

Madalyn Letellier

From: Chris Dwan [REDACTED]
Sent: Friday, March 29, 2024 9:18 AM
To: Public Comments
Subject: Fwd: Urban Forestry Committee recommendations on the Tree Preservation Ordinance
Attachments: TPO-updatesv5-2023.pdf

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Honorable Councilors,

I would like to bring to your attention a set of recommendations for updates and improvements to the Tree Preservation Ordinance that were unanimously adopted by the Urban Forestry Committee in February after several months of discussion.

The committee has been told that recommendations of this sort must now be routed through the law department prior to being made available to the council. I asked for an update on when they might be forwarded at the March meeting of the urban forestry committee and was told that no estimates are available.

These recommendations are the result of a public meeting of one of the city's advisory committees. They are available on the city's website at <https://somerillema.gov/ufc>. I have also attached them to this email.

Thank you for your attention.

Sincerely,
Chris Dwan

The Somerville Urban Forestry Committee

A Memo: Suggesting revisions to the Tree Preservation Ordinance

Adopted: February 15, 2023

Summary:

The Urban Forestry Committee recommends that the city consider making nine independent updates to the Tree Preservation Ordinance. The sections below briefly justify each of these recommendations and provides example amendments that we believe would implement the desired changes.

The committee is grateful to the City for the opportunity to offer this advice, and would be happy to support the conversation around these proposals however seems best.

- 1. Adjust the appointment requirements and term of service for youth members.**
- 2. Adjust the 30-day grace period on fines for the removal of significant trees without a permit so that it applies only once per owner**
- 3. Replace the owner/occupant exemption (from the requirement to replace trees or pay into the tree fund) with a 90% reduction in fees instead.**
- 4. Create a “duty of care” to protect trees on all construction sites.**
- 5. Make each serious injury to a shade tree a separate infraction of the ordinance**
- 6. Create specific standards for tree protection during construction**
- 7. Create a permit process under which residents can apply for permission to prune city owned trees**
- 8. Specify penalties and clarify how violations shall be enforced**
- 9. Adjust the language around large Norway Maples**

1. Adjust the appointment requirements and term of service for youth members.

Recruiting and retaining youth members has been a challenge for the UFC. The long timelines involved in Mayoral appointments and Council approvals can result in a youth member attending only a few meetings before they graduate or experience significant changes in responsibility and schedule at the boundary of an academic year.

The committee suggests that youth members should serve one-year, renewable terms, and that those terms should be aligned with the school year (September through August). We also suggest that the requirement for city council confirmation should be removed, allowing the Mayor to seat youth members on the committee without council review.

Proposed action: Amend article 6, Section 12-105 (“Urban Forestry Committee”), Subsection 3 (“membership”):

~~Nine~~ *Seven* 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 14 and 17 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, *and*

Two members of the public between the ages of 14 and 18 and the time of their appointment or re-appointment, each serving a term aligned with the City of Somerville’s academic calendar (September through August), selected by the Mayor.

2. Adjust the 30-day grace period on fines for the removal of significant trees without a permit so that it applies only once per owner

When the Tree Preservation Ordinance was passed in 2019, the process for issuing tree removal permits was entirely new. There was concern that property owners might be caught by surprise and incur fines through ignorance of the new law. To address that concern, the council introduced a 30-day grace period, allowing residents to retroactively apply for a permit and avoid incurring a fine.

Four years have passed, and the argument from surprise or ignorance is significantly weaker now. We believe that it is in the spirit of the ordinance to allow this grace period only once per owner and to begin to penalize repeat offenders immediately.

Proposed action: Amend article 6, Section 12-112 (“Removal of private trees”), Subsection 6 (“Enforcement”), part “a” as shown below:

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 or immediately in the case of a second or subsequent violation by the same property owner. Each business day thereafter, until an application is filed, shall constitute a separate violation of this section. On the first offense by a particular owner,

3. Replace the owner/occupant exemption (from the requirement to replace trees or pay into the tree fund) with a 90% reduction in fees instead.

When the Tree Preservation Ordinance was passed in 2019, the Council created an exemption to the permit process under which owner/occupants receive a waiver from the requirement to either plant replacement trees or to pay into the tree fund. At that time, the public was primarily concerned with thoughtless, large-scale clear-cuts by developers. Including this waiver was a way to focus debate on that concern and to avoid getting bogged down in what might, at the time, have been a fractious conversation.

The UFC regularly hears complaints from residents who, learning about this exemption, are baffled that we have such a glaring loophole in our tree protections. The public conversation around protecting and expanding our urban canopy has advanced in recent years, and many residents have told us that the tree preservation ordinance should be strengthened.

At the same time, we appreciate that mature trees can cost thousands of dollars per year in arborist services and require substantial work to clear leaves in the fall, which could be a significant burden, particularly for owner/occupants with financial or health constraints.

We note that exemptions are already available for hazardous trees, trees that are damaging private property, and for invasive species. In addition, paragraphs “c” and “d” of this subsection grant the Tree Warden substantial discretion to waive fees for other reasons.

As a compromise, we propose a modest strengthening of the ordinance to offer significantly reduced costs for owner/occupants rather than a complete exemption.

Proposed action: Amend Article 6, Section 12-112 (“Removal of private trees), Subsection 3 (“Conditions for granting a tree permit”) as shown below:

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~~ reduction in the amount of 90% to 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~~ reduced based on said owner-occupancy status as described in section committee above; said ~~waiver~~ reduction 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~~ any fees that were waived, unless such new owner is eligible for an owner occupant ~~waiver~~ reduction under section committee above.

4. Create a “duty of care” to protect trees on all construction sites.

Cambridge has recently modified their Tree Protection Ordinance to add the clause below:

Upon issuance of any City of Cambridge permit by the Inspectional Services Department, Department of Public Works, Water Department, Electrical Department or Traffic, Parking and/or Transportation Department the permit holder is required to take reasonable precautions to ensure that all Significant Trees on the Lot are adequately protected and maintained free from harm from work associated with the permit issued. Failure to adequately protect and maintain Significant Trees free from harm may result in a fine in accordance with 8.66.090, and failure to adequately protect Significant Trees that results in a Significant Tree being removed within two (2) years of the failure to protect being noted may result in a fine in accordance with 8.66.090 and a Mitigation Payment that reflects the value of the Significant Trees removed in accordance with 8.66.080.

We believe that language like this, with appropriate changes to apply to Somerville’s departments and fines, would be a huge boon to protecting trees citywide from accidental or careless destruction.

5. Make each serious injury to a shade tree a separate infraction of the ordinance

Unauthorized damage to or removal of Public Shade Trees

- c. Public Shade Trees are protected by Massachusetts state law, Chapter 87. No Public Shade Tree may be pruned, removed, or otherwise damaged—above or below ground—without written consent from the Tree Warden. For the intents of this ordinance, “damage” shall include but not be limited to unauthorized pruning, improper pruning, breaking or tearing of branches, wounding of the bark, excessive compaction of soil within the tree’s critical root zone, breaking or tearing of roots, and unauthorized root pruning.

6. Create specific standards for tree protection during construction

Protection of Public Shade Trees during construction

- a. Any construction activity on public or private property taking place within 50 feet of a Public Shade Tree will require proper tree protection measures as approved by the Tree Warden. During all construction projects, the utmost care shall be taken by the contractor to avoid unauthorized, unnecessary or improper wounding of public trees. Prior to construction, the contractor shall provide a tree protection plan and work schedule. A Massachusetts or International Certified Arborist shall be sub-contracted by the contractor to provide a protection plan and perform specified work. All plans and schedules shall be subject to review and approval by the Tree Warden.
- b. Pre-construction tree protection measures shall include the following:
 - i. Wrapping the trunks of trees with a diameter at breast height (DBH) of 6" or greater with a durable material such as two by four lumber sufficient to protect tree trunks from mechanical damage. Removal of protective wrapping shall be done by the contractor after construction is complete.
 - ii. The proper pruning (raise pruning) of low branches to a height no greater than fourteen feet (14") above the roadway and eight feet (8") above the sidewalk. This includes trees endangered by traffic re-routing as the result of construction operations.
 - iii. Traffic control plans shall be designed in such a way as to direct traffic away from tree trunks and branches.
 - iv. Tunneling shall be the preferred method of excavation adjacent to tree roots to avoid root pruning. If root pruning is unavoidable, certified personnel shall execute the operation with sufficiently sharpened hand tools and in such a fashion as to have minimum negative impact on tree health and safety. Root pruning shall take place only with written approval from the tree warden.
 - v. Trucks and heavy equipment shall not pass over or park on roots of public shade trees. A protection zone shall be established by erecting a ridged fence outside the perimeter of the dripline of the tree. If the tree is in a sidewalk tree well, the fence shall cover the extent of the sidewalk opening. For occasional or one time access over roots, ½' plywood overlapped may be used. Permeable materials such as gravel or wood chips shall be placed over root systems of trees which are not covered by hardscape and over which trucks and heavy equipment must travel during construction operations, when such travel is unavoidable, to prevent soil compaction and root damage. Material shall be replaced as needed.
 - vi. All tree protection measures and operations shall be subject to review, approval or change by the Tree Warden.

7. Refine the permit process under which residents can apply for permission to prune city owned trees

Pruning permits

- a. *Permit required:* No person may prune any City-owned tree without first obtaining a tree permit from the tree warden.
- b. *Application for a pruning permit:*
 - i. Applications must be made in writing on forms specified by the tree warden.
 - ii. The tree warden or their designee will review applications for pruning permits in accordance with the provisions of this article. The Tree warden or designee shall date stamp or otherwise record the date of filing of each application for a pruning permit. And shall complete the review of each pruning 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 article the permit shall be considered issued.
 - iii. The application shall include a plan including the location, species and DBH of the tree and indicating the branches proposed for pruning or removal, their diameter at the point of pruning, and the rough percentage of the live crown area to be removed.
 - iv. There shall be no fee or charge to submit an application for a tree pruning permit.
- c. *Conditions for granting a tree pruning permit:*
 - i. Any pruning of a City-owned tree must be carried out by an arborist with a current Massachusetts or International Society of Arboriculture credential and conform to specifications approved by the Tree Warden. The arborist's credential number must be included on the permit application.
 - ii. No more than 20% of the live crown of a tree may be pruned and all pruning cuts must be made in accordance with ANSI A300 standards.

8. Create a new fine structure for how damage to public shade trees shall be enforced

Penalties

- a. M.G.L. Chapter 87 Section 12 states that a fine of up to five hundred dollars, (\$500.00) per incident of damage to public shade trees can be levied by the tree warden. Each branch broken, improperly pruned, or pruned without a permit, each improper wounding of the trunks of the trees, and each root improperly pruned shall constitute a separate infraction.
- b. Per Chapter 87 Section 12, anyone who negligently or willfully damages a Public Shade Tree will be held liable to the City for all damages. At the discretion of the tree warden they will be charged with the replacement cost of the damaged or removed tree plus treble damages in accordance with M.G.L. Chapter 242 Section 7.
 - i. The replacement value of the tree shall be determined based on the City's current cost of replanting new trees with total caliper inches equaling the tree removed or damaged, or using the Trunk Formula Technique (TFT) method of appraisal- whichever value is greater.
- c. Construction activities within 50' of a Public Shade Tree without an approved tree protection plan or in violation of the approved tree protection plan will result in a fine as established in section 1-11 of the Somerville Code of Ordinances. Each business day after initial notification of violation shall constitute a separate violation until the infraction is rectified.

Enforcement

- a. If a fine is issued for damages to a Public Shade Tree in accordance with M.G.L. Chapter 87, payment must be made within 30 days of receipt of notification of damages. Failure to make payment by this deadline shall result in an additional fine as established in section 1-11 of the Somerville Code of Ordinances. Each business day thereafter shall constitute a separate violation.
- 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.
- c. *Stop work order:* Upon notice that a Public Shade Tree has been removed or damaged without a permit, or that construction is taking place within 50 feet of a Public Shade Tree without approval of or compliance with a tree protection plan, work may 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.

9. Adjust the language around large Norway Maples

The 2019 ordinance defined Somerville's list of invasive plants in terms of the Massachusetts Prohibited Plant List (MPPL). In late 2020, the Council created an exemption for particularly large Norway Maples (at least 24 inches in diameter). Practically speaking, this meant that homeowners would be required to obtain a permit and pay into the tree fund when they removed these large trees. The reasoning behind this was that large trees provide substantial benefits (cooling, traffic calming, shade, reduction in energy utilization), regardless of species. The council at the time felt that those benefits counterbalanced their negative effects, primarily of inhibiting understory growth and squeezing out more ecologically useful species.

The Committee has discussed this on multiple occasions and has not come to a clear consensus. These trees do provide benefits such as shade, cooling, and beauty. At the same time, they cause ecosystem harm by pushing out more desirable species and inhibiting understory growth.

We suggest that the city should certainly remove the language claiming that Norway Maples somehow cease to be invasive when they reach 24 inches of diameter. They do not. If the council wants to continue to protect these large, invasive trees, we suggest adding language like the below to the definition of a "significant" tree.

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. ~~However, Norway Maples and other trees larger than 24 inches DBH (diameter at breast height) except for Tree of Heaven (Ailanthus altissima) shall not be considered invasive plants.~~

Significant tree: Any living tree that is not an invasive plant and is eight inches or more in DBH, and any living tree that is an invasive plant and is over 24 inches DBH (diameter at breast height) except for Tree of Heaven (Ailanthus altissima).

Thank you for your consideration.

Sincerely,

The Urban Forestry Committee of Somerville
Leah Grossman and Tori Antonino, Co-Chairs