

CITY OF PORTLAND, MAINE
Standing Committee on Sustainability and Transportation
Councilor Spencer Thibodeau (D2), Chair
Councilor Belinda Ray (D1)
Councilor Jill Duson (D3)

Agenda
November 20, 2019
5:30 PM
Room 209

1. Review and approve minutes from October 16
 - a. Minutes from October 16, 2019
2. Sustainability Program Updates
3. Presentation and Discussion
Public comment may be taken
 - a. Recycling Reform Bill and C-Pace Bill
 - b. Regulating the cutting of trees on private property
4. Other Business

CITY OF PORTLAND, MAINE

Standing Committee on Sustainability and Transportation

Councilor Spencer Thibodeau (D2), Chair

Councilor Belinda Ray (D1)

Councilor Jill Duson (At large)

Draft Minutes October 16, 2019

Members Present: Councilor Thibodeau, Councilor Ray, Councilor Duson

Staff Present: Troy Moon, Ashley Krulik, Nelle Donaldson

Meeting was called to order at 5:35 PM. Councilor Ray moves to approve the minutes from September 18, 2019. Councilor Duson, seconded. All those in favor of approving 3-0.

Sustainability Program Updates

Troy Moon reviewed the items on the Sustainability Program Update memo.

Councilor Ray:

- Will solar RFP ask people to bid for entire energy load? Mr. Moon - there will be multiple proposals with the goal being that the credit we receive exceeds the cost.

Councilor Thibodeau:

- Energy Benchmarking - are we getting any closer to being able to measure the outstanding 600 buildings? Mr. Moon- we will follow up with CMP for an update.

Proposal to Relocate Portland Transportation Center

City Manager Jennings gave brief overview - City staff is not interested in taking a stance on a specific location, our goal is to not have any existing businesses harmed in any way.

Representatives from NNEPRA, MDOT and GPCOG are present.

Patricia Quinn - Executive Director of Northern New England Passenger Rail Authority presented proposal.

Councilor Duson:

- Does 15 minute reduction in time apply to trip from Portland to Boston? Ms. Quinn - no.
- Can we get a copy of the presentation for the committee record? Mr. Quinn - yes.

Councilor Ray

- I think that the travel time that is saved is significant. Know people who drive from Freeport to Portland to save time before getting on the train. Need to shave time to make mass transit more successful.
- We need to invest in all forms of public transit to reach our sustainability goals.

- Where would “Y” option pass-through? Ms. Quinn - over Congress Street and driveway of jail, would require more land. We envision a solution that doesn’t require taking land and being obtrusive. This option requires train to go backwards from Brunswick to Portland.
- Move to Fore River Parkway seems like the ideal solution.
- I’m hopeful that people will embrace this and look into it seriously.
- What is the timeline? Ms. Quinn - that’s a question for Mr. Moulton. We’re reviewing options now.
 - Nate Moulton - Director of Freight and Passenger Rail Services at MDOT
 - Study is underway - will complete by the end of 2019
 - Looking at multiple locations and alternatives (involving bus connections)
 - Happy to come back and give an update once the study is complete - Councilor Thibodeau asked to invite MDOT back once study is done.
 - We’ve concluded for sure that we need good transit connections to increase usage.

Councilor Thibodeau

- If there were two tracks between Portland and Boston would it be shorter? Ms. Quinn - not really. It would improve reliability.
- Excited for additional information.

There will be an open house at Merrill Auditorium next Tuesday for the public to learn more about the proposal.

Resolution to Support Youth Climate Strikers by Declaring a Climate Emergency

Troy Moon presented current climate goals, climate change predictions, and efforts underway to reach climate goals.

Youth Climate Strikers

Anna Seigel - 13 years old, Friends School of Portland - Climate Emergency Resolution - need fast and bold movement.

Troy Moon - presented overview of Climate Emergency Resolution.

- Worked collaboratively with South Portland to review proposal. Very largely supportive and agree that quicker action results in better outcomes.
- Modified commitment to being climate neutral by 2030 because some things are out of the City’s control. Climate strikers asking City to use influence to take action.
- City of Portland resolution is identical to South Portland, edited “eliminate GHG emissions within 10 years” to “dramatically reduce GHG emissions within 10 years”

Public Comment:

Anna Seigel - Village Brook Road - State lead Youth Climate Strikes - bringing forward momentum from September 20th climate strike. Terrified of climate change and leading me to action. This is our future. Coming forward with this action is very important.

Naomi Zaron - Portland City Lead Youth Climate Strikes, 15 years old, Falmouth Street - we need to support this resolution. I'm so lucky to have been able to grow up in this state. Feel scared for my children and myself. Want my children to have the opportunities that I did but climate change means they may not.

Emma Sawyer - Moody Street - student at USM, in support of climate emergency resolution. Feel that we should add back in no GHG emissions by 2030. US emits more than other nations and need to do our part. We owe it to everybody.

Adam Rice - Portland - in support of climate emergency resolution. CMP corridor will release massive amounts of carbon, coal fired power plant in NH is being subsidized by taxpayers, fast food industries are responsible for deforestation of the Amazon, Nestle is draining waters from Maine, carbon tax alone would not change anything and could devastate working class.

Cassie Cain - 20 years old, Saco resident - in support of climate emergency resolution with youth amendment. 2030 timeline is necessary to demand immediate action. It puts youth and marginalized communities at risk. Urge Portland to join South Portland in passing resolution.

Susan Pastor - Stevens Ave - 350 Maine member, retired teacher, hoping Portland can follow in South Portland's footsteps. Has to be 2030.

Jess Valero - 22 years old, C Street, one of 5 youth speakers during Youth Climate Strike - in support of climate emergency resolution with youth amendments. Homeless and scared for future. Climate change will affect the most vulnerable populations first. 40 other US cities has passed climate emergency resolutions.

Espabad Dadd - State Street - Portland Climate Action team, XR, 350 Maine - in support of climate emergency resolution with youth amendment. Need to stop putzing around. This is extinction and nothing less. We will lose everything. We must act now with sweeping, definitive actions.

Ezra Silk - Portland - work at Climate Mobilization - in support of climate emergency resolution with youth amendment. 2030 timeline is sober risk management. Meeting Paris Climate Accord goals may no longer be possible. Talking about world war scale consequences. Urge the City to take responsibility and acknowledge the limitations of City powers.

Anthony Marvin - Portland - Hub Coordinator for Sunrise Portland - 2030 timeline is imperative. We all need to fight.

Marcus Houston - Ocean Ave - concerned youth living in Portland - no more working waterfront if climate emergency is not declared. We need to act now because Portland and South Portland have the capacity to create local solutions. Need to lead by example and commit to responding.

Lily Herman - Ocean Ave - read email from Caitlin Marshall - Gray Street - in support of climate emergency resolution. The science is inarguable. We need to act at every level of our democracy to reduce carbon now. Give us policies to get behind.

Bob Klotz - Whitehall Avenue - PA who assists our most vulnerable population, excited that South Portland has passed climate emergency and ask that Portland does as well. Co-founded 350 Maine. Please honor the very adult ask of these young people.

Gus Goodwin - Wellwood Road - Gulf of Maine is warming, ticks are increasing, bird species are becoming endangered, Maine way of life will change, new leadership has given Mainers hope, need to work everyday to win this battle together, biggest impacts happen locally, declare a climate emergency to educate citizens of Portland and make people think differently.

Tim Honey - South Portland - 350 Maine - in support of climate emergency resolution with youth amendment. Between the 4 of us, we have over 50 years in Portland government. We are now confronted with a climate crisis. Future of city is threatened. This issue is not another planning exercise. Must have 2030 timeline. Urge you to pass resolution.

Maggie Wolf - St. Lawrence Street - in support of climate emergency resolution with youth amendment. We need urgency to push this through. City Councilors need to keep bringing this up publicly to keep conversation going and get buy-in. Urge city to put this in front of every transit action.

Daniel Flynn - Park Street - XR - in support of climate emergency resolution with youth amendment. Resolutions won't be good without policy changes. Need radical changes now.

Kelly Merrill - St. John Street - XR - natural world is growing silent, carbon neutrality by 2045 is inadequate, in support of climate emergency resolution with youth amendment.

Eric Brandon - Forest Ave - proud of youth, we were warned about climate change in the 1980s and we dropped the ball, fishing industry is feeling the pain, we're not being good stewards of the land.

Justin Beth - Munjoy Hill - Green Party - in support of climate emergency resolution with youth amendment. We need to take action immediately. Join South Portland. These actions will make our communities more resilient. Please stand with the youth.

Anna Seigel - closing thought - Portland and South Portland can be leaders in achieving goals. Set the tone for our state and country.

Closed Public Comment.

Councilor Ray:

- Was the South Portland staff recommended amendment the same as Portland's? Mr. Moon - yes, very similar. 2030 deadline was added back in by Council.
- Does Portland's resolution include 2030? Mr. Moon - staff recommendation is to dramatically reduce GHG emissions by 2030.

Councilor Thibodeau:

- Is our resolve the same as South Portland's? Mr. Moon - yes.

Councilor Duson moves Committee recommend staff recommendation to Council. Councilor Ray seconded.

Councilor Duson moves amendment to end greenhouse gas emissions within 10 years. Councilor Ray seconded amendment.

Councilor Duson:

- The data has changed and should drive urgency.
- We need to recalibrate our plans to achieve 2030 goal.
- No shame in controlling what we (the City) do to our best ability.
- Push needs to continue and be consistent.

Councilor Ray:

- Thank Councilor Thibodeau for current climate goals.
- Thank Anna, Cassie and members of Maine Youth Strikes.
- As we move forward this needs to be a Council priority. Our budget needs to be built around these issues. Need to put staff and funding in place to do what we need to do for this issue.
- Recognize staff hesitancy around setting unachievable goals. Goals also need to be aspirational.
- Wholeheartedly in favor of this amendment.

Councilor Thibodeau:

- Resolution speaks to hope and audacity.
- Joining colleagues in supporting amended resolution.
- Thank youth for taking this issue on.
- Ready to be audacious and hopeful.

All those in favor of passing amendment: 3-0.

All those in favor of passing resolution: 3-0.

Other Business: Proposal of rules around removal of trees in Portland.

Public Comment:

Liz Parsons - Winter Street - need to protect trees in Portland - 1) close loophole in City code, 2) propose rules on when and why trees can be removed. Devise ways to enforce rules and code.

Maggie Wolf - agree with Liz. Every tree we cut down is a symbol. Have lost at least 10 mature trees on Munjoy Hill due to development. Require a permit or posting a notice.

Close public comment.

City of Portland currently oversees 20,000 trees. This proposal will include a smaller group of trees that we don't manage.

Motion was made by Councilor Dusen to adjourn the meeting at 8:10 pm. Motion was seconded by Councilor Ray. All in favor: 3-0.



CITY OF PORTLAND
Sustainability Office
Troy Moon
Sustainability Coordinator

To: Councilor Thibodeau and Members of the Sustainability and Transportation Committee
From: Troy Moon, Sustainability Coordinator
RE: Sustainability Bills in Upcoming Legislative Session
Date: November 15, 2019

During our meeting on November 20, we would like to discuss two sustainability related bills that the State Legislature will take up during the upcoming session that begins on January 8. If enacted, both of them will help Portland achieve stated Council goals.

Extended Producer Responsibility

During the last session, the Legislature passed LD 1431 that directs the Maine Department of Environmental Protection to submit a bill to requiring the manufacturers of consumer packaging to reimburse municipalities in Maine for some of the costs associated with collecting, recycling, or disposing of packaging materials. Currently, local governments bear 100% of the costs for handling these materials when consumers dispose of them. This gives producers little incentive to reduce the volume, weight, or recyclability of the packaging they use to contain the goods they sell. As you know, the City of Portland now pays \$35 for each ton of recyclables delivered to ecomaine and \$72.50 to dispose of each ton of trash our crews deliver to the waste to energy facility. This amounts to about \$800,000 per year. We also pay over \$2 million annually to provide collection service to residents. (This includes personnel, equipment, and overhead.)

The Natural Resources Council of Maine (NRCM) is asking municipalities to support this effort to reform recycling and more fairly allocate the costs of handling packaging waste. They have shared a draft resolution for your consideration.

C-Pace

In Portland, about 60% of our carbon emissions come from the building sector. In order to meet our climate goals it is essential that we have tools available to assist the owners of commercial buildings finance energy improvements including efficiency and deployment of renewable energy systems. During the last legislative session, Senator Sanborn sponsored enabling legislation to authorize C-Pace financing in Maine. Thirty states around the country have already adopted this type of program. It establishes a public/private partnership that pairs municipal authority to place liens on property with private investors willing to lend money to commercial building owners for energy projects.

This makes it easier for businesses to make energy efficiency upgrades in their buildings because the value municipality creates a lien on the property equivalent to the value of the financed energy project. If the property owner defaults, the lender would recover their investment in the same manner the City would if a property owner fails to pay special assessments such as the stormwater fee. It is important to note that the C-Pace property lien would be enforceable only after municipal liens are liquidated.

Robert Wood, Government Relations Manager for The Nature Conservancy, will be on hand to present further information about the C-Pace bill in front of the legislature and to answer any questions from committee members.

I have attached a fact sheet from the US Department of Energy providing additional background.



Natural Resources Council of Maine

3 Wade Street • Augusta, Maine 04330 • (207) 622-3101 • Fax: (207) 622-4343 • www.nrcm.org

Fall 2019

To Maine's Municipal Officials,

Thank you for operating a recycling program in your town. Maine people overwhelmingly want access to recycling. We recognize the cost burden of managing municipal solid waste through your annual budget, and we know that market changes for recycled commodities are currently upending many of Maine's recycling programs. That is why we are asking you to join a new statewide effort to reform recycling in Maine by shifting the cost burden away from taxpayers.

At the request of the Legislature, the Maine Department of Environmental Protection will submit legislation by December 16, 2019, that would help solve this problem by establishing equitable, non-taxpayer-funded municipal recycling programs for packaging waste. This type of "extended producer responsibility" law has the power to:

- **Save Maine municipalities between \$16 and \$17.5 million each year.** Cities and towns would be reimbursed for any recycling costs by the corporations and brand owners that produce packaging into our state, like is done all over the world. Towns would still have control over their recycling programs; and could keep any revenues generated.
- **Protect our recycling programs and make them more resilient to market changes.** Right now, many municipalities are being forced to stop, cut back, or pay more for their recycling programs because of the expense. The key to making our recycling programs more sustainable is to change who pays for them.

How you can help: One simple way that your municipality can show support for [Recycling Reform for Maine](#) is by adopting the attached resolution language. Please send to sarah@nrcm.org by December 31, 2019. We will compile the documents and present them to the Legislature's Joint Standing Committee on Environment and Natural Resources, who will consider this policy in the winter and spring of 2020.

You can visit www.recyclingreform.org to find more information on this very important policy initiative; including a list of towns that have already supported the resolution. Please feel free to contact me with any questions.

Sincerely,

Sarah K. Nichols, NRCM Sustainable Maine Director
(207) 430-0170 or sarah@nrcm.org



RECYCLING REFORM FOR MAINE

More Effective • More Sustainable • More Equitable

Whereas, Maine's communities are struggling to maintain, expand, and in some cases are eliminating, recycling programs due to rising costs and difficult-to-manage materials; and

Whereas, product packaging, which includes plastic, metal, glass, and cardboard, constitutes approximately 30-40% of the materials managed by weight in Maine's municipal waste management programs; and

Whereas, Maine taxpayers currently unfairly bear 100% of the cost and pay an estimated \$16 million to \$17 million each year to finance the management of this material through fragmented and increasingly expensive disposal or recycling options; and

Whereas, producers of product packaging have little incentive to minimize wasteful packaging or increase access to recycling; and there is no organized coordination between the producers of packaging and municipalities that are responsible for disposing of or recycling the packaging materials; and

Whereas, producers of product packaging have taken some or all responsibility for the management of post-consumer packaging in other parts of the world, including all European Union member states and five provinces in Canada, and, as a result, have greatly increased recycling rates, expanded infrastructure investment, created jobs, and reduced taxpayer costs;

Now, Therefore Be It Resolved,

We, Maine's municipalities, support an Extended Producer Responsibility (EPR) for Packaging law as endorsed by the Legislature in 2019 through the passage of the Resolve, To Support Municipal Recycling Programs (LD 1431). We believe that this policy will work to make recycling in Maine:

More effective: Producers of packaging materials would have a direct economic incentive to produce less-wasteful packaging that can easily and profitably be managed by municipal recycling programs. Having shared responsibility between those who create the waste and those who manage the waste would foster recycling system improvements and enable greater participation in recycling across Maine;

More sustainable: An EPR law for packaging is an insurance policy for Maine municipalities when global recycling markets are unfavorable. The current approach to recycling is not resilient to fluctuations in the global recycling market. When commodity prices fall unexpectedly, towns and cities may be forced stop or restrict their programs; and

More equitable: Maine's cities, towns, and taxpayers are currently footing the bill for a problem they didn't create. With recycling reform, taxpayers will no longer pay for the cost of recycling since the net costs of recycling would be reimbursed—and the packaging manufacturers that produce less-wasteful, more recyclable packaging would pay less than those who do not. This is a much more equitable way to distribute costs.

Commercial Property Assessed Clean Energy (C-PACE)

A Fact Sheet for State and Local Governments

Commercial property assessed clean energy (C-PACE) is a tool that can finance energy efficiency and renewable energy improvements on commercial property.

Like other project financing, C-PACE uses borrowed capital to pay for the upfront costs associated with energy efficiency or renewable energy improvements. Unlike other project financing, the borrowed capital is repaid over time via a voluntary tax assessment. The security provided by the tax assessment, a long-used and well understood mechanism, results in several compelling features, including longer term financing and transferability of the repayment obligations to the next property owner. In turn, C-PACE strengthens the business case for investment in longer payback and deeper building retrofits beyond what is possible with traditional financing.

Why C-PACE Matters for State and Local Governments

C-PACE is not a federal program, and public funding is not necessary to run a C-PACE program. C-PACE must be authorized by state legislation, and requires further authorization from local governments. More than 30 states have adopted C-PACE enabling legislation because of the opportunities for investment in local businesses, energy and cost savings, and job creation.ⁱ

Private firms often participate in C-PACE as lenders, developers, administrators, contractors, and marketers. With limited public funding, state and local governments are increasingly interested in attracting private dollars to take full advantage of the opportunities associated with energy efficiency and renewable energy investment.

Commercial PACE Market Data

\$493 million
in cumulative C-PACE financing
1,097
commercial projects completed

Source: PACENation, October 2017
See: <http://pacenation.us/pace-market-data/>

Key C-PACE Features

- **Target Market:** Depending on the authorizing legislation, C-PACE may be available to industrial, commercial, agricultural, multi-family, and non-profit/religious properties.ⁱⁱ
- **Eligible Improvements:** Depending on the authorizing legislation, eligible projects may include energy efficiency, renewable energy, energy storage, and non-energy measures (e.g., storm and seismic hardening).
- **Duration and Transferability:** Terms tend to be long (20-30 years) because repayment is secured by the tax assessment and transfers to the next property owner (traditional commercial loans are usually 7-10 years).
- **Interest Rates and Fees:** Interest rates are competitive since the tax assessment mechanism is considered secure and low-risk; fees associated with program administration or other services are common.
- **Scale:** C-PACE programs may be organized at the local, multi-jurisdictional, or statewide levels.
- **Capitalization:** Public or private funds may be used to finance property improvements. Private capital from regional banks or national specialty lenders is increasingly common as programs mature and grow to scale, while many programs have leveraged public funding (e.g., through bonding).
- **Multiple Actors:** C-PACE financing may include commercial property owners, capital providers, a program administrator, the mortgage holder (e.g., bank), the contractor providing retrofits, a tax assessor, and others.
- **Lender Consent:** Mortgage holder consent is a best practice or requirement for most C-PACE programs.

How C-PACE Works

State and local governments frequently ask about two very different processes: how do we get a C-PACE program in our jurisdiction, and how do C-PACE projects get approved and financed? Generalized processes are below.

PROGRAM SET UP PROCESS

State legislature adopts commercial PACE enabling legislation

Decision making body is convened to start a PACE program (state or local)

Program guidelines are created or adopted to supplement enabling legislation

Select an administrator (public or 3rd party) and launch program

Local governments join program, or in some cases, start their own

PROJECT APPROVAL AND FINANCING PROCESS

A program administrator (public or 3rd party) approves the project

Tax assessment placed on property and financier provides project capital

A contractor completes the PACE-eligible building improvement

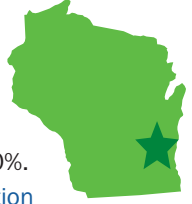
Property owner pays for completed work via a property tax assessment

Repayments are remitted back to the lender

Commercial PACE Project Examples

Milwaukee, WI

The City of Milwaukee authorized C-PACE in 2013. Milwaukee's first C-PACE deal closed in 2014 at the University Club of Milwaukee. The building underwent retrofits expected to result in \$60,000 in annual operating savings, roughly 30%. Learn more via the [Better Buildings Implementation Model](#).



Texas

Texas authorized C-PACE in 2013. Via a "PACE in a Box" model designed to streamline quick adoption, over 10 Texas local governments have adopted a PACE-enabling ordinance. Texas closed its first C-PACE project in late 2015, which included \$1.25 million in financing for retrofits to an Austin shopping mall. Learn more at [Texas PACE Authority](#).



Resources to Learn More

- [State and Local Solution Center: Pay for Energy Initiatives](#)
- [Accelerating the Commercial PACE Market: Statewide Programs and State Energy Office Participation in Property Assessed Clean Energy \(PACE\) Financing](#) – A 2016 report prepared by the National Association of State Energy Officials
- [PACENation](#): Resources on market data, state enabling legislation, case studies, and much more

ⁱ PACENation via "PACE Programs Near You." Available online [here](#).

ⁱⁱ Single family residential is excluded from C-PACE and is subject to different lending regulations. For more information, see the U.S. DOE's [Best Practice Guidelines for Residential PACE Financing](#).

U.S. DEPARTMENT OF
ENERGY

Office of
**ENERGY EFFICIENCY &
RENEWABLE ENERGY**

For more information about
C-PACE, contact:
stateandlocal@ee.doe.gov

An Act To Allow for the Establishment of Commercial Property Assessed Clean
Energy Programs

PRESENTED BY:_____

(Senator HEATHER B. SANBORN)

COUNTY: Cumberland

129LR1608(01)

PROPOSED SHORT TITLE:
ALLOW FOR THE ESTABLISHMENT OF
COMMERCIAL PROPERTY ASSESSED
(Subject to change)

129LR1608(01)

SPONSOR: Senator HEATHER B. SANBORN of Cumberland

An Act To Allow for the Establishment of Commercial Property Assessed Clean Energy Programs

Lead Cosponsor: (sign) _____

(print name) _____

Cosponsors pursuant to Joint Rule 206, subsection 1:

1. (sign) _____

(print name) _____

2. (sign) _____

(print name) _____

3. (sign) _____

(print name) _____

4. (sign) _____

(print name) _____

5. (sign) _____

(print name) _____

6. (sign) _____

(print name) _____

7. (sign) _____

(print name) _____

8. (sign) _____

(print name) _____

1 Be it enacted by the People of the State of Maine as follows:

2 Sec. 1. 35-A MRSA c. 101 is enacted to read:

3 **CHAPTER 101**

4 **COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY**

5 **§10201. Declaration of public purpose**

6 It is declared that the establishment and implementation of commercial property
7 assessed clean energy, or commercial PACE, programs to finance energy savings
8 improvements are public purposes.

9 **§10202. Definitions**

10 As used in this chapter, unless the context otherwise indicates, the following terms
11 have the following meanings.

12 **1. Commercial PACE.** "Commercial PACE" means commercial property assessed
13 clean energy.

14 **2. Commercial PACE agreement.** "Commercial PACE agreement" means an
15 agreement that authorizes the creation of a commercial PACE assessment on qualifying
16 property and that is approved in writing by all owners of the qualifying property at the
17 time of the agreement.

18 **3. Commercial PACE assessment.** "Commercial PACE assessment" means an
19 assessment made against qualifying property to finance an energy savings improvement.

20 **4. Commercial PACE ordinance.** "Commercial PACE ordinance" means an
21 ordinance adopted by the legislative body of a municipality for the purpose of
22 participating in a commercial PACE program.

23 **5. Commercial PACE program.** "Commercial PACE program" means a program
24 established under this chapter by the trust, a 3rd party contracted by the trust or a
25 municipality, under which commercial property owners can finance energy savings
26 improvements on qualifying property.

27 **6. Energy savings improvement.** "Energy savings improvement" means an
28 improvement to qualifying property that, as determined by the trust, is new and
29 permanently affixed to qualifying property and that:

30 A. Will result in increased energy efficiency and substantially reduced energy use
31 and:

32 (1) Meets or exceeds applicable United States Environmental Protection Agency
33 and United States Department of Energy Energy Star program or similar energy
34 efficiency standards established or approved by the trust; or

1 (2) Involves weatherization of commercial or industrial property in a manner
2 approved by the trust; or

3 B. Involves a renewable energy installation, an electric thermal storage system or
4 any heating equipment that meets or exceeds standards established or approved by
5 the trust.

6 7. Qualifying property. "Qualifying property" means real commercial property
7 that:

8 A. Does not have a residential mortgage; and

9 B. Is located in a municipality that participates in a commercial PACE program
10 pursuant to this chapter.

11 8. Renewable energy installation. "Renewable energy installation" means a fixture,
12 product, system, device or interacting group of devices installed behind the meter at a
13 qualifying property, or on contiguous property under common ownership, that produces
14 energy or heat from renewable sources, including, but not limited to, photovoltaic
15 systems, solar thermal systems, highly efficient wood heating systems, geothermal
16 systems and wind systems.

17 9. Trust. "Trust" means the Efficiency Maine Trust established in section 10103.

18 **§10203. Commercial PACE programs**

19 1. Establishment; administration. The trust, a 3rd party contracted by the trust or a
20 municipality that has adopted a commercial PACE ordinance may establish a commercial
21 PACE program. Notwithstanding any other provision of law to the contrary, the trust
22 may use funds from its administrative fund or program funds to pay reasonable
23 administrative expenses of the trust, a 3rd party contracted by the trust or a municipality
24 incurred to carry out the purposes of this chapter.

25 2. Energy savings improvement financing. Financing for energy savings
26 improvements may be provided by any funds available for those improvements, except
27 for proceeds from the regional greenhouse gas initiative as defined in Title 38, section
28 580-A, subsection 19. If funds are provided by a nongovernmental lender, including, but
29 not limited to, banks and investment firms, the nongovernmental lender has the
30 contractual right to receive commercial PACE assessment payments. Commercial PACE
31 financing may cover up to 100% of an energy savings improvement's costs, including
32 audits, energy savings improvement development and application fees.

33 3. Program administration; municipal participation and liability. A commercial
34 PACE program must be administered as follows.

35 A. A municipality that has adopted a commercial PACE ordinance may:

36 (1) Administer the functions of a commercial PACE program, including, but not
37 limited to, entering into commercial PACE agreements with commercial property
38 owners and collecting commercial PACE assessments; or

1 (2) Enter into a contract with the trust to administer some or all functions of the
2 commercial PACE program for the municipality.

3 B. The trust may enter into a contract with a municipality that has adopted a
4 commercial PACE ordinance to administer commercial PACE program functions in
5 the municipality.

6 C. The trust may enter into a contract with a 3rd-party administrator to administer a
7 commercial PACE program for a municipality.

8 D. Notwithstanding any other provision of law to the contrary, municipal officers
9 and municipal officials, including, without limitation, tax assessors and tax collectors,
10 are not personally liable to the trust or to any other person for claims, of whatever
11 kind or nature, under or related to a commercial PACE program established under
12 subsection 1, including, without limitation, claims for or related to uncollected
13 commercial PACE assessments.

14 E. Other than the fulfillment of its obligations specified in a commercial PACE
15 agreement, a municipality has no liability to a commercial property owner for or
16 related to energy savings improvements financed under a commercial PACE
17 program.

18 4. Quality assurance system. Subject to the availability of funds, the trust shall,
19 within one year of the establishment of a commercial PACE program under subsection 1,
20 adopt by rule a comprehensive quality assurance system for the commercial PACE
21 program. In developing a quality assurance system under this subsection, the trust must
22 consult with industry stakeholders, including, but not limited to, representatives of clean
23 energy and energy efficiency programs, contractors and environmental, energy efficiency
24 and labor organizations.

25 5. Terms and conditions. The trust may, by rule, establish terms and conditions
26 under which municipalities and commercial property owners may participate in a
27 commercial PACE program established under subsection 1, which may include, but are
28 not limited to, terms and conditions related to program design, implementation and
29 administration, cost sharing, collection of commercial PACE assessments and recording
30 of liens. The trust may vary the terms and conditions established under this subsection
31 applicable to a participating municipality from those of other participating municipalities
32 by mutual agreement with that municipality. Any terms or conditions established by the
33 trust may not conflict with other provisions of this chapter.

34 6. Model documents; educational materials. Subject to the availability of funds,
35 the trust shall develop and provide to municipalities model commercial PACE
36 ordinances, model commercial PACE agreements, other model forms and documents and
37 educational materials for use by municipalities in the implementation of commercial
38 PACE programs.

39 **§10204. Consumer underwriting and disclosure**

40 1. Underwriting. A commercial PACE agreement entered into pursuant to a
41 commercial PACE program must comply with underwriting requirements established by
42 rule by the trust. Underwriting requirements established by the trust must, at a minimum:

1 A. Provide that the term of the commercial PACE agreement not exceed the
2 estimated useful life of the financed energy savings improvements;

3 B. Require that the estimated cost savings from the energy savings improvements
4 over the useful life of such improvements exceed the direct costs to the commercial
5 property owner of such improvements;

6 C. Require proof of ownership of the qualifying property;

7 D. Require that the qualifying property:

8 (1) Is current on property taxes and sewer charges;

9 (2) Has no outstanding and unsatisfied tax or sewer liens;

10 (3) Is not subject to a reverse mortgage; and

11 (4) Is not subject to a mortgage or other lien on which there is a recorded notice
12 of default, foreclosure or delinquency that has not been cured;

13 E. Require that the owner or owners of the qualifying property certify that there are
14 no overdue payments on mortgages secured by the property; and

15 F. Require escrows for commercial PACE assessment payments when appropriate.

16 **2. Consumer disclosure; truth in lending.** A commercial PACE agreement entered
17 into pursuant to a commercial PACE program must provide consumer disclosure
18 consistent with the principles of truth in lending as specified in rules adopted by the trust.
19 In adopting such rules, the trust shall seek advice from the Department of Professional
20 and Financial Regulation, Bureau of Consumer Credit Protection and consumer credit
21 industry stakeholders. Notwithstanding Title 9-A, section 1-202, commercial PACE
22 assessments are not subject to the Maine Consumer Credit Code, Article 8-A.

23 **3. Consumer privacy.** The provisions of the federal Gramm-Leach-Bliley Act, 15
24 United States Code, Section 6801 et seq. (1999), and the applicable implementing federal
25 regulations regarding the privacy of consumer information, apply to all consumer
26 financial information obtained by the trust or municipalities or their designees in
27 implementing commercial PACE programs under this chapter.

28 **§10205. Commercial PACE assessments; collection; priority**

29 **1. Collection of assessments.** Commercial PACE assessments constitute a lien
30 against the qualifying property on which they are made until they are paid, and must be
31 assessed and collected by the trust, a 3rd-party administrator contracted by the trust, a
32 municipality or an agent designated by the trust or a municipality in any manner allowed
33 under the commercial PACE program, consistent with applicable laws.

34 **2. Notice; filing.** A notice of a commercial PACE agreement must be filed in the
35 appropriate registry of deeds. The filing of this notice creates a commercial PACE lien
36 against the property subject to the commercial PACE assessment until the amounts due
37 under the terms of the commercial PACE agreement are paid in full. A notice filed under
38 this subsection must, at a minimum, include:

1 A. The amount of funds disbursed or to be disbursed pursuant to the commercial
2 PACE agreement;

3 B. The names and addresses of the current owners of the qualifying property subject
4 to the commercial PACE assessment;

5 C. A description of the qualifying property subject to the commercial PACE
6 assessment, including its tax map and lot number;

7 D. The duration of the commercial PACE agreement;

8 E. The name and address of the entity filing the notice; and

9 F. Written verification of mortgage lender consent.

10 **3. Priority.** A commercial PACE assessment takes precedence over all other liens
11 or encumbrances except a lien for taxes of the municipality where the qualifying property
12 is located on real property, except that the precedence of such a commercial PACE
13 assessment over any lien held by an existing mortgage holder is subject to the written
14 consent of such existing mortgage holder.

15 **4. Mortgage lender notice and consent.** Any financial institution holding a lien,
16 mortgage or security interest in or other encumbrance on the property for which a
17 commercial PACE assessment is sought must be provided written notice of the
18 commercial property owner's intention to participate in the commercial PACE program
19 and acknowledge in writing to the commercial property owner and municipality that they
20 have received such notice. A commercial PACE assessment may not be approved until
21 the financial institution holding the lien, mortgage or security interest in or other
22 encumbrance on the property has provided written consent to the commercial property
23 owner and municipality that the property may participate in the program. This written
24 consent must be recorded in the registry of deeds.

25 **5. Acceleration not permitted.** A commercial PACE assessment runs with the
26 property in the same manner as a property tax lien. The portion of the assessment that has
27 not yet become due is not eliminated by foreclosure and the assessment cannot be
28 accelerated or extinguished until fully repaid.

29 **6. Judicial sale or foreclosure.** In the event of a judicial sale or foreclosure of a
30 property subject to a commercial PACE lien, all parties with mortgages or liens on that
31 property, including without limitation commercial PACE lien holders, must receive on
32 account of such mortgages or liens sale proceeds in accordance with the priority
33 established in this chapter and by applicable law. A commercial PACE assessment is not
34 eliminated by foreclosure and cannot be accelerated. Only the portion of a commercial
35 PACE assessment that is in arrears at the time of foreclosure takes precedence over other
36 mortgages or liens; the remainder transfers with the property at resale.

37 **7. Release of lien.** A municipality shall discharge a commercial PACE lien created
38 under subsection 2 upon full payment of the amount specified in the commercial PACE
39 agreement. The discharge of a commercial PACE lien under this subsection must be filed
40 with the appropriate registry of deeds.

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LR 1608, An Act to Establish the Commercial Property Assessed Clean Energy Program (C-PACE)

What is C-PACE?

Commercial Property Assessed Clean Energy (C-PACE) enables private investment in energy efficiency and clean energy upgrades for commercial buildings. A lender finances 100% of the upgrade, so there are no out-of-pocket expenses for the property owner. The assessment is paid back annually or semi-annually on the property tax bill. Because the assessment is very secure—with the same status as a property tax lien—financing can be provided over longer-than-standard loan terms (10-20 years) at low interest rates. This structure can achieve immediate savings for the property owner/tenant, as energy cost savings can exceed the annual assessment repayment amount. If the building is sold, the C-PACE assessment transfers with the property. Thirty-three states have enacted C-PACE legislation, enabling \$785 million in loans to date.

Who is eligible to participate?

All commercial buildings are eligible for C-PACE financing, including small businesses, commercial and industrial buildings, municipal buildings, churches, nonprofits, schools and multi-family housing. It doesn't matter if the building is owned by the occupant; C-PACE assessments can be passed through to utility-paying tenants under most lease terms.

Who provides the loan capital, and who administers the program?

Any qualified private lender can provide C-PACE financing—there are more than a dozen specialty C-PACE lenders across the U.S., including multiple lenders already working in New England.¹ Public funding may also be used, but is not necessary; C-PACE programs can be financed exclusively by private capital. C-PACE programs may be administered by a state entity (e.g., Efficiency Maine), a municipality, or an independent administrator contracted by the state.

LR 1608

PACE was first developed as a concept in 2008, and Maine enacted a PACE statute in 2009 (MRSA 35-A § 10151—10162). However, our PACE statute does not enable C-PACE. LR 1608 proposes five updates to Maine's PACE statute to enable (not mandate) a robust C-PACE program:

1. Assigns senior position to C-PACE assessments, equivalent to a property tax lien, allowing for better loan terms.
2. Requires mortgage lender consent for a C-PACE assessment to be made.
3. Requires that C-PACE assessments do not accelerate in the event of foreclosure (only the delinquent portion is repaid before the mortgage; the remainder stays with the property).
4. Allow Efficiency Maine to contract C-PACE administration to a third-party.
5. Prohibits RGGI funding from being used for C-PACE.

¹ Greenworks and Hannon Armstrong are lending in New England. For a more comprehensive list of specialty C-PACE lenders, see here: <https://www.md-pace.com/capital-providers/registered-providers/>.

How C-PACE benefits property owners and tenants

C-PACE removes the biggest obstacles to clean energy and energy efficiency upgrades in commercial buildings:

- There are zero out-of-pocket costs—100% of the upgrade is financed;
- Long-term, low-cost financing allows annual energy cost savings to exceed the annual repayment, which means the project can be cash flow positive from day one;
- The assessment is connected to the property and is transferable if the property is sold;
- If the building is occupied by a tenant who pays utility bills, the cost of the assessment can typically be passed through to the tenant, removing the landlord-tenant “split incentive.”

C-PACE-enabled building upgrades can increase property resale values and often the comfort of the building’s current occupants.

How C-PACE benefits towns

- Increases property values
- Improves aging buildings
- Helps local businesses
- Supports clean energy jobs
- Helps reduce carbon footprints
- Works in towns of any size
- Municipal buildings are eligible
- Completely voluntary

Why mortgage lenders support C-PACE

- The mortgage lender on a property must consent to the C-PACE assessment. If the mortgage lender does not consent, the loan cannot be executed.
- C-PACE retrofits increase the value of the property (improving the mortgage holder’s collateral).
- C-PACE typically results in positive cash flow for the property owner, which increases the Debt Service Coverage Ratio and enhances the owner’s ability to pay existing debt.
- C-PACE assessments do not accelerate. Only the amount of the assessment currently due (and/or in arrears) is collected and extinguished through foreclosure. The remainder of the debt transfers with the property once it is resold.
- 172 mortgage lenders have consented to C-PACE loans as of Oct. 2018 (list attached).

C-PACE across the country

States with C-PACE statutes: 33 (16 states up-and-running)

Projects financed: 1800 projects totaling \$785 million

- 49% efficiency, 27% renewables, 17% mix, 7% other
- 70% growth rate nationally 2016 to 2017

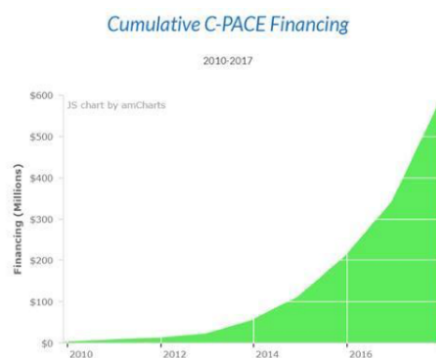
Rhode Island (started 2017):

- 3 projects in year one, 9 year two; “word of mouth”
- **All private capital; no state funding needed**

Connecticut (started 2013):

- 250 projects in 60 towns totaling \$130 million
- **Almost all private capital** (state also offers financing, but as a competitor to private lenders)

Nebraska: \$28 million in C-PACE projects to date (similar population size and density)



Bipartisan support for C-PACE

State Legislatures across the country are moving forward with C-PACE, from Missouri to Nebraska to Connecticut and Rhode Island. In 2018, the Republican-led Pennsylvania Legislature passed C-PACE by large margins (163-28 and 42-8). Later in 2018, the Democratic-led Delaware Legislature followed suit (31-9 and 15-6).

Is Maine a good market for C-PACE?

Yes. C-PACE is working in states of all sizes. With the oldest building stock in the nation, Maine has a significant need for energy efficiency retrofits, and C-PACE can help meet Efficiency Maine's goal of weathering 50% of Maine businesses by 2030. Furthermore, as demand for solar energy grows, C-PACE assessments can help make the numbers pencil out for businesses, municipalities, schools and nonprofits interested in investing in solar.

Is predatory lending a concern?

Housing advocates have expressed concerns about predatory lending in the residential PACE (R-PACE) market. However, the same concerns do not apply to the commercial PACE market (C-PACE). C-PACE financing is executed business-to-business, not between lenders and homeowners. The leading housing advocate, National Housing Law Project (NHLP), makes this distinction clear and states that predatory lending is not a concern in the C-PACE market. Furthermore, C-PACE has a significant and growing track record across the nation, whereas R-PACE is only available in a handful of states.

Why are TNC and CEI involved?

The Nature Conservancy (TNC) and Coastal Enterprises, Inc. (CEI) are seeking ways to drive new private investment toward clean energy and energy efficiency in Maine. In 2018, TNC and CEI commissioned a regional consultant, Vermont Energy Investment Corporation (VEIC), to research barriers to clean energy investment in Northern New England and opportunities for new investment. After more than 30 stakeholder interviews (including with officials administering C-PACE programs in Connecticut and Rhode Island), C-PACE was offered as a top recommendation.

TNC also partnered with the Maine State Chamber of Commerce in 2018 to conduct a Renewable Energy Listening Tour at six regional chambers. We consistently heard that the cost of making clean energy and energy efficiency upgrades—and how quickly a return on investment is realized—are important considerations for businesses. C-PACE can offer an option for businesses to upgrade their buildings and reduce their carbon footprint without any upfront costs and with financing terms that can improve cash flow from day one.

From: **Elizabeth Parsons** <ecparsons33@hotmail.com>

Date: Mon, Aug 19, 2019 at 7:29 AM

Subject: Closing loop hole that allows tree cutting prior to site plan submission and instituting protections for the future

To: sthibodeau@portlandmaine.gov <sthibodeau@portlandmaine.gov>

Cc: Jon Jennings <jpj@portlandmaine.gov>, Andrews, Deb <dga@portlandmaine.gov>, Christine Grimando <cdg@portlandmaine.gov>, Heather Brown <hbrown@portlandmaine.gov>, Jeff Tarling <JST@portlandmaine.gov>, Rose Marasco <marasco@maine.edu>, iancasperjacob@gmail.com <iancasperjacob@gmail.com>, whiteseth04@gmail.com <whiteseth04@gmail.com>, jennifer defilipp <jend@townsendre.com>, Anne Pringle <oldmayor@maine.rr.com>

Dear Councilor Thibodeau:

Thank you very much for your prompt actions and helpful presence relating to the unexpected tree removal at 166 State Street last week. As you noted, this incident has revealed at least one loop hole in Portland's city code concerning preservation of existing and/or historically significant, trees (see [land use code section 14-526, pp. 14-758ff](#)). The specifics of the case are that the new owner of the property began tree removal prior to submitting any site plans for redevelopment. This order of events isn't accounted for in our City's codes. Moreover, there is almost no mention of trees in Portland's current comprehensive plan.

So we are approaching you, in your capacity as Chair of the Sustainability and Transportation Committee, to request that the City close the loop hole while also crafting strong tree protection ordinances for the future. In addition to the incident occurring in your own District 2, there are two other reasons why this matter fits well with your Committee's mandate:

- Portland and South Portland are in the midst of a joint climate action planning process. [Tree planting and preservation](#) play a key role in mitigating carbon emissions. And [urban trees](#) offer a particularly important, multi-faceted role in this regard.
- Portland places great value on historic preservation and your Committee has already begun conversations with the Historic Preservation Department on issues of mutual interest/concern. Since built structures exist in contexts it makes sense for our land use

codes to recognize both buildings and their natural surroundings in all planning and preservation matters.

We realize that crafting such comprehensive ordinances can be complex and time consuming. Therefore, we offer a couple of examples for inspiration. These are the [tree ordinance](#) in Georgetown County, South Carolina and Charleston, South Carolina's [zoning ordinance](#). This latter document comes from a city with historic neighborhoods that is also set on a peninsula.

We further offer to assist city officials in any way possible to see that this matter is taken up promptly and drawn to a beneficial conclusion as soon as possible. Please advise us as to the next steps.

Thank you,

Rose Marasco and Liz Parsons

on behalf of Winter/Pine Street beautification group

P. S. This is an urgent matter for the remaining trees at 166 State as well as all old, lovely, and precious trees in this city that currently have no legal protections.



CITY OF PORTLAND

Sustainability Office

Troy Moon

Sustainability Coordinator

To: Councilor Thibodeau and Members of the Sustainability and Transportation Committee
From: Troy Moon, Sustainability Coordinator
RE: Proposed tree protection ordinance
Date: November 15, 2019

During our meeting on October 16 the Sustainability and Transportation Committee took public comment regarding the possibility of enacting an ordinance to regulate the cutting of trees on private property. Residents expressed concern that removing large trees affects the community as a whole. They suggested that the City should adopt a regulatory process to ensure that removing a tree is necessary and that projects that remove trees should replace them or provide funds to the City tree fund.

The City currently plants, protects and cares for trees on public property. We do not currently get involved in monitoring or regulating trees on private property, other than through the existing Development Review process.

We also recognize that tree canopy cover (on both public and private property) is an important factor in reducing stormwater runoff, preventing erosion, providing habitat, storing CO₂, and for human enjoyment. Michael Bloomberg writes in his new book [Climate of Hope](#) about how cities across the country are encouraging residents to plant trees to combat the effects of climate change. Each year our the Forestry Division of the Parks, Recreation, and Facilities Department plants 150-200 trees on public property and maintains an existing inventory of close to 20,000 street and park trees. Staff also collaborates with private residents to plant trees by offering a tree co-op program that allows people to purchase a tree from a list of approved tree species from a participating nursery that City staff will pick up from the nursery and plant.

We appreciate the examples of tree ordinances from Charleston, SC, Somerville, MA, and Newton, MA. These appear well thought out and provide a clear process that property owners or developers must follow before cutting any significant trees on their property. They also describe municipal responsibilities to monitor and review tree cutting on private property. As the committee considers such a program, we request that you be mindful that implementing such an ordinance will require resources that the City does not currently have available. Based on the direction you choose to follow, we will prepare an analysis describing the staff and financial resources required to implement it.

Tree protection ordinance information

Chicago, IL

Morton Arboretum has a good amount of relevant [tree preservation information](#).

Peoria, IL

The City has a Shade Tree Ordinance that appears to apply mostly to municipal trees but does have some good information on decision making. This may be found in [Chapter 29 of the City's Municipal Codes](#). A summary of their regulations may be found [here](#).

Newton, MA

The City has an extensive section on tree preservation that covers public and private lands and also deals with enforcement. The full document is **attached** and the portion of most relevance to our process starts at page 16 (Article 3, Division 3).

Somerville, MA

The City specifies that no one can take down a tree on private property without obtaining a permit from the Tree Warden. Point 6 under Section 12-112 of their Tree Protection Ordinance (**attached**) enumerates the ways in which the ordinance will be enforced.

Enforcement suggestions from engaged Portland citizens:

- Any project that gets a waiver to cut down a tree should post that permit in plain sight two weeks before the tree is removed. Then, at least, concerned neighbors can object/call the City if there is no notice posted.
- The general rule in Germany is that any tree larger than 7.5" in diameter (160 cm circumference) at about 5' height needs a permit, with the exception of fruit trees and conifers. The usual rule in Maine coastal zones is that any tree that meets a "4D" criterion can be cut: dead, diseased, damaged or dangerous. The coastal zone laws here also provide a useful benchmark—removing a tree cannot create a meaningful gap in the canopy (unless the 4D rule applies). This rule allows thinning to permit large trees to grow, but not clear-cutting. The presumption should be that a tree above the size threshold should **not** be cut without a compelling reason. Trees are a common resource, although grown on private land. Therefore:
 - Permit requests should be treated like zoning variance requests, with notice to 500' neighbors and a comment period. Large trees will almost surely be removed by professionals.
 - A good way to enforce this rule is (a) require arborists to be licensed by the city to remove trees within the city limits; (b) require the arborist to verify that a tree removal permit has been approved before removing a tree; (c) put in place financial penalties and suspension/revocation of license for removing a tree without a permit. The property owner should also face stiff fines, but the threat of pulling a business's license is where the real enforcement will occur. No businessperson will be willing to risk his/her business to remove a tree illegally.
- Send someone out to look at the site. The City sends historic preservation reps out when we [private residents] have a change and we have to fill out a form and pay. They send

code enforcement people when one is doing many, many things. And they send an inspector here every year (or every other) to make sure we pass an inspection.

- They could charge a fee to the developer, what would \$100 or even \$250 be to a developer?
- Everything is possible if communal values are in place. Do we want developers to have a go at any tree on the land they happen to have bought, or do we have a common commitment to saving trees that enhance both the streetscape and help mitigate the climate change we are all experiencing?
- One of the most effective means of enforcement may simply be publicizing this ordinance to the citizenry. If this were done in relation to the City's anticipated declaration of a climate emergency and in the context of our climate action plan, so much the better. Many residents care about Portland's threatened tree canopy and would likely monitor their own behavior as well as watch out for their neighborhood if they knew the City was officially taking a stand.

As of: 15 November 2019

ecp

CITY OF SOMERVILLE

ORDINANCE NUMBER 2019-15

IN CITY COUNCIL: June 27, 2019

TREE PRESERVATION ORDINANCE

Be it ordained by the City Council, in session assembled, that Chapter 12 of the Code of Ordinances of the City of Somerville, is hereby amended by replacing the existing Article VI with a new Article VI as follows.

ARTICLE VI. - TREE PRESERVATION ORDINANCE

Section 12-100. Intent and purpose.

The preservation of the tree canopy and the planting of replacement trees is intended to enhance the quality of life and the environment of the city; to reduce energy consumption; to protect air quality; to provide protection from glare and heat; to baffle noise; to reduce topsoil erosion and stormwater runoff; to preserve and enhance habitat for wildlife; to protect and increase property values; to combat climate change through carbon sequestration; to provide natural privacy for neighbors; to enhance the overall appearance of the City; and to acknowledge the intrinsic value of the mature trees within our community.

Section 12-101. Applicability.

The terms and provisions of this ordinance shall apply to trees within the City of Somerville that are located on city owned property, on private property, or in the public right of way.

Section 12-102. Definitions.

Caliper: A measurement of the tree trunk diameter used when purchasing tree plantings measured at 12" above the ground.

City Tree: A tree located on property owned by the City of Somerville, including Public Shade Trees, trees in City parks, and trees on the grounds of City buildings.

DBH (Diameter at Breast Height): The diameter of a tree trunk measured in inches at a height of four and a half (4.5) feet above the ground. For multiple trunk trees, DBH is the aggregate diameter of the trunks.

Invasive Plant: A plant that is both non-native and able to establish on many sites, grow quickly, and spread to the point of disrupting plant communities or ecosystems, including but not limited to the trees listed on the Massachusetts Prohibited Plant List.

Private Tree: A tree located on private property.

Public Shade Tree: A tree located in the public way, as defined in G.L. c. 87, section 5.

Removal: The intentional cutting down of any tree, including all other acts which cause actual or effective removal through damaging, poisoning, or other direct or indirect actions that result in the death of the tree. This includes, but is not limited to, excessive pruning.

Replacement Caliper: The replacement caliper for Significant trees shall be at least equal to the DBH of the tree removed.

Significant Tree: Any living tree that is not an Invasive Plant and is 8 inches or more in DBH.

Section 12-103. Tree warden.

The Tree Warden shall be an employee of the City, appointed by the Mayor, subject to confirmation by the City Council, for a term of three years.

1. The Tree Warden shall be qualified for the role as defined in G.L. c. 41 s. 106, and also according to the standards established and published by the Massachusetts Tree Wardens and Foresters Association.
2. The duties and responsibilities of the Tree Warden shall conform to G.L. c. 87 and shall include, but not be limited to, the following:
 - a. Management of all trees within public rights-of-way and on City property.
 - b. Granting or denying and attaching reasonable conditions to all permits required under this ordinance.
 - c. Posting notices and holding public hearings for the Removal of Public Shade Trees and City Trees as required by this ordinance.
 - d. Enforcement of this ordinance.

Section 12-104. Senior urban forestry and landscape planner.

The Senior Urban Forestry and Landscape Planner shall be an employee of the city, appointed by the Mayor.

1. The Senior Urban Forestry and Landscape Planner shall be a Certified Arborist by the Massachusetts Arborist's Association, The International Society of Arboriculture, or any successor of either organization.
2. The duties and responsibilities of the Senior Urban Forestry and Landscape Planner shall include, but not be limited to, the following:
 - a. Seeking grants or other assistance concerning the preservation and maintenance of the City's tree canopy.
 - b. Develop and publish policies, regulations, tree inventory, manuals, and other data and documents necessary to carry out the purposes and intent of this ordinance.
 - c. Supervising the planting and care of City Trees to ensure that such planting and care meets these rules, regulations and standards.
 - d. Assisting and working closely with the Tree Warden to help the Tree Warden fulfill their responsibilities.

Sec. 12-105. Urban forestry committee.

1. *Purpose:* The Urban Forestry Committee will be charged with advising with respect to the management and maintenance of all existing and new trees and shrubs on all public grounds and public ways of the City of Somerville.
2. *Duties:* The Urban Forestry Committee shall:
 - a. Review planting policies for trees and shrubs on public grounds and public ways of the City of Somerville, appraise the appropriateness of such plantings, their placement, and the type of maintenance necessary. The Urban Forestry Committee shall also review those planting proposals which it deems significant for trees and shrubs on public grounds and public ways of the City of Somerville.
 - b. This Committee shall have the ability to comment during any City of Somerville permitting review process.
 - c. This Committee may elect to review issues related to the health, effective

maintenance, and protection of existing trees and shrubs on public grounds and public ways of the City of Somerville, recommend solutions to any problems identified with such plantings, update the tree inventory with detailed information, and support all public education and outreach by:

- i. Promoting knowledge and awareness of the benefits of trees in the City.
 - ii. Developing and maintaining a website;
 - iii. Developing and maintaining a noteworthy tree program;
 - iv. Developing educational materials regarding best management practices for tree care;
 - v. Supporting City staff in establishing a volunteer adopt-a-tree program;
 - vi. Supporting City staff during Arbor Day Celebrations; and
 - vii. Considering and recommending incentives for tree planting and maintenance.
- d. Upon request of the applicant, this Committee shall consider and make recommendations to the Tree Warden on waivers for any required replantings or payments associated with the issuance of a Tree Permit.
 - e. This Committee may keep records of trees planted and removed within the City of Somerville and may issue regular reports on the overall status of the City's urban canopy.
3. *Membership:* This Committee shall consist of the following members:
- a. The Senior Urban Forestry and Landscape Planner
 - b. The Tree Warden, and
 - c. Nine members of the public, with at least one member demonstrating expertise in the field of urban forestry, and at least one member demonstrating expertise in the field of landscape design, and two members shall be between the ages of fourteen and seventeen at the time of their appointment or re-appointment, each serving a term of three years, selected by the Mayor, and subject to confirmation by the City Council.

Section 12-106. Criteria for removal of public shade trees.

A public hearing may not be initiated under G.L. c. 87, s. 3 to remove a healthy Public Shade Tree unless the Tree Warden finds in writing that there is a public health, safety, or welfare basis for removing the Public Shade Tree, including but not limited to hardship to a property owner, economic development, facilitating the development of affordable housing, pedestrian access enhancement, transportation improvement, or public project development. Nothing in this section shall be construed to prevent the cutting, trimming, or removal of trees in accordance with G.L. c. 87, s. 5.

Section 12. 107. Notice requirements for removal of public shade trees.

In addition to notice under G.L. c. 87 s. 3 for Removal of a Public Shade Tree, notice shall be given by the City by electronic notification when feasible and first-class mail to all property owners located within 150 feet of the Public Shade Tree proposed to be removed at least 14 days before the public hearing. To the extent feasible, the City shall notify all residents within 150 feet of the Public Shade Tree proposed to be removed by flyering at least 14 days before the public hearing. Notice shall also be given by placing notice on the City website and cable wheel at least 14 days before the public hearing. In the event that a public hearing is initiated under G.L. c. 87

s. 3 at the request of anyone other than the City, the requesting party shall pay for all costs of mailing and advertising, such costs to be determined by the City Clerk. The City Clerk may waive the costs if the requesting party demonstrates to the City Clerk that payment of the fee would cause financial hardship. Guidelines for determining financial hardship shall be established by the City Clerk. Applications for financial hardship shall be provided by the City Clerk.

Section 12. 108. Tree replacement for public shade trees.

Any healthy Public Shade Tree removed at the request of a property owner or agent thereof must be replaced within one year from the date of Removal. These replacement trees must be located at or near the location from which the tree was removed, and in no case shall trees planted in a different neighborhood qualify as replacements. The replacement trees must conform to the standards for size, species, and planting established by the Senior Urban Forestry and Landscape Planner.

Section 12. 109. Street tree stabilization fund.

1. *Establishment:* There shall be established a tree fund which shall be held in a separate identifiable account, and administered in accordance with applicable provisions of General Laws. Any payments required by this article shall be deposited in the Street Tree Fund and shall be used in accordance with subsection (3) below.
2. *Payment for planting replacement Public Shade Trees:* Where a healthy Public Shade Tree is removed at the request of a property owner or agent thereof, solely for reasons of private financial gain or personal preference, the requesting party shall make a contribution to the Street Tree Fund in an amount sufficient to pay for replacement trees as described in Section 12.108. This amount will be calculated using the schedule of costs established by the Senior Urban Forestry and Landscape Planner.
3. *Maintenance of Street Tree Fund:* The Street Tree 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. The Senior Urban Forestry and Landscape Planner shall expend these funds for tree planting, transplanting, care, and other tree-related needs.

Section 12. 110. Compliance with state law.

All public shade tree hearings shall comply with the applicable requirements set forth in G.L. c. 87 s. 3.

Section 12. 111. Criteria for removal of city trees.

1. *Purpose:* The purpose of this section is to extend the public notice and public hearing requirements of the Massachusetts Public Shade Tree Law G.L. c. 87 to trees on City of Somerville owned property.
2. *Definitions:* The following words, terms, and phrases when used in this Section shall have the following meanings ascribed to them:
 - a. *Capital Improvement Project:* A major, non-recurring expenditure that generally meets all of the following criteria: G.L. c 44, ss. 7 and 8 permit the City to issue bonds to finance the expenditure, the expenditure is a facility or object or asset costing more than \$50,000, and the expenditure will have a useful life or ten years

- or more for infrastructure, buildings, and parks.
 - b. *Park Project*: A project involving the renovation and maintenance of existing parks and City-owned open spaces and the development of new parks and open spaces within the City of Somerville. The phrase “City-owned open spaces” includes parks, community gardens, playgrounds, school yards, library lawns, cemeteries, public plazas, triangles, and squares.
 - c. *Tree on City-owned property*: Any tree located on land owned by the City of Somerville. This does not include any tree that fits the definition of a Public Shade Tree under G.L. c. 87.
- 3. *Applicability*: This section shall apply exclusively to trees on City-owned property as defined above in section (b). Nothing in this section shall be construed to apply to Public Shade Trees within the City of Somerville, whose care, maintenance, trimming, planting, and Removal are governed by the Public Shade Tree Law, G.L. c. 87, and the City of Somerville Code of Ordinances. The public notice and meeting requirements for Public Shade Trees shall remain in full force and effect and are entirely unaffected by the language of this section.
- 4. *Cutting down or Removal of trees*: No person, including but not limited to City employees, the Tree Warden, and their deputies shall cut down or remove any tree on City-owned property without the Tree Warden first holding a public hearing.
 - a. The Tree Warden, or his or her designee, shall post notice of the time and place of the public hearing in two or more public places in the City and upon the tree in question at least seven days prior to the public hearing. This notice shall identify the size, type, and location of the tree to be cut down or removed, and include a brief statement of the reason for the proposed action. Notice of this public hearing shall be sent to each City Councilor, all members of the Urban Forestry Committee, and published on the City website.
 - b. No later than 48 hours prior to the cutting down or Removal of any tree on city-owned property, a notice on brightly colored paper will be placed upon the tree stating the anticipated date on which the action is expected to occur.
 - c. Nothing in this section shall prohibit the Tree Warden and his or her designee from cutting down or removing any tree which in their opinion is dead or dying or constitutes a threat to public health or safety.
- 5. *Exceptions to the public notice and hearing requirements*: No public hearing shall be necessary prior to the Tree Warden, or his or her designee, cutting down or removing trees measuring less than one and one-half inches in diameter one foot from the ground on City-owned property.
- 6. The following types of public projects, which have undergone a public process that includes public notification and public meetings, shall be exempt from the requirements of section (4) above.
 - a. Park projects and
 - b. Capital improvement projects.
 - c. This exemption shall only apply to a public project of the type listed in (a) and (b) if such public process included all of the following:
 - i. All public meetings at which cutting down or Removal of trees is discussed were duly noticed and advertised including but not limited to notice sent to all members of the Urban Forestry Committee.

- ii. The public was provided reasonable opportunity to provide input regarding tree(s) to be cut down or removed.
- iii. Reasonable notice was posted on or around any trees to be cut down or removed at least two weeks prior to such action taking place.

Section 12-112. Removal of private trees.

1. *Permit Required:* No person may Remove any Significant Tree from private property without first obtaining a Tree Permit from the Tree Warden.
2. Application for a Tree Permit:
 - a. Applications must be made in writing on forms specified by the Tree Warden.
 - b. The Tree Warden, or his or her designee, will review applications for tree permits in accordance with the provisions of this article. The Tree Warden, or his or her designee, shall date stamp or otherwise record the date of filing of each application for a tree permit. The Tree Warden, or his or her designee, shall complete the review of each Tree Permit application no later than 30 business days after the submission of a completed application. In the event that this review is not completed within the time required by this ordinance, and if the applicant did not request a waiver of fees or replanting, the permit shall be considered issued.
 - c. The application shall include a plan showing the location, species, and DBH of each tree on the property, and must indicate clearly which trees are to be Removed.
 - d. If replacement trees are to be planted, the plan shall indicate the planned location, species, and size of any replacement trees to be planted. In order to qualify as replacements, trees must be planted on the same or adjacent lot, and must conform to species and planting standards as defined by the Senior Urban Forestry and Landscape Planner. Trees planted in the adjacent right-of-way or otherwise located on public property shall not be considered suitable for consideration as replacement trees.
 - e. There shall be no fee or charge to submit an application for a tree permit.
3. Conditions for Granting a Tree Permit:
 - a. *Removal of Significant Trees:* If any Significant trees are to be removed, the plan must show planting of new trees equal to the total Replacement Caliper of those trees.
 - b. *Payment instead of Replacement:* Payment to the Street Tree Fund may be made in lieu of planting some or all of the replacement trees, according to a cost schedule established by the Senior Urban Forestry and Landscape Planner. Such fees shall be based on the actual costs associated with purchasing, planting, and maintaining the City's Public Shade Trees. Payment must be made prior to issuance of the permit.
 - c. *Request for Waiver:* The application for a Tree Permit shall allow the applicant to request a waiver of the requirement for replanting or payment.
 - d. *Hearing of Request for Waiver:* The Tree Warden, or his or her designee, shall hear requests for such waivers within 60 days of the date the application was received. This hearing may take place at a public meeting of the Urban Forestry Committee. The applicant shall have the opportunity to speak and to answer

questions. The Committee may, at the request of the applicant, make a recommendation to approve or deny the waiver. Examples of reasons supporting a waiver include but are not limited to: Financial hardship associated with the care and upkeep of the trees; unreasonably high requirements for replacement or repayment, ongoing or reasonably foreseen damage or risk from the trees, and desire to create a benefit to the public. The Tree Warden shall consider such recommendation in considering whether or not to grant the waiver. If the waiver is approved, a Tree Permit will be issued within 10 business days of the close of the hearing.

- e. *Owner-Occupants*: The owner-occupant of a lot containing a one, two, or three family dwelling, who resides at that same property as demonstrated by issuance of, or good faith application for, a valid Residential Exemption shall, at their request, be granted a waiver of the requirements for replanting or payment with no need for a hearing.
 - f. *Departure of owner-occupant*: If at any point during the 18 consecutive months following the issuance of a Tree Permit the owner no longer resides at that address; and if the requirements for replanting or payment were waived based on said owner-occupancy status as described in section (e) above; said waiver shall be revoked. In this case, the owner or, if the property has been sold, the new owner, shall be required to obtain a tree permit either for a replanting plan or to make full payment within 30 days of the fees that were waived, unless such new owner is eligible for an owner occupant waiver under Section (e) above.
4. Standards for Replacement Trees:
- a. Replacement trees must be planted within 18 months from the date the tree permit is issued, or prior to transfer of property ownership, whichever comes first.
 - b. Replacement trees must be of the same or similar species and size as described in the application for the Tree Permit, and must be planted according to standards established by the Senior Urban Forestry and Landscape Planner.
 - c. In the event that trees of the size and species that were described in the application for the Tree Permit cannot be obtained at the time of planting, multiple smaller replacement trees may be planted with the authorization of the Tree Warden.
 - d. If a replacement tree dies within 18 months from the date of planting, it must be replaced. The person planting the tree shall provide documentation as to the date of the planting and file the same with the Tree Warden within 15 days of the planting of said replacement tree.
5. Exceptions to the Tree Permit Requirement:
- a. *Emergencies*: If any 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, verbal authorization may be given by the Tree Warden to remove such tree, and the tree may be removed without obtaining a written permit as otherwise required by this ordinance. The Tree Warden shall record in writing each such verbal authorization, and shall present these written notes at the next meeting of the Urban Forestry Committee.
 - b. *Waiver*: The requirements of this article may be waived by the Tree Warden

during the period of an emergency such as a hurricane, tornado, windstorm, flood, or similar threat to life and property.

6. Enforcement:
 - a. If a Significant tree is Removed without a Tree Permit, the property owner must apply for a Tree Permit within 30 days of the Removal. Each business day thereafter, until an application is filed, shall constitute a separate violation of this ordinance.
 - b. *Stop work order*: Upon notice that trees are being removed without a Tree Permit, such work shall be immediately stopped by the Director of Inspectional Services or designee. The stop work order shall be in writing and shall be mailed to the owner of record of the property and posted at the front of the property in a conspicuous location, and if possible, given to the owner of the lot 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.
 - c. *Injunctive relief*: Whenever there exists reasonable cause to believe that a person is violating any applicable provision of this article, the city may institute a civil action for a mandatory or prohibiting injunction in a court of competent jurisdiction ordering the defendant to correct the unlawful condition or to cease the unlawful use of the property.
7. Penalties:
 - a. For each offense under this ordinance the person in violation shall be subject to a fine as established in section 1-11 of the Somerville Code of Ordinances.
 - b. Failure to make payment of any fines may result in the revocation, suspension, or denial of any local license or permit, including renewals and transfers, pursuant to section 8-3 of the Code of Ordinances and / or a municipal charges lien being placed on the violator's property located within the city pursuant to the authority and provisions of Chapter 252 of the Acts of 1996.
8. *Safety of Life and Property*: Nothing in this ordinance shall be construed to prevent a property owner from acting to Remove any Significant Tree, with written or oral authorization from the Tree Warden, that is an immediate and pressing health or safety hazard; that is dead or dying; or that is damaging existing structures or property; or could do so if it were to fall. In such cases, the Tree Warden may authorize immediate removal in writing or verbally, with written record to the Urban Forestry Committee as soon as practicable.

Section 12-113. Effective date.

This ordinance shall take effect on August 1, 2019.

Approved:

President, City Council

Chapter 21

PARKS AND RECREATION, PUBLIC GROUNDS AND TREES*

- Art. I. In General, §§ 21-1—21-45**
- Art. II. Parks and Recreation Commission, §§ 21-46—21-59**
- Art. III. Trees, §§ 21-60—21-89**
 - Div. 1 Urban Tree Commission, §§ 21-60—21-71**
 - Div. 2 Regulation of Public Trees, §§ 21-72—21-80**
 - Div. 3 Tree Preservation, §§ 21-81—21-89**

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 city council.

(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

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 city council. Four (4) alternate members selected at large shall also be appointed by the mayor with the approval of the city council.

(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.

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(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 city council 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 city council 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 city council 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 city council 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 city council 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 city council that the urban tree commission be established as the successor to the urban tree task force. The city council 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.

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 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 city council and to each councilor 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 city council and to each ward councilor 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 21-85 of these ordinances and in any rule or regulation or 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 21-86 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 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 city council 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 city council 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 city council 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 21-82.

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

Remove (including removing and removal): The cutting down of any protected tree and all other acts which cause the actual removal or the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of a protected tree, including, but not limited to, excessive or improper pruning.

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

Tree 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:

- (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 city council and to each councilor 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 city council and to each ward councilor 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 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)