

# Update on Newton's Tree Ordinance

In early May, the Board of Aldermen passed revisions to Newton's Tree Preservation Ordinance. The changes were needed to ensure that the Ordinance, which has been in place since 1999, continues to be effective in preventing and mitigating the impact of tree loss due to construction and development activities. The recent boom in construction and high real estate values had highlighted problems and loopholes that needed to be addressed.

When it was passed in 1999, the Tree Preservation Ordinance was groundbreaking, one of the first of its kind in the region. It provided a process to protect trees on private property from damage or removal due to expansion or replacement of homes and commercial properties. It required trees removed by such construction and development activity to either be replaced "caliper for caliper" (i.e. one 8" diameter tree could be replaced by four 2" trees) or to pay into a city tree replacement fund. It is estimated that its passage has saved over 2,000 trees from removal and has required over 3,000 new trees planted.

The authors of the original Tree Preservation Ordinance were in uncharted territory in 1999 when they crafted its final language. Never before in Newton had such a detailed and encompassing regulation been created to protect trees on private property. They were tasked with creating language that did not infringe on the rights of homeowners in Newton and at the same time controlled tree loss caused by development.

The key to this preservation process was an exemption rule within the Tree Preservation Ordinance. It has always been the intent of the Tree Preservation Ordinance to require trees removed during building and development to be replaced as deemed necessary through a permitting process. The exception was for properties with an existing home that was occupied, which were not required to file for permits, to pay fees, or to replace trees.

In recent years the effectiveness of the Tree Preservation Ordinance has been diminished by a small number of individuals who exploited weak spots in its language, relating

to the exemption rule for residential property owners. The intent of the exemption was that the existing home stay in place and that it remain occupied during and after any trees were removed, but the Ordinance did not define "occupied," how to prove whether a home was occupied, or whether and how long it needed to remain occupied following tree removal. In some outrageous examples, a property

with a vacant home used the tree removal crew showing up to cut the trees down as the "occupiers" meeting the criteria for being exempt from getting a permit and replacing trees. In the last few years it has become increasingly common for an investor to purchase a property, cut trees down, demolish the home, build a new home, and then sell the property, all the while being technically exempt from the Tree Preservation Ordinance. We have also seen increases in another kind of alarming situation –

the investor arranging that the selling homeowner remove trees prior to the sale of the property, even including this in Purchase and Sale agreements.

Recognizing these problems were increasing, Urban Tree Commission and the Forestry Department worked over the past year on a revision of the Tree Preservation Ordinance, collaborating with the Mayor's Office and the Board of Alderman. This work culminated in the passage on May 5, 2014, of a revised Tree Preservation Ordinance that protects current homeowners' rights while more clearly defining the expectations for properties being developed for resale.

## The major changes are:

- For tree removal on a property where the existing home is being lived in (occupied) and no construction is planned: no permit or notification to the City is necessary. The property owner must have owned the lot for at least 90 days before removing the tree(s) and must own the property for eighteen months following removal. The property must have someone living in the home for the same time period.
- For tree removal on a property where the existing home is being lived in (occupied) and construction is planned: the



*Fairyland, Monprint by Mary Beth Maisel ©2014*

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property owner must certify in writing that the property is an exempt lot. This certification is made on forms provided to the property owner by the City at the Inspectional Services Department. The property owner must have owned the lot for at least 90 days before removing the tree(s) and must own the property for eighteen months following removal. The property must have someone living in the home for the same time period.

- For tree removal on a property where the existing home is **NOT** being lived in: the property owner must apply to the Tree Warden for a Tree Permit prior to any exterior construction or tree-removal work.
- The Tree Warden will determine the extent of tree replacement that is required based on any protected trees (trees greater than 8 inches in diameter at 4.5 feet above grade) being removed. The Tree Warden may waive the replacement of trees if the property owner owns the

property for eighteen months following its legal occupancy following construction.

The next phase of this work will involve education of developers, real estate agents, local attorneys, tree removal companies and the rest of the public—letting them know that the Tree Ordinance has changed and that its rules must be followed. Educational materials, forms, and procedures with Forestry and Inspectional Services departments will be improved. Enforcement will also be assisted by an aware and educated public, as calls from concerned neighbors are a key way for Forestry to know about potential issues that may require intervention. ■

*Questions and concerns about the Tree Preservation Ordinance can be directed to Marc Welch, Director of Urban Forestry at [mwelch@newtonma.gov](mailto:mwelch@newtonma.gov) or (617) 796-1500.*

*Newton Tree Conservancy Board*



**About the artist (pgs. 7, 9):** Mary Beth Maisel is an artist who lives in Newton, where she creates beautiful monotypes, water colors and collages in her airy studio surrounded by beautiful gardens and trees. She wrote a chapter on printing monotypes using a gelatin plate in *The Art of Printing from Nature*. Visit her website at [www.marybethmaisel.com](http://www.marybethmaisel.com), and consider making an appointment to visit her studio.

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