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June 6, 2023

Heather Shand, *City Council President*
City of Newburyport
PO Box 550
Newburyport, MA 01950

Dear President Shand:

In early March 2023, the *de facto* Tree Warden and appointed Interim DPS Director of the City of Newburyport resigned to obtain employment in another municipality. After vacating this position, no temporary appointment or full appointment has been made to fill the position.

Recognizing that this vital position has not been filled in a timely manner, I conducted a search to determine the date of appointment of the previous Tree Warden and could find no record indicating that this position was appointed by the (previous) Mayor and confirmed by the City Council. A review of Tree Commission Minutes showed that there was a change in the position of Tree Warden between November 2018 and December 2018. The November minutes stated that the Tree Warden was leaving City employment and the December minutes identified a different person as the Interim Tree Warden.

This is concerning for the following reasons:

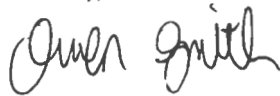
- 1) This is an enforcement position that is vested certain powers granted by the Commonwealth. Not having a person properly appointed exposes the City to liability. If a qualified person is not appointed, is the City legally exercising its authority? The Code of City Ordinances gives a lot of discretion to the Tree Warden to enforce local ordinances and pass on judicially the disposition of hazard trees on private property. The authority granted in Section 12-191 in the Code of Ordinances allows the Tree Warden to remove trees on private property. This authority alone shows the importance of ensuring this person is properly appointed. It is unacceptable to have people delegated to exercise authority of the Commonwealth without the proper appointment or training. This hinders the credibility of the City and is contrary to the rule of law.
- 2) Ch. 41 M.G.L. Section 1 requires that the Tree Warden be elected at every town meeting, or appointed if the city or town has a bylaw stating such. From November 2018 to date, I can find no record of appointment in a City Council Packet or City Council Meeting Minutes indicating that this position has been appointed and confirmed.
- 3) Ch. 41 M.G.L. Section 106 states that the term shall be for three years. This means that the City failed to have this position properly filled for at least two (2) terms. This establishes repeated non-compliance with state law. This section also states that "Such tree warden shall be qualified by training and experience in the field of arboriculture and licensed with the department of food and agriculture..." Industry standard qualifications would include ISA Certified Arborist, Massachusetts Certified Arborist, a degree in Arboriculture, or Urban Forestry.

- 4) Does the City have an internal control process to identify positions that require a Mayoral appointment? Is there an inventory of these positions to determine that they are filled with qualified people?

It is my hope that the City Council appoint a special commission to review the actions of this administration and the previous administration to identify other instances of non-compliance with the City Charter, City Ordinances, City Policies, and State Law.

Learning from previous mistakes will improve the delivery of public services. The City Council's demonstration of good governance will lead to public confidence and protect the City from liability.

Sincerely,



Owen Smith

Attachments:

- 1) Ch. 42 M.G.L. Section 1
- 2) Ch. 42 M.G.L. Section 106
- 3) November 2018 Tree Commission Meeting Minutes
- 4) December 2018 Tree Commission Meeting Minutes

Cc:

Richard Jones, City Clerk (for inclusion in the City Council packet)

Part I	ADMINISTRATION OF THE GOVERNMENT
Title VII	CITIES, TOWNS AND DISTRICTS
Chapter 41	OFFICERS AND EMPLOYEES OF CITIES, TOWNS AND DISTRICTS
Section 1	TOWN OFFICERS TO BE ELECTED; TENURE

Section 1. Every town at its annual meeting shall in every year when the term of office of any incumbent expires, and except when other provision is made by law or by charter, choose by ballot from its registered voters the following town officers for the following terms of office:

A town clerk for the term of one or more years.

A town treasurer for the term of one or more years.

One or more collectors of taxes for the term of one or more years, unless the town votes otherwise or votes to authorize its treasurer to act as collector.

Three or more selectmen for the term of not more than three years, subject to the provisions of section twenty-one.

One or more assessors for the term of not more than three years.

One or more auditors for the term of one or more years, except where such office is abolished as provided in section fifty-five.

One or more highway surveyors for the term of one or more years; or one or more road commissioners for the term of one or more years.

One or more sewer commissioners for the term of one or more years if the town has provided for such officers, unless the town by vote authorizes its road commissioners to act as sewer commissioners.

A tree warden for the term of one or more years, unless the town by vote or by-law provides that he shall be appointed.

One or more constables for a term of one or more years, unless the town by vote provides that they shall be appointed.

Three or more members of the school committee for terms of not more than three years.

Three or more assistant assessors, if the town so votes, for the term of not more than three years.

Three or more members of the board of health for the term of one or more years if the town provides for such board, otherwise the selectmen shall act as a board of health.

All other town officers shall be appointed by the selectmen unless other provision is made by law or by vote of the town.

In any town or district in which the election date of the officers, authorized under this section, is changed, the officers currently serving shall continue to hold their offices until the appointment or election and qualification of their successors.

In any case where three or more members of a board are to be elected for terms of more than one year, as nearly one-third as may be shall be elected annually.

The provisions of this section or any of the following sections of this chapter which authorize or require the fixing of the terms of office of members of any board, commission or body in such a manner that all such terms would not expire at the same time shall not apply with respect to such board, commission or body after the town has voted under section two of chapter fifty-four A to elect the members thereof by the proportional representational method of election. In no case shall the term of any officer exceed five years.

Part I	ADMINISTRATION OF THE GOVERNMENT
Title VII	CITIES, TOWNS AND DISTRICTS
Chapter 41	OFFICERS AND EMPLOYEES OF CITIES, TOWNS AND DISTRICTS
Section 106	TREE WARDEN; APPOINTMENT; TERM

Section 106. If the town provides by vote or by-law that the tree warden shall be appointed, such appointment shall be made by the board of selectmen. The term of such appointment shall be for three years.

In any city or in a town which exceeds ten thousand inhabitants and which provides by vote, by-law or by ordinance that the tree warden shall be appointed, such appointment shall be made by the mayor, with the approval of the city council or by the board of selectmen. In such city or town, the tree warden shall exercise the duties of tree warden and of insect pest control. Such tree warden shall be qualified by training and experience in the field of arboriculture and licensed with the department of food and agriculture in accordance with the provisions of section ten of chapter one hundred and thirty-two B. The term of such appointment shall be for three years.



City of Newburyport Tree Commission

Meeting Minutes

8 November, 2018

Children's Activity Room
Newburyport Public Library

Meeting convened at 7:04 pm.

Tree Commission members (TC) present: Crispin Miller (Chair) (**CM**), Constance Preston (Treasurer) (**CP**), Sheila Taintor (Secretary) (**ST**), Paul Bevilacqua (**PB**), David Dylewski (**DD**), Jane Niebling (**JN**), Scott Hanley (**SH**), Katie Haried (**KH**), Wayne Amaral, Tree Warden and Deputy Director/Director of Operations, Department of Public Services, ex-officio (**WA**)

No public in attendance

This was a special Tree Commission meeting marking both an ending and a beginning. We said farewell to Wayne Amaral, our cherished Tree Warden, and welcomed a new Commissioner, Scott Hanley.

Reports

Secretary

The Commission approved the Minutes of the September 2018 Meeting unanimously. (The **TC** did not meet in October.)

Treasurer

The October 2018 Treasurer's Report was unanimously accepted.

CP explained that scheduled watering was cancelled 4 times over the summer/fall season due to rain or projected rain. Each cancellation saved the **TC** \$1,968 (246 trees @ \$8), which was applied to extend the waterings in the fall.

Tree Warden

Total Street Trees Removed in 2018 is 84

Most recent tree removals are:

- Beacon Avenue #18
- Charles Street #40
- Coffin Street #2
- Guild Street #5 (2 trees)
- Prospect Street #119-121 (2 trees)
- Woodland Street at Carleton Street

WA said they are on track to remove a total of about 100 trees this year.

WA reminded the **TC** that ash trees need 2 injections in successive years to be protected from the Emerald Ash Borer (**EAB**). Last spring, 48 trees (~1/3 of Newburyport's ash trees) were injected, and they will need their second injection early this spring. In addition it would be

optimal to do the 1st round of injections on the next 50 trees. The following spring, the second 50 trees should get their 2nd injections and the remaining third should get their first injection. There is no money set aside for this in the budget, so the **TC** should plan to make a request from free cash.

Planting and Pruning

CP shared the report she had prepared for the October meeting which was cancelled.

Spring 2018 Planting:

- Lady Tracey Anne finalized the watering of 246 trees for 2018 growing season
- All new trees have been mulched

Fall 2018 Planting:

- 33 trees (all requests from residents) were planted in September by Plants & Pleasantrees
- The order was split between Northeast Nursery (17 trees) and Bigelow Nurseries (16 trees)
- These trees were mulched (11/7) and inventoried.

Spring 2019 Planting:

- There are currently 54 trees on the list of requests from residents
- Potential projects (Tyng St, Pheasant Run, Griffin House, Daniel St, High St and Federal St) are not included

CP explained that **SH** has agreed to take on the responsibility of supervising future spring and fall plantings. He will work closely with **CP** next spring as he learns the ropes and assume total responsibility for the fall planting. The **TC** expressed their appreciation to both: **CP** for her incredible effort this past spring and fall, and **SH** for stepping up to take over.

Inventory

KH is submitting a request for reimbursement to the **MA DCR** for about \$10,000 of our \$13,000 grant.

The **TC** expressed their gratitude to **KH** for her colossal effort of tracking all the details for the inventory.

The activity described in the chart on the next page is a result of the yearlong **MA DCR** matching grant to take the inventory of Newburyport's public trees. Two interns were hired for a 3-month period. Volunteers from the Tree Commission, the Friends of Newburyport Trees (FoNT) and several interested citizens were recruited. The volunteer hours and other operating expenses are eligible to match the reimbursable cost of the interns.

DCR Inventory Challenge Grant Tracking
June 2018 - October 2018, & YTD

Volunteer/ Intern	Task	# Trees ID'd	Hours	Miles
Volunteers				
June	Inventory / Administration	580	97.50	151.4
July	Inventory / Administration	918	111.25	291.1
August	Inventory / Administration	1,061	90.75	168.3
September	Inventory / Administration	0	23.50	13.3
October	Inventory / Administration	0	53.75	11.0
2018 YTD Volunteer Totals		2,559	376.75	635.1
Interns				
June	Inventory	623	67.00	102.0
July	Inventory	2,855	225.00	267.6
August	Inventory	2,722	260.50	235.5
September	Tree Book / Administration	0	55.80	
2018 YTD Intern Totals		6,200	608.30	605.1
2018 YTD INVENTORY TOTALS		8,759	985.05	1,240.2

Grants/Donations

JN reported that she will be submitting the application for the annual *Tree City USA* designation. She will need to include our volunteer hours for this calendar year and asked the commissioners to send their hours (exclusive of inventorying) to her in early December, adding in estimated hours for December.

She will prepare a report of all grants with details and deadlines to be distributed at the TC December meeting.

Education

No update.

Community Outreach

The TC expressed their appreciation to JN for her interesting and informative article *It takes all kinds of trees* which appeared in the 10/31 Daily News.

Old Business

Callery Pear

The TC currently has 2 lists of trees posted on our website: *Recommended Trees* and *Invasive Trees in Massachusetts*. It was decided that we would rename the *Invasive Trees* document *Undesirable Trees* and add trees such as the Callery Pear to it. In addition to the Callery Pear, there are several trees considered invasive in neighboring states, but have not yet been so designated in Mass. KH will work on the list of trees to be added and send them to ST for the retitled document.

Maintenance of Tree Pits

This summer's weather was optimal for crab grass which led to very unsightly tree pits. The TC agreed that since the DPS does not have the manpower we should take on the task for maintaining the condition of the tree pits and discussed how we might do it. Asking residents to be responsible for "their" city tree pits has not been successful, but we should consider adding this request to the information handed out to residents on planting day, and perhaps emphasize it more on the tree bag tags. We should also seek volunteers to help with this task. Reaching out to the H.S. for students in need of volunteer hours, contacting scout troops to see if a scout might take this on as an Eagle Scout project were mentioned. CM shared that having residents of the Link House help is not feasible for us, since their rate is \$20/hour.

New Business

2019 Free Cash request and FY 2020 budget

The TC approved a motion to submit the **FY 19 Free Cash** request to the Director of the **DPS** and the Mayor at the appropriate time by the Chair. If needed the Chair is authorized to make any reasonable adjustments in the proposal which he deems appropriate prior to submission.

The TC approved a motion to submit the **FY 20 Budget** proposal to the Director of the **DPS** and the Mayor at the appropriate time by the Chair. If needed the Chair is authorized to make any reasonable adjustments in the proposal which he deems appropriate prior to submission.

The meeting adjourned at 8:43 PM Children's Activity Room time.

Respectfully Submitted,
Sheila Taintor, Secretary

Next meeting: Thursday, December 13, 2018 at 7 PM

Location: Children's Activity Room, Newburyport Public Library



City of Newburyport Tree Commission

Meeting Minutes

13 December, 2018

Children's Activity Room
Newburyport Public Library

Meeting convened at 7:03 PM.

Tree Commission (TC) members present: Crispin Miller (CM), Chair; Sheila Taintor (ST), Secretary; Paul Bevilacqua (PB); Scott Hanley (SH)

Tree Commission members absent: Constance Preston (CP) Treasurer); David Dylewski (DD); Jane Niebling (JN); Jamie Tuccolo (JT), interim Tree Warden, ex-officio

No Public in attendance.

Shady News Talk #5

7:05-7:35 Speaker: Neil Doran, National Grid Merrimack Valley Forestry Supervisor
Topic: The Power of the Trees

Reports

Secretary

The Commission approved the Minutes of the 8 November, 2018 Meeting.

Treasurer

There was no Treasurer's Report this month. There will be a year-end report at the January meeting.

Tree Warden

Total Street Trees removed in 2018 is 89.

Most recent tree removals are:

- ◇ Market Street #10 ◇ Ferry Road #22 & #26 (2 trees removed - were on Moulton St.)
- ◇ Beacon Ave. #20 ◇ Perkins Playground on Beacon Ave

Both Tony Furnari and Jamie Tuccolo (Tree Warden) will attend the January meeting to discuss changes in DPS that they know will make things work well.

Planting and Pruning

Spring 2019 Planting:

- Spring 2019 planting list has been finalized at 62 trees. All are requests from residents.
- Species determinations have been finalized for all 62 trees.

- City Council approved our free cash proposal on 12/10/18, giving us funds to cover 58 trees.
- It is highly likely that there will be some changes to the planting list. Inevitably some trees will fall off the list. If no trees fall off the list, the last 4 trees added will be moved to the Fall 2019 Planting. Residents are aware of this.
- Free cash proposal also includes \$10K to cover the cost of inoculation of Phase I Ash trees. CP will work with DPS to get that done.
- Potential projects (Tyng St, Pheasant Run, Griffin House, Daniel St and Federal St) are not included in Spring 2019 list.

Inventory

CM and Kate Dardinski (KD), FoNT board member, have been working with the database of inventoried trees and have discovered some software anomalies. They are pointing them out to the software engineer at MVPC who is fixing them one-by-one.

Grants/Donations

Prior to this meeting and in anticipation of her absence, JN submitted a document listing grant activity and history along with deadlines.

Education

ST reported that plans for the 2019 poster contest are underway.

Community Outreach

JN's most recent Tree Talk column, *Getting Ready for Spring*, appeared in the 12/13 DN.

Old Business

“Undesirable Tree” document for website

There was discussion around the “*Undesirable Tree*” document on the website. It was decided that it will be called “*Not Recommended Trees*” and will include both “invasive” and “undesirable” trees. CM wishes to get feedback on our tree list from Neil Doran, our *Shady News* presenter tonight.

Maintenance of Tree Pits

SH has taken on the task of finding volunteers who can assume responsibility for maintaining our tree pits weed- and trash-free.

New Business

PB raised a concern about where trees are going to be planted around the new garage. He felt that the tree pits he had seen did not conform to the City of Newburyport Tree Regulations as posted on the DPS website. He wasn't able to locate the specific regulation he had in mind during the meeting. He promised to find it and share it later. **CM** shared his concern that the trees are being planted "this fall", since planting them now seems risky.

We will hold the *Annual Tree Commission Calendar* discussion for the January meeting.

The meeting adjourned at 8:50 PM.

Respectfully submitted,
Sheila Taintor, Secretary

Next meeting: Thursday, 10 January, 2018 at 7 PM

Location: Children's Activity Room, Newburyport Public Library