



# Tree Warden Statutes FAQ

New legislation has been passed to modernize Vermont's tree warden statutes and other statutes related to public trees and roadside vegetation. The bill, H.673 was signed into law by Governor Scott on October 8, 2020 and goes into effect November 1, 2020.

## WHAT IS THE TREE WARDEN'S RESPONSIBILITY?

In accordance with the amended Tree Warden Statutes, the tree warden is responsible for all **shade trees** within a municipality. The tree warden makes determinations about shade tree removals, enforces all laws relating to shade trees, may develop a community tree planting and care program, and may choose to work with the legislative body of the municipality to adopt a shade tree preservation plan.

### 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.

### Public Place

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

### Public Way

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

## WHAT IS A SHADE TREE PRESERVATION PLAN?

If a community would like to expand the role of the tree warden beyond shade trees in the public way, municipalities may adopt a **Shade Tree Preservation Plan**. *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.

*Additionally, plans may include:*

1. 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
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

## MY COMMUNITY HAS A TREE POLICY OR MANAGEMENT PLAN ALREADY. DOES IT COUNT AS A SHADE TREE PRESERVATION PLAN?

Maybe! The management plan or tree policy must include the requirements (listed in the question above). Additionally, one public hearing must be held to collect public input. The plan must be available to the public 10 days in advance of the hearing and adopted by the legislative body.

## IS THERE AN EXAMPLE OF A SHADE TREE PRESERVATION PLAN?

Not yet. The UCF team is currently developing resources for communities and tree wardens to revise their current management plan to meet the new requirements or create a new document entirely.

## WHO OWNS THE TREES WITHIN THE PUBLIC RIGHT-OF-WAY?

The abutting land owner typically owns the land underlying the road easement, however, the town has the authority to plant, maintain, and remove trees in this area. As with street lights, sidewalks, fire hydrants, etc., trees are considered part of the public infrastructure and, as such, are managed by the municipality within the public right-of-way. Shade trees are the responsibility of the tree warden, while other municipal departments (public works, road crews) manage trees within the municipal right-of-way that do not meet the definition of a shade tree.

## WHO CAN CUT DOWN TREES IN THE PUBLIC RIGHT-OF-WAY?

The tree warden has the authority to make determinations about shade tree removals. If such a decision is appealed by an abutting landowner or a citizen, the legislative body of the municipality convenes a public hearing and will make the final decision. If any other person than the tree warden critically injures or removes a shade tree without written permission of the tree warden or the legislative body of the municipality, a penalty pursuant to 13 V.S.A. section 3602 may be issued.

Both the municipality and the abutting landowner may remove trees within the right-of-way that do not fall under the definition of a shade tree.

## WILL MUNICIPALITIES BE ABLE TO REMOVE TREES IN THE TOWN RIGHT OF WAY WITHOUT THE TREE WARDEN'S APPROVAL?

Unless a tree falls under the definition of a shade tree, municipalities can manage and remove trees within the town right-of-way without involving the tree warden. If a tree is a shade tree then the tree warden needs to be involved in approving or supporting a public input process for removals.

## TO REMOVE SHADE TREES, WILL THE MUNICIPALITY HAVE TO HOLD A PUBLIC HEARING?

Not necessarily. The tree warden will post notice of any non-hazardous shade trees that will be removed. A public hearing is only required if someone within the municipality appeals to the public notice of shade tree removal.

## WITH EMERALD ASH BORER (EAB) IN VERMONT, WILL MUNICIPALITIES BE ABLE TO MANAGE ASH TREES WITHOUT HOLDING A PUBLIC HEARING?

Yes, if the tree is infested with EAB, or is threatened and is located in the area mapped as infested by the Department of Forests, Parks & Recreation, municipalities can take proactive steps to manage ash trees.

## HAVE TOWNS ENGAGED IN LITIGATION OVER PUBLIC TREE REMOVALS IN THE PAST?

Yes, though there are not many case examples in Vermont. In 2001, the town of Holland was taken to court by a landowner for failing to hold a hearing prior to cutting down a number of trees within the public right-of-way. In 2017, a farmer in Addison County removed a hedgerow of trees on land owned by the farm that was also in the municipal right-of-way spanning two towns. One municipality calculated a potential fine to the landowner of over \$1 million and the dispute is currently under litigation. Both of these are examples resulting from the ambiguous and conflicting language in the original Tree Warden Statutes. These instances of legal conflict were the impetus for modernizing, clarifying, and amending the statutes in the legislature in 2020.

**View more tree warden resources at [VTcommunityforestry.org](https://vtcommunityforestry.org)**



**Vermont Urban & Community Forestry Program**

Vermont Department of Forests, Parks and Recreation in partnership with University of Vermont Extension

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