



Programs & Services Committee Report **Revised**

City of Newton **In City Council**

Thursday, February 2, 2023

Present: Councilors Krintzman (Chair), Humphrey, Wright, Baker, Albright, Noel, Ryan, and Greenberg

Also Present: Councilors Markiewicz, Lucas, Malakie, Leary, Norton, Oliver, and Lipof

City Staff: Marc Welch, Superintendent of Urban Forestry; Jennifer Wilson, Assistant City Solicitor; Jonathan Yeo, Chief Operating Officer; and Jaclyn Norton, Committee Clerk

For more information regarding this meeting, a video recording can be found at the following link: [Programs & Services Committee February 2, 2023 \(newtv.org\)](https://www.newtv.org/Programs-Services-Committee-February-2-2023)

Referred to Programs & Services and Finance Committees

#411-22 Request for Amendment to Chapter 21, Art III Trees to extend tree protection and update permits

COUNCILORS MALAKIE, NORTON, LEARY, RYAN, WRIGHT, LUCAS, HUMPHREY, BOWMAN, MARKIEWICZ, OLIVER, DOWNS, LAREDO, AND GROSSMAN requesting revisions and amendments to Chapter 21, Art. III Trees (sec. 21-60 through 21-89) to extend tree protection to all trees 6 inches DBH (diameter at breast height) and greater within the City (with no exempt lots); to update tree removal permits, fees, and compensation; and to strengthen protection for existing and replacement trees.

Action: **Programs & Services Held 8-0**

Note: Items #411-22 and #412-22 were read into the record and the Chair noted the progress document that was included with the agenda along with the process that the Committee has followed for previous discussions on these items. The Committee then began discussion on the following proposed amendments.

Sec. 21-83(c) Review of Permit Applications

During the November 9th Programs & Services meeting, Councilors began discussion on Sec. 21-83(c), but were deadlocked on notification of abutters when a tree permit application is

received. ([11-09-22 Programs & Services Committee Meeting](#)) The Chair noted the following proposals for abutter notification; abutters within 500 feet of the lot, direct abutters, and no abutter notification.

Multiple Councilors noted the increased administrative burden placed on Marc Welch, Superintendent of Urban Forestry if the abutter notification was 500 feet along with the need for greater efficiency within city processes. Councilors who were proponents of having a larger notification radius noted current notification practices that occur within the City along with the increased notification radius helping residents be better informed.

A straw vote of 6-2 (Councilors Wright and Baker Opposed) was taken regarding notifying just direct abutters when a Tree Permit application is filed.

Environmental Mitigation Payments and Payment in Lieu of Planting

Councilors Norton and Malakie as the docketing Councilors described that the Environmental Mitigation Payment was proposed to better represent the value of a removed protected tree. It was also noted that a similar payment structure has been implemented in Cambridge.

Jennifer Wilson, Assistant City Solicitor raised concern about the potential for a fee to still be present if an equivalent DBH is replanted. It was further elaborated that the fee needs to be in relation to administering the ordinance.

Multiple Councilors sought clarification on how the value of the removed protected tree is calculated and how it could be reduced. To calculate the value of the protected tree the Diameter at Breast Height (DBH) would be squared and multiplied by 0.785 and a base value that would have to be set if adopted. A docketing Councilor noted that to reduce the fee each replacement tree's value is calculated using this formula and subtracted from the value of the protected tree.

Mr. Welch noted that the payment in lieu of planting replacement trees as prescribed in the City Proposal would be determined by the tree warden and based on the cost to purchase, install, and maintain the replacement trees for the first five years. These fees would be updated annually by the tree warden. These fees are also subject to the category factor detailed in Sec. 21-85(b)(2).

A couple of Councilors noted concern with the fee escalation that occurs when the category factor is increased. These Councilors also proposed the creation of a fee waiver program for individuals who would experience significant hardship resulting from the fee. Multiple Councilors also advocated for a distinction to be made in the fee schedule between homeowners and developers. Mr. Welch responded that he would look into ways to mitigate that fee escalation in the fee schedule and the feasibility of a fee waiver program.

Regarding the point made regarding the developer distinction and a later point made to exempt 100 percent affordable development, a Councilor noted that the ZBA can exempt a project from replacement planting.

Committee members took a straw vote of 5-3 (Councilors Wright, Humphrey, and Baker Opposed) to not adopting the Environmental Mitigation Payment. Later in the discussion, the Committee adopted the first 5 years of tree maintenance be part of the basis for payment in lieu of planting via unanimous consent.

21-83(e) Conditions

The only difference between the Councilor and City proposals was that the Councilor proposal required that the Commissioner of Inspectional Services be notified that Exterior Work may commence. Mr. Welch described that this is the current practice as the building permit applicant must supply the approved tree permit when applying for a building permit with Inspectional Services. Councilors unanimously adopted the City proposal.

Sec. 21-83(g) Suspension or Revocation

The City proposal has no changes to this provision. The Councilor proposal would add that this would affect the validity of a building permit and would be cause for issuing a stop-work order or withholding a certificate of occupancy by the Commissioner of Inspectional Services.

Attorney Wilson raised concern regarding the language in the Councilor proposal as it can create a potential conflict with the state building code. Massachusetts Building Code prescribes the duties of the Commissioner of Inspectional Services including what can be cause for issuing a stop work order or withholding a certificate of occupancy. Multiple Councilors noted the other instances in that a stop work order can be issued.

Councilor Greenberg proposed language to amend the Councilor proposal and eliminate this potential conflict. The proposed language will read as: "and the Commissioner of Inspectional Services may review a suspension or revocation of a tree permit for consideration of issuing a stop-work order or to withhold the issuance of a certificate of occupancy." Multiple Councilors expressed support for this amendment and was adopted by an 8-0 straw vote.

21-83(h) Appeal

The City proposal amends this section to require that the mayor seek input and consult with the Ward Councilor in which the trees are located. The Councilor proposal would however have the appeal decision made by the mayor and councilors from the ward that the tree is located in, have them be guided by reasonable safety and tree wellbeing provisions, and notification of the appeal decision be sent to each abutter.

Attorney Wilson raised concerns with the Councilor proposal for conflicting with the separation of powers doctrine by placing the role of the executive also in the hands of the legislature. Later in the discussion, a Councilor noted that separation of powers is explicitly stated in the City Charter (Sec. 1-2).

Multiple Councilors sought clarification of who an aggrieved party would be. Another Councilor later in the discussion stated that an aggrieved party is someone who is adversely affected by the initial decision. Councilor Albright proposed amending the City proposal to state that the mayor seeks input and consults with the councilors from the ward in which the trees are located. Multiple Councilors expressed support and the Committee adopted Councilor Albright's proposal with a straw vote of 8-0.

Multiple Councilors also expressed support for having the decision be guided by reasonable safety and tree well-being provisions and notifying abutters of a final decision. Both of these provisions were added to the amended City proposal and adopted via an 8-0 straw vote.

21-85(b)(1) Conditions of Replacement Tree Species and Hedges

Both proposals would not allow trees planted as hedges to be counted as replacement trees. However, the City proposal permits the Tree Warden to exercise discretion in allowing this on a case-by-case basis. Mr. Welch noted that this scenario is very infrequent and primarily used when the removed protected trees are already planted as a hedge.

Multiple Councilors supported the idea of letting the Tree Warden exercise some discretion but would like further clarification on the definition of a hedge. Mr. Welch agreed to present a definition of a hedge at a future meeting. Councilors adopted the City proposal 8-0 with the contingent that Mr. Welch presents a draft hedge definition at a future meeting.

Sections 21-83(d), 21-83(f), 21-84(a), 21-84(b), 21-85(b)(2), and 21-85(b)(3)

All provisions that were the same in both proposals for Sections 21-83(d), 21-83(f), 21-84(a), 21-84(b), 21-85(b)(2), and 21-85(b)(3) were adopted via unanimous consent.

Councilors voted 8-0 on a motion to hold the item from Councilor Humphrey.

Referred to Programs & Services and Finance Committees

#412-22

Request for Review and Amendments to Chapter 21, Art. III, Division 3

HER HONOR THE MAYOR requesting review and amendments to Chapter 21, Art. III, Division 3, Tree Preservation to increase replacement requirements for larger trees, add protections for smaller trees, limit removal of trees without replacement, enhance procedures for protecting trees, increasing payment required for trees cut without replacement, protect trees on lots adjacent to construction, provide Tree Warden with additional professional input on trees on private properties.

Action: **Programs & Services Held 8-0**

Note: This item was discussed concurrently with item #411-22. A written report can be found with item #411-22.

The meeting adjourned at 10:33 pm.

Respectfully Submitted,

Josh Krintzman, Chair