

Memorandum

To: Legislative Matters Committee

From: Meredith Stivers, Assistant City Solicitor

Date: April 14, 2025

Subject: Tree Ordinance amendments – Stop Work Order and Enforcement

- The stop work order provision of the tree ordinance as written states that the director of inspectional services or designee shall issue stop tree removal work. As written, the provision does not address stopping construction and it is the law department’s interpretation that issuing a stop work order to stop construction at a site for tree violations could be vulnerable to a successful legal challenge because a building code stop work order may only to be used as a remedy for building code violations. To the extent that a stop work order is limited to only tree-related work, it might be less susceptible to challenge. Alternatively, the City Council may wish to amend the stop work provision so that the Tree Warden, not the ISD director, has the authority to issue a stop work order that is limited to tree-related work and not construction.
- The current Stop Work language in 12-112(6)(b) says:
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. [Emphasis added.]
- The Stop Work Order under the State Building Code 780 CMR is exclusively a remedy for the building official to enforce the State Building Code or where a permit was issued in error.
 - **780 CMR 115.1** states, “Whenever the building official finds any work regulated by 780 CMR [MA State Building Code] being performed in a manner either contrary to the provisions of 780 CMR or dangerous or unsafe, the building official is authorized to issue a stop work order.”
 - Landscaping work to remove a tree is currently outside the scope of 780 CMR.
- ISD’s past experience is that stop work orders are not practical to administer in tree-related scenarios.
 - Stopping tree removal while in process can be dangerous.
 - ISD does not have the expertise that the Tree Warden or PSUF have about trees.

- The stop work order provision could be amended to 1) make it enforceable by Tree Warden/PSUF, so that they could make a determination about tree health and viability and 2) limit it to work which is not regulated by 780 CMR (landscaping work to remove a tree, etc).
 - *Stop work order:* Upon notice ~~from the tree warden or designee~~ that ~~a tree~~~~s are~~ *is* being removed *or pruned* 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.
- In situations where current Tree Protections are inadequate, a formal order to correct and install necessary Tree Protections may be issued by the enforcing authority. The proposed amendment to the Tree Ordinance specifically leaves other options open: SCO 12-113(a) “The city may institute other remedies to abate violations of this article, as permitted by law..”
- Adding language to the ordinance about suspension/revocation of tree permits will also strengthen enforcement options.
 - Proposed additional text for the ordinance. (This language is similar to Newton’s ordinance).
 - 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 or exemption permit upon compliance, where practicable.
 - Suspension/revocation provisions could also be added to the Tree Removal Permit in the case that work to remove trees does not conform to approved plans.