

VERMONT LEAGUE OF CITIES & TOWNS

VERMONT URBAN & COMMUNITY FORESTRY
Cultivating connections to grow trees in our communities

MUNICIPAL TREE LAW 2021

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AGENDA

- **Tree Warden/Tree Law Changes – Act 171 2019**
- **Tree Warden’s Role**
- **Shade Tree Preservation Plan**
- **Tree Ordinance**
- **Other Town Officials’/Employees’ Roles**
- **Cutting or Removing Trees**
- **Penalties**

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AUTHORITY OF VERMONT MUNICIPALITIES

- Vermont municipalities must follow *Dillon's Rule*
 - Municipalities only have those powers and functions specifically authorized by the State Legislature, and those additional powers/functions that are incidental, subordinate, or necessary to exercise the powers granted

- **Note on:** *The Law of Trees, Vermont Institute for Government* by Paul Gillies: Has great nuggets of information and history, but much of it is now outdated with the passage of Act 171

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SHADE TREE DEFINITION BEFORE & AFTER ACT 171

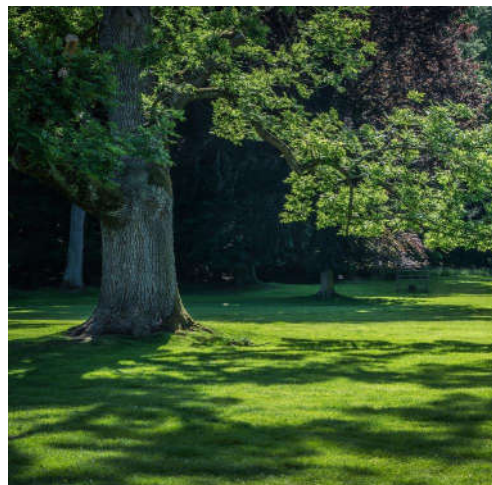
BEFORE ACT 171;

- NONE!

AFTER:

- Shade tree: “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 pursuant to a municipal shade tree preservation plan”

- See Act 171:
<https://legislature.vermont.gov/Documents/2020/Docs/ACTS/ACT171/ACT171%20As%20Enacted.pdf>



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PUBLIC WAY OR PLACE DEFINITION BEFORE & AFTER ACT 171

BEFORE ACT 171:

- NONE!

AFTER:

- Public place: “municipal property, including municipal park, a recreation area, or a municipal building (does not include municipal forestland or property subject to ownership interest held by the State AOT)”
- Public way: “a right-of-way (ROW) held by a municipality, including a town highway”



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SHADE TREE PRESERVATION PLAN BEFORE & AFTER ACT 171

■ BEFORE:

- Tree warden had option to, *alone*, adopt and implement shade tree preservation *program*
- Not defined very well and no standard adoption process

■ AFTER:

- Shade tree preservation *PLAN* – clearer goals and purpose (STPP or Plan)
- Adopted by tree warden AND selectboard
- Process for adoption, following at least one public hearing
- Designate trees or zones of trees as shade trees

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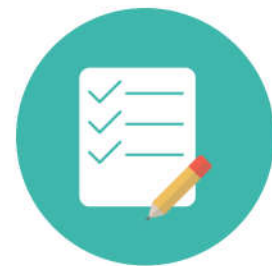
SHADE TREE PRESERVATION PLAN

- Plan is a *discretionary* document
- Benefits of Plan:
 - protect shade trees
 - organized, planned, controlled process for and management of trees
 - plan for and managing infestations / tree pests
 - Manage liability

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SHADE TREE PRESERVATION PLAN REQUIRED COMPONENTS

- If Plan is adopted, it must:
 - Describe program for planning new trees and shrubs;
 - Provide for the maintenance of shade trees through feeding, pruning, and protection from noxious insect and disease pests;
 - Determine the apportionment of costs for tree warden services provided to other municipal corporations;
 - Determine whether tree maintenance or removal on specific municipal property shall require the approval of another municipal officer or legislative body; and
 - Determine the process, not inconsistent with tree law, for the removal of:
 - Diseased, dying, or dead shade trees; and
 - Any shade trees that create a hazard to public safety, impact a disease or insect control program, or must be removed to comply with State or federal law or permitting requirements



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SHADE TREE PRESERVATION PLAN DISCRETIONARY COMPONENTS

- *Discretionary* Plan components:
 - Map locations or zones within the municipality where all trees in whole or in part within a public way or place shall be designated as shade trees; and
 - Designate as a shade tree any tree in whole or in part within a public way, provided that the tree warden and legislative body of the municipality find that the tree is critical to the cultural, historical, or aesthetic character of the municipality
- **If you don't adopt a Plan, the only shade trees that will be protected are those the town planted.**

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SHADE TREE PRESERVATION PLAN ADOPTION PROCESS

- Tree warden and selectboard must hold at least one public hearing on the proposed shade tree preservation plan to solicit feedback and input (same method for amendment to Plan)
- Must publish proposed plan 10 days prior to public hearing.
 - Publish by posting with Open Meeting Law (OML) *notice* of hearing, by:
 - **Notice** & provide **Agenda** for public hearing as a special meeting under OML: I VSA section 312
(<https://www.vlct.org/sites/default/files/documents/Resource/December%202017%20OML%20Quick%20Guide.pdf>)
 - Take minutes as required by OML
- Selectboard and tree warden approve



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TREE ORDINANCE AUTHORITY & PURPOSE & ADOPTION

- Selectboard can adopt a tree warden ordinance to manage and control trees and shade trees. Natural extension to shade tree preservation plan, authority comes from:
 - 24 VSA section 2502: authority to adopt ordinance for the purpose of administering the shade tree preservation plan and regulation of shade trees
 - 24 VSA section 2291 (3): to provide for the location, protection, maintenance, and removal of trees, plants, and shrubs and buildings or other structures on or above public highways, sidewalks, or other property of the municipality.
- Tree warden can also recommend rules and ordinances for selectboard, but selectboard adopts.
- Adoption process: <https://www.vlct.org/resource/ordinance-notice-requirements-info-sheet> & <https://www.vlct.org/resource/quick-guide-ordinance-adoption-amendment-or-repeal>.
- Dept. of Forests, Parks and Recreation useful tips for strategic plan to adopt ordinance: https://fpr.vermont.gov/sites/fpr/files/Forest_and_Forestry/Community_Forests_and_Trees/Library/TreeRegulationsOverview.pdf

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TREE WARDEN'S ROLE LEGAL AUTHORITY

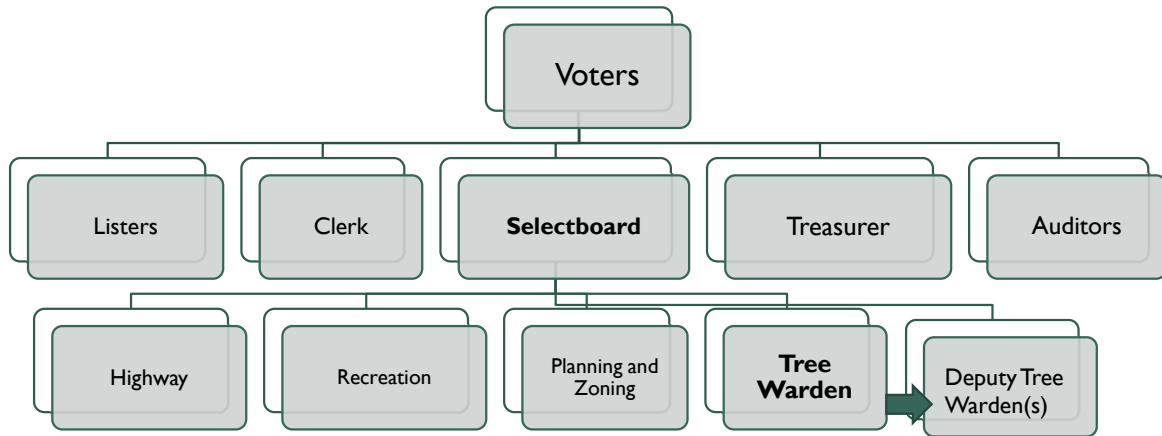
Primary Tree Warden Authority in Vermont Statutes:

- Title 24 V.S.A. §§ sections 2501a-2511: <https://legislature.vermont.gov/statutes/chapter/24/067>
- Other relevant tree laws:
 - Highway ROW cutting/maintenance: 19 V.S.A. §§ 901-904
 - Utility work: 30 V.S.A. § 2506

Local governance charter could modify these laws; typically take precedence over general statutes

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TREE WARDEN'S ROLE WITHIN TOWN GOVERNMENT



Certify tree warden appointment at <https://anrweb.vt.gov/FPR/vtFPR/TreeWarden.aspx>

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TREE WARDEN'S ROLE

Legal Obligations = "shall"

- Control shade trees
- Give public notice before shade tree cutting or removal
- Enforce all laws related to shade trees

Discretionary = "may"

- Shade Tree Preservation Plan
- Control and manage infestations and diseases
- Propose and help draft tree ordinances and policies regarding planting, protection, and care of trees
- Tree warden may expend monies appropriated by the town for the purposes of carrying out tree law and their duties
- With approval of selectboard, may (discretionary) accept on behalf of town any funds, equipment, supplies, or services from organizations and individuals to carry out tree law and town policies and ordinances

The tree warden's authority sometimes gives way to other entities

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TREE WARDEN'S ROLE COOPERATION & AGREEMENTS

- Discretionary (with approval)
 - Enter into financial or other agreements with the owners of land adjoining or facing public ways and places for the purposes of encouraging and effecting the STP Plan
 - Enter into agreements with other municipalities to provide or receive tree warden services or training; or
 - Cooperate with federal, state, or other municipalities, agencies, or other organizations or individuals



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CUTTING OR REMOVING SHADE TREES BEFORE & AFTER ACT 171



BEFORE:

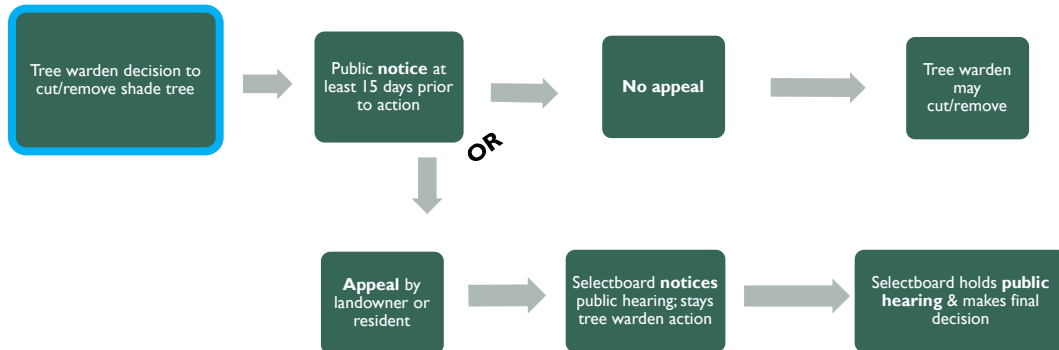
- Tree warden hearing required ALWAYS required before cutting/removing shade tree
- No standard notice requirements

AFTER:

- Tree warden initially decides whether to cut/remove shade tree (or cause cut/removal by designating it to someone else); then gives standardized public notice
- Any landowner or resident may appeal tree warden's decision to selectboard
- If appealed selectboard must hold public hearing and tree warden action is stayed until decision is made

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CUTTING OR REMOVING SHADE TREES PROCESS



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CUTTING OR REMOVING SHADE TREES NOTICE REQUIRED



Public notice required by tree warden before cutting/removal:

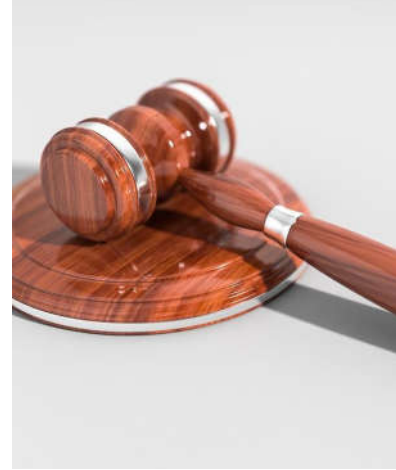
- Posted at least 15 days prior to action in at least two conspicuous places in town and in/near the clerk's office
- If the shade tree is located on property held in fee by another, the tree warden must notify each abutting landowner at the landowner's address of record

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CUTTING OR REMOVING SHADE TREES APPEAL & HEARING

Appeal & Hearing

- Residents and landowners may appeal in writing to the selectboard within 15 days after notice to cut/remove has been posted
- **Notice & Agenda:**
<https://www.vlct.org/sites/default/files/documents/Resource/December%202017%20OML%20Quick%20Guide.pdf>
- Selectboard **must** hold public hearing within 10 days after receipt of appeal and inform tree warden of appeal; tree warden's action is stayed until selectboard renders final decision



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CUTTING OR REMOVING SHADE TREES APPEAL & HEARING



Public hearing's purpose is to receive public comment on proposed cut/removal

- Hearing is a quasi-judicial proceeding where the selectboard acts like judge
- Site inspection (visual inspection) of tree or trees may be necessary (not legally required)
- Selectboard makes final decision within town (but can be appealed to superior court under Vermont Rules of Civil Procedure 75)

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CUTTING OR REMOVING SHADE TREES APPEAL & HEARING

What if there's no tree warden notice or selectboard hearing?

- Likely a violation of individual(s) constitutional due process rights

BUT under 24 V.S.A. § 901: Selectboard and tree warden aren't going to be *personally* liable for failing to give notice or hold a hearing

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CUTTING OR REMOVING SHADE TREES EXCEPTIONS TO PUBLIC NOTICE



Public notice / hearing requirements don't apply when shade trees:

- are infested with or infected by, or at risk to become infested with or infected by, a tree pest and are located in an infestation area designated by the Agency of Agriculture, Food and Markets and Department of Forests, Parks and Recreation;
- are a hazard to public safety; or
- must be removed for the municipality to comply with State or federal law or permitting requirements

Tree warden also has authority to remove/cut or caused to be removed *any* tree that constitutes a public hazard or is infested or infected.

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CUTTING OR REMOVING TREES NON-SHADE / SHADE TREES

Town (selectboard)

- Selectboard, as delegated to highway foreperson/workers, control and decide when to cut or remove *non-shade* trees in town highway ROW for town purposes and ROW maintenance (19 VSA sections 901 and 904)
 - Removal of roadside growth; or trees that obstruct the view of the highway ahead or that cause damage to the highway or that are objectionable from a material or scenic standpoint.
 - Importantly, trees that have been set out or marked by abutting landowners and **shade trees** that have been designated must be preserved if usefulness or safety of highway is not impaired.
 - Young trees standing at a proper distance from the roadbed and from each other, and banks and hedges of bushes that serve as a protection to the highway or add beauty to the roadside, must also be preserved.



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ROLES AND RESPONSIBILITIES OF TOWN OFFICIALS

Required Plan components:

- “Determine whether tree maintenance or removal on specific municipal property shall require the approval of another municipal officer or selectboard”

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CUTTING OR REMOVING TREES NON-SHADE TREES



Abutting landowners

- “[a] person, other than the abutting landowner or municipality, shall not cut, trim, remove, or otherwise damage any grasses, shrubs, vines, or trees growing within the limits of a town highway without first having obtained the consent of the legislative body.”

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CUTTING OR REMOVING TREES STATE ROW AND UTILITY WORK



- State highway ROW: state controls trees in state ROW, even if town or town residents have ownership interest in land underlying state ROW. No tree warden or selectboard approval required for state to cut or remove **ANY** trees in state ROW (even shade trees).

- No tree warden notice or approval required for utility work

- Abutting landowner can give permission to utility company. If abutting landowner refuses, selectboard may give permission following hearing

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VIOLATIONS BEFORE & AFTER SHADE TREE

Stayed same: "Mar or deface" shade tree without permission:

- Fined not more than \$50

Cuts down or critically injures:

BEFORE

- Willfully, critically injures or cuts down a shade tree without permission, fine up to \$500

AFTER

- Fined pursuant to 13 VSA section 3602 (formula based on tree's size; up to \$2,000), for each tree cut

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VIOLATIONS BEFORE & AFTER NON-SHADE TREES IN ROW

BEFORE

- Willfully or maliciously cuts, trims, removes or damages NON-shade trees in the town ROW fined not more than \$100 nor less than \$10 per offense

AFTER

- Willfully or maliciously cuts, trims, removes or damages NON-shade trees in the town ROW fined under 13 VSA section 3602 (\$2,000), for each tree cut

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QUESTIONS

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Contact VLCT Municipal Assistance Center:
(800) 649-7915
info@vlct.org

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