



## Programs & Services Committee Agenda

### City of Newton In City Council

Thursday, November 30, 2023

#### 8:00 PM – PLEASE NOTE START TIME

The Programs & Services Committee will hold this meeting as a virtual meeting on Thursday, November 30, 2023 at 8:00 pm. To view this meeting using Zoom use this link: <https://newtonma-gov.zoom.us/j/84477019659> or call 1-646-558-8656 and use the Meeting ID: 844 7701 9659.

#### Items Scheduled for Discussion:

- #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 4-2-1 (Councilors Humphrey and Ryan Opposed) (Councilor Krintzman Abstaining) on 11/8/23**
- #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 4-2-1 (Councilors Humphrey and Ryan Opposed) (Councilor Krintzman Abstaining) on 11/8/23**

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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](mailto: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.

**Respectfully Submitted,  
Josh Krintzman, Chair**

CITY OF NEWTON  
LAW DEPARTMENT  
INTEROFFICE MEMORANDUM

DATE: November 24, 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  
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Attached is an updated version of the Law Department’s draft of the tree ordinance. Changes from the draft submitted to the Committee on November 3 are shown in redline.

Please note that the Law Department had a productive meeting with Councilors Norton, Malakie and Wright on November 15 to discuss their comments and concerns. As a result of that meeting, we have made a handful of edits to address issues of clarity and consistency. For the most part, we do not believe these edits require further discussion or consideration by the Committee. A complete list of the changes is set forth below.

Following the list of changes is a second list of issues that Councilors Norton, Malakie and Wright would like the Committee to reconsider or consider further. This list also includes a few issues that the Committee has not previously addressed. It may be helpful to use this list of issues as a roadmap for the Committee discussion.

**Changes that were made:**

- Added a new paragraph to the intent and purpose section (21-80) to summarize the permit process and applicability of the ordinance to all trees six inches and larger. This was done to address the concern of Councilors Norton, Malakie and Wright that the public might not understand that the removal of all protected trees requires a permit.
- Removed duplicative language from the definition of Landmark Tree and Legacy Tree (21-81).
- Added language to the definition of Exempt Tree to clarify that this classification only applies when an applicant is seeking to remove a tree on their lot that meets the definition. Language has also been added to address the concerns of Councilors Norton, Malakie and Wright that the ordinance did not make clear early enough that if construction ultimately does occur within 24 months after application of an exemption

permit, the trees must be replaced. The Law Department does not believe that this language is necessary, however we do not strongly oppose its inclusion.

- Removed the Tree Warden’s ability to waive the “required contents” of the Tree Permit Application in 21-83(a)(1). This language is no longer necessary as the application content has been divided into separate categories of required content and additional content that may be required depending on the relief sought.
- As part of the documentation required for Tree Permit Applications evidencing abutter notice, added language to 21-83(a)(1)(c) requiring tree permit applicants to submit a list of the addresses of the abutters that were notified. Also changed “street” to “right of way” in describing the notice requirement.
- Added language to 21-83(a)(2)(A) to clarify when a Tree Protection Plan will be required to be submitted with a tree permit application.
- Added language to 21-83(a)(2)(D) to clarify that the submission of a statement by certified arborist when there are proposed grade changes applies to both trees on the applicant’s lot and on abutting lots.
- Removed the Tree Warden’s ability to waive the required contents of the exemption permit application in 21-83(b). Please note, however, that if the Committee considers the Councilors’ request to add additional required contents to this section, it should also decide whether this deleted language should be retained to give the Tree Warden discretion to waive any of those submissions.
- Created a new low-income exemption from the application fee in section 21-83(c)(3). The intended scope of the low-income exemption was not clear to the Law Department and the Committee should decide whether the exemption applies only to the application fee, as currently written, or if it applies more broadly to an exemption from the replacement requirements or the entire permitting process. Additionally, the Committee may want to consider not including any low-income waiver/exemption language at all.
- Amended the section addressing the Tree Warden’s review of permit applications (21-83(d)) to clarify that it applies to both tree permits and exemption permits.
- Following section 21-83(g), which sets forth the standards for granting of a tree permit, we added new section 21-83(f) which similarly states the standard of granting an exemption permit.
- Amended 21-83(g) to clarify that the Tree Warden has the authority when issuing tree permits to create conditions to protect abutting trees with a Tree Save Area extending over the applicant’s lot line.

- Amended the Performance of Work section 21-83(h) to require documentation of protective measures be submitted to the Tree Warden prior to commencing work, instead of being maintained and available upon request.
- Amended 21-83(j) to make the suspension and revocation provision apply to both tree permits and exemption permits.
- Added a new 21-85(b) to clarify that a Protected Tree that does not meet the definition of Exempt Tree must be replaced when it is removed without a tree permit.
- Amended the cemetery exemption language in 21-85(c) to clarify that the annual report submitted to the Tree Warden includes the size of trees planted and removed.

**Additional Issues:**

1. **Section 21-83(b) governing the application requirements for an Exemption Permit Application.** Councilors Norton, Malakie and Wright would like the following to be added as required submissions prior to removal of an exempt tree:
  - a. Tree Protection Plan
  - b. Tree Plan (what is existing on the lot)
  - c. Notification of abutters
  - d. Plan of the property
  - e. Plan of utility services and roadway

If some or all of these additional requirements are added by the Committee, the Committee should decide whether the Tree Warden has the discretion to waive them.
2. **Section 21-83(c) governing permit application fees.** Currently the draft does not require a fee for an Exemption Permit. Councilors Norton, Malakie and Wright would like the same fee to apply for both Tree Permit applications and Exemption Permit applications.
3. **Section 21-83(c)(3) governing the low-income exemption.** As drafted this section would waive the payment of the permit application fee only for persons who qualify as low-income. The Committee should determine if additional requirements of the ordinance, such as the replacement requirement or application requirement, should be waived as well, or whether any low-come exemption should be included in the ordinance.
4. **Section 21-85(b) governing the requirement that removal of a Protected Tree without a permit will require the tree to be replaced or payment in lieu made in accordance with the ordinance.** As drafted, removal of an Exempt Tree without a permit would not trigger the replacement requirement. In other words, the only penalty for removal of an Exempt Tree without a permit would be a fine in accordance with the fine provisions. Councilors Norton, Malakie and Wright would like removal of an Exempt Tree without an exemption permit to require replacement/payment in lieu.

5. **Section 21-89 governing penalties.** The Tree Warden would like further discretion to issue only a warning and no fine when an Exempt Tree is removed without a permit. Warning language is not currently included in the draft ordinance but could be added.

We will be available at the Committee meeting to discuss further and answer 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 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.

This ordinance establishes a permit system that requires all property owners to apply for a permit prior to removal of any tree with a diameter of six inches or larger to ensure review by the Tree Warden and compliance with the established standards for the replacement of trees and the protection of existing trees. (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 a permit applicant seeks to remove 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. Such trees may not be removed prior to obtaining an exemption permit and any subsequent exterior construction on the lot within 24 months will require compliance with the tree replacement requirements applicable to non-exempt Protected Trees set forth herein.

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

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

*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.

*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 right of way~~ prior to submitting the application ~~along with a list of the addresses of all abutters notified~~; 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, ~~when work is being done within the Tree Save Area of a Protected Tree on the applicant's property or an abutting lot~~;

(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 that might adversely affect or endanger a Protected Tree or any proposed grade change that is within the Tree Save Area of any Protected Tree on the applicant's lot or any abutting lot.

(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:

**Commented [JT1]:** Councilors Norton, Malakie and Wright would like additional submissions required for exemption permit applications.

(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).

**Commented [JT2]:** Councilors Norton, Malakie and Wright would like to add a fee for exemption permit applications.

~~(3)~~ The requirements of this Section shall not apply to any owner of real property who, prior to the removal of a Protected Tree or commencing construction, submits sufficient evidence to the Tree Warden that they have been certified by the board of assessors as qualifying under one or more of the tax exemption and deferral programs set out in General Laws chapter 59, section 5, clauses 18, 41A, and 41C.

**Commented [JT3]:** The Committee should decide whether the low-income exemption applies to the application fee, the replacement requirement, or both.

(d) *Review of tree permit and exemption permit applications:* The Tree Warden shall review applications for tree permits and exemption 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 or exemption permit. The Tree Warden shall complete the review of each tree permit or exemption 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) *Standards for grant or denial of exemption permit:* No exemption permit shall be issued unless the tree to be removed meets the definition of exempt tree.

(g) *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 abutting trees with a Tree Save Area extending to or over the lot line.

(h) *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 submit 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 or exemption 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.

(i) *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.

(j) *Suspension or revocation:* A tree permit or exemption 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 or exemption permit upon compliance, where practicable. The suspension or revocation of a tree permit or exemption 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 or exemption permit and the Commissioner of Inspectional Services may review a suspension or revocation of a tree permit or exemption permit for consideration of issuing a stop-work order or to withhold the issuance of a certificate of occupancy.

(k) *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 Pprotected Ttrees. 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 Pprotected Ttree 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 Pprotected Ttree 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 Pprotected Ttree 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) *Replacement of Tree Removal Without a Tree Permit:* A Protected Tree that does not meet the definition of an Exempt Tree shall be replaced in the manner provided in subsection (a) hereof in each instance in which said tree was removed without a tree permit.

**Commented [JT4]:** Councilors Norton, Malakie and Wright would like this language changed so that removal of an exempt tree without an exemption permit will require replacement.

(c) *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, size, and ~~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 tree 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

**Commented [JT5]:** The Committee should consider the penalty for removal of an exempt tree without an exemption permit. The Tree warden would like the option to issue a warning instead of a fine.

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.

DRAFT