

Chapter 21

PARKS AND RECREATION, PUBLIC GROUNDS AND TREES*

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**ARTICLE I.
IN GENERAL**

Sec. 21-1. Parks and recreation commissioner—Designation; duties generally; compensation.

(a) The office of commissioner of parks and recreation and the department of parks and recreation are established. The commissioner shall be an officer of the city and the provisions of the law for the appointment and removal of heads of departments shall be applicable to such office. He shall have under his immediate control and direction such assistants and employees as may from time to time be duly authorized. The commissioner shall consult with the Director of the history museum regarding the manner of maintenance, care and management of the burial grounds. He shall receive for his services such salary as shall be fixed by the mayor and board of aldermen.

(b) The parks and recreation commissioner shall have charge of maintenance, care and management of playgrounds and all recreation lands, except to the extent conferred upon the Parks and Recreation Commission, pursuant to Chapter 426 of the Acts of 1982 and G.L. c. 45. He shall have and exercise the power conferred by G. L. c. 45, sec. 14, except that of taking by eminent domain. He shall also be responsible for the control and supervision of the parks and recreation department. The commissioner also shall have charge of the maintenance, care and management of burial grounds and the grounds about public buildings and the maintenance of lands under the jurisdiction and control of the conservation commission. The commissioner shall consult with the conservation commission regarding the manner of maintaining lands under the commission's jurisdiction.

(c) The parks and recreation commissioner shall also be designated as the local superintendent of insect pest control pursuant to the G.L. c. 132, sec. 13. He shall perform the duties of tree warden and have the care and control of all public shade trees and the planting, trimming and cutting thereof. He shall make and keep an itemized account with vouchers, showing the definite amounts expended for the purposes named in the General Laws for the suppression of insects. He shall, under the direction of the mayor, cause notices as required by the statutes to be sent to owners of parcels of land infested with such insects. He shall make lists of the amounts expended on spraying as provided by law, containing the names of the owners of estates, the locations thereof and the amounts expended thereon. (Rev. Ords. 1973, § 2-125, § 19-39; Ord. No. 90, 10-6-75; Ord. No. 190, 12-20-76; Ord. No. 220, 6-7-77; Ord. No. 233, 8-15-77; Ord. No. 317, 2-20-79; Ord. No. R- 267, 10-18-82; Ord. No. T-318, 12-6-93; Ord. No. V-289, 3-20-00)

State law references—Office of tree warden, G.L. c. 41, § 1; statements of expenditures of local superintendents of pest control, G.L. c. 132, § 15

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

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

Sec. 21-2. Same—Authority over school property.

(a) The parks and recreation commissioner shall have charge of the management, care and maintenance of the city's school yards and school grounds. No layout of a school yard or school ground shall be made by the parks and recreation commissioner until the plan and design of the same has received the written approval of the school committee.

(b) Control of the use of school yards and school grounds shall be entirely within the jurisdiction of the school committee which shall determine the persons entitled to use the grounds and how the same shall be used. The school committee may, however, during vacation periods of the school, turn over the control of the use of designated school yards and school grounds to the parks and recreation commissioner and it may turn over the control of the use of any designated portion of such ground during the school year to the parks and recreation commissioner. The release of jurisdiction provided for in this section shall only be accomplished if and when the parks and recreation commissioner in writing applies for and the school committee in writing authorizes the same. In the event of such turning over of jurisdiction, the adjoining school building and the equipment of the school department shall only be used under such regulations as to use as the school committee makes. (Rev. Ords. 1973, § 2-270; Ord. No. 190, 12-20-76; Ord. No. 220, 6-6-77; Ord. No. R-267, 10-18-82)

Cross reference—Newton community education program, Ch. 2, Art. VI, Div. 2

Sec. 21-3. Operation of vehicles.

No person, unless by permission of the commissioner of public works or, on parks and playgrounds, of the parks and recreation commissioner, shall operate a motor vehicle in or upon parks or other public grounds except upon the driveways thereof. (Rev. Ords. 1973, § 19-102; Ord. No. 90, 10-6-75)

Sec. 21-4. Selling goods and wares; amusement tents, booths, etc.

No person, except by permission of the commissioner of public works, or, on parks and playgrounds, of the parks and recreation commissioner, shall expose for sale or sell any goods, wares or merchandise in or upon any park or other public grounds, nor erect or maintain a booth, stand, tent or apparatus of any kind for the purpose of amusement or show in any park or on public grounds. (Rev. Ords. 1973, § 19-103; Ord. No. 90, 10-6-75)

Cross reference—Licensing and permits generally, Ch. 17

Sec. 21-5. Nuisances generally.

No person shall commit a nuisance in parks or on other public grounds. (Rev. Ords. 1973, § 19-104; Ord. No. 90, 10-6-75)

Sec. 21-6. Playing games, etc.

No person, except by the permission of the commissioner of public works, or, on parks and playgrounds, of the parks and recreation commissioner, shall engage in a game of ball, football, baseball or other athletic sports in or upon any park or public grounds, except upon such portions thereof as may be set apart for such purposes. (Rev. Ords. 1973, § 19-105)

Sec. 21-7. Throwing missiles.

No person shall throw a stone, snowball or other missile in or upon any park or public playground. (Rev. Ords. 1973, § 19-106; Ord. No. 90, 10-6-75)

Sec. 21-8. Damaging property.

No person shall pull up, break, cut or deface any of the seats, fences or railings upon or around any park or other public grounds, nor deface any monument or statue in any park or on public grounds. (Rev. Ords. 1973, § 19-107)

Sec. 21-9. Climbing, posting bills on trees.

No person shall climb a tree in any park or upon other public grounds, nor post a bill, nor place a sign upon or around any tree in any park or upon other public grounds of the city. (Rev. Ords. 1973, § 19-108)

Sec. 21-10. Digging, carrying dirt, etc.

No person, except by permission of the commissioner of public works, or, on parks and playgrounds, of the parks and recreation commissioner, and for some public use, shall dig or carry away any sward, gravel, sand, turf or earth from, nor place or deposit or cause to be placed or deposited any stones, sand, gravel or other substance upon, any park, playground or other public grounds. (Rev. Ords. 1973, § 19-109; Ord. No. 90, 10-6-75)

Sec. 21-11. Damaging flowers.

No person shall walk, stand, sit or lie down in or upon, or pull a flower or plant out of a flower bed, in any park or upon public grounds. (Rev. Ords. 1973, § 19-110)

Sec. 21-12. Walking on grass.

No person shall stand, walk or lie upon the grass in any park or upon public grounds where such walking, standing or lying has been prohibited, and notice of such prohibition is given to the public by legible notices placed in or upon such park or public grounds. (Rev. Ords. 1973, § 19-111)

Sec. 21-13. City-owned burial grounds.

No further burials are to be permitted in that portion of the City-owned burial ground located on Centre Street, said portion being bounded on the west side by Centre Street and Loring Park, on the south side by Cotton Street, on the east by the land of the Franciscan Sisters, and on the north by a driveway, as more specifically shown on a plan entitled "Plan of Centre Street Cemetery, January 1901; Amended 1918", on file in the engineering division of the department of public works. (Ord. No. R-251, 6-21-82; Ord. No. V-289, 3-20-00)

Sec. 21-14. Spraying for insects.

(a) The commissioner of parks and recreation may, at the request of owners of private property in the city, spray trees and shrubs thereon for the purpose of destroying or suppressing insects or pests and preventing or controlling the spread of Dutch Elm Disease. The commissioner of parks and recreation may establish rules and regulations governing such spraying, including the time and manner of making requests and payments therefor.

(b) There shall be charged for each such spraying an amount determined by the size of the lot upon which such spraying is done according to the following table:

Size of lot (square feet)	
Amount under 7,500	\$ 5.00
7,500 to 9,999.....	7.50

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10,000 to 14,999.....10.00

15,000 to 19,999.....12.50

20,000 to 24,999.....15.00

25,000 and over the cost of labor and materials employed for the purpose as estimated by the commissioner.

(c) The amount to be charged shall in each case be paid to the parks and recreation commissioner before the spraying is done. (Rev. Ord. 1973, § 2-129, § 19-44; Ord. No. 90, 10-6-75; Ord. No. R-267, 10-18-82)

Sec. 21-15. Parks and recreation department; functions generally.

The parks and recreation department shall be responsible for planning, scheduling, organizing and supervising programs for designated city groups and citizens. Under direction of the parks and recreation commissioner, it shall provide supervision and patrol activities at swimming ponds, swimming pools, skating areas, playgrounds and all other recreation areas; it shall also conduct all senior citizens recreation programs. (Rev. Ord. 1973, § 2-271; Ord. No. 190, 12-20-76; Ord. No. R-287, 1-19-83)

Secs. 21-16—21-45. Reserved.

**ARTICLE II.
PARKS AND RECREATION COMMISSION**

Sec. 21-46. Composition; appointment of members; vacancies; chairman.

(a) There shall be a parks and recreation commission comprised of eight (8) voting members together with the parks and recreation commissioner who shall serve, ex officio, as a non-voting member of the parks and recreation commission. One resident from each ward of the city shall be appointed as permanent members by the mayor with the approval of the board of aldermen. Four (4) alternate members selected at large shall also be appointed by the mayor with the approval of the board of aldermen.

(b) Appointments by the mayor shall strive to balance the concerns of parks and open space preservation with the concerns of recreation.

(c)(i) Permanent members of the parks and recreation commission shall be appointed for a term of three (3) years.

(ii) Four (4) alternate members shall be appointed by the mayor following the effective date of passage of this ordinance. The initial terms of three (3) of the alternate members shall be shortened as follows to stagger expiration of their terms: one member shall be appointed for one (1) year; two members shall be appointed for two (2) years; one member shall be appointed for three (3) years. All alternate member appointments subsequent to the initial appointments shall be for a term of three (3) years.

(iii) Both permanent and alternate members shall continue to serve after expiration of their terms until their successors shall be duly appointed and qualified. Vacancies in the offices of either permanent or alternate members shall be filled in the same manner as the original appointment for any unexpired term.

(d) The permanent members shall elect one member to act as chair. In the event that a permanent member is absent or unable to act for any reason, the chair shall designate an alternate member to act. (Rev. Ords. 1973, §2-267; Ord. No. R-287, 1-19-83; Ord. No. T-317, 12-6-93)

Editor's note—As amended in 1970, this section provided for the members of the former recreation commission whose terms had not expired to serve until December 31, 1970, as well as for the mayor to appoint additional members to serve until December 31, 1970. The section also provided for appointment of members, commencing January 1, 1971, for staggered terms of one, two (2) and three (3) years.

Cross references—Commissions generally, Ch. 2,
Art. VII; regulations governing appointment to and service on commissions and committees, § 2-8

State law reference—Recreation commission for city of Newton, c. 631, Acts of 1969

Sec. 21-47. Powers and duties.

The parks and recreation commission shall advise the mayor and board of aldermen in relation to matters pertaining to sports, recreation, parks, open space and preservation of scenic beauty and shall render decisions concerning parks and recreation programs and the use of lands under its jurisdiction in accordance with written guidelines or policies. The guidelines or policies established by the parks and recreation commission shall preserve and enhance access to parks and recreation opportunities for Newton citizens. The parks and recreation commission shall also advise the mayor and board of aldermen as to the amount of money to be spent annually by the department of parks and recreation. Pursuant to Chapter 426 of the Acts of 1982, the parks and recreation commission shall have all the rights, powers, duties and obligations of a park commission as set forth in Chapter 45 of the General Laws, and shall exercise the powers of eminent domain conferred by Sections 2 and 14 of Chapter 45 of the General Laws.

Pursuant to Section 2 of Chapter 87 of the General Laws, the commission may delegate its powers as tree warden under Section 5 of Chapter 45 to the parks and recreation commissioner. (Rev. Ords. 1973, § 2-268; Ord. No. 190, 12-20-76; Ord. No. R-287, 1-19-83; Ord. No. T-317, 12-6-93)

Secs. 21-48. —21-59. Reserved.

ARTICLE III. TREES

DIVISION 1. URBAN TREE COMMISSION

Sec. 21-60. Establishment and purpose.

There is hereby established the urban tree commission to advise and assist the tree warden in carrying out his duties and responsibilities. The purpose of the urban tree commission shall be to advise the tree warden, the mayor, the board of aldermen and the general public on all matters concerning public trees, including but not limited to, the selection of trees for planting, planting and pruning of trees, the treatment of disease, and the preservation and regular maintenance of trees. (Ord. No. V-71, 3-4-96)

Cross reference—Tree warden, Ch. 21, Art. I, § 21-1

Sec. 21-61. Powers and duties.

(a) The commission shall issue a city tree maintenance manual which shall set forth the standards for planting and maintaining all public shade trees in the city and which shall also set forth the general policies in regard to those trees. The commission shall regularly revise and distribute the tree maintenance manual and review the implementation of the practices and policies it enunciates.

(b) The commission shall annually review the needs of various geographical areas of the city for the planting and replacement of trees and shall recommend priorities based on the annual review to the tree warden and

superintendent of urban forestry or such other municipal officials as may hereafter be assigned the duties of tree warden and superintendent of urban forestry.

(c) Whenever a hearing is required to be held in regard to cutting down or removal of a tree, the commission may offer written recommendation(s) to the tree warden.

(d) Whenever the tree warden prepares an impact statement on the effect of any construction project on existing trees or the ability to plant trees in that area in the future, the tree commission may submit its advice as part of a submission to appropriate city agencies and/or to the board of aldermen for its review of the project. (Ord. No. V-71, 3-4-96)

Sec. 21-62. Composition and organization.

(a) The commission shall consist of twelve (12) voting members who shall serve for three year terms in accordance with Section 2-8 of these Revised Ordinances. Ten (10) members shall be appointed by the mayor in accordance with Section 3-3 of the Charter. 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 serve, ex officio, as the eleventh voting member. The superintendent of urban forestry, or such other municipal official as may hereafter be assigned the duties of superintendent of urban forestry, shall serve, ex officio, as the twelfth voting member. Three (3) of the initial appointees shall serve for a term of one year; three (3) of the initial appointees shall serve for a term of two years; and four (4) of the initial appointees shall serve for a term of three years.

(b) Members of the commission, so far as practicable, shall be selected so as to provide representation of citizens with expertise or interest in the preservation and care of trees. Consistent with this requirement, whenever a vacancy occurs on the commission, the commission shall offer a list of prospective members for the mayor's consideration in making appointments.

In making the initial appointees to the urban tree commission, the board of aldermen requests that the mayor consider any active members of the urban tree task force who wish to be appointed, it being the will of the board of aldermen that the urban tree commission be established as the successor to the urban tree task force. The board of aldermen also requests that the mayor also consider appointing any such members of the urban tree task force to the longest terms of office available prior to appointing persons who are not currently serving on the urban tree task force. (Ord. No. V-71, 3-4-96)

Secs. 21-63. —21-69. Reserved.

Sec. 21-70. Volunteer work on city property.

(a) Improvements to and maintenance of real property owned or controlled by the City of Newton may be carried out by volunteer workers in accordance with a permit issued by the head of the department having care, custody or control of such real property, or his designee. Every such permit shall state the location, scope and nature of the project and any other limitations and requirements which, in the opinion of the department head, are necessary in order to carry out the city's policies for the use of such real property.

(b) Whenever such a permit has been issued, the head of the department shall provide city personnel who shall act as supervisors of the volunteer work on the improvement project. All persons serving as volunteer workers shall follow all instructions of and act under the supervision of the city personnel supervising such work.

(c) Volunteer workers who work on improvement and maintenance projects in accordance with such a permit shall be deemed to be "public employees" within the meaning of section one of chapter 258 of the Massachusetts

General Laws for the purpose of third party claims; provided that any such claim arises as a result of the project described in the applicable permit.

(d) In order to facilitate the protection provided to volunteer workers pursuant to subsection (c), the head of the department shall keep a record of the names and addresses of every volunteer worker who works at the site of each such project; and every such volunteer worker shall provide his/her name and address for inclusion in such record. (Ord. No. V-96, 11-18-96)

Sec. 21-71. Reserved.

DIVISION 2. REGULATION OF PUBLIC TREES

Sec. 21-72. Public Tree Regulation

(a) Purpose

The purpose of this ordinance is to promote a diverse, healthy and sustainable urban forest in order to provide for the general welfare of Newton's citizens. A healthy urban forest improves the quality of air and water, controls erosion, moderates air temperature, absorbs carbon, reduces noise, enhances appearance and increases property values. Public trees also define public spaces and create civic identity. This ordinance sets out measures to protect trees located on city property and on public rights of way from construction and other preventable damage; to establish conditions for long-term preservation and expansion of the urban forest; to extend the protections afforded by the Tree Preservation Ordinance to city-owned trees and supplement Chapter 87 of the Massachusetts General Laws.

(b) Definitions

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.

Caliper: The measure of a newly installed tree and is determined in the following manner - Caliper measurement of the trunk shall be taken six inches above the ground up to and including four-inch caliper size. If the caliper at six inches above the ground exceeds four inches, the caliper should be measured at twelve inches above the ground.

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.

Person: Any person, firm, partnership, association, corporation, company or organization of any kind including, but not limited to, the person removing a public tree or public shade tree.

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.

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Public 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 owned by the city of Newton.

Public Shade Tree: Any tree within the city that fits the definition of public shade tree under G.L. Ch. 87

Remove (including removing and removal): The cutting down of any public tree or public shade 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 public 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.

(c) *Applicability:* The terms and provisions of this article shall apply be administered by the tree warden and shall apply to any public shade tree as defined in G.L. Ch. 87 and to any public tree located on land owned and managed by the city of Newton, with the exception of the land under the auspices of the conservation commission.

(d) *Permit:* No person other than the tree warden shall remove, prune, or alter a public tree or public shade tree located on land subject to the provisions of this article without first obtaining a tree permit from the tree warden. Applications shall be made in writing on forms specified by the tree warden.

(e) *Activities requiring a Tree Permit:* A tree permit issued by the tree warden is required prior to any of the following activities:

- (1) Any exterior work that requires the removal of a public tree;
- (2) Any construction on city property within the dripline of a public tree;
- (3) Removal of a public shade tree. This requirement is in addition to the requirements of G.L. Ch. 87 pertaining to removal of a public shade tree;
- (4) Construction within that portion of the dripline of a public shade tree that is located over the public right of way;
- (5) Pruning or treatment for the benefit of the health, safety, or overall well-being of a public shade tree and/or public tree, as deemed appropriate by the tree warden, by anyone other than the tree warden or his designee as provided in G.L. Ch. 87;
- (6) Planting of a tree in the public right of way or on city property by anyone other than the tree warden or his designee as outlined under G.L. Ch. 87;
- (7) Pruning or altering of a public shade tree and/or public tree for the purposes of overhead utility line clearance;
- (8) Affixing or hanging anything from a public shade tree or public tree.

(f) *Permit application; fee:* An application for a tree permit shall be submitted to the tree warden. Such application shall be on a form prescribed by the tree warden and shall include any materials or information required by the tree warden based on the nature of the activity for which application is made. The application for

a tree permit shall be accompanied by an administrative fee of \$150.00. Such fee shall be waived if the applicant is a city department, agency, commission or other public instrumentality of the city or if the tree warden determines in writing that the proposed activity will benefit the health of the tree or the wellbeing of the public.

(g) *Review of permit applications:* The tree warden shall review applications for tree permits in accordance with the provisions of this article and with any rules or regulations promulgated hereunder. 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 except in the case of a request to remove a public shade tree which shall be subject to the procedures set forth in G.L. Ch. 87.

(h) *Conditions:* The tree warden may condition issuance of a tree permit upon such measures as he deems necessary to protect existing public trees or public shade trees. Such conditions shall be in writing. The tree warden shall make a determination that the prescribed protected measures have been adequately provided before site disturbance related to the permitted activity may begin.

(i) *Construction:* Except as provided in a tree permit, construction activities on city-owned property and public right of ways under the drip line of a public tree or public shade tree are prohibited. 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.

(j) *Suspension or revocation:* The tree warden may suspend or revoke a tree permit at any time upon written notice to the permit holder that the permit holder has failed to comply with any provisions of this section, or with any rules or regulations promulgated hereunder, or with conditions of the permit. Written notice shall be sent by certified 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 of such tree permit nor shall such suspension or revocation be cause for withholding the issuance of a certificate of occupancy.

(k) *Public Tree Removal:* The tree warden shall notify the urban tree commission upon receipt of an application to cut down or remove a public tree, and no public tree shall be removed pursuant to a permit until five (5) days after its issuance unless such removal of the tree(s) is necessary based on a determination by the tree warden that at least one of the following conditions are met:

- (1) The public tree is interfering with existing structure, utilities, streets, sidewalks or proposed necessary improvements, and there is no alternative to removal;
- (2) The public 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.
- (3) The removal of the public 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.

(l) *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 there for.

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 public trees shall be removed while an appeal is pending.

(m) *Permit length:* Any permit issued by the tree warden shall be valid for sixty (60) days from issuance. Length may be extended by tree warden following written request by the applicant. The tree warden may grant the extension for any length of time as he deems necessary and appropriate.

(n) *Emergencies:* A public tree or public shade tree may be removed without first obtaining a written permit as otherwise required by this section only if the tree warden determines that the condition of the public tree or public shade tree is hazardous and immediately endangers the public health, safety or welfare or causes an immediate disruption of public services such that immediate removal is required. If such determination is made, the tree warden may remove the tree or provide oral authorization for its removal, utilizing such professional criteria and technical assistance as he deems necessary. The tree warden shall memorialize in writing each such oral authorization to remove a hazardous tree and keep a record of same.

(o) *Waiver:* The requirements of this section may be waived by the tree warden during the period of an emergency such as a tornado, windstorm, flood or other act of God.

(p) *Tree replacement:* The tree warden may require that replacement of a removed public tree or public shade tree in the manner required in section 20-35 of these ordinances and in any rule or regulation of the tree warden

(q) *Payment in lieu of planting replacement tree(s):* In lieu of planting a replacement tree as provided in section (p) above, a person who has been granted a tree permit may make a contribution to the tree replacement fund as established in section 20-36 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 maintain on file the city's current tree planting costs.

(r) *Rules and regulations:* The tree warden is authorized to promulgate reasonable rules and regulations to implement administration and enforcement of this section

(s) *Enforcement:* 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 enforce the provisions of this section. The tree warden shall provide written notice to the offender of the specific violation and provide a reasonable time for compliance. Such notice shall be sent by certified mail, return receipt requested, or by hand delivery. Thereafter, the tree warden may impose the fines described in (t) below.

(t) *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 damaged or removed.

(u) *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.

(v) *Conflict of laws:* 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. Nothing herein is intended to conflict with any state law regulating public utilities and to the extent that any provision hereof conflicts with state law, such provision shall not be valid. (Ord. No. Z-80, 02-22-11; Rev. Ord. 2007, § 20-72)

Secs. 21-73. —21-79. Reserved.

DIVISION 3. TREE PRESERVATION

Sec. 21-80 Findings, intent, and purpose.

The board of aldermen has determined that many trees are being lost without replacement incident to demolition of existing buildings in order to construct new buildings and lot clearing in connection with the construction of new buildings on previously undeveloped land. The Board has further determined that trees have been lost, severely damaged or disfigured through excessive or improper pruning or other than natural causes. The result is a net loss of the tree population in the city. The board has further determined that the city has insufficient legal vehicles to assure that such development adequately preserves, protects and provides for replacement of trees.

The preservation of the private tree canopy and the planting of replacement trees is intended to enhance the quality of life and the environment of the city; to preserve the character of the wooded and natural areas; to reduce energy consumption; to protect air quality; to baffle noise; to preserve and enhance habitat for wildlife; to reduce topsoil erosion and storm water runoff; to protect and increase property values; and to enhance the overall appearance of the city. (Ord. No. A-38, 05-05-14)

Sec. 21-81. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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 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 all of the following criteria:

- (1) The lot is occupied and used primarily as a dwelling for up to four families at the time any protected tree(s) are removed.
- (2) The lot owner at the time of protected tree removal has owned the lot continuously for a minimum of ninety (90) days prior to the removal of any protected tree(s).

(3) The existing structure on the lot remains occupied as a dwelling with a person or persons living in it for eighteen consecutive months from the date any protected tree(s) are removed.

(4) The lot remains owned by the same person for eighteen consecutive months from the date any protected tree(s) are removed.

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 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.

Occupied Lot: A lot containing a legally constructed, permanent structure, used primarily as a dwelling that is currently being legally occupied and lived in and used as a residence by a person or persons. The dwelling must have a functioning, legally permitted, permanent water service, permanent sanitary service, and permanent electrical service.

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

Protected tree: Any tree having a diameter of 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. (Rev. Ord. 2007, § 20-31; Ord. No. A-38, 05-05-14)

Sec. 21-82. 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 pursuant to paragraphs (c) and (d) below.

(b) *Permit, certificate of exemption:* No person shall remove a protected tree on a non-exempt lot located on land subject to the provisions of this article, or commence legally permitted exterior work on any lot without first obtaining a tree permit or a certificate of exemption from the tree warden. Applications shall be made in writing on forms specified by the tree warden.

(c) *Exempt lot, certificate of exemption:* The owner of an exempt lot shall not be required to apply for a tree permit, provided however, that an owner of an exempt lot who seeks an exterior work permit must certify to the tree warden on form(s) provided by the tree warden, that as of the date on the form(s) the lot qualifies as an exempt lot and will remain an exempt lot for eighteen months following tree removal. There shall be no fee for filing a certificate of exemption.

- (1) The tree warden shall determine whether a property is an occupied lot for the purposes of establishing exempt lot status. The property owner shall, if requested by the tree warden provide proof of ownership as well as a written statement confirming ownership and that a person or persons are living in the property.
- (2) If lot ownership changes during the eighteen consecutive months following the removal of any protected tree(s) on an exempt lot, the new owner must apply for a tree permit and shall be required to replace any protected tree(s) that were removed. If, However, a change of ownership occurs on a lot for which an extension of exempt lot status for non-occupancy during construction has been issued within the eighteen months prior to the change in ownership, the person issued such extension shall apply for a tree permit and shall be required to replace any protected tree(s) that were removed.

(d) *Extension of exempted lot status:* If at any point during the eighteen consecutive months following the removal of any protected tree(s) the property is no longer an occupied lot, the current owner of the lot must apply for a tree permit. If the non-occupancy is due to legally permitted construction, the tree warden may grant an extension of exempt lot status for the duration of the construction, provided:

- (1) The owner intends to own the lot for eighteen consecutive months from the date a certificate of occupancy is issued for the construction for which the extension was issued; and
- (2) The property remains an occupied lot for eighteen consecutive months from the date a certificate of occupancy is issued for the construction for which the extension was issued.
- (3) Upon request of an applicant for exempt lot status extension, the tree warden may also waive the requirement that the lot be continuously owned by the same owner for ninety (90) days prior to protected tree removal provided the owner intends to own the lot for twenty-one months from the date a certificate of occupancy is issued for the construction for which the extension is granted..
- (4) If at any time during the applicable eighteen or twenty-one month period the lot ownership changes or the lot is not occupied, the tree warden shall revoke the tree permit and exempt lot status extension. The person issued the extension shall file a new tree permit application and shall replace any protected trees that were removed.
- (5) Any person issued an extension of exempt lot status must report to the tree warden any change of ownership and any change of occupancy status within fifteen (15) days of the change if that change takes place during the applicable eighteen (18) month or twenty-one (21) month period following the date the certificate of occupancy issued. (Ord. No. A-38, 05-05-14)

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) and shall include, but not be limited to, the following:

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- (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.

(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:

- (1) The protected tree will be relocated or replaced on site.
- (2) The protected tree will be replaced by payment in lieu of planting replacement trees 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 on the same site as certified to the tree warden by a certified arborist.
- (6) No protected tree(s) are to be removed from the site and appropriate tree protection measures will be in place where necessary as determined 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. 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. 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; Rev. Ord. 2007, § 20-33; Ord. No. A-38, 05-05-14)

Sec. 21-84. Activities not requiring a permit.

(a) *Pruning*: A permit is not required for the pruning of protected trees. However, in order to prevent excessive pruning and topping of trees and to prevent pruning that will be hazardous to the health and natural appearance of the tree, compliance with 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; Rev. Ord. 2007, § 20-34; Ord. No. A-38, 05-05-14)

Sec. 21-85. 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 21-82 without a tree 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 permit in accordance with section 21-83, shall replace

such tree within eighteen (18) months, or prior to transfer of property ownership whichever comes first from the date the tree permit is issued 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 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 eighteen (18) months 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.. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-35, Ord. No. A-38, 05-05-14)

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.

(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; Rev. Ord. 2007, § 20-36; Ord. No. A-38, 05-05-14)

Sec. 21-87. Rule and regulations.

The tree warden is authorized to promulgate reasonable rules and regulations to implement administration of sections 21-80 through 21-90. (Ord. No. A-38, 05-05-14)

Sec. 21-88. Enforcement.

(a) *Notice of violation:* Any person who violates any of the provisions of this article shall be notified by the tree warden of the specific violation by certified mail, return receipt requested, or by hand delivery. The notice shall set forth the nature of the violation and a reasonable time period within which compliance must be had. The tree warden shall send notice of violation of section 21-86), 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 21-89.

(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 of a court that an alleged violation is occurring, it shall enter such order or judgment as is necessary to abate the violation. The institution of an action for injunctive relief under this subsection shall not relieve any party to such proceedings from any civil penalty prescribed for violation of this article. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-37; Ord. No. A-38, 05-05-14)

Sec. 21-89. Penalties.

(a) *Removal without a permit:* Each instance in which a protected tree is removed without a permit shall constitute a violation of this article which shall be subject to a fine in the amount of three hundred dollars (\$300.00).

(b) *Failure to replace trees or make payment:* Each failure to replace a tree or make a payment into the tree replacement fund shall constitute a separate violation of this article which shall be subject to a fine in the amount of three hundred dollars (\$300.00). Each day such violation continues shall constitute a separate offense.

(c) *Failure to comply with a condition contained in a tree permit or stop work order:* Each instance where there is a failure to comply with a condition contained in a tree permit or stop work order shall constitute a violation of this article which shall be subject to a fine in the amount of three hundred dollars (\$300.00). Each day such violation continues shall constitute a separate offense.

(d) *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; Rev. Ord. 2007, § 20-38; Ord. No. A-38, 05-05-14)

Sec. 21-90. Severability, effect on other laws.

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

(b) *Conflict of laws*: This article shall not apply to any public shade tree as that term is defined by the General Laws, Chapter 87 or any amendments thereto. Nothing herein is intended to conflict with the General Laws, Chapter 87 and to the extent that any provision hereof conflicts with said Chapter 87, such provision shall not be valid. 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; Rev. Ord. 2007, § 20-39; Ord, No. A-38, 05-05-14)