



Amendments to the Vermont Tree Warden Statutes

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Presentation Flow

- **Brief history of Vermont tree warden statutes**
- **Where to find the updated statutes**
- **10 changes of note**
- **Outreach & assistance in 2021 to support tree wardens and municipalities**

Context: History

- Established 1904, last amended 1969
- Lack of definitions, conflict between statutes, governance issues
- Legal cases

The Vermont Institute for Government

THE LAW OF TREES

Compiled by Paul Gillies

In the law, a tree can be either public or private property. It can be real or personal property, depending on the circumstances. Trees are funny that way. They depend.

A tree's status depends on where it's located. If it's in the public right-of-way — that area usually three rods in width that is controlled by the town for highway purposes — it isn't yours to cut and split into cordwood, without permission of a public official. Town officials can, if they think it right, remove the tree and leave you the wood, unless they can figure some way to use it in the building of the highway.

A tree's status also depends on its health. If a tree has a disease that can infect other trees, public officials also have authority to spray it, cut it down, and burn the wood to protect other trees in the area.

Trees have been around much longer than any law, but the traditions and understanding of people toward trees have been translated into law in ways that every landowner ought to understand. This brochure is intended to give you an idea of how the law treats trees, and to describe your rights and duties toward our leafy friends.

The Players

Let's meet the people who administer the law of trees in Vermont.

Every town ought to have a **tree warden**, as the law requires one to be appointed annually by the select board. The statutes devote an entire chapter to the office. The domain of this official includes all shade and ornamental trees within the limits of the public ways and places. Tree wardens decide when old trees should come down and when new trees should be planted, what pest control measures are needed and where to prune. They may enact ordinances for the planting, protection, care, or removal of public shade trees. It's important to appoint someone, with a good background in the subject, to this office, one who is both familiar with the science of trees and who will serve as an advocate for them in an official capacity.

The **select board** hears appeals from decisions of the tree warden. It has no authority to interfere with this officer, if no one appeals. The **voters** approve budgets that raise money for caring for these trees. The **town road commissioner** has continuing responsibility for maintaining the public rights-of-way.

The **private landowner** is bound by the law to work with the tree warden to ensure the health and preservation of public shade and ornamental trees.

The **Commissioner of Forests, Parks and Recreation** has a continuing role in assisting communities and landowners to keep forests healthy, and operates a cost-sharing program for the planting and maintenance of trees by towns through the town tree warden. The **Commissioner of Agriculture** recommends

The Anomaly of the Bee Tree

Shortly after the Civil War, a man found a bee tree on his neighbor's land. He visited the neighbor and told him about his find and his intention to remove the honey. The neighbor told his cousin about the tree. With the neighbor's permission, the cousin went looking for the tree, found it, and took the honey for himself. The original finder then sued for damages claiming he was entitled to the honey.

He was, even though the tree was not on his own land. The common law recognized his rights as first finder of a bee tree. The Vermont Supreme Court acknowledged his right to cut it down, even without asking permission, and take the honey for himself.

Whether this is still good law in Vermont is unclear, but the story illustrates how curious the law of trees can be. The usual rules of private property ownership do not always apply. Trees have a special status in the law. All landowners ought to know their rights and those of their trees.

1

Context: Legislative Process

- Amendments introduced to the legislature in 2017, 2018, and 2020
- Many perspectives, extensive bill edits in committee
- Signed into law by Governor Scott on October 8th

No. 171
2020

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No. 171. An act relating to tree wardens.

(H.673)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 24 V.S.A. § 871 is amended to read:

§ 871. ORGANIZATION OF SELECTBOARD; APPOINTMENTS

(a) Forthwith after its election and qualification, the selectboard shall organize and elect a chair and, if so voted, a clerk from among its number, and file a certificate of such election for record in the office of the town clerk.

(b) The selectboard shall ~~thereupon~~ appoint ~~from among the registered voters~~ a tree warden, who need not be a resident of the municipality, and may ~~thereupon~~ appoint from among the registered voters the following officers who shall serve until their successors are appointed and qualified, and shall certify ~~such~~ the appointments to the town clerk who shall record the same:

* * *

(c) After the selectboard appoints a tree warden, the selectboard shall certify the appointment to the Commissioner of Forests, Parks and Recreation. The certification shall include contact information for the appointed tree warden.

Sec. 2. 24 V.S.A. chapter 67 is amended to read:

CHAPTER 67. PARKS AND SHADE TREES

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Relevant Websites and Pages

H.673/Act 171: An act relating to tree wardens:

<https://legislature.vermont.gov/bill/status/2020/H.673>

Vermont State Statutes Online (updated on 12/17/20)

<https://legislature.vermont.gov/statutes/>

VT UCF's Tree Warden webpage:

<https://vtcommunityforestry.org/resources/vermont-tree-wardens-0/tree-warden-statutes>

Legal Interpretation

Vermont League of Cities and Towns – Municipal Assistance Center:

<https://www.vlct.org/mac>

OR

Your municipality's attorney (if there is one)



10 Changes of Note

VERMONT TREE WARDEN STATUTES
CHANGES IN TITLE 24, CHAPTERS 33 AND 67
AND IN TITLE 19, CHAPTER 9

#1

Definitions have been established for “public places” and “public ways”.



What's in a name?

Definitions of terms and what they really mean

Public Place

is defined as municipal property, including a municipal park, a recreation area, or a municipal building.

What's in a name?

Definitions of terms and what they really mean

Public Way

is defined as a right-of-way held by a municipality, including a town highway.

#2

A definition for “shade tree” is established.



What's in a name?

Definitions of terms and what they really mean

Shade Tree

is defined 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 is either:

- a) planted by the municipality or
- b) is designated as a shade tree pursuant to a municipal shade tree preservation plan.

#3

The Shade Tree Preservation Plan has been established as an optional mechanism for documenting municipal tree program and for expanding jurisdiction of the tree warden.



What's in a Shade Tree Preservation Plan?

- Five "musts"
- Two "mays"
- Required adoption by the town

The plan must include:

1. Description of any program for the planting of new trees and shrubs;
2. Provide for the maintenance of shade trees through feeding, pruning, and protection from noxious insect and disease pests;
3. Determine the apportionment of costs for tree warden services provided to other municipal corporations;
4. Determine whether tree maintenance or removal on specific municipal property shall require the approval of another municipal officer or legislative body; and
5. Determine the process, not inconsistent with this chapter, for the removal of:
 - a) diseased, dying, or dead shade trees; and
 - b) 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.

What's in a Shade Tree Preservation Plan?

- Five "musts"
- Two "mays"
- Required adoption by the town

Additionally, plans may :

1. include a map of **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
2. 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.



[Home](#) > [Programs](#) > [Technical Assistance](#) >

Shade Tree Preservation Plan

Now providing technical assistance to draft a municipal shade tree preservation plan for selected municipalities.

Deadline for application: February 3, 2021

Amendments to the existing Vermont tree warden statutes were signed into law on October 8, 2020 and made effective on November 1, 2020. Towns now have the option to adopt a shade tree preservation plan written by and for the municipality that describes a municipal shade tree program and allows the flexibility to extend the jurisdiction of the tree warden beyond the core duties now specified in the law. For more information on the duties of a tree warden and on the amended statutes, see our [FAQ page](#) or our [tree warden statutes](#) resources.

The Vermont Urban & Community Forestry Program (VT UCF) is seeking five municipalities to participate in a collaborative process to draft a shade tree preservation plan specific to the municipality. VT UCF will provide technical assistance regarding tree care and management, example plan language, urban and community forestry best practices, and details regarding municipal procedures. Partner municipalities should be willing and able to assemble a team of interested parties including the tree warden, contribute to draft elements of a shade tree preservation plan, hold a public hearing to accept comments on the plan, and lead a process to adopt the shade tree preservation plan by the governing body of the municipality. **The collaboration requires at least 50 hours of matched time by municipal staff or volunteers for the duration of the year-long project.** No money will be exchanged for the duration of the collaboration.

Want to learn more?

[Application Overview](#)

Why Trees  **TREEmail** 
[Find out](#) [Sign up](#)

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[Professionals](#)

[Resilient Right-of-Ways](#)

[Shade Tree Preservation Plan](#)

 [EXPLORE THE
Tree Selection Tool](#)  [VISIT OUR
Resources](#)

Apply for technical assistance

[vtcommunityforestry.org/programs/
technical-assistance/shade-tree-
preservation-plan](https://vtcommunityforestry.org/programs/technical-assistance/shade-tree-preservation-plan)

#4

Conflicts have been addressed in **Title 24, Chapter 67** (Parks & Trees) and **Title 19, Chapter 9** (Town Highways).

- Addresses a conflict in language between Title 19 and Title 24 to recognize shade trees and requiring involvement with the tree warden to remove them.
- Maintains the municipality and the abutting landowner's ability to maintain and remove trees that are not designated as shade trees without the consent of the tree warden.
- Establishes consistent penalties.
- Recognizes that designated shade trees along town highways should not be removed, pursuant to the tree warden statutes, in regular road maintenance practices



#5

Municipalities can proactively manage shade trees that are threatened by invasive forest pests (such as emerald ash borer).



#6

Penalties for unauthorized shade tree removals are based on size of tree (and consistent with timber trespass law) opposed to static fee.



#7

Municipalities can appoint a non-resident as the tree warden and can share a tree warden between municipalities.



#8

Municipalities are now required to report tree warden appointments, with contact info, to the Vermont Department of Forests, Parks & Recreation.



#9

There are clear situations and processes for shade tree removals, including public notice and public hearings.



#10

The final decision about shade tree removals has been transferred from the responsibility of the tree warden to the legislative body of the municipality.



Outreach & Assistance in 2021

Updated web resources

- FAQ
- 2-pager on how to comply
- Guide for public hearings
- Webinar read-through recording, Vermont Local Roads coming up
- PowerPoints to present/explain changes available for use of TWs or Tree Committees

Shade Tree Preservation Plan pilot program

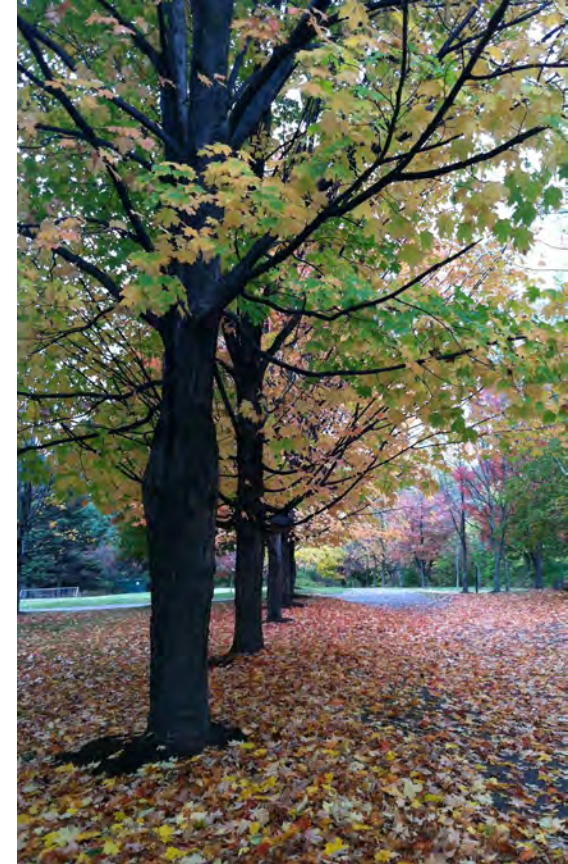
- 10 municipal partners (4 identified, 6 will be selected via application process)

Contract with VLCT

- VT tree law guidance
- Webinars/trainings/article in the VLCT bimonthly

Tree warden reporting button

Tree warden School





Questions?

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