 6, 2023
To: Jennifer Wilson, Assistant City Solicitor
From: Councilors Emily Norton, Pam Wright, Julia Malakie
CC: Programs & Services Committee; Director of Urban Forestry Marc Welch

We have reviewed your draft of the Tree Protection Ordinance posted to the Newton Friday packet on November 3. As you noted in your November 3 memo:

The Law Department has made edits to clean up the most recent draft that was reviewed by the Programs and Services Committee on October 4, 2023. The intent of these edits is to modify the form of the proposed ordinance for the purpose of clarity. These edits are not intended to change the substance or policy of the ordinance as decided by the Committee. Prior to making these edits, all of the changes made by the Committee up through the last meeting were accepted. In the attached draft, the redlines represent only the Law Department's edits as to form. Below is a brief summary of the most substantial changes.

We appreciate the improvements you have made to the draft in terms of clarity and removing duplicative phrases.

Unfortunately, in spite of your stated intention to avoid changing substance or policy, the new categories of "Exempt Tree" and "Exemption Permit" do just that, as we lay out below. We believe it is necessary to revert to the October 4 version and make only the changes to that draft (such as adding the low income exemption) that the Programs and Services Committee ("Committee") had requested.

Councilor Norton can make herself available to meet with you on Tuesday or Wednesday in order to facilitate a corrected document prior to Wednesday night's meeting.

Below we lay out the many ways that the creation of the new concepts of "Exempt Tree" and "Exemption Permit" lead to significant departures from the version agreed on by the Committee, including:

- ☐ Removal of protections for abutters' trees
 - ☐ Removal of data collection from all applicants for a much-needed City-wide inventory of tree canopy and tree loss on private land
 - ☐ Removal of the requirement for permit violators to provide replacement trees (or payment in lieu)
 - ☐ Removal of the requirement for a permit to cut trees before a building permit application can be accepted
- (Page numbers mentioned in the list are from the Newton Ordinances On-Line - Chapter 21 number at the bottom center of the page.)

1. Creation of "Exempt Tree" Category

This category was never discussed by the Committee, which consistently affirmed Protected Trees as those 6" DBH and larger within Newton (that are not on City-, Commonwealth-, or Federal-owned land). The introduction of an

“Exempt Tree” category creates a series of inconsistencies, missing information, and departures from policies agreed upon by the Committee. Each place we found in the document where this category creates problems is listed here:

(p. 1) Sec. 21-81, definition of *Exempt Tree*

You wrote: “Exempt Tree: A protected tree that does not meet the Landmark or Legacy tree designation that is located on a single- or two-family residential occupied lot where no exterior construction is presently underway or planned to take place during the 24 months from the date of the permit application.”

This definition contradicts the definition of a Protected Tree as 6" DBH and larger that is within the City of Newton on land not owned by the City, Commonwealth, or Federal Government.

Also, this definition would include trees on abutting lots as Exempt (unless there was also construction on the abutting lot). But the Committee explicitly chose to protect trees 6" DBH and larger on abutting lots.

Some Committee members noted there is a problem with the term “planned” in that property owners could claim that they had not *planned* construction for 24 months, even if they then actually proceed to construction within that time frame. Marc Welch said that the term would be removed in the final document.

Another problem with the “Exempt Tree” concept is that it is not particular trees that are exempt. Rather, specific conditions exempt property owners from the requirement to replace Protected Trees. The Committee was very explicit, as was Marc Welch on multiple occasions, that everyone would need to file a Permit application including documentation that will allow Marc and his staff to inventory and track trees on private property and their losses. Thus the creation of an Exempt Tree category has detrimental implications for long-term Urban Forestry planning, as discussed further below.

We understand that you may have been trying to accommodate the discussion of the so-called nexus added late on October 4 by the Committee. But we suggest it is more efficient to refer to this additional set of conditions for exemption under the Standards section as “exemptions for Protected Trees outside the nexus of construction (unless they are Landmark or Legacy Trees).”

We understand how difficult it is to incorporate this late-added condition for exemption because, depending on how “nexus” is interpreted, it could contradict the multiple instructions by the Committee to prevent clearcutting of lots by developers.

(p. 2) definition of *Remove*

The draft maintained this definition of “Remove”:

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.

However, because of the addition of an Exempt Tree definition, the language in the definition of *Remove* also changes meaning. It now means that the concept of *removal* does *not* apply to Exempt Trees, so including all the related requirements and penalties for violation do not apply.

Thus, if someone cuts down an Exempt Tree (including an abutter’s tree) in violation—for example, without a permit or approval of exemption—they cannot be said to have removed a tree and the penalties cannot apply.

(p. 3) Sec. 21-82, applicability of *Tree Permit*

Your changes to the definition of “Tree Permit” are quite problematic. The introduction of “non-exempt” adds a new requirement for a permit to cut down a tree. It must be *both* a Protected Tree *and* a non-Exempt Tree. Are all trees that are not defined as an Exempt Tree “non-exempt”? The grammar implies yes.

This language also creates ambiguity for property owners. How do they identify which trees are Protected, which are Exempt, and which are non-Exempt?

(p. 6) Sec. 21-83, permitted *Construction*

Because of the addition of an Exempt Tree definition, the language of what construction is permitted also changes meaning. It now means that activities within the Tree Save Area of Exempt Trees, including on adjoining lots, are allowed.

This change in meaning contradicts the Committee’s explicit intention to protect abutter trees and the entire purpose of defining a Tree Save Area.

(p. 6) *Appeal*

Because of the addition of an Exempt Tree definition, the language of what trees cannot be removed pending appeal also changes meaning. It now means that if the appeal is about exemption status, then the trees in dispute can be removed because Exempt Trees are not included here.

(p. 6) Sec. 21-84, *Pruning* activities & *Emergencies*

Because of the addition of an Exempt Tree definition, the language of what trees cannot be killed by over pruning and which trees may be taken down without penalty during emergencies also changes meaning. It could mean that a permit is required for pruning Exempt Trees, or it could mean that if Exempt Trees are pruned to the point of killing them, there is no consequence. It also implies that Exempt Trees also require a written permit even in an emergency.

(p. 8) Sec. 21-85, replacement of *Exempt Trees* (if construction takes place within 24 months)

This language is confusing. Are Exempt Trees that are cut down without an exemption permit subject to replacement requirements? (The grammar implies they are.)

Are Exempt Trees on abutting lots subject to replacement requirements when construction takes place on the applicant’s lot within 24 months? (The grammar implies they are not.)

If an abutting lot has construction within 24 months, so the abutting trees are no longer Exempt, which owner has to comply with the replacement requirements? (Unclear.)

(p. 10) Sec. 21-85, penalties for *Removal without a permit*

Because of the addition of an Exempt Tree definition, the language of what tree violations have penalties also changes meaning. It now means that only violations of Protected Trees carry penalties. Thus, if someone cuts down an Exempt Tree without a permit, there is no penalty.

This lack of consequences for failure to get a permit goes against the intention of the Committee and Marc Welch to ensure documentation of Newton's tree canopy and tree losses. It also contradicts the language on p. 8 (see above).

2. Creating an "Exemption Permit" Category

This category was never discussed by the Committee, which consistently affirmed that every one would have to submit a permit application with documentation for every tree cut. Marc Welch said that having this documentation is important to inventory Newton's full tree canopy, since his current documentation is only for street trees and City-owned land.

The introduction of the "Exemption Permit" category creates departures from policies agreed upon by the Committee. Most notably, it removes the previously clear language of protection for abutters' trees, consultation with a Certified Arborist, and documentation of a Tree Protection Plan. This category also creates inconsistencies and missing information that will require further deliberation to resolve. Each place we found in the document where this category creates problems is listed here:

(p. 3) Sec. 21-82, applicability of *Exemption Permit*

Your creation of this new "Exemption Permit" is problematic. The ordinance language doesn't explain:

- ☐ How the Exemption Permit application will be reviewed
- ☐ What the standards are for grant or denial of an Exemption Permit application (and if denied, whether the applicant is allowed to apply for a Tree Permit application)
- ☐ The conditions for an Exemption Permit
- ☐ How to perform work pursuant to an Exemption Permit
- ☐ The criteria for suspension or revocation of an Exemption Permit
- ☐ The process for an appeal of an Exemption Permit
- ☐ Whether pruning protections and emergency procedures apply to Exempt Trees
- ☐ what happens when an Exempt Tree is cut without an Exemption Permit

The creation of "Exempt Trees" and "Exemption Permits" make the ordinance unnecessarily complicated. Much additional language will be required. Moreover, the language creates definitions and terms that do not make sense: cutting Exempt Trees does not mean "removal," emergency and ordinary pruning procedures do not apply to Exempt Trees, and a new type of permit is necessary for an exemption. These departures from plain English will create confusion over the requirements of the ordinance and how to comply with it.

(pp. 3–6) Sec. 21-83, Permit Application

We agree that it is useful to indicate which items are required of all permits and which are required depending on particular circumstances. However the actual reorganization here departs from both the agreement of the Committee, and Marc Welch's stated goals for the Urban Forestry inventory.

(a) *Tree Permit Application*

As currently written, the only things required of all applications are a plan of the property, a Tree Plan, an affidavit that abutters have been notified, and a plan of utilities and useways and parking.

Notably, the requirement for a Tree Protection Plan has been incorrectly moved to the "Additional" category, and that change contradicts several things that the Committee repeatedly agreed:

- A Certified Arborist should be consulted about which trees should be cut and why (both to reduce Marc Welch's workload and to increase public consideration about the environmental value of trees).
- A Certified Arborist should advise on which trees on abutters' properties will require protection.
- Protections must occur for other trees 6" DBH and larger on the applicant's lot, and on abutting lots for tree removal projects as well as for construction projects.

Moreover, the items moved to "Additional Contents" have been modified such that several things that the Committee repeatedly agreed on have been lost.

- There is no longer any requirement for documentation from a Certified Arborist for an argument that tree removal (for example, of an invasive species tree) would enhance the overall tree canopy.
- Abutters' trees are no longer protected from grade changes.

Note also that we recommend the following additional changes in this section:

- Sec. 21-83 (a) (1)(A): Delete "to be developed" since the plan is also required in the absence of construction.
- Sec. 21-83 (a) (1)(C): Change "directly across the street" to "directly across the right of way" because the Committee was explicit that properties across the footpath in Oak Hill must be included in the requirement.
- Sec. 21-83 (a) (1)(C): Require a list of the addresses notified as part of the affidavit to allow verification that all the abutters have been correctly identified.
- Sec. 21-83 (a)(2): Delete the phrase "depending on the scope of the work" since it is not the size (scope) of the project but whether and how the specifics of the construction or tree removal will impact other trees on the applicants' lot and abutters' lots.

(b) Exemption Permit Application

In addition to the concerns raised above, there is no information provided for property owners about how they know whether they may apply for an Exemption Permit rather than a Tree Permit, requiring many individual consultations with Marc or his staff.

As currently written, the only things required of Exemption Permit applications are documentation that the tree(s) are Exempt Trees and a list (with diagram or photo) of the trees to be removed. The requirements that *all* applications must include a Tree Protection Plan and consult a Certified Arborist have been removed. The Committee agreed on these requirements and Marc repeatedly emphasized the importance of having property owners consult with a Certified Arborist and the importance of documenting all the trees on each lot for the City-wide inventory.

There is no provision anywhere in the Exemption Permit for identification of, or protections for, abutters' trees that may be at risk.

(a) and (b) Waiver of requirements

In Sec. 21-83(a) and (b), the modifications of the language granting the Tree Warden the ability to waive some of these requirements has been modified in a way that changes the meaning agreed upon by the Committee.

The Committee agreed that, when there is no construction, some of these materials are not necessary, but that the "Tree Warden shall still require a tree permit application be filed and supporting documentation provided." Moreover, the reorganization of requirements into a required-for-all section and an additional section means that the statement that the Tree Warden can waive some requirements is not necessary and could be dropped entirely.

But the current document instead says that the Tree Warden can waive any documentation requirement on (written) request by any applicant, without the Committee's requirement that such waiver only be when no construction is going on or any other guidelines. This loophole will subject the Tree Warden to individual requests for special treatment.

(c) *Fee*

The Committee agreed that there would be an application fee of \$200 for all tree removals except for removals of trees documented as dead or dangerous. But this section now removes the fees for all Exemption Permits.

(d) *Review of Tree Permit Applications*

Language has been removed from the current in-place ordinance that the Tree Warden report the acceptance or denial of the tree permit *and* that ISD's acceptance of a building application depends on confirmation of a tree permit. This removal contradicts the Committee's deliberations that ISD acceptance of a building permit should continue, as in current practice, to depend on having a tree permit. The Committee did agree that the Tree Warden posting the permit status in the City's online permitting system could meet the report requirement.

Also, as mentioned above, there are no specifications for review of the new category of Exempt Permit applications.

(e) *Standard for Grant or Denial of Tree Permit*

Tree Warden confirmation that tree protection measures are in place before issuing a permit have been removed. This removal has serious implications for protection of abutters' trees. When combined with the removal of language in (g) below, there is no one responsible for assuring that the protections for abutters' trees are in place before tree removal or construction begins. Since abutters' trees may die, once the damage is inflicted, this oversight is crucial.

The language "determined by the Tree Warden" was moved from one of the clauses to the overall standards (with the addition of "in their sole discretion") thus changing the meaning at both levels. The standards are *not* at the *sole* discretion of the Tree Warden. The reason for requiring documentation from a Certified Arborist is so that the Tree Warden does not have to do all this work himself. The one place that the Committee agreed that the Tree Warden should continue to check in person—as in the current in-place tree ordinance—is to confirm that tree protections are in place.

Also removed is the agreed-upon requirement for documentation by a Certified Arborist that tree removal would enhance the overall tree canopy. This documentation requirement was also not added to the requirements in Additional Documents in 21-83(a)2 above.

As mentioned above, there are no standards for grant or denial of the new category of Exempt Permit applications.

Note also that we recommend the following additional changes in this section:

- Sec. 21-83(e)(3): Add "documented as" in "tree is documented as interfering..." to avoid the misleading impression from the editing that no documentation is required.
- Sec. 21-83(e)(4): Add "documented as" in "tree is documented as dead..." to avoid the misleading impression from the editing that no documentation is required.

(f) Conditions

The Committee agreed on October 4 that the Law Department could clean up the language in this section, which was (e) in the October draft. However, the change in language misses a relevant category of abutter tree. We recommend changing the language to say “and abutter trees with a Tree Save Area extending to or over the lot line” to include all the relevant abutter trees.

Also, as mentioned above, there are no conditions for the new category of Exempt Permit applications.

(g) Performance of Work Pursuant to Tree Permit

Responsibility for assuring that the protections for abutters’ trees are in place before tree removal or construction begins has been removed here, and in (e) above. The language agreed upon by the Committee needs to be reinstated: the permit holder must *provide* documentation that all protective measures are in place *and the Tree Warden will provide written documentation that work may commence*.

Also, as mentioned above, there are no indications of how work (tree removal) should be performed for the new category of Exempt Permit applications.

(pp. 7–8) Sec. 21-85, replacement of trees

The requirement that trees cut without a permit (tree permit or exemption permit) has been removed without being moved elsewhere. This change creates a loophole that trees cut without a permit do *not* have to be replaced (or have payment in lieu of replacement). The Committee agreed that violators should have to both replace cut trees and pay a penalty.

(p. 9) Sec. 21-89, Penalties

The language here does not explicitly include Exempt Trees or Exemption Permits, so it is not clear that any tree cut without a permit is a violation subject to penalties.

3. Violators Not Required to Replace Trees (or Make Payment in Lieu)

In Sec. 21-85 (p. 7), the requirement that people who cut trees without a permit are required to provide replacement trees (or payment in lieu) *in addition to* paying penalties has been deleted. This requirement has not been inserted anywhere else in the document. There is no mention of having to provide replacement trees, for example, in Sec. 21-88 (Enforcement) or Sec. 21-89 (Penalties).

4. Limiting Definitions

Several definitions have been limited in ways that change the meanings of the agreements and even discussions of the Committee. Changes that violate plain English (to the meaning of “remove,” for example) are discussed above, but here we want to emphasize that definitions of tree categories should not be limited or variable.

“Protected Trees” (trees 6" DBH and larger) are of necessity limited to lands under the City’s jurisdiction (and thus not owned by the Commonwealth or Federal Government). And trees on publicly owned City land are discussed in a different article of the ordinance. But there should be no further limitations on what constitutes a protected tree.

Similarly, there should be no limitations on what constitutes a Significant, Landmark, or Legacy Tree. Thus the additions of “and which is located on land subject to the provisions of section 21-82” needs to be struck from each of these definitions. Especially with the erroneous addition of “Exempt Trees,” that location statement makes it confusing which trees qualify for status as Significant, Landmark, or Legacy trees.

5. Lack of Inclusion of Fee Waiver for Low-Income Applicants

On October 4, the Committee voted to create a waiver program for low-income applicants to cut trees. That waiver for low-income applicants is not included anywhere in the document.

CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM

DATE: November 7, 2023

TO: All Members, Programs & Services Committee

CC: Marc Welch, Deputy Commissioner

FROM: Jennifer Wilson, Assistant City Solicitor
Jonah Temple, Deputy City Solicitor

RE: #411-22 Request for Amendment to Chapter 21, Art III Trees
(sec. 21-60 through 21-89) to extend tree protection

Attached please find the Law Department's comments in response to the Memorandum from Councilors Norton, Wright and Malakie dated November 6, 2023.

We will be available at the Committee meeting Wednesday evening to discuss further and answer any questions.

Thank you.



MEMORANDUM

Date: November 6, 2023

To: Jennifer Wilson, Assistant City Solicitor

From: Councilors Emily Norton, Pam Wright, Julia Malakie

CC: Programs & Services Committee; Director of Urban Forestry Marc Welch

We have reviewed your draft of the Tree Protection Ordinance posted to the Newton Friday packet on November 3. As you noted in your November 3 memo:

The Law Department has made edits to clean up the most recent draft that was reviewed by the Programs and Services Committee on October 4, 2023. The intent of these edits is to modify the form of the proposed ordinance for the purpose of clarity. These edits are not intended to change the substance or policy of the ordinance as decided by the Committee. Prior to making these edits, all of the changes made by the Committee up through the last meeting were accepted. In the attached draft, the redlines represent only the Law Department's edits as to form. Below is a brief summary of the most substantial changes.

We appreciate the improvements you have made to the draft in terms of clarity and removing duplicative phrases.

Unfortunately, in spite of your stated intention to avoid changing substance or policy, the new categories of "Exempt Tree" and "Exemption Permit" do just that, as we lay out below. We believe it is necessary to revert to the October 4 version and make only the changes to that draft (such as adding the low income exemption) that the Programs and Services Committee ("Committee") had requested.

Councilor Norton can make herself available to meet with you on Tuesday or Wednesday in order to facilitate a corrected document prior to Wednesday night's meeting.

Below we lay out the many ways that the creation of the new concepts of "Exempt Tree" and "Exemption Permit" lead to significant departures from the version agreed on by the Committee, including:

- Removal of protections for abutters' trees
- Removal of data collection from all applicants for a much-needed City-wide inventory of tree canopy and tree loss on private land
- Removal of the requirement for permit violators to provide replacement trees (or payment in lieu)
- Removal of the requirement for a permit to cut trees before a building permit application can be accepted

(Page numbers mentioned in the list are from the Newton Ordinances On-Line - Chapter 21 number at the bottom center of the page.)

1. Creation of "Exempt Tree" Category

This category was never discussed by the Committee, which consistently affirmed Protected Trees as those 6" DBH and larger within Newton (that are not on City-, Commonwealth-, or Federal-owned land). The introduction of an

“Exempt Tree” category creates a series of inconsistencies, missing information, and departures from policies agreed upon by the Committee. Each place we found in the document where this category creates problems is listed here:

(p. 1) Sec. 21-81, definition of *Exempt Tree*

You wrote: “Exempt Tree: A protected tree that does not meet the Landmark or Legacy tree designation that is located on a single- or two-family residential occupied lot where no exterior construction is presently underway or planned to take place during the 24 months from the date of the permit application.”

This definition contradicts the definition of a Protected Tree as 6" DBH and larger that is within the City of Newton on land not owned by the City, Commonwealth, or Federal Government.

As “Exempt Trees” are a subset of Protected Trees, there is no contradiction. Many points in this memorandum appear to confuse the addition of a definition with the creation of an exemption from the entire ordinance. The addition of the “Exempt Tree” definition does not change the definition of “Protected Tree” and is consistent with the applicability exemption approved by the Committee. If a tree was protected under the older draft of the ordinance, it will still be protected under this draft.

The term “Exempt Trees” appears only five times in the proposed ordinance: (1) its definition in 21-81; (2) excluding “Exempt Trees” from needing a Tree Permit in 21-82; (3) creating an exemption permit in 21-82; (4) creating an exemption permit application section in 21-83(b); and (5) excluding “Exempt Trees” from replacement requirements in 21-85(d). Aside from these sections, the creation of the term “Exempt Trees” does not change any other provisions of this draft ordinance.

Also, this definition would include trees on abutting lots as Exempt (unless there was also construction on the abutting lot). But the Committee explicitly chose to protect trees 6" DBH and larger on abutting lots.

Abutting trees would not be “Exempt Trees.” A tree is only designated as an “Exempt Tree” when a homeowner is seeking to remove a protected tree from their own property and is not planning any construction. This ordinance does not contemplate a property owner removing a tree on an abutting lot. If an abutting tree was protected under the older draft of the ordinance, it will still be protected under this draft.

Some Committee members noted there is a problem with the term “planned” in that property owners could claim that they had not *planned* construction for 24 months, even if they then actually proceed to construction within that time frame. Marc Welch said that the term would be removed in the final document.

Another problem with the “Exempt Tree” concept is that it is not particular trees that are exempt. Rather, specific conditions exempt property owners from the requirement to replace Protected Trees. The Committee was very explicit, as was Marc Welch on multiple occasions, that everyone would need to file a Permit application including documentation that will allow Marc and his staff to inventory and track trees on private property and their losses. Thus the creation of an Exempt Tree category has detrimental implications for long-term Urban Forestry planning, as discussed further below.

We understand that you may have been trying to accommodate the discussion of the so-called nexus added late on October 4 by the Committee. But we suggest it is more efficient to refer to this additional set of conditions for exemption under the Standards section as “exemptions for Protected Trees outside the nexus of construction (unless they are Landmark or Legacy Trees).”

We understand how difficult it is to incorporate this late-added condition for exemption because, depending on how “nexus” is interpreted, it could contradict the multiple instructions by the Committee

to prevent clearcutting of lots by developers.

(p. 2) definition of *Remove*

The draft maintained this definition of “Remove”:

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.

However, because of the addition of an Exempt Tree definition, the language in the definition of *Remove* also changes meaning. It now means that the concept of *removal* does *not* apply to Exempt Trees, so including all the related requirements and penalties for violation do not apply.

The addition of the definition of “Exempt Tree” does not change the meaning of “Remove.” “Removal” will still include the cutting down of all Protected Trees.

Thus, if someone cuts down an Exempt Tree (including an abutter’s tree) in violation—for example, without a permit or approval of exemption—they cannot be said to have removed a tree and the penalties cannot apply.

Cutting down an Exempt Tree without first obtaining an exemption permit is a violation of the proposed ordinance and therefore penalties would be imposed pursuant to 21-89(a).

(p. 3) Sec. 21-82, applicability of *Tree Permit*

Your changes to the definition of “Tree Permit” are quite problematic. The introduction of “non-exempt” adds a new requirement for a permit to cut down a tree. It must be *both* a Protected Tree *and* a non-Exempt Tree. Are all trees that are not defined as an Exempt Tree “non-exempt”? The grammar implies yes.

This language also creates ambiguity for property owners. How do they identify which trees are Protected, which are Exempt, and which are non-Exempt?

As drafted, the removal of all Protected Trees require a permit. If the Protected Tree meets the definition of an Exempt Tree (meaning it is on a single or two-family lot and no construction), removal requires an Exemption Permit. If the Protected Tree does not qualify as an Exempt Tree, it is a non-exempt Protected Tree and removal requires a Tree Permit. In other words, any Protected Tree that does not meet the definition of an Exempt Tree will need a Tree Permit for removal.

Homeowners will know if a protected tree is exempt if it is a tree that is 6” to 40” in diameter that is located on a single- or two-family lot where there is no construction planned for 24 months.

(p. 6) Sec. 21-83, permitted *Construction*

Because of the addition of an Exempt Tree definition, the language of what construction is permitted also changes meaning. It now means that activities within the Tree Save Area of Exempt Trees, including on adjoining lots, are allowed.

This change in meaning contradicts the Committee’s explicit intention to protect abutter trees and the entire purpose of defining a Tree Save Area.

There is no change here. As stated before, the addition of the “Exempt Tree” definition does not change the meaning of “Protected Tree.” If a tree was protected before, it would still be protected now.

(p. 6) *Appeal*

Because of the addition of an Exempt Tree definition, the language of what trees cannot be removed pending appeal also changes meaning. It now means that if the appeal is about exemption status, then the trees in dispute can be removed because Exempt Trees are not included here.

There is no change here. As stated before, the addition of the “Exempt Tree” definition does not change the meaning of “Protected Tree.” If a tree was protected before, it would still be protected now.

(p. 6) Sec. 21-84, *Pruning activities & Emergencies*

Because of the addition of an Exempt Tree definition, the language of what trees cannot be killed by over pruning and which trees may be taken down without penalty during emergencies also changes meaning. It could mean that a permit is required for pruning Exempt Trees, or it could mean that if Exempt Trees are pruned to the point of killing them, there is no consequence. It also implies that Exempt Trees also require a written permit even in an emergency.

There is no change here. As stated before, the addition of the “Exempt Tree” definition does not change the meaning of “Protected Tree.” If a tree was protected before, it would still be protected now.

(p. 8) Sec. 21-85, replacement of *Exempt Trees* (if construction takes place within 24 months)

This language is confusing. Are Exempt Trees that are cut down without an exemption permit subject to replacement requirements? (The grammar implies they are.)

As drafted, yes. If the Committee does not want the replacement requirements to apply to Exempt Trees that are removed without an exemption permit, we can change the language to reflect that.

Are Exempt Trees on abutting lots subject to replacement requirements when construction takes place on the applicant’s lot within 24 months? (The grammar implies they are not.)

This question may require further clarification. A tree is only designated as an “Exempt Tree” when a single or two-family homeowner is seeking to remove a protected tree from their own property and is not planning any construction. This ordinance does not contemplate or regulate in any way a property owner removing a tree from an abutting lot.

If an abutting lot has construction within 24 months, so the abutting trees are no longer Exempt, which owner has to comply with the replacement requirements? (Unclear.)

This question also requires further clarification. There is no connection between removal of an Exempt Tree and any construction activities on an abutting lot.

(p. 10) Sec. 21-85, penalties for *Removal without a permit*

Because of the addition of an Exempt Tree definition, the language of what tree violations have penalties also changes meaning. It now means that only violations of Protected Trees carry penalties. Thus, if someone cuts down an Exempt Tree without a permit, there is no penalty.

There is no change here. As stated before, the addition of the “Exempt Tree” definition does not change the meaning of “Protected Tree”. If a tree was protected before, it would still be protected now.

This lack of consequences for failure to get a permit goes against the intention of the Committee and Marc Welch to ensure documentation of Newton's tree canopy and tree losses. It also contradicts the language on p. 8 (see above).

2. Creating an "Exemption Permit" Category

This category was never discussed by the Committee, which consistently affirmed that every one would have to submit a permit application with documentation for every tree cut. Marc Welch said that having this documentation is important to inventory Newton's full tree canopy, since his current documentation is only for street trees and City-owned land.

It was the Law Department's understanding that the Committee wanted the application process for owners of one- and two- family homes with no construction planned to be simpler than the application required for a tree permit. The exemption permit would still require documentation for every tree cut, so there would be no change to the Tree Warden's ability to inventory Newton's full tree canopy.

If there are any submittals that the Committee wants to have required for the Exemption Permit that are not currently listed, they can be added to the final draft.

The introduction of the "Exemption Permit" category creates departures from policies agreed upon by the Committee. Most notably, it removes the previously clear language of protection for abutters' trees, consultation with a Certified Arborist, and documentation of a Tree Protection Plan. This category also creates inconsistencies and missing information that will require further deliberation to resolve. Each place we found in the document where this category creates problems is listed here:

(p. 3) Sec. 21-82, applicability of *Exemption Permit*

Your creation of this new "Exemption Permit" is problematic. The ordinance language doesn't explain:

- How the Exemption Permit application will be reviewed
We agree that 21-82(d) should apply to both tree and exemption permits. We will replace "tree permit" with "tree permit or exemption permit" in this section.
- What the standards are for grant or denial of an Exemption Permit application (and if denied, whether the applicant is allowed to apply for a Tree Permit application)
We can add this section, but the standard should simply state that an exemption permit will be granted if the tree is exempt as defined by the ordinance.
- The conditions for an Exemption Permit
If the Committee wants the Tree Warden to be able to add conditions to an Exemption Permit, that language can be added into the final draft.
- How to perform work pursuant to an Exemption Permit
If the Committee decides to require a Tree Protection Plan or documented protective measures for the exemption permit, we can add another section for Performance of Work Pursuant to an Exemption Permit, analogous to 21-82(g) for Tree Permits. However, that was not our understanding of the Committee's intent.
- The criteria for suspension or revocation of an Exemption Permit
We agree that 21-82(i) should apply to both tree and exemption permits. We will replace "tree permit" with "tree permit or exemption permit" in this section.
- The process for an appeal of an Exemption Permit
The process for an appeal is the same for all decisions of the Tree Warden.
- Whether pruning protections and emergency procedures apply to Exempt Trees
Yes, any provisions that apply to Protected Trees still apply to Exempt Trees.
- what happens when an Exempt Tree is cut without an Exemption Permit
This would be a violation of the ordinance and would result in a penalty and, as currently written,

replacement would be required.

The creation of “Exempt Trees” and “Exemption Permits” make the ordinance unnecessarily complicated. Much additional language will be required. Moreover, the language creates definitions and terms that do not make sense: cutting Exempt Trees does not mean “removal,” emergency and ordinary pruning procedures do not apply to Exempt Trees, and a new type of permit is necessary for an exemption. These departures from plain English will create confusion over the requirements of the ordinance and how to comply with it.

The proposed ordinance, as discussed at the 10/4 Committee meeting, exempted the same category of trees from the permit requirements. The creation of the “Exempt Tree” definition and the exemption permit simply label and identify the exemption that the Committee already agreed to in a way that we believe is easier to follow and apply.

(pp. 3–6) Sec. 21-83, Permit Application

We agree that it is useful to indicate which items are required of all permits and which are required depending on particular circumstances. However the actual reorganization here departs from both the agreement of the Committee, and Marc Welch’s stated goals for the Urban Forestry inventory.

(a) Tree Permit Application

As currently written, the only things required of all applications are a plan of the property, a Tree Plan, an affidavit that abutters have been notified, and a plan of utilities and useways and parking.

Notably, the requirement for a Tree Protection Plan has been incorrectly moved to the “Additional” category, and that change contradicts several things that the Committee repeatedly agreed:

- A Certified Arborist should be consulted about which trees should be cut and why (both to reduce Marc Welch’s workload and to increase public consideration about the environmental value of trees).
- A Certified Arborist should advise on which trees on abutters’ properties will require protection.
- Protections must occur for other trees 6" DBH and larger on the applicant’s lot, and on abutting lots for tree removal projects as well as for construction projects.

A Tree Protection Plan is a plan developed by a Certified Arborist, following the most current version of the ANSI A300 standards, including management standards for the site planning and development, that sets out measures for protecting all trees on the lot during construction or tree removal activity, as well as trees adjacent to the lot that may be impacted by the construction or tree removal activity on the applicant’s lot. There are multiple situations where this may not be required, for example if construction is being done on a lot with no trees or if all trees on the lot are being removed, or if removal of a tree is sought because it is dying. The Law Department consulted with Marc Welch to put each submittal type in the appropriate section. If the Committee wants a Tree Protection Plan to be required for all permit applications, we can move it to that section.

These lists were created with the involvement of Marc Welch. Just because a submittal is listed as additional does not mean that most applicants will not have to provide them. If there will be construction on a lot and there are trees on the lot or an abutting lot that need to be protected, the Tree Protection Plan will still be required. However, not all lots and projects will fit into that category. Marc anticipates creating additional permit instructions that will clearly spell out the type of documentation required for different permit requests.

Moreover, the items moved to “Additional Contents” have been modified such that several things that the

Committee repeatedly agreed on have been lost.

- There is no longer any requirement for documentation from a Certified Arborist for an argument that tree removal (for example, of an invasive species tree) would enhance the overall tree canopy.

The referenced language is found in 21-83(e). As discussed below, we can add this documentation requirement to the Additional Contents section.

- Abutters' trees are no longer protected from grade changes.

They are still protected. The additional content in subsection 2(d) includes Protected Trees, which includes those on abutting lots.

Note also that we recommend the following additional changes in this section:

- Sec. 21-83 (a) (1)(A): Delete "to be developed" since the plan is also required in the absence of construction.

The Law Department agrees with this change.

- Sec. 21-83 (a) (1)(C): Change "directly across the street" to "directly across the right of way" because the Committee was explicit that properties across the footpath in Oak Hill must be included in the requirement.

The Law Department agrees with this change.

- Sec. 21-83 (a) (1)(C): Require a list of the addresses notified as part of the affidavit to allow verification that all the abutters have been correctly identified.

The affidavit will be on a form created by the Tree Warden, so the form can require this information. However, this requirement could be added to the ordinance as well.

- Sec. 21-83 (a)(2): Delete the phrase "depending on the scope of the work" since it is not the size (scope) of the project but whether and how the specifics of the construction or tree removal will impact other trees on the applicants' lot and abutters' lots.

The term "scope" does not mean the size of the project. The "scope" of a project includes the goals and desired outcomes of the project. Certain submittals will be required depending on whether the project will include construction, tree removal, tree preservation, etc. which are all included in the term "scope."

(b) Exemption Permit Application

In addition to the concerns raised above, there is no information provided for property owners about how they know whether they may apply for an Exemption Permit rather than a Tree Permit, requiring many individual consultations with Marc or his staff.

Homeowners will know to obtain an exemption permit if the tree to be removed is 6" to 40" in diameter that is located on a single- or two-family lot where there is no construction planned.

As currently written, the only things required of Exemption Permit applications are documentation that the tree(s) are Exempt Trees and a list (with diagram or photo) of the trees to be removed. The requirements that *all* applications must include a Tree Protection Plan and consult a Certified Arborist have been

removed. The Committee agreed on these requirements and Marc repeatedly emphasized the importance of having property owners consult with a Certified Arborist and the importance of documenting all the trees on each lot for the City-wide inventory.

It was the Law Department's understanding that the Committee wanted the application process for owners of one- and two- family homes with no construction planned to be simpler than the application required for a tree permit. If the committee wants to require one- and two- family homeowners to submit documentation from a certified arborist for removal of all Protected Trees, when no construction is planned, we can add that requirement.

There is no provision anywhere in the Exemption Permit for identification of, or protections for, abutters' trees that may be at risk.

If the committee wants to require one- and two- family homeowners to submit a Tree Protection Plan from a certified arborist for removal of all Protected Trees, when no construction is planned, we can add that requirement.

(a) and (b) *Waiver of requirements*

In Sec. 21-83(a) and (b), the modifications of the language granting the Tree Warden the ability to waive some of these requirements has been modified in a way that changes the meaning agreed upon by the Committee.

The Committee agreed that, when there is no construction, some of these materials are not necessary, but that the "Tree Warden shall still require a tree permit application be filed and supporting documentation provided." Moreover, the reorganization of requirements into a required-for-all section and an additional section means that the statement that the Tree Warden can waive some requirements is not necessary and could be dropped entirely.

But the current document instead says that the Tree Warden can waive any documentation requirement on (written) request by any applicant, without the Committee's requirement that such waiver only be when no construction is going on or any other guidelines. This loophole will subject the Tree Warden to individual requests for special treatment.

We are comfortable removing the waiver language from the section of required documents.

(c) *Fee*

The Committee agreed that there would be an application fee of \$200 for all tree removals except for removals of trees documented as dead or dangerous. But this section now removes the fees for all Exemption Permits.

In the version of the ordinance discussed by the Committee on 10/4, there was no fee for exemption permits. If the Committee wants a fee for exemption permits, we can add that.

(d) *Review of Tree Permit Applications*

Language has been removed from the current in-place ordinance that the Tree Warden report the acceptance or denial of the tree permit *and* that ISD's acceptance of a building application depends on confirmation of a tree permit. This removal contradicts the Committee's deliberations that ISD acceptance of a building permit should continue, as in current practice, to depend on having a tree permit. The Committee did agree that the Tree Warden posting the permit status in the City's online permitting system could meet the report requirement.

Also, as mentioned above, there are no specifications for review of the new category of Exempt Permit applications.

The edit to this section does not make any change to ISD's practice of requiring a tree permit to accept a building permit. This edit only removes the reporting requirement, which matches how the workflow operates in practice. The Tree Warden does not report the issuance of a tree permit directly to ISD; ISD can look for the verification. Regardless of the wording in this section, no exterior construction can take place without a tree permit. The Committee should discuss further with the Tree Warden.

(e) Standard for Grant or Denial of Tree Permit

Tree Warden confirmation that tree protection measures are in place before issuing a permit have been removed. This removal has serious implications for protection of abutters' trees. When combined with the removal of language in (g) below, there is no one responsible for assuring that the protections for abutters' trees are in place before tree removal or construction begins. Since abutters' trees may die, once the damage is inflicted, this oversight is crucial.

The language "determined by the Tree Warden" was moved from one of the clauses to the overall standards (with the addition of "in their sole discretion") thus changing the meaning at both levels. The standards are *not* at the *sole* discretion of the Tree Warden. The reason for requiring documentation from a Certified Arborist is so that the Tree Warden does not have to do all this work himself. The one place that the Committee agreed that the Tree Warden should continue to check in person—as in the current in-place tree ordinance—is to confirm that tree protections are in place.

The Committee agreed at the 10/4 meeting that having the Tree Warden confirm that the protective measures are in place and then issue what amounts to a second permit was an unnecessary administration burden and that broader language could be drafted, as was provided.

Also removed is the agreed-upon requirement for documentation by a Certified Arborist that tree removal would enhance the overall tree canopy. This documentation requirement was also not added to the requirements in Additional Documents in 21-83(a)2 above.

This section lists the standards. We can add this documentation requirement to the Additional Contents section.

As mentioned above, there are no standards for grant or denial of the new category of Exempt Permit applications.

Note also that we recommend the following additional changes in this section:

- Sec. 21-83(e)(3): Add "documented as" in "tree is documented as interfering..." to avoid the misleading impression from the editing that no documentation is required.
- Sec. 21-83(e)(4): Add "documented as" in "tree is documented as dead..." to avoid the misleading impression from the editing that no documentation is required.

These documentation requirements are listed in the Additional Contents sections, this section just includes the standards. The language is not necessary here.

(f) Conditions

The Committee agreed on October 4 that the Law Department could clean up the language in this section, which was (e) in the October draft. However, the change in language misses a relevant category of abutter

tree. We recommend changing the language to say “and abutting trees with a Tree Save Area extending to or over the lot line” to include all the relevant abutting trees.

The language as written does include abutting trees, but we can make this change for clarification purposes.

Also, as mentioned above, there are no conditions for the new category of Exempt Permit applications.

(g) Performance of Work Pursuant to Tree Permit

Responsibility for assuring that the protections for abutters’ trees are in place before tree removal or construction begins has been removed here, and in (e) above. The language agreed upon by the Committee needs to be reinstated: the permit holder must *provide* documentation that all protective measures are in place *and the Tree Warden will provide written documentation that work may commence.*

The Committee agreed at the 10/4 meeting that having the Tree Warden confirm that the protective measures are in place and then issue what amounts to a second permit was an unnecessary administration burden and that broader language could be drafted, as was provided. Language could be added to require that the documentation be submitted, instead of just being available upon request.

Also, as mentioned above, there are no indications of how work (tree removal) should be performed for the new category of Exempt Permit applications.

(pp. 7–8) Sec. 21-85, replacement of trees

The requirement that trees cut without a permit (tree permit or exemption permit) has been removed without being moved elsewhere. This change creates a loophole that trees cut without a permit do *not* have to be replaced (or have payment in lieu of replacement). The Committee agreed that violators should have to both replace cut trees and pay a penalty.

We understand that the inclusion of “from the date the tree permit is issued” in 21-85(a) creates ambiguity about whether a tree removed without a permit has to be replaced. To correct this issue, we can add a new 21-85(b) “Replacement of Tree Removed Without a Tree Permit” that will state the following: “A Protected Tree shall be replaced in the manner provided in subsection (a) hereof in each instance in which a Protected Tree was removed without a tree permit.”

(p. 9) Sec. 21-89, Penalties

The language here does not explicitly include Exempt Trees or Exemption Permits, so it is not clear that any tree cut without a permit is a violation subject to penalties.

This section applies to all Protected Trees. The creation of the Exempt Trees definition does not change this section. However, we can clarify that penalties will accrue when a protected tree is removed “without a tree permit or exemption permit.”

3. Violators Not Required to Replace Trees (or Make Payment in Lieu)

In Sec. 21-85 (p. 7), the requirement that people who cut trees without a permit are required to provide replacement trees (or payment in lieu) *in addition to* paying penalties has been deleted. This requirement has not been inserted anywhere else in the document. There is no mention of having to provide replacement trees, for example, in Sec. 21-88 (Enforcement) or Sec. 21-89 (Penalties).

As stated above, we understand that the inclusion of “from the date the tree permit is issued” in 21-85(a) creates ambiguity about whether a tree removed without a permit has to be replaced. The inclusion of a new 21-85(b) “Replacement of Tree Removed Without a Tree Permit” that states “A Protected Tree shall be replaced in the manner provided in subsection (a) hereof in each instance in which a Protected Tree was removed without a tree permit” will resolve this issue.

4. Limiting Definitions

Several definitions have been limited in ways that change the meanings of the agreements and even discussions of the Committee. Changes that violate plain English (to the meaning of “remove,” for example) are discussed above, but here we want to emphasize that definitions of tree categories should not be limited or variable.

“Protected Trees” (trees 6" DBH and larger) are of necessity limited to lands under the City’s jurisdiction (and thus not owned by the Commonwealth or Federal Government). And trees on publicly owned City land are discussed in a different article of the ordinance. But there should be no further limitations on what constitutes a protected tree.

This may require additional clarification. The language added to the definition of Protected Tree expands the definition. Pursuant to 81-85(a), if a replacement tree is less than 6” it is still considered a Protected Tree. The additional language adds that to the definition.

Similarly, there should be no limitations on what constitutes a Significant, Landmark, or Legacy Tree. Thus the additions of “and which is located on land subject to the provisions of section 21-82” needs to be struck from each of these definitions.

We agree this change should be made.

Especially with the erroneous addition of “Exempt Trees,” that location statement makes it confusing which trees qualify for status as Significant, Landmark, or Legacy trees.

5. Lack of Inclusion of Fee Waiver for Low-Income Applicants

On October 4, the Committee voted to create a waiver program for low-income applicants to cut trees. That waiver for low-income applicants is not included anywhere in the document.

The Law Department is in the process of drafting language for this provision and will have it available for the Committee meeting.



Ruthanne Fuller
Mayor

City of Newton, Massachusetts

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Office of the Mayor

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#343-23

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CITY CLERK
NEWTON, MA. 02459

September 25, 2023

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

To the Honorable City Councilors:

I am pleased to reappoint Nancy Kritzman of 677 Winchester Street #423, Newton 02459 as a member of the Commission on Disability. Her term of office shall expire on September 20, 2026 and her appointment is subject to your confirmation.

Thank you for your attention to this matter.

Warmly,

A handwritten signature in blue ink that reads "Ruthanne Fuller".

Ruthanne Fuller
Mayor

Application Form

Profile

Nancy

First Name

Mira

Middle Initial

Kritzman

Last Name

Email Address

677 Winchester Street #423

Home Address

Suite or Apt

Newton

City

MA

State

02459

Postal Code

What Ward do you live in?

☒ Ward 8

Primary Phone

Alternate Phone

presently self-employed

Employer

Insurance agent and marketing,
pt time for elections dept in
Newton

Job Title

Which Boards would you like to apply for?

Commission on Disability: Submitted

Ethnicity

None Selected

Gender

None Selected

Interests & Experiences

Please tell us about yourself and why you want to serve.

Why are you interested in serving on a board or commission?

My passion is helping others navigate through situations that are complex and in which they may need another set of eyes or just another voice to speak on their behalf. I love volunteering and advocacy work. I am an active independent wheelchair user and have raised 2 grown adults(both of which have dedicated their life to the field of social causes) and moved to Newton 6 years ago and thrilled to serve on the Patient Family Advocacy Council at Mass General Brigham and hope to be able to be a viable part of this board.

Nancy Kritzman
677 Winchester Street #423
Newton, MA 02459

Skills: Administrative Management, Motivational Speaking, Program Coordination. MS Office Suite
Data Driven, Sales & Marketing

Experience: **Gallahue Insurance** – *Office Manager / Sales* (2008-15)

- Educated customer base, sold multiple products (personal auto, homeowners, general liability, workers comp policies)
- Developed new, quantified, full-bodied relationship with clients to upsell products in a long-term relationship (rather than “one and done” short-term accounts)
- Dramatically reduced company’s loss ration from over 80% to 35% (industry typically a little under 40%)
- Achieved an increase of 2.5 million in sales and gained industry “admiral status” during my tenure
- Expanded to 2 more agencies by direct consequence of increased revenue
- Responsible for Customer Service team’s quality – had final authorization for all problem resolution procedures
- Created all company marketing & advertising campaigns resulting in more qualified incoming leads

Underwriter Laboratories - *Senior Sensory Analyst* (2012-15)

- Led my panel to satisfy high quotas under extreme deadline pressure
- Analyzed name-brand products against competition over multiple metrics
- Gained Sensory Analysis Certification

Bank of America – *Sales Manager* (2.5 years)

- Advanced to a sales position, then sales manager in under 1 year
- Handled high volume customer support
- Responsible for my telemarketing sales team’s training on interpersonal skills and creating sales incentives

Education: Lesley University (Elementary Ed & Special Needs)

Interests: Adaptive Skiing & Sailing, Film Critique, Volunteering, Reading Thrillers