

Newport Tree and Open Space Commission

December 1, 2020

Madam Mayor and Council Members:

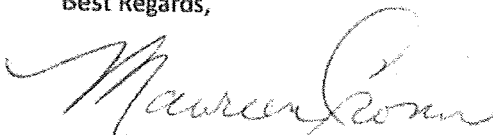
On behalf of the Newport Tree and Open Space Commission, I am submitting a proposed revision to the current Newport Tree and Open Space Commission Ordinance and a request for your support and endorsement. These changes better align the Commission with the Newport Open Space Master Plan (NOSMP) which the Council adopted in 2017. In the NOSMP, there is significant attention paid to the need for public input and information about the current and proposed use of our city's open space and parks, as well as to the future natural environment.

Our commission serves as an advisor to the Council. We are requesting this revision to serve in that advising role more effectively regarding projects that involve city open space and natural environment. We propose that the Commission be the formal public meeting forum for community information-sharing and for projects that involve changes to community open space. Our goal is to memorialize the NOSMP recommendation of public input and involvement in the end use of the natural environment in our city. We do not seek any enforcement role, rather our goal is to provide a forum for community input so that we can best advise the Council.

This revision was written with the assistance of the Newport Open Space Partnership and has been accepted by the Newport Tree and Open Space Commission members. It has been reviewed and edited by the City Solicitor.

I invite your consideration of this proposed revision and will gladly address questions.

Best Regards,



Maureen Cronin

Chair, Newport Tree and Open Space Commission

CC: Newport Open Space Partnership

Chapter 12.36. - TREE AND OPEN SPACE PRESERVATION AND PROTECTION

12.36.010. - Intent and purposes.

- A. An ordinance regulating the protection, maintenance, removal and planting of trees in the public rights-of-way, parks, and all public property within the city, and in designated cases, on private property.
- B. An ordinance establishing the Newport Tree and Open Space Commission which, together with the tree warden, shall recommend for city council approval the establishment of regulations relating to the protection, maintenance, removal, and planting of trees in the above-mentioned public and private places, providing for the maintenance ~~of or~~ removal of trees on private property when the public safety is endangered and prescribing penalties for violations of its provisions, as amended. The provisions of this chapter shall apply to all property within the city, public or private, and to any person, firm, corporation, or public or private utility except as may be otherwise provided for herein.
- C. The intent of this chapter is to establish city policy and protective regulations regarding the preservation, protection, maintenance, removal and planting of trees to protect the health, safety and welfare of the citizens of Newport. Said chapter shall establish standards regulating the removal of and insuring the replacement of trees sufficient to:
1. Safeguard the ecological and aesthetic environment necessary to a community;
 2. Aid in the stabilization of soil by the prevention of erosion and sedimentation;
 3. Reduce storm water runoff and costs associated therewith and replenish ground water supplies;
 4. Aid in the removal of carbon dioxide and the generation of oxygen in the atmosphere and in the reduction of global warming;
 5. Provide a buffer and screen wherever possible against noise pollution as well as air pollution;
 6. Provide protection against glare, heat and severe weather conditions;
 7. Provide a haven for birds which, in turn, assist in the natural control of insects;
 8. Protect and increase property values;
 9. Conserve and enhance the city's physical, aesthetic and historic environment and generally protect and enhance the quality of life and general welfare of its citizens;
- D. In addition to the aforementioned roles, the Newport Tree and Open Space Commission shall:
1. Assist in the implementation of the adopted Newport Tree, Park and Open Space Master Plan ("Master Plan") and make recommendations to the City Council concerning the same;
 2. in addition to its tree-related responsibilities, also advise After holding community hearings thereon, advise the city council on acquisition, management, preservation and improvement of city parks and open spaces in order to enhance and protect the quality of life of the city's citizens; and
 3. Exercise such other responsibilities as may be provided for herein.
- E. The Newport Tree and Open Space Commission shall aid in the implementation of the adopted Newport Tree, Park, and Open Space Master Plan (hereinafter "Master Plan") by conducting public workshops tree, park, and open space on plans, guidelines, and projects related to the Master Plan to allow for public comment and to make recommendations to the City Council where city action is necessary input. The Newport Tree and Open Space Commission shall also review the proposed plans, guidelines, and projects for consistency with the Newport Tree, Park, and Open Space Master Plan as adopted by the Newport City Council on July 12, 2017 and make recommendations to other city boards and commissions as to such consistency.

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-(Ord. 2008-25 § 1 (part), 2008; Ord. 10-91 § 1 (part), 1991)

12.36.020. - Short title.

This chapter shall be known and may be cited as the Newport Tree and Open Space Preservation and Protection Ordinance.

(Ord. 2008-25 § 1 (part), 2008; Ord. 10-91 § 1 (part), 1991)

12.36.030. - Definitions.

For the purposes of this chapter, the following terms, phrases, words and their derivatives shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future and words in singular number include the plural number. The word "shall" is always mandatory and not merely directory. Doubts as to the precise meaning of other words shall be determined with reference to the Rhode Island General Laws and Webster's Third New International Dictionary, respectively.

"Applicant" means a person who is applying for a license or permit as required by this chapter.

"Approval" means written assent from the Newport Tree and Open Space Commission or the tree warden pursuant to a fully executed application for approval made on a form promulgated by the city.

"Arborist" means a person engaged in the professional practice of tree care and licensed by the state of Rhode Island as a "Certified Arborist."

"Building" means any roofed and walled structure built for the support, shelter or enclosure of persons, animals, chattels, or properties of any kind.

"Building permit" means a permit issued by the city, after the necessary official review, to a party proposing to fell trees, clear, excavate, or fill land or commence alterations to a structure, or commence erection of a structure, or to move an existing structure. Such permit recognizing the proposed work, complies with the provisions of this chapter and other pertinent ordinances of the city.

"Building site" means that portion of a lot which is occupied by a building or that portion of a site which is proposed to be occupied by a building and for which a building permit is required, said building site to include vehicular and pedestrian circulation areas.

"Caliper" means the diameter of any tree trunk at breast height, or four and one-half feet (1.35m) above ground line.

"Central leader pruning" means the removal of a tree's main growing stem.

"City" means the city of Newport, Newport County, state of Rhode Island.

"Cutting back" means the same as drop crotch pruning (see definition of "drop crotch pruning").

"Destroy" means any intentional or negligent act which will cause a tree to decline within a period of three years.

"Diameter breast height" means the diameter of a tree as measured at breast height (four and one-half feet or 1.35m) above the natural grade at the base of the tree. In cases where a tree has developed more than one trunk or branches below the four-and-one-half-foot height above natural grade, measurement to determine if such tree has achieved the size sufficient to be considered a protected (or heritage) tree shall following the formula used by the National Tree Registry Program of the U.S. Forest Service which provides that the circumference of each stem or branch at the four-and-one-half-foot height will be measured at that level and the circumference of the largest stem will be counted together with one-half of the circumference of each additional stem or branch to come up with a total equivalent circumference. Diameter breast height may be referred to as DBH.

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"Diseased tree" means a tree or part thereof which has become blighted, defaced, caused to decline as a result of defacement, or acquired a disease.

"Drip line" means a vertical line extended from the outermost portion of a tree canopy or crown to the ground.

"Drop crotch pruning" means the reduction of tops, sides, under branches, or of individual tree limbs to be taken as specified in the International Society of Arboriculture, Western Chapter 5/9/88, revised 6/6/88.

"Historic tree" means any public tree which has been designated by the Newport Tree and Open Space Commission to be of notable historic value or interest because of its type, age, size, or historic association.

"Interference" means the hindrance, delay, prevention or intervention of the tree warden or his assigns while engaged in the implementation or enforcement of this chapter.

"Inventory of existing trees" means the classification as to location, species, size, condition, and evaluation of existing trees on Newport's streets, parks, and other public places. This inventory shall be an integral part of the master systematized tree management and planting program for Newport. The inventory shall include those trees identified as historic or protected as defined in this chapter.

"Licensee" means a person with a valid license as required by this chapter.

"Open space" means mostly un-built and vacant private or public land which contains conservation values (such as scenic values, wildlife habitat values, public recreational values, historic values, agricultural values, and/or water resource values) beneficial to a community.

"Park" means any city-owned public space designated for the use of the public for recreation, passive enjoyment, and/or conservation.

"Park tree" means any and all trees now or hereinafter growing in a park.

"Person" means any person, firm, partnership, association, corporation, company, or organization of any kind, including public utilities.

"Protected tree" means any privately-owned tree which has been nominated by its owner and accepted by the Newport Tree and Open Space Commission to be of such noteworthy interest or high value to the community because of its type, age, size or historical association that it shall be deemed to be in the custody of that community and its official assigns.

"Pruning" means the removal of branches greater than two inches in diameter.

"Pruning standards" means officially recognized by this chapter and those designated to enforce it as those standards set forth by the International Society of Arboriculture, Western Chapter, dated May 9, 1988, as revised by that organization from time to time and as amended by this chapter.

"Public tree" shall include all trees now or hereinafter growing in any public right-of-way, park or public property within the city.

"Removal" means uprooting, severing the main trunk of the tree or any act which causes or may reasonably be expected to cause the tree to decline and die, including but not limited to damage inflicted upon the root system by machinery, storage of materials or soil compaction; substantially changing the natural grade at the root system or around the trunk; excessive pruning; or paving with concrete, asphalt or other impervious materials in a manner which may reasonably be expected to kill or seriously damage the tree within three years.

"Replacement tree" means any tree that is planted in order to replace an existing tree which must be or has been removed. Replacement trees must have a minimum DBH size of two and one-half to three inches in caliper or twelve (12) to fourteen (14) feet in height. The tree warden may require a larger size or multiples of trees based on the size and value of the tree to be replaced.

"Right-of-way" means that property located within the adjoining streets, roads and highways within the city, which rights-of-way are owned by the city or otherwise accepted for maintenance by the city.

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"Root system" means that part of the tree responsible for the absorption and conduction of water and nutrients, anchorage of the tree to the soil, and in some places, reproduction by sprouting.

"Systematized tree management and planting program" means a comprehensive administrative program which insures the regular maintenance and enhancement of the city's urban forest and which includes, but is not limited to:

- A. A regularly updated one hundred (100) percent inventory of Newport's public, historic, and protected trees;
- B. A comprehensive maintenance plan for Newport's urban forest;
- C. A comprehensive tree removal plan;
- D. A comprehensive tree planting plan.

"Tree" means:

- A. Any living, self-supporting, woody perennial plant with needle or scale-type leaf and which has a well-defined stem(s) with a caliper of at least six inches (15.24 cm) at five inches (12.7 cm) from the ground level;
- B. Any living, self-supporting, woody broadleaf plant what has a well-defined stem(s) with a caliper of at least two inches (5.08 cm) at five inches (12.7 cm) from ground level.

"Tree pit" means the hole dug in which the tree is to be placed for planting. The size of the hole is relative to the size of the rootball and should be no less than twenty-four (24) inches wider than the width of the rootball and no less than twelve (12) inches deeper than the depth of the rootball.

"Tree topping" means the cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

"Tree warden" means the municipal arborist appointed as the designated qualified official of the city assigned to carry out the enforcement of this chapter.

"Tree well opening" means the ground area surrounding the base of the tree not covered by sidewalk and paving.

"Trimming" means the removal of nonessential branches less than two inches in diameter.

(Ord. 2008-25 § 1 (part), 2008; Ord. 10-91 § 1 (part), 1991)

12.36.040. - Applicability.

The tree-related terms and provisions of this chapter shall apply to all public property with the city, as well as historic and protected trees while the open-space-related terms and provisions of this chapter shall apply to all open spaces within the city. The provisions of this chapter shall not limit the applicability of the historic district ordinance, Newport zoning ordinance or tree preservation provisions of the rules and regulations governing subdivisions in the city. The terms of this chapter shall be consistent with any requirements imposed by state law.

(Ord. 2008-25 § 1 (part), 2008; Ord. 10-91 § 1 (part), 1991)

12.36.050. - Newport Tree and Open Space Commission.

- A. Establishment. There shall be created by this chapter a commission, hereinafter referred to as the commission for purposes of this chapter. The commission shall be composed of nine members who shall be appointed for three-year staggered terms by the city council from among the eligible residents of the city. The tree warden shall serve as a nonvoting member, ex officio.

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B. Appointment. The city council, when appointing members to the Newport Tree and Open Space Commission, shall give consideration to those persons interested in the conservation and preservation of trees and the urban forest and open spaces of Newport. The commission shall, to the extent practicable, include:

1. A licensed arborist;
2. A professional landscape architect or landscape gardener;
3. A person with real estate expertise;
4. A horticulturist or garden club member;
5. A member of a recognized environmental protection organization; and
6. Lay citizens committed to tree and open space preservation.

With the exception of the tree warden, all members of the commission shall serve without pay or compensation. Within two months of the annual installation of new full-term members, the commission shall select from its voting members a chairperson and a vice-chairperson who shall serve annual terms.

C. Terms. The members appointed by the city council shall be appointed for three years and serve until their successors are duly appointed and approved by the city council. Successors to those members appointed by the city council shall thereafter be appointed for terms of three years. Vacancies caused by death, resignation, or otherwise, shall be filled for the unexpired term in the same manner as original appointments are made, maintaining at all times the distribution of membership qualification as required by this chapter. No voting commissioners shall serve more than two consecutive three-year terms. A majority of voting members shall constitute a quorum.

D. Duties. The Newport Tree and Open Space Commission shall:

1. Promote the conservation, planting, health, and growth of trees in Newport with the particular objective of protecting and nurturing a healthy growing urban forest for the benefit of Newport and its citizens;
2. Advise the city council based on an annual reevaluation of experience under the chapter, provide leadership in the development of understanding of the objectives and methods of a municipal systematized tree management program, and recommend to the city council any legislation, plans, policies, and programs complementary to the intent and purpose of this chapter;
3. Establish rules of procedure for whatever regular and special meetings are deemed by the commission to be advisable and necessary to the fulfillment of the duties imposed upon this chapter, consistent with the Rhode Island State Code, Newport City Charter, and the city code, including the open meetings law;
4. Draft and submit for city council approval an annual systematized tree management and planting plan which shall be part of a five-year master systematized tree management and planting plan which shall be revised annually and incorporated into the city's capital improvement program and annual (operating) budget. Said master and annual systematized tree management and planting plans shall include but not be limited to:
 - a. Policies concerning maintenance, removal, selection, and planting of trees on city property and under the jurisdiction of this chapter;
 - b. Policy concerning the allocation of funds, expenditures of funds, and requests for funds for the purpose of public tree maintenance and planting;
 - c. The establishment of and systematic updating of a one hundred (100) percent public tree inventory;
 - d. Educational and informational programs whereby the public may be notified of any matters pertaining to the Newport tree and open space preservation and protection ordinance, the

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systematized tree management and planting program, as well as tree-related city rules and regulations;

5. Coordinate with other governmental bodies which have jurisdiction over trees as part of their areas of responsibility to ensure that all branches of the Newport city government, including the school department, shall work together to promote, protect, and preserve those trees which are a part of the city's total urban forest;
6. Coordinate efforts to promote the planting of new trees and to protect and preserve existing trees which make up part of the city's urban forest that are located on private properties in the city by making available to the public information concerning proper species selection, tree planting methods and proper tree maintenance;
7. Establish an on-going education program regarding the aesthetic, social, and environmental value of trees, as well as the care of trees, including the city's systematized tree management and planting program;
8. Coordinate efforts by individual citizens, businesses, neighborhood or charitable organizations, and other groups wishing to donate monies, volunteer work, information, or any other manner so as to protect, preserve, and enhance Newport's urban forest;
9. The Newport Tree and Open Space Commission shall recommend the adoption of such rules and regulations as deemed necessary to carry out the intent and enforcement of this chapter. Said rules, regulations, and permits shall include but not be limited to the planting, maintenance, removal, fertilization, pruning, or any act which will, in any other way, affect public or protected trees and shall be adhered to by any and all persons.
10. The Newport Tree and Open Space Commission, with the assistance of the tree warden, shall establish and maintain a record of "historic" and "protected" trees of Newport, which shall be made a permanent part of the "inventory of existing trees";
11. The Newport Tree and Open Space Commission shall serve as a quasi-judicial body for hearing and deciding appeals from any order, requirement, or decision, or determination made by the tree warden relating to trees, provided that the appropriate written appeal from said determination has been filed. The commission shall meet to hear the applicant's appeal within thirty (30) days of the filing of said appeal. The tree and open space commission shall hold hearings on appeals and render its written opinion affirming, modifying, or overturning the decision of the tree warden as may be fit and proper under the conditions of this chapter within thirty (30) days of the hearing thereon. The commission's written opinion shall be mailed to the applicant. The decision of a majority of the appointed members of the tree and open space commission with regard to such appeal shall be binding on the parties. Nothing in this section shall be construed to limit the jurisdiction of any court of law with respect to such appeals.
12. The Newport Tree and Open Space Commission, in its advisory capacity on open space matters, shall also do the following: identify open space parcels significant to the city; inventory all city-owned open spaces, including public parks, and identify required protection enhancement for those city-owned open spaces lacking adequate protection; educate the public about the benefits of open space acquisition and protection; advise on local, state and federal open space funding initiatives, such as open space bond referenda, coordinate efforts with local, state and federal conservation organizations; and make recommendations to the city council and other appropriate public bodies regarding open space protection.
13. ~~The Newport Tree and Open Space Commission shall aid in the implementation of the Newport Tree, Park, and Open Space Master Plan by serving as the public forum for input on all tree, park, and open space plans, guidelines, and projects. Any plans, guidelines, and projects shall be consistent with the Newport Tree, Park and Open Space Master Plan as adopted by the Newport City Council on July 12, 2017.~~

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The Newport Tree and Open Space Commission shall also review the proposed plans, guidelines, and projects for consistency with the Master Plan as adopted by the Newport City Council on July 12, 2017 and make recommendations to other the City Council, city boards and commissions as necessary as to such consistency. The Newport Tree and Open Space Commission shall make recommendations with regard to plans, guidelines, and projects to the Newport City Council.

The Newport Tree and Open Space Commission shall act as an Advisory Board to the City Council and City Staff by accepting public comment at community hearings, reviewing and providing recommendations for projects involving new public parks and open spaces, major renovations to public parks and open spaces, and other significant planning efforts involving public parks and open spaces, including but not limited to such recommendations as to the consistency of a project with the Master Plan. The Commission shall provide for public review and comment for such projects when such is required by law or is a condition for grants or funding for such projects, or is deemed to be consistent with the provisions of the Master Plan. The Commission may also conduct such other public outreach for its review which is consistent with the provisions of the Master Plan.

(Ord. 2008-25 § 1 (part), 2008; Ord. 10-91 § 1 (part), 1991)

(Ord. No. 2011-008, § 1, 4-27-2011; Ord. No. 2012-005, § 1, 2-22-2012)

12.36.060. - Tree warden—Appointment—Qualifications—Duties—Authority.

- A. Appointment and Qualifications of the Tree Warden. The tree warden shall be appointed by the city manager. Said person shall have training and experience in arboriculture, and shall have passed the Rhode Island Arborist exam.
- B. Duties of the Tree Warden.
 - 1. The tree warden shall affirm and endorse the purpose and intent of the Newport tree and open space preservation and protection ordinance and shall cause the provisions of this chapter to be enforced;
 - 2. The tree warden shall, with the advice of the Newport Tree and Open Space Commission and the approval of the city council, prepare and enact an annual systematized tree management and planting program for the city which shall be prepared as an integral part of a master systematized tree management and tree planting plan which shall be adopted every five years starting with the inception of this chapter;
 - 3. The tree warden is further charged with keeping informed of environmental and technical changes that could affect the city's public and protected trees;
 - 4. It shall also be the duty of the tree warden to implement such rules, regulations, and permit and penalty procedures as are deemed necessary to carry out the intent and enforcement of this chapter;
 - 5. The tree warden shall communicate and work with all civic and public interest groups interested in or devoted to tree care, preservation or planting.
- C. Authority of the Tree Warden.
 - 1. The tree warden shall have the authority and jurisdiction of regulating and enacting the maintenance, removal, and planting of public and protected trees to insure public safety, preserving the aesthetics of public sites with regard to trees, and protecting the value and health of Newport's urban forest as a whole;

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2. The tree warden shall consider the existing and future utility and environmental factors when recommending a specific species for each of the streets and other public sites and when issuing permits for tree work, removal, or planting;
3. The tree warden shall have the responsibility of regularly updating the master systematized tree management and planting program;
4. The tree warden shall have the authority to review all requests for permits for any planting, removal, pruning, and/or trimming or cutting of trees in any public area, with the exception of an historic or protected tree. He shall also have the authority to grant or deny and to attach reasonable conditions to all permits with the exception of those specifically exempted herein;
5. The tree warden shall enforce such rules, regulations and permit and penalty procedures as are deemed necessary to enforce the intent of this chapter.

D. Authority of the Tree Warden to Treat or Remove Trees on Private Grounds.

1. The tree warden or his agents, under the power herein given, may cause or order to be removed, trimmed, or treated, any tree or part thereof on private grounds which is in an unsafe condition so that it poses a threat to the public or public property or which by reason of its nature is injurious to sewers or other public improvements or rights-of-way, or is afflicted with an injurious fungus, insect, or other pest so as to constitute a threat to the health of the city's urban forest;
2. The tree warden or his agents shall have the power to enter upon any private grounds in the city to treat or cause or order to be treated, any tree infested by a parasite insect or pest, when it shall be deemed necessary in his opinion to do so to prevent the breeding of any parasite or animal pest, and to prevent danger therefrom to persons or property, or to trees planted in the public streets or other public places. Due notice shall be given to the property owner prior to any action on the part of the tree warden;
3. It shall be unlawful for any person to hinder, prevent, delay or interfere with the tree warden or any work being done by an employee of the city, while engaged in the lawful execution of this chapter. This shall not be construed as an attempt to prohibit the purpose of any legal or equitable remedy in a court of competent jurisdiction.

(Ord. 2008-25 § 1 (part), 2008; Ord. 10-91 § 1 (part), 1991; prior code § 1032.06)

12.36.070. - Public danger or obstruction—Trees pruned, removed or treated.

- A. It shall be the duty of any person(s) owning or occupying real property bordering on any public street or thoroughfare, upon which property there may be trees, to prune in such manner that they will not obstruct or shade street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs or obstruct the view of any street or intersection so as to pose a threat to pedestrian or vehicular safety. The minimum clearance of any overhanging portion thereof shall be eight feet (2.44 m) over sidewalks, and fourteen (14) feet (4.27 m) over all streets and thoroughfares and/or at the discretion of the tree warden;
- B. It shall further be the duty of any person owning or occupying real property upon which there may be tree(s), to prune, remove, or treat any tree(s) or part thereof which is in an unsafe condition or which, by reason of its nature, poses a threat to persons or public property, or is injurious to sewers or other public improvements or rights-of-way, or is afflicted with an injurious fungus, insect, or other pest so as to constitute a threat to the health and welfare of the public as well as that of the city's urban forest;
- C. Notice to Prune, Remove or Treat Tree(s) on Private Property.
 1. Should any person owning real property bordering on any street fail to prune, remove or treat tree(s) as herein above provided, the tree warden shall inform such person that corrective

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action shall be taken within three weeks or sooner, depending on the seriousness of the problem, upon receipt of a written notice from the tree warden;

2. The order required in this section shall be a written notice, served by certified mail, from the tree warden to the property owner at his or her last known address;
3. When a person to whom an order for tree care is directed fails to comply within a reasonable time, it shall be lawful for the tree warden to take such action as is necessary to insure public safety and that of the urban forest. A charge for services rendered will be assessed to the property owner and shall constitute a property lien in the event it remains unpaid.

(Ord. 2004-42 § 1, 2004; Ord. 10-91 § 1 (part), 1991; prior code § 1032.07)

12.36.080. - Planting trees on any public street or public place.

- A. Any person desiring to plant a tree upon any public street or public place must first obtain a permit from the tree warden. Any permit shall be granted to a date certain and shall include consideration of appropriateness of species, location, size, and public safety.
- B. Should the planting(s) be performed by persons other than the tree warden or his agents, the proposed method and workmanship for planting as prescribed by the tree warden shall be adhered to.
- C. A planting plan is required where more than six trees are to be planted.
 1. Any person desiring to plant more than six trees on public streets or on public places shall, in addition to applying for a permit, submit a plan or written statement in duplicate to the tree warden, who shall return one copy to the applicant and keep one copy on file with the city. The tree warden shall consult with the Newport Tree and Open Space Commission prior to issuing a permit to plant.
 2. All planting plans shall show accurately:
 - a. The proposed park or public place site, or proposed street width, with any curbs, parking strips, driveways, sidewalks and adjacent structures accurately defined, to scale;
 - b. The proposed location of each proposed tree, together with the location of each existing tree within the proposed site in scaled relation to the other features of the plan;
 - c. The species of each and every tree proposed to be planted and of those already existing within the proposed site, either indicated on the plans or referenced with a number with a key list.

(Ord. 2008-25 § 1 (part), 2008; Ord. 10-91 § 1 (part), 1991; prior code § 1032.08)

12.36.081. - Planting trees on private property.

At the discretion of the tree warden, municipal resources may be utilized to plant shade trees upon private land adjoining public rights-of-way, at a distance not exceeding the maximum number of feet permitted from said public ways, pursuant to Section 2-4-10, Rhode Island General Laws, as amended, that will function as public tree(s) by improving, protecting, shading or beautifying the rights-of-way, provided that the written consent of the owner of such adjoining land shall first be obtained. Trees planted under this provision are the property of the landowner with all the rights and responsibilities that entails.

(Ord. 5-97 § 1, 1997)

12.36.090. - Emergencies.

The requirements of this chapter may be waived by the city manager in the case of emergencies such as windstorms, ice storms, or other disasters so that they, in no way, shall hinder private or public work to restore order in the city. This work shall following maintenance standards as outlined by the tree warden.

(Ord. 10-91 § 1 (part), 1991: prior code § 1032.09)

12.36.100. - Moving large objects.

No person shall move any building or any other large object that may injure public or protected trees or parts thereof, without first obtaining the written approval of the tree warden and abiding by his requirements.

(Ord. 10-91 § 1 (part), 1991: prior code § 1032.10)

12.36.110. - Prohibited activities.

It shall be unlawful for any person to damage, cut, carve, transplant, or remove any public, historic or protected tree, except as provided for under the terms of this chapter; attach any advertising posters, flags, vending machines, or any other contrivance to a tree; allow gaseous liquid or solid substance which is harmful to such trees to come in contact with them; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any tree as protected under this chapter.

(Ord. 10-91 § 1 (part), 1991: prior code § 1032.11)

12.36.120. - Permit required.

- A. All trees on any street or other publicly-owned property and any tree protected under the terms of this chapter near any excavation or construction or repair of any building, structure, or street work, shall be guarded with a good substantial fence, frame, or box not less than four feet high and eight feet by eight feet, or at a distance in feet from the trunk equal to the diameter of the trunk at DBH in inches, whichever is greater.
- B. No person shall excavate any ditches, tunnels, trenches, lay any drive, or place any building material, excess dirt, or other debris, within the dripline of any public or protected tree without first obtaining a permit from the tree warden.
- C. No person shall place, store, or maintain upon any public place of the municipality, any stone, brick, sand, dirt, concrete, or any other materials or chemicals which may impede the passage of water, air, and fertilizer to the roots of any tree growing therein or any protected tree except by valid permit of the tree warden.

(Ord. 10-91 § 1 (part), 1991)

12.36.130. - Standards.

In determining whether or not a permit should be granted, the tree warden shall consider the following:

- A. The condition of the tree or trees with respect to disease, insect attack, danger of falling, proximity to existing or proposed structures and interference with utility services;
- B. The necessity of removing the tree or trees in order to construct the proposed improvements to allow reasonable economic use of the property;

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- C. The effect of the removal on erosion, soil moisture retention, flow or surface waters and coordination with the master drainage plan of the city;
- D. The number and density of trees in the area and the effect of tree removal on property values of the neighborhood and other existing vegetation;
- E. Whether any tree in question is a tree worthy of preservation.

(Ord. 10-91 § 1 (part), 1991)

12.36.140. - Permit procedure.

- A. A permit shall be required but is not limited to planting, spraying, pruning, cutting above ground, removing, or otherwise disturbing any public or protected tree.
 - 1. A permit shall be a written document that authorizes the bearer thereof to perform the proposed work as outlined on such permit. The permit shall be issued only by the tree warden or his/her assigns.
 - 2. Any person desiring a permit, as required by this chapter, shall submit a written application, together with a processing fee, to the department of recreation and public services. Said processing fee shall be as specified by ordinance.
- B. Upon approval or rejection of said application, the tree warden shall either issue said permit or notify the applicant of rejection of the application.
- C. Planting. The tree warden shall have the right to make the determination as to location, species, cultivare or variety of each tree and the method of planting before issuing said permit. Applications shall be as specified in Section 12.36.080.
- D. Maintenance. The application required herein shall state the number and kinds of trees to be sprayed, fertilized, pruned, or otherwise preserved; the kind of treatment to be administered; the composition of the spray material to be applied; and such other information as the tree warden shall find reasonably necessary to a fair determination of whether a permit should be issued.
- E. Removal, Replanting and Replacement.
 - 1. Wherever it is necessary to remove a tree in connection with the paving of a sidewalk, or the widening of a portion of a street or highway, the city shall replant or replace the tree.
 - 2. No person shall remove a public, protected or historic tree for the purpose of construction or any other reason, without first filing an application and procuring a permit from the tree warden. The tree warden may require replacement of a removed tree or financial reimbursement for loss of tree as a condition to the issuance of a permit. Such replacement shall meet the standards of size, species and placement as provided for in a permit issued by the tree warden. The person or property owner shall bear the cost of removal and replacement of all trees removed.
- F. The tree warden shall be notified by the bearer of said permit upon satisfactory completion of designated work.
- G. Failure to Comply With Permit. If the tree warden determines that the permit holder has failed to comply with the terms of the permit and the plan set forth therein, the tree warden shall immediately serve upon the permit holder a notice to comply which shall be sent by registered or certified mail to the address specified by the permit holder in his/her permit application. Such notice shall set forth specifically the measures needed to come into compliance with such permit and shall specify the time within such measures shall be completed. If the permit holder fails to comply within the specified time, the holder may be subject to revocation of the permit and a penalty.

(Ord. 10-91 § 1 (part), 1991)

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12.36.150. - Enforcement.

Any person who violates any of the provisions of this chapter shall be notified by the tree warden of the specific violation by certified or registered mail, return receipt requested, or by hand delivery. The notice shall set forth the nature of the violation, the measures required to comply with the chapter, if compliance is at all practicable, and a reasonable time period within which compliance must be had.

(Ord. 10-91 § 1 (part), 1991)

12.36.160. - Appeal.

- A. In the event any applicant is dissatisfied with a decision of the tree warden or his designee which adversely affects such person involving the application of this chapter, said applicant may request a hearing before the tree and open space commission within thirty (30) working days of the receipt of the decision. The request must be in writing and directed to the tree warden.
- B. After hearing, the tree and open space commission shall issue its written opinion within ten working days, either affirming, denying, or modifying the decision of the tree warden. The commission's written opinion shall be mailed to the applicant.
- C. If the applicant remains dissatisfied with the ruling of the tree and open space commission, the applicant may appeal to the municipal court. Notice of the appeal must be filed within ten working days of his receipt of the commission's decision. This notice must be in writing and directed to the tree warden and the city manager.
- D. No tree subject to the provisions of this chapter shall be removed or in any way altered during the pendency of an appeal.

(Ord. 2008-25 § 1 (part), 2008; Ord. 10-91 § 1 (part), 1991)

12.36.170. - Exceptions—Waiver of chapter.

In the event that any tree shall be determined to be in a hazardous or dangerous condition so as to endanger the public health, welfare, or safety, and require immediate removal, pruning, or treatment without delay, verbal authorization may be given by the director of public safety and such treatment as shall be required to remedy the situation shall be undertaken without obtaining a permit as herein required.

(Ord. 10-91 § 1 (part), 1991)

12.36.180. - Replacement of trees destroyed in violation of chapter.

When trees are destroyed in violation of this chapter, equal replacement trees, or payment of the value thereof, shall be required unless exemption is granted by the tree warden. The size, species and quantity of these replacements shall be determined by the tree warden based upon the value of the trees removed, destroyed or damaged, as calculated by the latest formula published by the International Society of Arboriculture.

(Ord. 10-91 § 1 (part), 1991)

12.36.190. - Registration of tree experts.

To protect the public, the city shall require any person who removes or maintains trees on public property or protected trees as a business to be:

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- A. Certified by the state of Rhode Island as a licensed arborist;
- B. Covered by Workman's Compensation to the extent required by Rhode Island law and Public Liability and Personal Property Insurance in minimum amounts hereinafter mentioned adequate to cover and save harmless the city and its agents from all suits, claims, or actions of every class and nature, or on persons or property damage caused or claimed to be caused, directly or indirectly, by the conduct of the work.

(Ord. 10-91 § 1 (part), 1991)

12.36.200. - Liability.

Nothing in this chapter shall impose any liability upon the city, or members of the council, or any of its officials or employees, nor relieve the owner or occupant of any property from the duty to keep his private property, sidewalks and rights-of-way abutting such private property in a safe condition, free from hazards to public use.

(Ord. 10-91 § 1 (part), 1991)

12.36.210. - Utilities.

Any public or private utility companies, maintaining overhead wires or underground pipes, shall comply with all aspects of this chapter. Said public utility shall in no way injure, deface or prune any tree until their plans and procedures have been approved by the tree warden.

(Ord. 10-91 § 1 (part), 1991)

12.36.220. - Separability.

If any section, subsection, sentence, clause or phrase of this Newport tree and open space preservation and protection ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the remaining portions of this chapter. The council hereby declares that it would have passed this Newport tree and open space preservation and protection ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases are declared invalid or unconstitutional.

(Ord. 2008-25 § 1 (part), 2008; Ord. 10-91 § 1 (part), 1991)

12.36.230. - Violation—Penalty.

Any person convicted of violating any section of this chapter shall be subject to a fine of up to the maximum allowable in Newport municipal court and/or the value of the tree(s) removed or damaged.

(Ord. 4-94 § 1, 1994; Ord. 10-91 § 1 (part), 1991)

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