New Tree Warden Laws in Effect

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For over a century, Vermont's tree warden laws have mostly remained untouched, much like the great redwood trees out west. Last fall, the Vermont Legislature passed an update to the laws with the enactment of Act 171, which took effect in November. The act makes substantial changes to the tree warden law, including getting to the root of the old law's main problem, which was the lack of a definition for the term "shade tree." Other amendments define how trees may be removed and the methods by which they are managed on both public and private land. The following is an overview of the major changes and additions to the law.

Appointing and Reporting

Municipalities always had to appoint a tree warden, who had to be a registered voter of the town – in other words, a resident. This is no longer the case. Although municipalities must still appoint a tree warden, the warden no longer needs to be a resident of the municipality. This change allows selectboards to branch out to find someone who meets the position's requirements. The selectboard now may also appoint as many deputy tree wardens as it sees fit, and these deputies would have the same authority and duties as the tree warden and serve under the direction of the tree warden. The commissioner of Forests, Parks and Recreation will be pining to know who the tree warden is; therefore, the selectboard must certify the tree warden's appointment and contact information on the Forest, Parks, and Recreation website(opens in a new tab).

Shade Trees

Before Act 171, public trees or public shade trees were not defined in statute, causing tree wardens and selectboards to be stumped as to their obligations with respect to particular trees. The new legislation defines shade tree as "a shade or ornamental tree located in whole or in part within the limits of a public way or public place," provided that the tree was planted by the municipality or is designated as a shade tree in a

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municipal shade tree preservation plan. To flesh this definition out a bit more, the law says that a "public place" is any municipal property except municipal forestland or property subject to any ownership interest by the Agency of Transportation, and that a "public way" is a right-of-way held by a municipality.

A preservation plan may be created and approved by the selectboard and tree warden. While the plan is discretionary, it must include at least the following:

- a description of any program for planting new trees and shrubs;
- details about how shade trees will be maintained, such as feeding, pruning, and protection from noxious insects and disease pests;
- determination of the apportionment of costs for tree warden services provided to other municipalities;
- whether other municipal officials, such as the selectboard, must also approve tree maintenance or removal on specific municipal property; and
- the process for removing shade trees that are diseased, dying, or dead, or any shade tree that creates a hazard to public safety.

Of particular relevance to the shade tree definition, the preservation plan may designate particular trees as shade trees, including designating trees individually or as part of a mapped zone, in whole or in part, provided the trees are within a public place or way. If a tree is to be designated as a shade tree in a public way, the tree warden and selectboard must find that the tree is critical to the cultural, historical, or aesthetic character of the municipality. This is a great opportunity for municipalities to inventory their shade trees for better tree management. Before adopting a preservation plan, the tree warden and selectboard must hold at least one public hearing and publish the plan ten days before the hearing.

Ordinance Authority

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While municipal authority to regulate trees on or above public highways, sidewalks, or other municipal property already exists (24 V.S.A. § 2291(3)), the new law grants additional, supplemental authority for municipalities to adopt an ordinance in order to administer the preservation plan and to regulate shade trees. The law also allows the tree warden to propose to the selectboard rules or an ordinance for the planting, protection, care, or removal of shade trees, which the selectboard may adopt.

Removal of Trees and Tree Warden Hearings. Tree wardens still have control over shade trees but the process for removing them has changed. Previously, a hearing was always required before removing a shade tree. Now, only public notice is required before a shade tree is cut or removed. If a landowner or resident appeals the cutting or removal, then the selectboard and tree warden must hold a public hearing, and the cutting or removal is suspended pending the selectboard's final decision.

A public hearing is not required for shade tree removals when they are infested or infected (or at risk to become so) and are located in an area designated by the Agency of Agriculture, Food and Markets and Department of Forests, Parks and Recreation; a hazard to public safety; or required to be removed by the municipality in order to comply with state or federal laws or permitting requirements. Notably, municipalities still have the authority to manage trees on town highways. Selectboards may cause a tree within the limits of their highways to be trimmed, cut, or removed without following the tree warden notice and appeal procedures, if it is not a shade tree and it obstructs the view of the highway ahead or causes damage to the highway.

The penalty for the "tree-sonous" act of willfully and critically injuring or cutting down a shade tree without the permission of the tree warden or selectboard now ranges from $50 to $2,000 per tree, which will be determined by a value assessment based on the tree's diameter. The same penalty will apply for the willful or malicious removal of or damage to trees in municipal and state highway rights-of-way without

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prior consent from the state, the municipality, or the tree warden.

Cooperation with Other Municipalities

Tree wardens previously had authority to enter into various agreements and cooperate with other entities, including adjoining landowners of public ways and places and state and federal agencies. Act 171 gives additional collaborative enabling authority, which allows the tree warden to, with the consent of the selectboard, enter into agreements or "treeties" with other municipalities to provide tree warden services or training.

With a clear definition of shade tree, the ability to both adopt preservation plans and designate trees, and the chance to work communally with peers, Act 171 gives municipalities and tree wardens a "tree-mendous" opportunity to turn over a new leaf on tree management.

Thanks to generous support from the Vermont Department of Forests, Parks and Recreation's Vermont Urban & Community Forestry Program, MAC will be developing online guidance and hosting training on municipal tree law this year. The Vermont Urban & Community Forestry Program provides technical assistance to municipalities and tree wardens regarding tree care and management. In response to the amended tree warden laws, in 2021 the program is offering a free online Tree Warden School, partnering with 10 municipalities to develop shade tree preservation plans, and has updated its tree warden web resources, which can be found at https://vtcommunityforestry.org/municipal-assistance/tree-wardens.

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