

ARTICLE V. REGULATION OF PUBLIC TREES

(Draft 12/1/2022)

Sec-14-20. This ordinance serves as the implementation document for the State of Vermont’s statute, Title 24, Chapter 67, Parks and Shade Trees, as regards the paragraphs 2501a through 2511. The definition of “Shade Tree” is expanded from the state minimum to include trees that were not planted by the town, but which are on town property and/or within the town right-of-way, and certain shrubbery as defined in Section 14-21.

Sec.14-21. Definitions

Public Trees and Shrubs: All trees and shrubs located on town-owned land and within the town right-of-way.

Street Trees: Public Trees on either side of all streets, avenues, and bike paths and located within the town right-of-way.

Shade Trees: Any Public Tree or Shrub which meets the following criteria:

9 inches or greater in caliper, 4½ feet above ground level, in the Rural and waterfront zoning districts.

6 inches or greater in caliper measured 4½ feet above ground level, in the Urban Center, Village Center, Neighborhood Center, Mixed Use, Residential Neighborhood, and Industrial and Institutional zoning districts.

3 inches or greater in caliper measured 4½ feet above ground level, in all other zoning districts.

Any tree intentionally planted, which has not attained the requisite size.

Any Public Shrub intentionally planted.

Any tree or shrub listed as invasive on the website, <https://vtinvasives.org>, , shall not be considered a Shade Tree nor offered any of the protections described in this ordinance, except for trees that were intentionally planted.

Shade Tree Preservation Plan: This ordinance shall be considered to be the town’s Shade Tree Preservation Plan in accordance with the State Statute, Title 24, Chapter 67.

Sec. 14-22. Creation and Establishment of a Town Tree Board.

There is hereby created and established the Brattleboro Tree Advisory Board (“the Board”) which shall consist of five members, who shall be appointed by the Selectboard. The Board shall function under this ordinance and State Statute, Title 24, Chapter 67, or its successor provision. The Board shall be an advisory organization that works with the Tree Warden to promote the improvement and preservation of a healthy environment in the town as it relates to Public Trees. The Board is subject to the Vermont Open Meetings Law, per State Statute, Title 1, Chapter 5, Subchapter 2.

1. **Term of Office of Members of the Brattleboro Tree Advisory Board**
Each member shall be appointed for a period of three years. In the event that a vacancy shall occur during the term of any member, his or her successor shall be appointed for the unexpired portion of their term. Any member may be removed from the Board for good cause. Cause shall include but not be limited to, excessive absences from scheduled board meetings, and clearly identified conflicts of interest. Removal from the Board shall require a majority vote of the Board and the concurrence of the Selectboard.
2. **Compensation for members of the Brattleboro Tree Advisory Board**
Members shall serve without compensation.

3. **Duties and Responsibilities of the Brattleboro Tree Advisory Board**
Board members shall study, investigate, and develop and/or update a written plan, as needed, for the care, preservation, pruning, planting, removal, or disposition of Public Trees and Shrubs. The Board, when requested by the Tree Warden or any town department, board or commission, shall consider, investigate, make findings, report and recommend upon any special matter of question coming within the scope of its responsibilities.
4. **Operation of the Brattleboro Tree Advisory Board**
The Board shall choose its own chairperson on an annual basis during a regularly scheduled meeting in the month of July. A member will also be chosen as secretary and will properly warn and keep the minutes of each meeting. The Tree Warden should attend all meetings and shall serve in the capacity of advisor to the Board. Meetings shall be held once each month. If less than a quorum of the members is in attendance, no official action can be taken.

Sec. 14-23. Tree Warden's Jurisdiction

The Tree Warden shall have the sole authority over all Shade Trees within the town. If another jurisdiction requests help or advice from the town's Tree Warden, the costs associated with those services shall be borne by the requesting jurisdiction.

The Tree Warden shall have all powers granted to Tree Wardens under State Statute Title 24, Chapter 67, or its successor provisions.

The Tree Warden shall advise any regulatory boards of the town in matter of tree health, care, and maintenance, as needed. All actions taken by the Tree Warden shall be reported to the Tree Advisory Board and maintained in the Board's official files.

Sec. 14-24. Planting of Public Trees and Shrubs. This section does not apply to non-conforming Shade Trees and Shrubs that were pre-existing the adoption of this ordinance, February 17, 2004.

1. **Street Tree Species to be Planted.**
All species planted as Street Trees shall be selected from the booklet, "Vermont Tree Selection Guide", by Vermont's Urban and Community Forestry Program, available on-line at VTcommunityforestry.org/sites/default/files/pictures/complete_vt_tree_selection_guide_2019.pdf. Note that this link may change as the guide is revised. See vtcommunityforestry.org for updates. The planting of non-conforming species may be appealed to the Tree Warden.
2. **Spacing**
Spacing of Street Trees shall be in accordance with the spacing and soil volume recommendations given in the booklet, "Vermont Tree Selection Guide", and in accordance with any applicable requirements of the Brattleboro Land Use and Development Regulations, Section 315.
3. **Distance from Curb and Sidewalk**
Street Trees shall be planted per the requirements of the Brattleboro Land Use and Development Regulations, Section 315, and ensuring adequate soil volume as discussed in the booklet, "Vermont Tree Selection Guide".
4. **Distance from Street Corners and Fire Hydrants**
No Street Tree shall be planted closer than 30 feet from any street corner, measured from the point of nearest intersecting curbs or edges of roads. No Street Tree shall be planted closer than 10 feet of any fire hydrant. Exception may be granted only by approval of the Tree

Warden, in consultation with the Department of Public Works and the Tree Advisory Board, as appropriate.

5. **Utilities**

No Street Trees, other than those species listed with mature heights of 30 feet and under, may be planted under or within 10 lateral feet of any overhead utility wire. Larger trees shall be planted one-half of the listed canopy diameter from any overhead utility line. Small trees (mature height of 30 feet) shall be planted at least 5 feet, medium trees (mature height of 30 to 50 feet) at least 10 feet, and large trees (mature height of more than 50 feet) at least 15 feet from any underground utility line.

Sec. 14-25. Construction in Vicinity of Public Trees and Shrubs

Any construction within 10 lateral feet of a Public Tree or Shrub requires consultation with the Tree Warden, who may provide specific written recommendations for protection of those trees and/or shrubs. Any required pruning shall be done per American National Standards Institute's standard, A300.

Sec. 14-26. Care of Public Trees and Shrubs

The town shall have the right to plant, prune, maintain, and remove Public Trees and Shrubs as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds as set forth in the following guidelines. Certain maintenance and/or removal of Public Trees and Shrubs may require approval of appropriate town departments. Notification should be made to any department directly affected by the work, and permission granted if the work is to be performed by a private company.

1. **Maintenance:** The care and maintenance of Public Trees located on public property are the responsibility of the public agency responsible for the property, unless arrangements have been made with others for such maintenance (e.g. charitable organizations, garden clubs, public service organizations, etc.). The care and maintenance of Public Trees located on private property are the responsibility of the property owner.
 - a. All Public Tree and Shrub maintenance and pruning shall be in accordance with ANSI A300.
 - b. The Tree Warden may hire an arborist to obtain further information and options on tree issues, but only with the prior approval of the Selectboard or relevant town department.
 - c. **Topping:** It shall be unlawful for any person, firm, or town Department to top any Public Tree. Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree as to remove the normal canopy and disfigure the tree. Public Trees severely damaged by storm or other cause, or certain trees under utility wires or other obstruction where other pruning practices are impractical may be exempted from this section of the ordinance with the approval of the Tree Warden. If topping occurs, the requirements of Section 14-27 shall apply.
 - d. **Corner and Street Clearance:** It shall be the responsibility of each property owner of any tree overhanging any town right-of-way or town-owned land to prune the branches so that such branches shall not obstruct the light from any streetlamp or obstruct the view of any street or alley intersection, and so that there shall be a clear area above the surface of the street and/or sidewalk to allow for pedestrian and vehicular safety and travel. Said owners shall remove all dead, diseased, or dangerous trees, or broken or decayed limbs, which constitute a menace to the safety of the public. The town shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along

the street from a state or town streetlamp or interferes with visibility of any state or town traffic control device or sign, or to maintain an appropriate clear space above the surface of the street or sidewalk.

- e. **Utilities:** If trees are interfering with utility wires, it is the obligation of the appropriate utility company to correct the situation.

2. Removal of Hazardous, Infected, or Infested Public Trees and Shrubs:

- a. Town employees who have been notified of, or recognize, a concern or a problem with Public Tree or Shrub must determine if the concern or problem is a hazard to the public's safety.
- b. If the employee, in his or her judgement, determines that there is a hazard to public safety, the employee shall contact a supervisor and secure the area, if needed.
- c. The supervisor shall contact the Tree Warden for a formal determination. If the Tree Warden determines that the Public Tree or Shrub needs to be removed, the process shall be per standard town practices.
- d. If the Tree Warden feels that further information should be obtained before a decision can be made, the area should be secured, until such determination can be made.
- e. The Tree Warden may remove, or cause to be removed, any Public Tree or Shrub, or any part thereof, which is infested with, or infected by, or at risk of being infested with or infected by a recognized tree pest, if the tree is within an infestation area designated by the State Agency of Agriculture Food and Markets and the State Department of Forests, Parks and Recreation. No posting or public posting is required in these cases.
- f. The Tree Warden may remove, or cause to be removed, any Public Tree or Shrub, or any part thereof, which is injurious to town sewers, electric power lines, water lines, or other public improvements or which can otherwise be considered a public nuisance. In these cases, the requirements for notifying the public per this section 3, below, apply.

3. Removal of Non-Hazardous and Healthy Shade Trees:

If the Tree Warden determines that a Shade Tree constitutes no hazard to public safety and is determined to be healthy, but needs to be removed to comply with State or federal law, permitting requirements, construction, or other perceived needs, then the following actions are required. If a property owner wishes to remove a Shade Tree for reasons not related to safety (as described in Section 14-26 (2)), the following actions are also required.

- a. At least 15 days prior to the scheduled removal the Tree Warden shall create a public notice which shall be posted in the Town Clerk's office, and on the tree scheduled for removal. The notice shall include the proposed action to be taken. If the tree(s) is located on property held in fee by another, the Tree Warden shall notify each landowner with property that abuts the affected parcel at their address of record.
- b. Anyone contesting the removal must do so to the Selectboard within 15 days of the posting, in writing. The Selectboard must notify the Tree Warden.
- c. A public hearing shall be scheduled within 10 business days of receipt of the appeal, with the Tree Warden, to receive public comment on the proposed Shade Tree or Shrub removal. No action may proceed until the Selectboard has rendered a final decision.
- d. The decision of the Selectboard is final.

- g. Shade Trees may be removed with prior notice to, and approval by, the Tree Warden, by town employees who are maintaining road banks or engaging in accepted practices of right-of-way clearance and tree and shrub maintenance, following the requirements of this section.

Sec. 14-27. Tree Removal Mitigation

1. Mitigation shall be considered for every non-hazardous Shade Tree removed, whether with Tree Warden approval, or not, and for any reason, by any party except for the town. Mitigation shall be determined by the Tree Warden as part of the process for approval for the taking of a non-hazardous tree, or if no approval was granted, when the taking of the Shade Tree is discovered.
2. The Tree Warden may require that a tree or trees be planted equal to the total caliper of the removed tree. (Caliper measured at 4½ feet above ground level). The tree(s) planted shall be consistent with Section 315 of the Brattleboro Land Use and Development Regulations and section 14-24 of this ordinance. Bare root plantings may be no less than 1 ½" in caliper when planted (measured 1 foot above the root ball). Trees shall be replaced by the caliper inch, such that for every inch of diameter (at 4 ½ feet above ground level) removed, one or more trees totaling an equal number of caliper inches shall be planted. In lieu of replacement tree(s), the Tree Warden may allow payment to be made to the town. The amount to be paid should be equal to the value of the tree(s) being removed. The valuation shall be per the *Guide for Plant Appraisal* by the Council of Tree and Landscape Appraisers, available from the International Society of Arboriculture (ISA). A third-party ISA certified arborist may be consulted, if necessary. In no case may the value of mitigation be less than the amount given in state statute, Title 13, Chapter 77, section 3602, or its successor provisions.
3. The mitigation fee may be appealed to the Selectboard within thirty days of written notification to the person or agency responsible for payment.
4. The planting need not be done at the site of the removal but shall be carried out in accordance with Section 315 of the Brattleboro Land Use and Development Regulations and section 14-24 of this ordinance. The Tree Advisory Board may advise the Tree Warden as to where the new tree(s) shall be planted.

Sec. 14-28. Prohibited Activities and Substances Harmful to Tree Life.

It shall be unlawful for any person or agency owning, using, or having control of substances harmful to plant life to allow such substances to come into contact with the soil surrounding the roots of any Public Tree or Shrub in such a manner as may injure or destroy the tree or shrub. If this type of damage occurs, it shall be considered to be equivalent to the removal of a Shade Tree and mitigation is required per Section 14-27.

Unless specifically authorized in writing by the Tree Warden, no person or town agency shall damage, cut, carve, attach any rope, wire, nails, advertising posters or other contrivance to any Public Tree or Shrub. Anyone found to be willfully marring or defacing a Shade Tree shall be subject to the penalty established by state statute Title 24, Chapter 67, section 2510 or its successor provisions.

Sec. 14-29. Tree Removal on Private Property

1. When an insect or disease pest infestation upon or in Public or private Trees threatens other Public or private Trees, is considered detrimental to a municipal shade tree preservation program, or threatens the public safety, the tree warden may request a survey and

recommendation for control action from the Secretary of Agriculture, Food and Markets or Commissioner of Forests, Parks and Recreation in accordance with 6 V.S.A. Chapter 84, sections 8 and 2

2. The Tree Warden may remove or cause to be removed any tree or part thereof which is injurious to town sewers, electric power lines, water lines or other public improvements or can otherwise be considered a public nuisance. The Tree Warden shall notify the owner of such tree in writing by Certified Mail that removal of the tree is necessary. The property owner may appeal this decision per section 14-26 (3). If it is determined that such tree(s) needs to be removed, the town may remove it at its own expense.

Sec. 14-29. Arborist and Bond

Before securing a contract with the town for arboricultural services, a contractor shall have possession of liability insurance in the minimum amounts of \$1,000,000 aggregate, general liability per occurrence indemnifying the town or any person injured or damage resulting from the pursuit of such endeavors as herein described. All tree work performed on Public Trees and Shrubs must conform to the recent ANSI A300 standards.