



CITY OF CAMBRIDGE
INTEROFFICE CORRESPONDENCE

To: Mr. Robert W. Healy
City Manager

Date: May 4, 1983

From: Everett R. Kennedy *ERM*
Acting Commissioner of Public Works

Reference

Subject: Request for Removal of Tree
- 25 Banks Street

I have personally viewed the tree in question. There is a real problem to take it down, rather than trimming it, because the tree itself is evidentially sound. Jim Woods and I both agree that we can do some additional trimming; however, if in the judgement of all it must come down, I am prepared to hold a public hearing and finally proceed with its removal. (See attached Law). I am also asking the Public Planting Committee to advise me on this matter.

Attachment

cc: Mr. William Ryan
Mr. James Woods
Mrs. Mary Kennedy

OFFICE OF THE
CITY MANAGER

MAY 4 1 13 PM '83

RECEIVED

MR. E. Kennedy
114485

Chapter 114

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Seventy-eight

AN ACT RELATING TO NOTICE OF CUTTING OF PUBLIC SHADE TREES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows.

Section 3 of chapter 87 of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:— Except as provided by section five, public shade trees shall not be cut, trimmed or removed, in whole or in part, by any person other than the tree warden or his deputy, even if he be the owner of the fee in the land on which such tree is situated, except upon a permit in writing from said tree warden, nor shall they be cut down or removed by the tree warden or his deputy or other person without a public hearing and said tree warden or his deputy shall cause a notice of the time and place of such hearing thereof, which shall identify the size, type and location of the shade tree or trees to be cut down or removed, to be posted in two or more public places in the town and upon the tree at least seven days before such hearing and published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than seven days before the day of the hearing or if no such local newspaper exists then in accordance with the provisions of section six of chapter four.

House of Representatives, April 13, 1978.

Passed to be enacted,

Thomas W. McKeen

Speaker.

In Senate, April 15, 1978.

Passed to be enacted,

Ken B. ...

April 25, 1978.

Approved,

Michael Dukakis

Governor.

CHAPTER 87.

SHADE TREES.

Public Shade Trees Defined.

SECTION 1. All trees within a public way or on the boundaries thereof shall be public shade trees; and when it appears in any proceeding in which the ownership of or rights in a tree are material to the issue; that, from length of time or otherwise, the boundaries of the highway cannot be made certain by records or monuments, and that for that reason it is doubtful whether the tree is within the highway, it shall be taken to be within the highway and to be public property until the contrary is shown.

Powers of Tree wardens.

SECTION 2. The tree warden of a town may appoint and remove deputy tree wardens. He and they shall receive such compensation as the town determines or, in default thereof, as the selectmen allow. He shall have the care and control of all public shade trees, shrubs and growths in the town, except those within a state highway, and those in public parks or open places under the jurisdiction of the park commissioners, and shall have care and control of the latter, if so requested in writing by the park commissioners, and shall enforce all the provisions of law for the preservation of such trees, shrubs and growths. He shall expend all money appropriated for the setting out and maintenance of such trees, shrubs and growths, and no tree shall be planted within a public way without the approval of the tree warden, and in towns until a location therefor has been obtained from the selectmen or road commissioners. He may make regulations for the care and preservation of public shade trees and establish fines and forfeitures of not more than twenty dollars in any one case for violation thereof; which, when posted in one or more public places, and, in towns, when approved by the selectmen, shall have the effect of town by-laws.

Cutting of Public Shade Trees. Hearing.

SECTION 3: Except as provided by section five, public shade trees shall not be cut, trimmed or removed, in whole or in part, by any person other than the tree warden or his deputy, even if he be the owner of the fee in the land on which such tree is situated, except upon a permit in writing from said tree warden, nor shall they be cut down or removed by the tree warden or his deputy or other person without a public hearing at a suitable time and place, after notice thereof posted in two or more public places in the town and upon the tree at least seven days before such hearing, and after authority granted by the tree warden therefor. Any person injured in his property by the action of the officers in charge of the public shade trees as to the trimming, cutting, removal or retention of any such tree, or as to the amount awarded to him for the same, may recover the damages, if any, which he has sustained, from the town under chapter seventy-nine.

Approval of mayor or selectmen required if objection made.

SECTION 4. Tree wardens shall not cut down or remove or grant a permit for the cutting down or removal of a public shade tree if, at or before a public hearing as provided in the preceding section, objection in writing is made by one or more persons, unless such cutting or removal or permit to cut or remove is approved by the selectmen or by the mayor.

Cutting down bushes and small trees. Trimming trees, etc., that obstruct travel.

SECTION 5. Tree wardens and their deputies, but no other person, may, without a hearing, trim, cut down or remove trees, less than one and one half inches in diameter one foot from the ground, and bushes, standing in public ways; and, if ordered by the mayor, selectmen, road commissioners or highway surveyor, shall trim or cut down trees and bushes, if the same shall be deemed to obstruct, endanger, hinder or incommode persons traveling thereon or to obstruct buildings being moved pursuant to the provisions of section eighteen of chapter eighty-five. Nothing contained in this chapter shall prevent the trimming, cutting or removal of any tree which endangers persons traveling on a highway or the removal of any tree, if so ordered by the proper officers for the purpose of widening the highway and nothing herein contained shall interfere with the suppression of pests declared to be public nuisances by section eleven of chapter one hundred and thirty-two, including the Dutch elm disease.

Penalty.

SECTION 6. Violations of any provision of the three preceding sections shall be punished by forfeiture of not more than five hundred dollars to the use of the city or town.

Planting of shade trees.

SECTION 7. Towns may appropriate money to be expended by the tree warden in planting shade trees in the public ways, or, if he deems it expedient, upon adjoining land, at a distance not exceeding twenty feet from said public ways, for the purpose of improving, protecting, shading or ornamenting the same; provided, that the written consent of the owner of such adjoining land shall first be obtained.

Trees on state highways.

SECTION 8. The department of public works, in this chapter called the department, shall have the care and control of all trees, shrubs and growths within state highways, and may trim, cut or remove such trees, shrubs and growths, or license the trimming, cutting or removal thereof. No such tree, shrub or other growth shall be trimmed,

cut or removed by any other than an agent or employee of the department, even if he be the owner of the fee in the land on which such tree, shrub or growth is situated, except upon a permit in writing from the department. Any person injured in his property by the action of the department as to the trimming, cutting, removal or retention of any such tree, shrub or growth may recover the damages, if any, which he has sustained, from the commonwealth, under chapter seventy-nine.

Signs and marks on shade trees.

SECTION 9. Whoever affixes to a tree in a public way or place a notice, sign, advertisement or other thing, whether in writing or otherwise, or cuts, paints or marks such a tree, except for the purpose of protecting it or the public and under a written permit from the officer having the charge of such trees in a city or from the tree warden in a town, or from the department in the case of a state highway, shall be punished by a fine of not more than fifty dollars. Tree wardens shall enforce the provisions of this section; but if a tree warden fails to act in the case of a state highway within thirty days after the receipt by him of a complaint in writing from the department, the department may proceed to enforce this section.

Injury to trees of another person.

SECTION 11. Whoever willfully, maliciously or wantonly cuts, destroys or injures a tree, shrub or growth which is not his own, standing for any useful purpose, shall be punished by imprisonment for not more than six months or by a fine of not more than five hundred dollars.

Duties of tree wardens in cities.

SECTION 13. The powers and duties conferred and imposed upon tree wardens in towns by this chapter shall be exercised and performed in cities by the officers charged with the care of shade trees within the limits of the highway.

CHAPTER 242.

Liability for wilfully cutting trees, etc.

SECTION 7. A person who without license wilfully cuts down, carries away, girdles or otherwise destroys trees, timber, wood or underwood on the land of another shall be liable to the owner in tort for three times the amount of the damages assessed therefor; but if it is found that the defendant had good reason to believe that the land on which the trespass was committed was his own or that he was otherwise lawfully authorized to do the acts complained of, he shall be liable for single damages only.

liability, to the emergency finance board, established by chapter forty-nine of the acts of nineteen hundred and thirty-three, for its written opinion that such action will not adversely affect the financial condition of the community. Upon receipt of said opinion, the commissioner shall certify to the state treasurer and the state tax commission the cost of such measures and contracts not exceeding the limit of said financial liability, the amount of which shall be collected and paid to the state treasurer as provided by section twenty of chapter fifty-nine.

Section 25. Suppression of Certain Foliage-Destroying Insects Within Municipal Limits.

The local superintendent in each city and town having charge of the suppression of the public nuisances referred to in section eleven shall have like jurisdiction over the suppression of all foliage-destroying pests within the limits of his city or town for which special appropriation is made. In the absence or disability of such local superintendent, the city manager or town manager in cities or towns having such a manager, otherwise the mayor or the selectmen, may temporarily deputize a person, who shall have the same powers as the local superintendent, to perform such duties.

Section 26A. Dutch Elm Disease Eradication; Removal of Trees, Etc.

If the chief superintendent or the local superintendent or their employees or authorized agents shall find on public or private property elm trees or parts thereof infested or infected with or likely to become so infested or infected with the causal fungus of the Dutch elm disease or infested with, or likely to become infested with, beetles known or suspected to be carriers of said disease, they may remove and destroy or cause to be removed and destroyed such trees or parts thereof. Complete removal of trees may be ordered by them only upon proof by positive laboratory tests conducted by the shade tree laboratories at the University of Massachusetts that the trees had become infected with the said Dutch elm disease. The order to remove shall be subject to other applicable provisions of this chapter.

Section 26D. County Aid to Municipalities in Suppression of Certain Public Nuisances.

The county commissioners, subject to appropriation therefor, may grant to any city or town sums of money to aid in the suppression of pests declared to be public nuisances in section eleven, and Dutch elm disease; provided, that no payments shall be made unless the chief superintendent certifies that the work has been done under his direction; and said county commissioners may assist in organizing cities and towns in co-operative associations for the suppression of said public nuisances or scouting or sampling for Dutch elm diseased trees or wood.

Section 26E. Dutch Elm Disease; Procedure Following Notice of Positive Diagnosis.

Notice of positive diagnosis received by the chief superintendent or a local superintendent shall imply necessary condemnation of said elm tree and complete removal of the tree and destruction of the wood by burning or other method to render it harmless as a future source of infection or infestation, unless the said tree or wood has ceased to be such a source of infestation. Such trees or parts thereof shall be removed within thirty days of the receipt of the notice of positive diagnosis, except that when such notice is received during the months of September, October, November, December,

Section 25.

January or February, removal may be delayed, if necessary, until a later date but not later than March thirty-first next following the receipt of the notice, but if the removal and destruction of said trees or parts thereof cannot be accomplished within the time limits herein designated for reasons beyond the control of the local superintendent, he shall by spraying or otherwise render the said trees or parts thereof harmless as a source of the spread of the Dutch elm disease infection or as a breeding place for the beetles which spread said disease. If any city or town shall not have removed and destroyed the said trees or parts thereof within the time limits of this section or by spraying, or otherwise rendered them harmless as a source of spreading the said disease during a delay in removal and destruction of said trees or parts thereof beyond the time limits of this section, the chief superintendent may, subject to the provisions of this chapter, cause them to be so removed and destroyed or sprayed or otherwise rendered harmless as a source of the spread of said disease.

Section 26F. Same Subject: Trees on Certain Private Land.

When notice of positive diagnosis is received by a local superintendent affecting elm trees or parts thereof on privately owned land within five hundred feet of public land, he shall so mark said trees or parts thereof with a sign, and shall give written notice in hand or by certified mail of the diagnosis to the owner or person or persons in charge of the land on which such tree or parts thereof is located. Such notice shall contain an order that said owner or person or persons shall cause said tree or parts thereof to be removed and destroyed within thirty days of the date of said notice except that when such notice is received during the months of September, October, November, December, January or February, removal may be delayed, if necessary, until a later date, but not later than March thirty-first next following the receipt of the notice. If the removal and destruction of said trees or parts thereof cannot be accomplished within the time limits herein designated for reasons beyond the control of the owner or person or persons in charge of the land, he or they shall by spraying or otherwise render the said trees or parts thereof harmless as a source of the spread of the Dutch elm disease infection or as a breeding place of the beetles which spread said disease. The person or persons so notified may within ten days after receipt of said notice appeal in writing to the commissioner from the order contained therein requesting a hearing on the order, and said appeal shall stay the order until the appeal has been heard and decided by the commissioner. He may change, modify or confirm the order contained in the notice and his decision shall be final. The decision of the commissioner shall be communicated to the chief superintendent, the local superintendent and the appellant in writing, shall state the decision and the facts on which it is based, and if the original order is not thereby modified or changed, the commissioner shall direct the appellant to carry out the order within the time prescribed or by a later designated date because of the menace of the Dutch elm disease and the seasonal danger of its spread.

Section 26G. Same Subject; Procedure When Order under S26F not Complied With.

If an order issued under section twenty-six F is not complied with within the time prescribed or if the trees or parts thereof are not rendered harmless as a source of further infection or infestation by spraying or otherwise the local superintendent shall cause the trees or parts thereof covered by the order to be removed and destroyed and he shall certify in writing to the owner the cost of such removal and destruction. Such cost shall be payable to the city or town within ninety days from the date of said certification, and if not so paid, be recovered by suit together with cost thereon;

Provided, however, that, if, as the result of an appeal taken under section twenty-six F, the commissioner determines that suppression measures are necessary for the control of the Dutch elm disease or the beetles which spread said disease, and that the total cost of such suppression measures in excess of the financial ability of the landowner to pay, the said cost may be apportioned between the owner and the city or town; and provided, further, that the cost payable by such owner shall be not less than one fourth of said total cost and the cost to the city or town shall be includible in its accounting for the purposes of section sixteen.

Any owner who has appealed from the order issued under section twenty-six F and is aggrieved by the certified cost chargeable to him may apply to the board of selectmen in a town or the city council in a city, as the case may be, for abatement thereof, and such abatement may be granted by said board or by said city council, with the approval of the mayor, but such abated cost shall not be includible in the accounting of the said city or town for the purposes of section sixteen.

EXCERPTS FROM CHAPTER 40, GENERAL LAWS, RELATIVE TO PURPOSES FOR WHICH TOWNS MAY APPROPRIATE MONEY.

CHAPTER 40.

Section 5. Authorization

A town may at any town meeting appropriate money for the exercise of any of its corporate powers, including the following purpose.

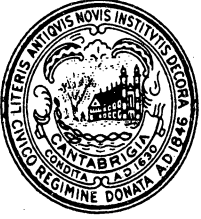
- (23) For suppressing pests under chapter one hundred and thirty-two.

EXCERPTS FROM CHAPTER 266, GENERAL LAWS, RELATIVE TO THE TRANSPORTATION OF ANY PEST REFERRED TO IN CHAPTER 132 OF THE GENERAL LAWS.

CHAPTER 266.

Section 119. Transportation of any pest, or the eggs, nests larvae or pupae thereof.

Whoever knowingly brings into the commonwealth, or transports from one town to another therein, any pest referred to in section eleven or twenty-five of chapter one hundred and thirty-two, or the eggs, nests, larvae or pupae thereof, except when engaged in research work for the commonwealth or for the United States department of agriculture, and for the purpose of suppressing such pests, or whoever knowingly evades the requirements of a quarantine regulation duly established under any provision of said chapter one hundred and thirty-two, shall be punished by fine of not more than two hundred dollars, or imprisonment for not more than two months, or both.



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
Tel. 498-9011

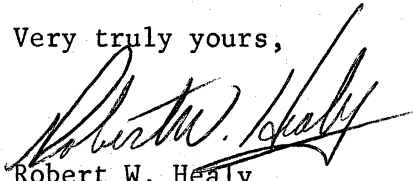
EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

May 9, 1983

To the Honorable, the City Council:

With respect to Awaiting Report Item No. 22 relative to a request for the removal of a tree located at the premises numbered 25 Banks Street, enclosed please find copy of a report from Everett R. Kennedy, Acting Commissioner of Public Works.

Very truly yours,


Robert W. Healy
City Manager

RWH/mbf
Enc.

Re: response to Awaiting Report Item No. 22
regarding the request for the removal of a
tree at the premises numbered 25 Banks St.

In City Council,

May 9, 1983

5/9/83

-Placed on File-