

CITY OF NEWTON

IN BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, NOVEMBER 20, 2013

Present: Ald. Johnson (Chairman), Baker, Linsky, Rice, Leary, Hess-Mahan, Blazar and Fischman

Also Present: Ald. Johnson and Danberg

Others Present: Robert Rooney (Chief Operating Officer), Bob DeRubeis (Commissioner, Parks & Recreation), Marc Welch (Director, Urban Forestry), Howard Mintz (Police Chief), Elaine Gentile (Director, Environmental Affairs), Dori Zaleznik (Commissioner, Health and Human Services), Julie Ross (Assistant City Solicitor), Katherine Howard (Urban Tree Commission), Karyn Dean (Committee Clerk)

Appointment by His Honor the Mayor

#409-13 JAN HUFFMAN, 27 Indiana Terrace, Newton, appointed as a member of THE NEWTON ELECTION COMMISSION for a term to expire March 31, 2017. (60 days 1/30/14) [11/12/13 @ 9:28 AM]

**ACTION:** **APPROVED 6-0 (Ald. Blazar and Fischman not voting)**

**NOTE:** Mr. Huffman joined the Committee. He explained that he got more involved with politics in the last few years and was working on the Upper Falls Area Council. He is a member of the Republican Party so was eligible for the position on the Commission and was voted Republican of the year last year. He has had more time for civic involvement since he has retired. Ald. Rice said he has worked with Mr. Huffman and he appreciated all his work on Upper Falls projects. He moved to approve this appointment and the Committee voted in favor.

#130-13 ALD. JOHNSON & LAPPIN requesting a change to the Board Rules, Article I, Section 3. Referral of business to Committees, paragraph D., to increase the majority vote to a greater than majority vote. [03/18/13 @ 9:39 PM]

**ACTION:** **APPROVED AS AMENDED TO 16 VOTES 5-1-1 (Ald. Baker opposed; Ald. Leary abstaining; Ald. Fischman not voting)**

**NOTE:** The Rules Subcommittee held a short meeting to discuss this item and then to discharge it to the full Committee for action.

**Rules Subcommittee Meeting**

Ald. Baker, Linsky, Hess-Mahan and Blazar were in attendance. Item #130-13 was held in the last Subcommittee meeting as Ald. Johnson was unable to attend. Ald. Johnson explained that this item arose from the debate regarding whether or not to hold a special election for the Ward 1 Alderman seat left vacant by Ald. Merrill's death. The full board voted to hold a special election

after considerable debate. One of the Aldermen proposed bringing the item back for discussion after the conventional 24-hour reconsideration period. It took just a simple majority to bring the item back and Ald. Johnson and Lappin felt the standard should be higher than that. A docket item cannot be taken up again if it has been acted on in the last 12 months. However, that can be overridden by a simple majority vote. Ald. Johnson said she would like to see the standard raised to a 16-member vote in this sort of circumstance. Ald. Baker said usually the item in question would be re-docketed to be taken up again, and the Board would vote on that. In this case, however, it was requested that the existing item be brought back for discussion, which was quite unusual. The Subcommittee approved to recommend a 16-vote majority by a vote of 3-1 with Ald. Baker opposed. The Subcommittee discharged this item to the full Committee.

The Committee voted to approve the Subcommittee's recommendation to increase the majority vote to a 16-member vote 5-1-1 with Ald. Baker opposed and Ald. Leary abstaining.

#200-13      ALD. JOHNSON requesting a discussion with the Parks & Recreation Department and the Department of Public Works to establish a process for managing the placement and removal of City for-profit, and non-profit signs advertising events. [05/28/13 @ 9:26 AM]

**ACTION:**      **REFERRED TO 2014-1015 BOARD OF ALDERMEN 8-0**

**NOTE:** Ald. Johnson explained that there is a proliferation of signs in the City that stay posted well after an event has taken place. These are signs placed on City-owned property, not private property. Sandwich boards go through a registration process with the Department of Public Works and are tracked. The bigger problem is with the placards that are stuck primarily in berms around the City. These tend to be city related organizations and events. There is currently no process for registering, tracking or removing those signs and she would like to propose a system for this and an application fee involved. Non-profit organizations would be allowed to post signs 14 days prior to an event and remove them within 48 hours after the event has taken place. Posting a removal date on the sign would allow City workers to know when they could pull a sign that hasn't been removed by its sponsor. The signs could then be retrieved at City Hall.

Angie Clark from the Department of Public Works explained that she administers the registration for sandwich boards and she noted that placards of any kind are illegal, but there has been leeway on them over the years, particularly for non-profit, school groups and lost pet signs. It would be difficult for City workers to pull placards for some companies and events but leave them up for non-profits, PTO and school events, Farm events, etc. It's unfair to leave it to a DPW worker to determine which signs they should take down or leave up.

Elaine Gentile, Director of Environmental Affairs, said the Commissioner of Public Works has to give permission for any sign to be posted on City property. That rarely happens and signs get posted that never get taken down. It becomes a littering problem. She believes a fine per day, per sign should be levied and that would be a way to limit that problem. In working up new regulations, it was determined that there are common areas within the City that are more conducive to posting signs. One of the ideas is to allow signs in several designated areas only and not everywhere throughout the City. This would make management much easier and efficient and mitigate the "eyesore" effect. Details need to be determined, however, in terms of

how many signs would be allowed in each of these sites, fees and fines. Personnel resources become an issue as well. If there is a database to register and monitor the signs, it needs to be distributed to the appropriate personnel to make sure it is enforced. She felt strongly about having fines for those who did not comply. The other issue is that those who have their signs pulled but see other's allowed to stand will complain of an unfair system. It's better to have a policy in place that applies to all.

Bob DeRubeis, Commissioner of Parks & Recreation, said he would like clarification relative to the responsibilities of his department. He would also like to be very clear about what the policy would be for Parks & Recreation signs.

Committee members felt that having a limited number of locations for signs would ease the workload for the various departments, make monitoring much easier and reduce the clutter around the City. Some others felt that it was better to keep it simple by not allowing placards at all on City property and fining those who violated that. Ald. Johnson said that in her experience, if a simple process is in place, people will follow the rules and this situation can be much improved. Many members felt that enforcement of the ordinance was essential.

#### Follow Up

Ald. Johnson will continue working with Commissioner DeRubeis, Angie Clark and Elaine Gentile for possible locations, fines and fees. She plans on having something ready in the early part of the new year. Ald. Sangiolo asked that any suggestions on ordinance language be sent directly to the Committee Clerk or Ald. Johnson. **See draft ordinance, attached.**

The Committee voted to refer this item to the 2014-2015 Board of Aldermen.

#397-13      ALD. SANGIOLO on behalf of the URBAN TREE COMMISSION, proposing amendments to the Tree Preservation Ordinance. [10/28/13 @ 2:46 PM]

**ACTION:**    **HELD 8-0**

**NOTE:** Marc Welch, Director of Urban Forestry joined the Committee. He explained that the private tree preservation ordinance has been in effect since December, 1999 and he has been responsible for its enforcement since June of 2002. The intent has been met but as time has passed, developers and builders have found some loopholes in the ordinance. The behavior to evade the ordinance has been escalating recently with builders openly stating their intent to do so. Now that people have figured out how to get around compliance, enforcement is nearly impossible. The Tree Commission, the Law Department and he have been looking at ways to address these obvious problems. A number of revisions have been worked up to attempt to close the loopholes and assist in enforcing the intent of the ordinance. The goal of the tree ordinance has been to conserve tree canopy in the City and these changes would help accomplish that and prevent large scale tree removal from private properties. Commissioner DeRubeis agreed that the proposed changes would greatly improve the ability to enforce the ordinance and conserve the canopy.

Committee members commented that they have seen this happening as well. Purchase and sale agreements on home sales even state that the homeowner will remove trees prior to sale. In

some cases the tree removal makes a property more marketable so this could affect a homeowners' ability to sell their home, so it needs to be done fairly. Mr. Welch explained that tree removal permits will be required if an excess of five trees or an excess of 8 inches of diameter are being removed. Most of the time, that volume of trees is associated with some kind of work or construction process and not just removal of a few trees by a homeowner for one reason or another. There would be a fee for the permit consistent with the fee for work around a city tree, which is \$100. That fee does not apply for trees that need to be taken down by a homeowner for safety reasons and replacement would not be required. This is on an honor system to some extent as well. For violators, the City generally knows about them because they get calls from neighbors if there is a lot of tree removal activity going on. He, his staff or the police can respond to any urgent problems. Mr. Welch said for developers who follow the rules, the impact will be nonexistent. The ones who don't follow the rules need to be caught and stopped. Inspectional Services has been very good about alerting him if they think something doesn't seem right about an application that comes into them.

A member noted that the Historic districts do have jurisdiction of settings and sometimes that can have something to do with trees. Demolition delays are something to look at as well. It was suggested that a conversation with Brian Lever might be useful.

There was a question about utility companies cutting trees. Mr. Welch said the city tree regulations control that and state law controls that as well and is not part of this private tree ordinance.

It was asked if the contractor that actually cuts the tree might have to be a co-applicant and can be held responsible if they violate. Mr. Welch had some procedural ideas about this and is thinking of ways to capture as much information as possible in order to promote compliance. They are also looking at extending the 1-year ownership period to 2 years. The issue of primary and secondary homes is extremely difficult to navigate so they are not going to incorporate that. The Law Department could be consulted at the next meeting.

The Committee was very much in favor of improving the ordinance and enforcement. Mr. Welch said his group was very close to completing a draft and could be ready to discuss this at the December 4<sup>th</sup> meeting. **He has since provided the updated draft ordinance and it is attached for review.**

#398-13      ALD. BAKER & DANBERG requesting a discussion of a possible ordinance, regulations or otherwise, to complement zoning regulation of any licensed Registered Marijuana Dispensaries to respond to any secondary impacts so as to make the operation of such dispensaries as successful as possible. [10/28/13 @ 10:00 AM]

**ACTION:      REFERRED TO 2014-2015 BOARD OF ALDERMEN 8-0**

**NOTE:** Ald. Baker explained that the Zoning & Planning Committee has been working on zoning revisions to allow Registered Marijuana Dispensaries (RMD) to locate in Newton and then be subject to special permit requirements. The zoning will be taken up on Monday and

should be voted out to go to the full Board on December 2<sup>nd</sup>. The moratorium that is in place expires on December 31, 2013.

Ald. Baker said he would like to look at complementary regulations to the zoning ordinance that might make sense for Newton. He would also like to explore any that might be useful in the zoning ordinance. Boston has a proposed set of regulations that is about to be adopted by their Public Health Commission. The Town of Dennis has an ordinance with some provisions that are zoning and some that are non-zoning as well. A sample ordinance from the Massachusetts Municipal Association was also provided with the agenda.

Ald. Baker also wondered if the City had any authority in choosing an applicant for location in Newton among the several they might receive. The state Department of Public Health requires all applicants must be non-profit and there must have \$500K in the bank to be considered. There is also a \$30K application fee to move into Phase 2 consideration. It had also been noted that the DPH has said a letter of non-opposition from a community would be helpful to an application. Commissioner Zaleznik gave the same non-opposition letter to 3 of the 5 applicants for Newton thus far. The other 2 did not request a letter. Commissioner Zaleznik said the Commissioner of DPH, who headed the working group that prepared the regulations, stated that the City or Town would not have any role in the state's decision in choosing the applicant. The decision would be entirely up to the state. Ald. Baker wondered if, notwithstanding that, could there be any benefit in giving input to the state. Commissioner Zaleznik said the city's authority would come in the form of the special permit process. Ald. Baker said he was concerned that there are some other dimensions of applicants that may be very important to understand that won't show up in the special permit process. He therefore wonders if the City should consider some sort of local licensing process in addition to the state license. Boston requires a parallel license because the state is going to be supervising the RMD, but the state is strapped for time and resources. He would like to consider that model. Commissioner Zaleznik said that once the state decides on an applicant in the Phase 2 process, all that information will be available to the City in the special permitting process.

Ald. Baker was concerned about secondary use and the potential for theft or resale and public safety. This is a business which will generate a fair amount of revenue and he wondered if they should be asking for more from the applicant to mitigate those risks. He would like to know the current problems in the City with marijuana crimes.

Chief Mintz addressed the Committee. He reported that from January 2012 through today, the police have made only 14 arrests related to marijuana. Sixty-six \$100 marijuana citations have been issued. The police do not aggressively enforce marijuana possession rules. Four of their personnel are assigned to two different drug tasks force and one is a county task force, the other a federal task force and unless there is heavy marijuana trafficking activity, those statistics don't get included in these numbers. He felt a sensible strategy would be to see how things go with an RMD and if there is a big drain on the police, he would not be opposed to looking at some mitigation from the facility. Commissioner Zaleznik said that if it were proved that a certain amount of money was being expended due to the RMD, one could argue that the Board could then impose a fee to cover the costs that are related. Ald. Sangiolo wondered if a mitigation fund requirement could be imposed. Ald. Hess-Mahan said that would be an impact fee and they are

not allowed to do that. It could be done through licensing perhaps and would make more sense. The Boston regulations have reserved naming the license fee to see what the cost of administration is going to be. Commissioner Zaleznik said Boston is unique in that it licenses a number of medically regulated facilities that no one else in the state licenses. Part of that has to do with the fact that the Boston Public Health Commission has 1200 employees, which is a large staff relative to the state. Newton has 4 employees and even though it will only be 1 facility, the state is already completely regulating it. There are no other medically regulated facilities in City that are licensed by the City, so the RMD would become the only one. Brookline passed its ordinance last night and is looking at licensing, but they don't seem to feel any particular urgency and did not try to tie it to zoning. Commissioner Zaleznik is concerned with getting the zoning in place before the moratorium expires. Ald. Baker said is not advocating holding up the zoning at all.

Some Committee members felt this was designed to dissuade applicants from wanting to be in Newton. Ald. Baker said he just wanted to know if they could help choose the best applicant to be here and look at any safeguards that might assist them in being successful. It is not an attempt to stop an RMD from coming to Newton. Commissioner Zaleznik said the state will be making decisions by January 31<sup>st</sup>. It will then take a few months after that for an RMD to be up and running. Once the RMDs have been chosen, the state is willing to work with the local communities about concerns and be part of the conversations.

Committee members asked what would happen if the approved applicant failed the special permitting process. Commissioner Zaleznik said she believed they would then presumably look for a different location and that they would remain the one and only chosen applicant. Ald. Hess-Mahan reminded everyone that special permit criteria are very specific and a permit could only be turned down based on those alone.

Ald. Baker would like to hold the item and think about a licensing complement and other regulations. He would also like to see what other communities might end up doing as well. Since any regulations regarding licensing would not influence the state process there is no time pressure on this. He would like to hold this and refer it to the next Board.

The Committee voted to refer this item to the 2014-2015 Board of Aldermen.

#399-13      ALD. LINSKY, HESS-MAHAN, ALBRIGHT, CROSSLEY, DANBERG, BLAZAR, LAREDO & SCHWARTZ requesting to re-charge a task force to devise recommendations as to best practices and/or potential regulatory approaches to achieve improvements regarding the use of leaf blowers in the City of Newton.  
[10/28/13 @ 7:01 PM]

**ACTION: REFERRED TO 2014-2015 BOARD OF ALDERMEN 8-0**

**NOTE:** Ald. Linsky explained that this was just an introduction of this item. Several years ago an item was docketed to limit the use of leafblowers. The docketers very much tried to make it a process with all the stakeholders on board trying to make some positive changes. In the end, it seemed more of an adversarial process than a consensus building one so the item was abandoned.

The docketers would like to see if they could take a different approach this time. The vast majority of contractors using leafblowers do well. But there are those that blow leaves into the city streets and they ultimately end up in the storm drains which have an impact on the City. This is an ongoing problem and they need to be addressed in some way. Ald. Hess-Mahan said the original item formed a task force and he found that landscape companies and golf courses don't really want to participate. Without the participation, there is no community consensual process. The residents are very much interested, however, and want to participate. His focus was also on the particulate matter that gets stirred up in the air.

In Cambridge, the process was different and they passed regulations including seasonal bans. The impetus was different and they got institutional interest because the stakeholders were told it was being done, so get they had to get on board or be left out basically. Some members felt that this should be moved forward in Newton. If the landscapers don't want to get on board, they don't have to but they will have to follow the rules once they are passed. Times have changed and more people are working at home and the noise issue is a bigger problem now. Private citizens are also using leafblowers in excess and there are many complaints from people about their neighbors.

Ald. Sangiolo asked that participants look at this issue in terms of noise, particulate matter, storm drain problems. As for time restrictions, that is a more difficult issue and needs to be considered. The Committee voted to refer this item to the 2015-015 Board of Aldermen.

All the following items were referred to the 2014-2015 Board of Aldermen by a vote of 8-0.

**REFERRED TO FINANCE AND APPROPRIATE COMMITTEES**

#403-13 HIS HONOR THE MAYOR submitting the FY15-FY19 Capital Improvement Plan and Long Range Projection pursuant to section 5-3 of the Newton City Charter. [10/21/13 @ 9:59 AM]

**ACTION: REFERRED TO 2014-2015 BOARD OF ALDERMEN 8-0**

#199-13 ALD. JOHNSON AND SANGIOLO requesting an update from the School Committee and School Department regarding the request from the Board of Aldermen to reduce the family cap on activity fees. [05/20/13 @ 11:05 PM]

**ACTION: REFERRED TO 2014-2015 BOARD OF ALDERMEN 8-0**

#95-13(2) THE PROGRAMS & SERVICES COMMITTEE requesting an update from the Health Care Advisory Committee. [09/12/13 @ 9:49AM]

**ACTION: REFERRED TO 2014-2015 BOARD OF ALDERMEN 8-0**

#34-13 ALD. DANBERG, ALBRIGHT, BLAZAR, RICE, LINSKY AND CROSSLEY requesting a prohibition on polystyrene-based disposable food or beverage containers in the City of Newton if that packaging takes place on the premises of food establishments within the City. [01/03/13 @ 11:01 AM]

**ACTION: REFERRED TO 2014-2015 BOARD OF ALDERMEN 8-0**

#334-12 ALD. SWISTON AND LINSKY requesting a discussion with the Licensing Board regarding the licensing and permit requirements for non-profit organizations. [10/10/12 @ 3:52 PM]

**ACTION:** **REFERRED TO 2014-2015 BOARD OF ALDERMEN 8-0**

**REFERRED TO PROGRAMS & SERV. AND PUBLIC FACILITIES COMMITTEES**

#315-12 ALD. FULLER, RICE AND GENTILE of the Angier School Building Committee providing updates and discussion on the Angier School Building project as it develops through the site plan approval process.

**ACTION:** **REFERRED TO 2014-2015 BOARD OF ALDERMEN 8-0**

**REFERRED TO PROG & SERV, PUB. FAC., ZAP, AND FINANCE COMMITTEES**

#256-12 ALD. HESS-MAHAN, SANGIOLO & SWISTON proposing an ordinance promoting economic development and the mobile food truck industry in the City of Newton. [08/06/12 @4:46 PM]

**ACTION:** **REFERRED TO 2014-2015 BOARD OF ALDERMEN 8-0**

**REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES**

#254-12 ALD. HESS-MAHAN, SANGIOLO, DANBERG, KALIS, CROSSLEY proposing an ordinance relating to plastic bag reduction that would add a fee to single-use plastic and paper bags that are not at least 40% post-consumer recycled content, at certain retail establishments in Newton [07/18/12 @4:34 PM]

**ACTION:** **REFERRED TO 2014-2015 BOARD OF ALDERMEN 8-0**

#229-12 RECODIFICATION COMMITTEE recommending a review and possible amendment to the *Board of Aldermen Rules & Orders 2012-2013* relative to review of draft ordinances by the Law Department.

**ACTION:** **REFERRED TO 2014-2015 BOARD OF ALDERMEN 8-0**

#145-12 ALD JOHNSON requesting a review by the Solicitor's office as to what constitutes "reorganization" per our City Charter. [05/16/12 @ 10:24PM]

**ACTION:** **REFERRED TO 2014-2015 BOARD OF ALDERMEN 8-0**

#144-12 ALD. HESS-MAHAN proposing to repeal the time restrictions for filing special permit applications/site plan reviews for Major Projects during July and August in Article X Section 5 of the Rules and Orders of the Board of Aldermen.

**ACTION:** **REFERRED TO 2014-2015 BOARD OF ALDERMEN 8-0**

**REFERRED TO PROG & SERV, PUB. FACIL. AND FINANCE COMMITTEES**

#312-10 ALD. LENNON, LAPPIN, SCHNIPPER, SANGIOLO requesting a discussion with the School Committee on its plans to address space needs in the Newton public schools. [10/27/10 @11:07 AM]

**FINANCE & PF VOTED NO ACTION NECESSARY**

**ACTION:** **REFERRED TO 2014-2015 BOARD OF ALDERMEN 8-0**

Respectfully Submitted,  
Amy Mah Sangiolo



Existing Ordinance

## 26-27 Placing Signs on Sidewalks

No person shall, without authority from the commissioner of public works, place or cause to be placed on a sidewalk or a showboard, placard or sign for the purpose of displaying the same or attracting attention thereto. (Rev. Ords. 1973, § 19-27; Ord. No. 90, 10-6-75)

Proposed Amended Ordinance Sec. 26-27: Placing signs on sidewalks or city property

- 1) No person shall, without authority from the commissioner of public works, place or cause to be placed on a sidewalk or City property a showboard, placard or sign for the purpose of displaying the same or attracting attention thereto, and shall be subject to the following:
  - (a) An application for such showboard placard or sign shall be filed with the Commissioner of Public Works, who shall issue a permit authorizing the posting of such sign. Said application shall clearly set forth the proposed number and location of signs, the date of the event, and the dates during which the signs will be posted.
  - (b) The proposed location and number of signs are subject to approval by the Commissioner of Public Works.
  - (c) An application fee of \$25 shall be paid upon filing of the application.
  - (d) Such signs shall not be placed before fourteen (14) days preceding the event and shall be removed within forty-eight (48) hours after conclusion of the event.
  - (e) All such signs shall contain the following notation: "This sign may be removed on [insert date]." The removal date shall be forty-eight (48) hours after conclusion of the event.
  - (f) City personnel are authorized to remove and discard any signs remaining after forty-eight (48) hours after conclusion of the event.
  - (g) City personnel are authorized to remove and discard any signs which were not validly issued a permit for that location.

## ARTICLE IV. TREE PRESERVATION

### 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 organizations.

**Comment [MW1]:** Minor change. Expanded acceptable certifications

*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.

*Exterior work permit.* A permit or approval which is required in order to perform work on a vacant lot or to the exterior of a building on a lot, including, but not limited to the following: a building permit; a review of an alteration of contour of land if required pursuant to section 30-5(c)(1); curb cut and street opening permits; an order of conditions; certificates of appropriateness, nonapplicability, or hardship; a demolition permit; site plan approval pursuant to section 30-23; subdivision approval; a special permit pursuant to section 30-24; a comprehensive permit.

**Deleted:** *Exempt lot.* A lot which meets either of the following criteria at the time that the tree removal permit application is filed or an exterior work permit is sought or at the time that trees are being removed:¶  
(a) the lot is occupied and used primarily as a dwelling for up to four (4) families; or¶  
(b) the lot is vacant and is adjacent to a lot used solely as an owner occupied dwelling for up to four (4) families and owned by the same person and the owner of such vacant lot wishes to remove trees from such vacant lot in order to construct a dwelling for up to four (4) families which said owner will occupy.¶

*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.

**Comment [MW2]:** Minor change. Updates description of Exterior work permits to match ordinance changes since 1999

*Protected tree.* Any tree having a diameter of eight inches (8") DBH or larger or having an aggregate diameter of fifteen inches (15") DBH or larger and which is located on land subject to the provisions of section 21-82.

*Pruning standards.* Standards for pruning as defined in the City of Newton Tree Management Manual, 1995 and any future amendments or revisions to the same.

*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.

*Tree Manual:* The City of Newton Tree Management Manual, 1995, and any future amendments and revisions to the same. (Ord. No. V-275, 12-6-99)

*Tree Permit: Document issued by the Tree Warden with information regarding which activities relative to trees on the site are allowed. This document may include information on protective measures, which trees are permitted for removal, and other action necessary for compliance with the Tree Preservation Ordinance.*

**Comment [MW3]:** Added definition of a tree permit

*Tree Warden:* The commissioner of parks and recreation or his designee.

**Editor's note**—Ordinance V-275 contained a lengthy and detailed Declaration of legislative findings and intent, which is on file in the records of the Board of Aldermen.

### **Sec. 21-82. Applicability, activities that require a permit**

(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) **Whenever** one or more of the following conditions are or will be met, no person shall remove a protected tree on land subject to the provisions of this section without first obtaining a tree permit from the tree warden. The provisions of (1), (2), (3), and (4) below shall apply to all persons, including any subsequent owner of a lot, within the stated time period:

**Comment [MW4]:** Significant Change. This section was added to reflect the new criteria of when a permit is required.

(1) The removal of greater than five protected trees on any one lot within a 24 consecutive month time period; or

(2) The removal of greater than 80 diameter inches of protected trees on any one lot within a 24 consecutive month time period; or

(3) The removal of a single protected tree measuring greater than 50 diameter inches; or

(4) Whenever an exterior work permit (as defined in section 21-81) is required.

### **Sec. 21-83. Permit application.**

(a) *Contents, fee:* An application for a tree permit shall be submitted to the tree warden. The application for a tree permit shall be accompanied by a fee in the amount of **one hundred fifty** dollars (\$150.00) except in instances of hardship as determined by the tree warden and shall include, but not be limited to, the following:

**Comment [MW5]:** Increase permit fee from \$50 to \$150.

(1) 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;

(2) A tree plan showing the location, type and size of each protected tree indicating which protected tree(s) are to be removed, and the location, type and size of proposed replacement trees;

(3) The proposed relocation of any existing protected tree with a statement prepared by a certified arborist or other qualified person as determined by the tree warden explaining how each such protected tree is to be relocated and maintained;

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

(5) Any proposed grade changes which might adversely affect or endanger any protected tree with a statement prepared by a certified arborist explaining how each such protected tree shall be protected and maintained;

(6) The proposed method of protecting the remaining protected trees during the course of the construction in accordance with section 20-34, subsection (a).

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

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

**Comment [MW6]:** Several edits made in this section that cleaned up confusion and ambiguity from current ordinance. Simplified the language for replacement and payment.

(1) The protected tree(s) will be relocated or replaced on site.



(2) The protected tree(s) will be replaced by payment in lieu of planting replacement tree as outlined in 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 or wildlife on the same site as certified to the tree warden and accepted by the tree warden.

(d) *Conditions:* Upon the issuance of a tree permit, the tree warden may prescribe in writing such protective measures for existing protected trees as he deems necessary. Before site disturbance may begin, the tree warden may make a determination that the prescribed protective measures have been adequately provided.

(e) *Construction:* Except as provided in a tree permit, construction activities under the drip line of a protected tree are prohibited. Construction activities include, but are not limited to, trenching or grading, storage of materials or equipment, passage of heavy equipment within the drip line and spillage of chemicals or other materials which are damaging to trees.

(f) *Suspension or revocation:* A tree permit may be suspended or revoked at any time by the tree warden upon written notice to the permit holder that the permit holder has failed to comply with either this article or the conditions of the permit. The written notice shall be sent by certified or registered mail, return receipt requested, or by hand delivery and shall provide an opportunity for the permit holder to correct the noncompliance and apply for a renewal of the tree permit upon compliance, where practicable. The suspension or revocation of a tree permit in accordance with this subsection shall not affect the validity of a building permit issued in reliance upon the issuance (granting) of such tree permit nor shall such suspension or revocation be cause for withholding the issuance of a certificate of occupancy.

(g) *Appeal:* Any person aggrieved by a decision of the tree warden may file an appeal with the mayor or his designee. Said appeal must be in writing and must be received by the mayor or his designee within five (5) business days of issuance of the tree warden's decision. Upon receipt of such appeal, the mayor or his designee shall provide a copy to the clerk of the board of aldermen and to each alderman for the ward in which the trees are located. The mayor or his designee shall make a final decision on the matter within thirty (30) days from the date of receipt of the appeal request. The mayor or his designee shall include in the decision the rationale therefor. Upon issuance of the final decision, the mayor or his designee shall provide a copy to the clerk of the board of aldermen and to each ward alderman for the ward in which the trees are located. There shall be no further appeal of the matter decided

by the mayor or his designee. No protected trees shall be removed while an appeal is pending.

**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 approved pruning standards is required, and failure to meet these standards is a violation of this article. The tree warden shall maintain on file at all times a copy of the current edition the Tree Manual and shall make copies of the Tree Manual available for the cost of reproduction upon request.

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

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

**Sec. 21-85. Tree replacement.**

Any time a tree permit is required a person who has removed in excess of five protected trees; or in excess of 80 diameter inches of protected trees; or a single tree in excess of 50 diameter inches is required to replace such trees as a condition of granting a tree permit in accordance with section 21-83, and shall replace such trees within one year from the date of removal in accordance with the following standards:

(1) A replacement tree shall be of the same or similar species or such other species as deemed advisable by the tree warden in accordance with the Tree Manual and shall have the same or equivalent size as measured in DBH inches as that of the protected tree that has been removed.

(2) In the event that a tree of the same or equivalent size as measured in DBH inches cannot be planted, then multiple smaller replacement trees may be planted provided that, wherever practicable, as determined by the tree warden, the total DBH of the replacement trees shall, when added together, equal the total DBH of the protected tree that has been removed. The tree warden may specify that replacement trees be of a minimum caliper when consistent with current accepted practice as stated in the Tree Manual.

**Comment [MW7]:** Section changed to reflect language changed in 21-82 (b). This section explains when trees require replacement.

(3) A replacement tree shall be required to survive for a minimum of one (1) year from the date it is planted. The 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.

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

**Sec. 21-86. Tree replacement fund.**

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

(b) *Payment in lieu of planting replacement tree(s):* In lieu of planting a replacement tree as provided in section 21-85, a person who has been granted a tree permit may make a contribution to a tree replacement fund in an amount equal to the cost to replace the tree in accordance with the provisions of section 21-85, which cost shall be determined by the tree warden based on the City's current cost to purchase and install trees.

**Comment [MW8]:** Changed this section to simplify process and to reflect current practices.

**Deleted:** who shall obtain written estimates from at least two (2) tree companies.

(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)

**Sec. 21-87. 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 or registered mail, return receipt requested, or by hand delivery. The notice shall set forth the nature of the violation and a reasonable time period within which compliance must be had. The tree warden shall send notice of violation of section 21-86, subsection (c), which notice shall include the date by which trees were to be replaced or payment was to be made for purposes of computing the "per day" violation fine, as provided in section 21-88, subsection (b).

(b) *Stop work order.*

(1) Upon notice from the tree warden that work on any protected tree, or lot on which a protected tree is located, is being performed contrary to the provisions

of this article, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work; and shall state the conditions under which work will be permitted to resume.

(2) The tree warden is also authorized to request the agency which has granted an exterior work permit to order, to the extent permissible by law, that the owner cease any activity pursuant to the exterior work permit that might affect such protected tree while a stop work order is pending.

(3) Any person who shall continue any work in or about the protected tree or lot on which a protected tree is located 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 by 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)

**Sec. 21-88. Penalties.**

Violations of any portion of this section, including violations of any regulation promulgated hereunder, or failure to comply with conditions of a permit, or failure to replace any removed tree as required by the tree warden, or failure to pay the required amount into the tree replacement fund shall be punishable by a fine of three hundred dollars (\$300.00) for each day during which the violation continues. Nothing herein shall be construed to require the city to make a payment for violation of this section; however the city agency that caused the violation shall be responsible for the costs of replacement or repair of the tree(s) which were

**Comment [MW9]:** This section was changed to mimic language in public tree regulation that was passed two years ago. It more clearly explains penalties than the current version.



| damaged or removed.

**Sec. 21-89. Severability, effect on other laws.**

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

(b) *Conflict of laws*: This article shall not apply to any public shade tree as that term is defined by the General Laws, Chapter 87 or any amendments thereto. Nothing herein is intended to conflict with the General Laws, Chapter 87 and to the extent that any provision hereof conflicts with said Chapter 87, such provision shall not be valid. Nothing herein is intended to conflict with existing special permit procedures as provided in section 30-24 and to the extent that any provision hereof conflicts with said special permit procedures, such provision shall not be valid. (Ord. No. V-275, 12-6-99)