

CITY OF NEWTON

BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE AGENDA

WEDNESDAY, MAY 20, 2009

**7:45PM**  
**Room 222**

**ITEMS SCHEDULED FOR DISCUSSION:**

Re-appointment by His Honor the Mayor

#107-09      JUDI MacKENZIE, 9 Oak Vale Road, Waban, re-appointed as a member of the NEWTON COMMUNITY EDUCATION COMMISSION for a term to expire on June 30, 2011 (60 days: 6/20/09).

#125-09      THE POST AUDIT & OVERSIGHT COMMITTEE requesting creation of a public tree protection ordinance and amendment of the current tree ordinance as recommended in the Tree Preservation Ordinance Report. [04-17-09 @ 9:14 PM]

#124-09      ALD. HARNEY requesting to amend the Rules and Orders of the Board of Aldermen to place a term limit on the President of the Board to two consecutive terms. [04-27-09 @ 10:38 PM]

#50-09      CLERK OF THE BOARD requesting that Article IX, Section 2 of the Rules of the Board be updated to reflect the use of the most current version of Robert's Rules Newly Revised 10<sup>th</sup> Edition (Cambridge, Mass; Perseus Publishing, 2000) [02/05/09 @ 12:21 PM]

#33-09      ALD. LAPPIN requesting an amendment to the Rules of the Board of Aldermen so that appointments requiring confirmation to the Farm Commission be referred to the Committee on Community Preservation. [01/22/09 @ 9:03 AM]

#154-08      ALD. JOHNSON requesting to establish a definition and appropriate usage of the Committee of the Whole of the Board of Aldermen as are all committees of the Board. [4/10/08 @ 9:09 AM]

#153-08      ALD. JOHNSON requesting to establish a definition and appropriate usage of the Long Range Planning Committee of the Board of Aldermen as are all committees of the Board. [4/10/08 @ 9:09AM]

#130-08 ALD JOHNSON, SANGIOLO AND BRANDEL requesting establishment of a new Rule of Board of Aldermen requiring that referral of any and all new business, communications, petitions and orders docketed before the Board of Aldermen be restricted to one or more of the standing committees of the Board of Aldermen: Land Use, Programs and Services, Public Safety and Transportation, Zoning and Planning, Finance, Real Property Reuse, Post Audit and Oversight, Public Facilities and Committee on Community Preservation. [03/24/08 @ 9:11 AM]

#129-08 ALD. JOHNSON, SANGIOLO AND BRANDEL requesting establishment of a new Rule of Board of Aldermen stating that any new item submitted but not yet approved or accepted by the Full Board of Aldermen is prohibited from any formal or informal discussion by any formal, informal or special committee of the Board. [03/24/08 @ 9:11 AM]

**ITEMS NOT YET SCHEDULED FOR DISCUSSION:**

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

#130-09 HIS HONOR THE MAYOR requesting authorization to appropriate and expend from Cable Receipts the sum of twenty-four thousand nine hundred eighteen dollars (\$24,918) for the purpose of purchasing equipment to provide for archived web casting of the Board of Aldermen and School Committee meetings. [4/28/09 @ 6:02 PM]

#95-09 TOM SHEFF requesting the Board of Aldermen appoint an advisory committee made of up persons who are not elected officials to review the daily processes of the Board of Aldermen and report recommended efficiency improvements to the Board of Aldermen. [03/26/09 @8:34 pm]

**REFERRED TO FINANCE AND APPROPRIATE COMMITTEES**

#70-09 HIS HONOR THE MAYOR submitting the FY10-14 Capital Improvement Program, totaling \$192,908,572, and the FY09 Supplemental Capital budget, which require Board of Aldermen approval to finance new capital projects over the next five years.

**REFERRED TO FINANCE AND APPROPRIATE COMMITTEES**

#70-09(3) HIS HONOR THE MAYOR submitting in accordance with Section 5-1 of the City of Newton Charter the FY10 Budget totaling \$333,411,747, passage of which shall be concurrent with the FY10-FY14 Capital Improvement Program.  
Effective date of submission: 4/21/09; last day to pass budget: 6/5/09)

**REFERRED TO PUBLIC FACILITIES AND PROGRAMS & SERVICES**

- #8-09 ALD. HESS-MAHAN, LINSKY, ALBRIGHT, FREEDMAN, MANSFIELD, JOHNSON, HARNEY & VANCE proposing an ordinance requiring that the installation of synthetic in-filled turf athletic fields on city-owned property shall use sustainable, recyclable, lead-free, non-toxic products to the maximum extent feasible. [12/30/08 @ 9:55 AM]

**REFERRED TO LAND USE AND PROGRAMS & SERVICES COMMITTEES**

- #474-08(2) ALD. HESS-MAHAN & VANCE proposing that Article X of the Rules & Orders of the Board of Aldermen be amended to conform with a proposed amendment to Chapter 30 re transfer of the special permit granting authority to the Zoning Board of Appeals and/or the Planning & Development Board for projects that are not classified as Major Projects pursuant to Article X.

**REFERRED TO PS&T AND PROGRAMS & SERVICES COMMITTEES**

- #391-08 HIS HONOR THE MAYOR requesting Board of Aldermen approval to petition the General Court for an amendment to the legislation that governs the appointment of a Police Chief in the City of Newton in order to add two members to the committee: an additional representative of the Newton Superior Officers Association and an additional citizen member. [11/4/08 @ 12:31 PM]
- #306-08 ALD. BAKER, DANBERG, MANSFIELD & PARKER requesting discussion of how swimming at Crystal Lake might be lawfully and safely extended beyond mid-August. [08/26/08 @ 5:03 PM]
- #292-08(2) PROGRAMS AND SERVICES COMMITTEE requesting that His Honor the Mayor develop a written policy of standards and processes that could be uniformly followed by community groups for the use of the branch library buildings. [11/07/08 @ 11:11 AM]

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

- #274-08 ALD. JOHNSON AND SANGIOLO proposing a RESOLUTION to His Honor the Mayor requesting that he create a plan to move the Child Care Commission to a self-sustaining model for FY2010. [07/17/08 @ 9:53 AM]

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

- #273-08 ALD. JOHNSON proposing a RESOLUTION to His Honor the Mayor requesting that the Executive and Human Resources Departments develop a comprehensive human capital strategy for the city to include: performance management, talent development, succession planning, and compensation. [07/17/08 @ 9:53 AM]

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

#272-08 ALD. JOHNSON proposing a RESOLUTION to His Honor the Mayor that he work with the Board of Aldermen, School Department, and School Committee in order to determine the most effective and efficient way to organize the Human Resources Departments. [07/17/08 @ 9:53 AM]

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

#271-08 ALD. JOHNSON proposing a RESOLUTION to His Honor the Mayor requesting that he work with the Board of Aldermen, the Parks and Recreation Department, and the Department of Public Works in order to determine the most effective and efficient way to organize the work of managing our public resources. [07/17/08 @ 9:53 AM]

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

#270-08 ALD. JOHNSON proposing a RESOLUTION to His Honor the Mayor requesting that he work with the Board of Aldermen, School Department, and School Committee in order to determine the most effective and efficient way to organize the Information Technology Departments. [07/17/08 @ 9:53 AM]

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

#261-08 ALD. SANGIOLO requesting discussion with the Executive Department regarding moving the Director of Arts in the Parks' salary to the Arts in the Parks revolving account. [07/08/08 @ 1:29 PM]

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

#259-08 ALD. SANGIOLO requesting discussion with the Executive Department regarding moving the salaries of the Parks & Recreation Commissioner and the Recreation Programs Director to the revolving accounts for various programs. [07/08/08 @ 1:28 PM]

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

#258-08 ALD. SANGIOLO requesting discussion with the Executive Department regarding reorganization of senior transportation services and establishment of intra-village transportation systems. [07/08/08 @ 1:29 PM]

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

#207-08 ALD. BRANDEL AND SANGIOLO proposing that the following question be put before the Newton voters:  
"Shall the City of Newton be allowed to exempt from the provisions of Proposition 2 ½ the amounts required to pay for the bond issuance in order to fund Newton North High School?" [05/21/08 @ 12:58 PM]

- #111-08(2) ALD. JOHNSON and PARKER requesting regularly scheduled updates and discussion each month in regard to the offering of a RESOLUTION to the Mayor, President of the Board of Aldermen, and Chair of the School Committee that they, during the budget development and review process, identify short term tactics to improve the City's operational efficiency and effectiveness. In addition, they establish a citizen advisory group to assist in planning for additional tactics and strategies to improve the City's operational efficiency and effectiveness in future fiscal years, and report progress to the Board of Aldermen, School Committee and the public before any vote is taken by the citizens of Newton for any operational override. [04/01/08 @ 11:22 AM]

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

- #89-08 ALD. PARKER requesting the following:
- A) review of the maintenance practices for buildings, parks and other properties owned by the City (including School Department facilities and grounds)
  - B) development of a comprehensive maintenance plan that includes regular schedules for preventive maintenance for each specific site or facility
  - C) a RESOLUTION requesting that implementation of said maintenance plan be funded using operating budget funds.
- [02/13/08 @ 12:07 PM]
- #287-07(2) ALD. PARKER requesting a discussion with Parks and Recreation Department in regards to an appropriate marker or plaque to honor and recognize Olympic figure skater and Newton resident Tenley Albright and her skating exhibition at the Crystal Lake upon her return from the 1956 Olympic Games where she won a gold medal. [09/20/07 @ 1:22 PM]
- #262-07 ALD. VANCE AND HESS-MAHAN seeking approval by the Board of Aldermen of a home rule petition to the General Court that would authorize an amendment to the charter of the City of Newton that would change the length of terms of the members of the Board of Aldermen to three years and would provide for electing one-third of the aldermen, one from each ward, every year. [08/22/07 @ 3:53 PM]

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

- #83-07 ALD. YATES requesting that the City of Newton take all possible steps to persuade the General Court to adopt the proportion of Governors Municipal Partnership that would allow the City to reduce employee health insurance costs by joining the Group Insurance Commission. [02/27/07 @ 10:21 PM]
- #82-07 ALD. YATES requesting that the City of Newton take all possible steps to persuade the General Court to allow the cities and towns to tax all

telecommunications facilities in the City (which would yield at least \$1.6 million per year for Newton). [02/27/07 @ 10:21 PM]

#52-07 ALD. PARKER, SANGIOLO, MANSFIELD, HARNEY, DANBERG, VANCE, LINSKY, HESS-MAHAN, BURG, ALBRIGHT & JOHNSON requesting an ordinance amendment to create a health care advisory committee whose function would be to recommend measures to control the rate of increase of health insurance costs, as recommended by the Newton Finance & Management Working Group in 2005 and the Blue Ribbon Commission on the Municipal Budget in 2007. [02/09/07 @ 12:36 PM]

#422-06(2) ALD. HESS-MAHAN requesting that a task force be established to meet and prepare a report and recommendations regarding the regulation of noise, air pollution and best practices with respect to the operation of power equipment used in landscaping, property and yard maintenance, including, without limitation, leaf blowers. [01/27/09 @ 3:47 PM]

#370-06 ALD. SANGIOLO, PARKER, MANSFIELD requesting home rule legislation to allow advisory questions to be asked in a Newton special election.

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

#267-06(3) ALD. PARKER, BURG, LINSKY, FISCHMAN, HESS-MAHAN, VANCE, HARNEY, JOHNSON, & DANBERG proposing Home Rule Legislation authorizing the City of Newton to apply the ordinance proposed in item #267-06(2) to assets held by the City's retirement system.

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

#245-06 ALD. JOHNSON AND HESS-MAHAN requesting an amendment to the City Charter to require the Mayor annually to prepare and submit to the Board of Aldermen a long-term financial forecast of anticipated revenue, expenditures and the general financial condition of the City, including, but not limited to identification of any factors which will affect the financial condition of the City; projected revenue and expenditure trends; potential sources of new or expanded revenues; anticipated municipal needs likely to require major expenditures; and a strategic plan for meeting anticipated municipal needs, to include, but not be limited to, any long or short-term actions that may be taken to enhance the financial condition of the City.

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

#264-03(3) ALD. JOHNSON AND BAKER requesting update on the work of the Taxation Aid Committee established by the Board of Aldermen in March 2004 in administering aid to the elderly taxation fund.

#346-99      ALD. SANGIOLO requesting creation of an ordinance that would prohibit dogs (leashed or unleashed) from all elementary school playgrounds.

**REFERRED TO PROGRAMS & SERVICES, PUBLIC FACILITIES  
AND FINANCE COMMITTEES**

#309-01      ALD. PARKER requesting increase in the income eligibility level of the 30% water/sewer discount for low-income senior citizens.

Respectfully Submitted,

Marcia Johnson, Chairman

# Overview of the Tree Preservation Ordinance

#125.09

On December 1999 the Newton Board of Alderman and Mayor enacted the Tree Preservation Ordinance

The City's Tree Warden is assigned the task of overseeing and enforcing the Tree Preservation Ordinance. Under City regulations the Parks and Recreation Commissioner is the Tree Warden. The Duties of Tree Warden are assigned to the Director of Urban Forestry (here in referred to as the Director). The Director is responsible for reviewing all applications, forms and plans submitted by the public. The Director is also responsible for the inspection of all projects for compliance.

## Basic Steps in the procedure

1. Property owner fills out one of two forms
  - a. Certificate of Exemption – form filed with Inspectional Services and copied to the Director. - - No further action is required. Person may remove tree at this time. The Director may inspect the property if it appears that the property is not actually exempt.
  - b. Application for tree removal permit – form filed with Director. Included materials may be site plan, existing condition plan, proposed construction plan including plantings, and tree protection information and assessments from Certified Arborist.
2. The Director reviews the site and site plan including the trees to be removed and their species, size, and condition.
3. The Director reviews the proposed construction, its impacts on any protected trees to remain and the planting plan. It is at this time that any payment, if required, must be received.
4. Any issues or corrections that are needed are conveyed to the applicant for correction.
5. Once all plans, forms and paper work are acceptable and/or corrected the applicant is notified that they have been approved.
6. The Director may periodically inspect the site to insure compliance with the Tree Preservation Ordinance.
7. Once the project is complete the applicant is to notify the Director that the project is complete. At this time an inspection is made to insure that all the provisions of the approval were followed including that all proposed trees were planted according to the plan.



# The Appeal Process

Section 20-33 (g) allows any aggrieved person to appeal the decision of the Director. This appeal process is directed to the Mayor.

2.(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. 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. (Ord. No. V-275, 12-6-99; Ord. No. X-202, 04-03-06)

## Typical steps of the appeal process

1. The Director denies an applicant's Application for Tree Removal Permit. The denial will cite the reason(s) for denial.
2. Within five days of denial the Applicant files an appeal with the Mayor.
3. Some time following the filing of the appeal the Mayor and/or the City's Law Department contacts the Director to explain the denial. They will typically ask for general details such as:
  - a. The number, size and type of trees to be removed.
  - b. The planting plan such as species and quantity
  - c. The payment amount offered (if offered) in lieu of complete replacement planting
  - d. Depending on circumstances any number of other types of information may be provided.
4. Per the requirements of the Ordinance the Mayor provides a copy to the clerk of the Board of Aldermen and to each Alderman for the ward in which the trees are located that there has been an appeal.
5. The Mayor and the Law Department review the facts and arguments of the Applicant. *(the details of this process does not involve the Director therefore any detailed information on it would need to be provided by Executive office.)*
6. An initial ruling is rendered and a draft sent to the Director to verify any facts that pertain to the information he received in the application.
7. The Mayor issues his final ruling and rational to the applicant, the Director of Urban Forestry, the City Clerk and each Ward Alderman.

## Recommendations

---

The Newton Tree Preservation Ordinance has been minimally revised since its passage in 1999. Since that date there has been many questions and scenarios that has challenged the Ordinance's intent and purpose. By enlarge the intent and purpose has stood up to the test. There are several recommendations to be made that would help insure the original intent and purpose is met. These recommendations can be divided into two districts areas, operational and legal.

The first recommendation that does not fall into either category is to assemble a small working group of people to examine the Tree Preservation Ordinance and its effectiveness. This group should be comprised of the Director of Urban Forestry and representatives from the Board of Alderman, Law Department, Inspectional Services Department, Planning Department, and Tree Commission. This group would examine the following recommendations and review other deficiency in the Tree Preservation Ordinance not apparent here.

**\*Note:** The issues and recommendations presented here are solely based on the Director of Urban Forestry's experiences, observations and interpretation of the Tree Preservation Ordinance. As noted previously it is recommended that a group of selected and interested parties review the Tree Preservation Ordinance as a whole.

### **Issue One**

The major issue impacting the intent of the Tree Preservation Ordinance is the Exemption distinction . Routinely *property owners* use the provision of section 20—32 (b) to work around the intent of the Ordinance or to directly violate it. Under the current rules of the Ordinance a property only has to be occupied at the moment the tree removal permit application is filed or an exterior work permit is sought or at the time that trees are being removed. The Ordinance does not require that the property remain occupied following the removal of the trees and only requires that it be owned by the same person. Builders and Developers will use several different approaches and scenarios to exploit this aspect of the Tree Preservation Ordinance.

### Recommendation One — Legal

**It is recommended that the word "owner" be inserted in the section of the Ordinance below.**

Section 20-31. Definitions—Exempt lot (a) the lot is [owner] occupied and used primarily as a dwelling for up to four (4) families;

In addition to this change it is recommended that **owner** be defined as well as **occupied**.

Currently it is difficult to determine occupancy because of a lack of definition in the Tree Preservation Ordinance and rules to use to make a determination. Developers and Builders are exploiting the definition of occupied to claim they occupy or have an occupant in the property at the time the trees are to be removed. Once the trees are removed the property becomes unoccupied and they must only own it for twelve more months.

### **Issue Two**

Enforcement of the Tree Preservation Ordinance is a time consuming task that takes vigilance and flexibility. When the Tree Preservation Ordinance was passed the duties and responsibilities were delegated to the Director of Urban Forestry to do in conjunction with their other existing responsibilities. The current level of enforcement and management requires that on average 10 to 20 hours per week (this number fluctuates seasonally) are spent on the Tree Preservation Ordinance. The current level of enforcement does not adequately address all the rules of the Tree Preservation Ordinance. The current level of enforcement does not allow the City to monitor or catch the daily violations that occur City-wide. The Director relies on notification by the public, other City Agencies and honest and up front Builders, Developers and property owners of potential issues.

### Recommendation Two — Part 1 — Operational

It is recommended that additional steps and mechanisms are put in place that will allow the City to insure that fewer intentional and accidental violations of the Tree Preservation Ordinance occur. The following are some

## Recommendations

suggested steps to meet this goal. Some of these items are already being attempted or done in a less formal form.

- **Require a sign off by the Tree Warden (or designee here in referred to as the Director of Urban Forestry) on all exterior work permits impacting trees.**
- **Require review of all special permit requests involving the exterior of properties.**
- **Require all Property owners to seek a Tree Removal Permit or Exemption Form from the Director of Urban Forestry prior to the removal of a tree and prior to the issuance of an exterior work permit. \*see note at end of section**
- **Monitor all Exterior Permits issued by Inspectional Services Department.**
- **Regularly patrol City in search of violations.**

### Recommendation Two—Part 2—Legal

The recommendations above would significantly cut back on the number of violations and would insure the intent of the Tree Ordinance would be met. The above recommendations would **dramatically** increase the number of hours spent on the Ordinance. It is estimated that the above recommendations on top of the current level of management would result in 30 to 40 additional hours of work per week (see appendix for staff time information).

**It is recommended that a fee structure be added to the language of the Tree Preservation Ordinance that would support a new Enforcement Position.**

\*It is being interpreted that Section 20-32. *Applicability, permit or certificate of exemption required*, requires that a Removal Permit or Exemption form be issued any time a Protected Tree is to be removed. Currently Removal permits are issued as required under the Ordinance but Exemptions are not. Exemptions are done by a petitioner filing an affidavit stating they are exempt. Once they have filed the affidavit they are free to remove the trees before any determination can be made if they are actually exempt. This

process currently only occurs at Inspectional Services when an applicant is filing for an Exterior Work Permit. Any other time a tree is removed from and Exempt Lot we are unaware of it. Also, individuals looking to avoid the regulations of the Ordinance remove trees prior to seeking Exterior Work Permits or immediately prior to the sale of a property.

### **Conclusion**

There are several other minor tweaks and changes that could be made to clarify different aspects and requirements which could be dealt with under the recommended review process. By enlarge these changes would only make minor enhancements.

If it is the intent of the of the Tree Preservation Ordinance to reduce the effects of tree loss throughout the City than it has been moderately successful. If it is the intent of the Tree Preservation Ordinance to prevent tree loss on all but owner occupied properties where the owner intends to live for at least 12 months than it has only been marginally successful.

In addition to the revisions and issues presented here for the Tree Preservation Ordinance it is also recommended that a similar Ordinance be enacted in the City that places the same protections to publicly owned trees. Under State Law there already exists protections to public shade trees, however the statute is nearly 100 years old and does not provide enough protection to all public trees. An ordinance similar to the Tree Preservation Ordinance could put in place a mechanism that would protect trees during construction on private and public property where access to public streets and property is required. It would also regulate the activities of overhead utility companies when working near or on public trees. If enacted this ordinance would be managed in much of the same way as the Tree Preservation Ordinance is currently and as proposed in this document.

**It is recommended that a similar or the same group as proposed earlier develop and review a Public Tree Protection Ordinance.**

# Appendix 1 — Tree Preservation Ordinance

## ARTICLE IV. TREE PRESERVATION

### Sec. 20-31. 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 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 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.

*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 special permit for grade change of more than three (3) feet pursuant to section 30-5(b)(4); curb cut and street opening permits; an order of conditions; certificates of appropriateness, nonapplicability, 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.

*Person*: Any person, firm, partnership, association, corporation, company or organization of any kind including, but not limited to, the person removing a protected tree as well as the owner of the real property from which the tree is removed. The definition of "person" shall not include the City of Newton.

*Protected tree*: Any tree having a diameter of eight 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 20-32.

*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 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. 20-32. Applicability, permit or certificate of exemption 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 except protected tree(s) located on an exempt lot.

(b) *Permit, certificate of exemption*: No person shall remove a protected tree located on land subject to the provisions of this article without first obtaining a tree removal permit or a certificate of exemption from the tree warden. Applications shall be made in writing on forms specified by the tree warden. An owner of an exempt lot shall not be required to apply for a tree removal permit, provided, however, that an owner of an exempt lot who seeks an exterior work permit must certify to the tree warden on forms provided by the tree warden that the owner intends to own such exempt lot for at least twelve consecutive months. There shall be no fee for filing a certificate of exemption. (Ord. No. V-275, 12-6-99)

### Sec. 20-33. Permit application.

## Appendix 1 — Tree Preservation Ordinance

(a) *Contents, fee:* An application for a tree removal permit shall be submitted to the tree warden. The application for a tree removal permit shall be accompanied by a fee in the amount of fifty dollars (\$50.00) and shall include, but not be limited to, the following:

- (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 replacement trees;
- (3) The proposed relocation of any existing protected tree with a statement prepared by a certified arborist explaining how each such protected tree is to be relocated and maintained;
- (4) The location of existing and proposed underground or overhead utility services, existing and proposed roadways, bikeways, walkways and parking areas;
- (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 removal 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 removal permit. The tree warden shall complete the review of each tree removal 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 inspection services within ten (10) business days of a request with respect to any tree removal permit application submitted in connection with a building permit as to whether said tree removal 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 removal permit shall be issued unless one of the following conditions exists:

- (1) The protected tree will be relocated or replaced on site.
- (2) The protected tree will be replaced by the off-site planting of tree(s) of the same or equivalent size as measured in DBH inches. 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. Off-site plantings shall be made in accordance with written priorities established by the tree warden as stated in the Tree Manual. 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.
- (3) The protected tree is interfering with existing structures, utilities, streets, sidewalks or other existing improvements and the relocation of the protected tree is not feasible as certified to the tree warden by a certified arborist.
- (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 site as certified to the tree warden by a certified arborist.

(d) *Conditions:* Upon the issuance of a tree removal 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

# Appendix 1 — Tree Preservation Ordinance

been adequately provided.

(e) *Construction*: Except as provided in a tree removal permit, construction activities under the drip line of a protected tree are prohibited. 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 removal 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 removal permit upon compliance, where practicable. The suspension or revocation of a tree removal 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 removal 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. 20-34. 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. 20-35. Tree replacement.

(a) *Required*: A protected tree shall be replaced in the manner provided in subsection (b) hereof in each instance in which a protected tree was removed from land subject to the provisions of section 20-32 without a tree removal permit.

(b) *Standards*: A person who has removed a protected tree and is required to replace such tree pursuant to subsection (a) hereof or as a condition of granting a tree removal permit in accordance with section 20-33, shall replace such tree within one year from the date of removal and 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



## Appendix 1 — Tree Preservation Ordinance

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.

(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 or at a location determined by the tree warden in accordance with the priorities stated in the Tree Manual. (Ord. No. V-275, 12-6-99)

### Sec. 20-36. 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 20-35, a person who has been granted a tree removal 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 20-35, which cost shall be determined by the tree warden 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. 20-37. 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 20-36, 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 20-38, subsection (c).

(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 pro-

# Appendix I — Tree Preservation Ordinance

vision of an approved tree removal 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)

## Sec. 20-38. 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).

(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) *City trees:* Nothing herein shall be construed to require the city to make a payment into the tree replacement fund for any tree(s) which it removes. (Ord. No. V-275, 12-6-99)

## Sec. 20-39. 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)

## Secs. 20-40—20-49. Reserved.

e) DEPARTMENT OF PARKS AND RECREATION: The commissioner of parks and recreation, in his capacity as tree warden, or such other municipal official as may hereafter be assigned the duties of tree warden, shall be authorized to issue written notice of the following violations:

### PENALTY

( ) Warning: \$0.00

Sec. 20-32. Removal of a tree without a permit

( ) Any offense \$300.00

Sec. 20-33. Failure to comply with a condition contained in a tree removal permit

( ) Any offense \$300.00

Sec. 20-35. Failure to replace a tree

( ) Any offense \$300.00

Sec. 20-36. Failure to make a payment into the tree replacement fund

( ) Any offense \$300.00

Sec. 20-37. Failure to comply with a stop work order

( ) Any offense \$300.00

