

**MAYOR'S BLUE RIBBON COMMITTEE
TREES AND PUBLIC GREENERY**

AGENDA

**7:30 AM—Wednesday, December 8, 2010
Portsmouth City Hall, City Manager's Conference Room**

1. Acceptance of Minutes of November 10, 2010 Meeting
2. Tree Removal Requests:
 - 56 Marston Avenue
 - Corner of Marcy and Mechanic Street next to stop sign (request of Prescott Park as tree is cracked on back side)
 - Hislop Park (associated with Little League field expansion)
3. Update on Lower State Street Project
4. Update on Status of Protective Wrapping for Downtown Trees
5. Haymarket Square Tree Removal & Testing and Resistograph Analysis of Red Oak – Corner of Lincoln and Junkins
6. Discussion of Proposed Urban Forestry Ordinance (Legal Department Memorandum attached)
7. Old Business
8. New Business
9. Next Meeting - Wednesday, January 12, 2011

Respectfully submitted, Peter J. Loughlin-Chair

CITY OF PORTSMOUTH

LEGAL DEPARTMENT

MEMORANDUM

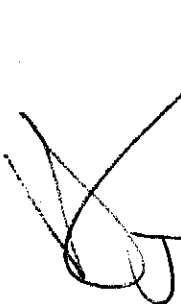
DATE: October 26, 2010

TO: TREES AND PUBLIC GREENERY COMMITTEE

FROM: ROBERT P. SULLIVAN, CITY ATTORNEY
JIM NOUCAS, LEGAL INTERN

CC: JOHN P. BOHENKO, CITY MANAGER
STEVE PARKINSON, PUBLIC WORKS DIRECTOR

RE: PROPOSED PORTSMOUTH URBAN FORESTRY ORDINANCE



Attached please find a proposed PORTSMOUTH URBAN FORESTRY ORDINANCE along with a proposed addition to the City Ordinances within Chapter 1 Article IV: COMMISSIONS/ AUTHORITIES. The proposed ordinance is a combination of the current City STREET TREE ordinance, your recommendations, and enabling statutory legislation. The addition to Chapter 1 Article IV is a direct response to your committee's request concerning your proposed role as an advisory commission to the Tree Warden of the City. All of these additions and amendments to the current City ordinances are a result of our best efforts to synthesize the Committee's requests with local and state law when it comes to regulating and enforcing all tree-related activities within the City.

When this ordinance is in a form satisfactory to the Committee, it would be appropriate for it to be forwarded to the City Council with a report that it be brought in for a first reading.

**ORDINANCE #
THE CITY OF PORTSMOUTH ORDAINS**

That Chapter 8, Article III Street Trees of the Ordinances of the City of Portsmouth is hereby deleted in its entirety and replaced with the following amendment to Chapter I Article IV creating a Tree and public Greenery Commission and the adoption of a new Portsmouth Urban Forestry Ordinance as described below:

ADD following Commission to Chapter I Article IV:

Section 1.412: TREE AND PUBLIC GREENERY COMMISSION

There is hereby a Commission known as the Tree & Public Greenery Commission. The Commission shall consist of no less than three (3) members and no more than seven (7) members including the following: City Manager or designee; Tree Warden or designee; the Public Works Foreperson in charge of tree maintenance; and four individuals with an interest in trees and public greenery. Members of the Commission other than City Officials listed above shall be appointed for three year terms with the length of the initial terms being staggered in the discretion of the Council. The Commission shall have the Tree Warden as its chairperson. Vacancies for the unexpired terms shall be filled in the same manner as the original appointments. The main purpose of this Commission will be to advise and assist the Tree Warden in enforcing the provisions of this ordinance as well as ensuring the proper expansion of the City's Urban Forest consistent with best horticultural practices, aesthetic concerns, and public safety. The Commission shall, with the assistance of the Department of Public Works, collect and maintain all records and data necessary to objectively evaluate whether progress is being made towards proper expansion of the City's Urban Forest. The Commission shall prepare an annual report summarizing all activity relating to this ordinance and shall offer recommendations for

actions to better achieve a proper expansion of the City's Urban Forest. This report shall be presented to the City Council for its considerations.

AND be it further ordained that the following new municipal ordinance is hereby added to Chapter 8.

ARTICLE III: PORTSMOUTH URBAN FORESTRY ORDINANCE

Section 8.301: AUTHORITY

This ordinance is adopted with the authority of RSA 231:139 (et. seq.)

Section 8.302: DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

A. "City" is the City of Portsmouth, New Hampshire.

B. "Tree Warden" is the Director of the Department of Public Works of the City or his/her designee.

C. "Person" is any person, firm, partnership, association, corporation, company, or organization of any kind.

D. "Street tree" or "Tree" is a tree in a public place on property owned by the city or within a right of way or easement controlled by the City and is defined as a perennial woody plant with a single main stem that grows to at least thirteen (13) feet high and two (2) inches in diameter.

E. "Urban Forest" is defined as the trees and shrubs that exist within the residential part of the City as defined by the Tree Warden.

Section 8.303: FINDINGS

The value of urban trees can hardly be overstated. In addition to conferring significant environmental value they provide equally important psychological benefits. What was said in the early 1800's remains true today: "There is not a village in America, however badly planned at first, or ill-built afterwards, that may not be redeemed, in a great measure, by the aid of shade trees in the streets... and it is never too late or too early to project improvements of this kind." (Andrew Jackson Downing (1815-1852)

Section 8.304: PURPOSE

This ordinance establishes policies, requirements, and standards to ensure a healthy and stable urban forest in Portsmouth. Its provisions are enacted to:

1. Establish and maintain the maximum sustainable number of healthy trees on public lands in the city.
2. Ensure that these trees will represent a diversity of species and age classes.
3. Regulate and enforce the planting and maintenance of trees and shrubs on City property.
4. Establish limits on the amount of disturbance of trees that may take place on public property.

Section 8.305: POLICIES

It shall be the policy of the City to expand the urban forest through the planting of trees and shrubs alongside the streets of the City and in City parks and other public

places, consistent with the best horticultural practices, aesthetic concerns, and public safety.

Whenever feasible, trees that are removed shall be replaced as soon as possible with one or more specimens appropriate to the site.

The City shall endeavor to meet the national standards set forth in the Tree City USA Program so as to qualify annually as a Tree City USA Award-Winning Community.

Section 8.306: TREE WARDEN

The Director of the Department Public Works is hereby charged with the responsibility for the enforcement of this ordinance as Tree Warden for the City. As Tree Warden, the Director of the Department of Public Works may serve notice to any person in violation of this ordinance or institute legal proceedings through the Office of the City Attorney.

Section 8.307: AUTHORITY OF THE TREE WARDEN

A. The Tree Warden shall have exclusive jurisdiction and supervision over all street trees, shrubs, and other plantings now or hereafter in any street, park, public right-of-way, easement, conservation land, or any other public place within City limits.

B. The Tree Warden shall have the authority to plant, care for, remove and replace trees, shrubs and other plantings.

C. Order to Preserve or Remove:

The Tree Warden shall have the authority and it shall be his/her duty to order the trimming, preservation or removal of trees or plants upon property owned or controlled by the City when he/she shall find such action necessary to preserve public safety or to prevent the spread of disease or insects to public trees and places. The Tree Warden shall

give notice to any abutting property owner on whose property such tree is located.

However, no such declaration and notice shall be required when the delay entailed by such declaration and notice would pose an imminent threat to public safety or property.

Section 8.308: PROHIBITED ACTS

No person or entity (except a public utility with the express written approval of the Tree Warden) shall cut, prune, injure, affix wires or cables, post notices, or remove any tree on or in a public highway, right of way, public park, or other public property.

Section 8.309: PERMITS REQUIRED

A. No person shall trim, spray or preserve trees in public places without first filing an application and procuring a permit from the Tree Warden.

B. No person shall remove trees in public places without a permit from the Tree Warden which permit shall not be granted until after a hearing before the Tree Warden. Said hearing shall be a public hearing and shall be held within 30 days from the date of application for removal. The decision of the Tree Warden shall be binding on the applicant as to whether or not the application shall be granted. The applicant for removal shall cause to be attached to any tree sought to be removed a conspicuous tag of a kind and color approved by the Tree Warden . Said tag shall be attached to such tree or trees not less than seven days prior to the public hearing.

C. Application Data: The application required herein shall state the number and kind of trees to be trimmed, sprayed, preserved or removed; the kind of treatment to be administered; the kind and condition of nearest trees upon the adjoining property; and such other information as the Tree Warden shall find reasonably necessary to a fair determination of whether a permit should be issued hereunder.

D. Standards for Issuance: The Tree Warden shall issue the permit for trimming, spraying or preservation of trees provided for herein when the Tree Warden finds that the desired action or treatment is necessary and that the proposed method and workmanship are satisfactory. The Tree Warden shall have the authority and it shall be his/her duty to supervise all work done under a permit issued in accordance with the terms of this Ordinance. The Tree Warden shall have the authority to affix reasonable conditions to the granting of a permit.

E. No person shall affix any sign or signs to any public trees except as in B. above.

F. The Tree Warden shall order the issuance of permits for tree removal, after public hearing, when he/she finds that the desired action is necessary and that the proposed methods and workmanship are satisfactory. Except for exigent circumstances, the decisions of the Tree Warden shall be subject to prior review and approval by the Tree and Public Greenery Commission which will consider the following: (1) the reason for the request; (2) the health of the tree; (3) the importance of the tree to the streetscape and/or neighborhood. After prior review and approval by the Tree and Public Greenery Commission, the Tree Warden will report the Commission's findings to the City Council for final approval.

Section 8.310: PENALTIES

Any person, natural or otherwise, who violates a provision of this ordinance, shall be:

- a. Subject to a fine of not more than \$1,000.00 per violation; and

- b. Shall be liable to the City for all costs of replacing any damages to City property as well as other damages allowable by law.

The City Clerk shall properly alphabetize and/or re-number the ordinance as necessary in accordance with this amendment.

All ordinances or parts of ordinances inconsistent herewith are hereby deleted.

This ordinance shall take effect upon its passage.

APPROVED:

Thomas G. Ferrini, Mayor

ADOPTED BY COUNCIL:

Kelli L. Barnaby, City Clerk