

CITY OF NEWTON

IN CITY COUNCIL

ORDINANCE NO.

December __, 2023

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2017, as amended, be and are hereby further amended with respect to **Chapter 21 Parks, Recreation and Culture; Public Grounds and Trees** as follows:

- I. **DELETE Division 3. Tree Preservation** in its entirety, and **INSERT** in its place a new **Division 3.** as follows:

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.

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.

Legacy Tree: Any tree having a diameter larger than 55" DBH.

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.

(d) *Low Income Exemption*: The fee set forth in subsection 21-83(c) and the replacement requirement set forth in section 21-85 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.

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, 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 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.

(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:
 - (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.
- (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 \$150.
 - (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 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 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 permit holder must submit documentation from a Certified Arborist on the form(s) provided by the Tree Warden that all protective measures are in place. 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 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) *Replacement of Tree Removed 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.

(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 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. Rules and regulations.

The Tree Warden is authorized to promulgate reasonable rules and regulations to implement administration of sections 21-80 through 21-91. (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. Notwithstanding the foregoing, if the tree removed without a permit is an Exempt Tree and it is a first offense, the Tree Warden may issue a warning.
- (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 March 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.

Approved as to legal form and character:

ALISSA O. GIULIANI
City Solicitor

Under Suspension of Rules
Readings Waived and Adopted

EXECUTIVE DEPARTMENT
Approved:

(SGD) CAROL MOORE
City Clerk

(SGD) RUTHANNE FULLER
Mayor

DRAFT