

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

* * *

§ 2501a. DEFINITIONS

As used in this chapter:

(1) “Public place” means municipal property, including a municipal park, a recreation area, or a municipal building. “Public place” shall not include any municipal forestland or property that is subject to any ownership interest held by the Agency of Transportation.

(2) “Public way” means a right-of-way held by a municipality, including a town highway.

(3) “Shade tree” means 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:

(A) was planted by the municipality; or

(B) is designated as a shade tree pursuant to a municipal shade tree preservation plan pursuant to section 2502 of this title.

§ 2502. TREE WARDENS AND PRESERVATION OF SHADE TREES

~~Shade and ornamental trees within the limits of public ways and places shall be under the control of the tree warden. The tree warden may plan and implement a town or community shade tree preservation program for the purpose of shading and beautifying public ways and places by planting new trees and shrubs; by maintaining the health, appearance, and safety of existing trees through feeding, pruning, and protecting them from noxious insect and disease pests and by removing diseased, dying, or dead trees which create a~~

~~hazard to public safety or threaten the effectiveness of disease or insect control programs.~~

(a) The tree warden shall control all shade trees within the municipality.

(b) The tree warden and the legislative body of the municipality may adopt a shade tree preservation plan. The plan shall:

(1) describe 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.

(c) The shade tree preservation plan may:

(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 character of the municipality.

(d) The tree warden and legislative body of the municipality shall hold a minimum of one public hearing concerning the shade tree preservation plan for the purpose of soliciting public input. The legislative body shall publish the proposed plan 10 days prior to the public hearing.

(e) For the purpose of promoting the public health, safety, welfare, and convenience, a municipality shall have authority to adopt an ordinance that is not inconsistent with this chapter for the administration of the shade tree preservation plan and the regulation of shade trees. The tree ordinance shall be adopted pursuant to chapter 59 of this title.

§ 2503. APPROPRIATIONS

A municipality may appropriate a sum of money to be expended by the tree warden, ~~or if one is not appointed, by the~~ mayor, aldermen, selectboard, or trustees for the purpose of carrying out this chapter.

§ 2504. REMOVAL OF SHADE TREES; EXCEPTION

(a) The tree warden may remove or cause to be removed from the public ways or places ~~all any trees and other plants upon which noxious insects or tree diseases naturally breed~~ that are infested with or infected by a tree pest or that constitute a public hazard. The notice and hearing requirements of section 2509 of this chapter shall not apply to the removal of infested or infected trees.

(b) ~~However, where~~ The tree warden may determine that an owner or lessee of abutting real estate shall annually, to the satisfaction of such warden, control property has sufficiently controlled all insect pests or tree diseases upon the trees ~~and other plants~~ within the limits of a highway public way or place abutting ~~such real estate~~ the property, ~~such trees and plants shall not be removed~~ and may determine that it is not necessary to remove the trees.

§ 2505. DEPUTY TREE WARDENS

~~A tree warden~~ The legislative body of the municipality may appoint deputy tree wardens and dismiss them at pleasure who shall serve under the direction of the tree warden and shall have the same duties and authority as the tree warden. The legislative body of the municipality may dismiss a deputy tree warden at its pleasure.

§ 2506. REGULATIONS FOR PROTECTION OF SHADE TREES

A tree warden shall enforce all laws relating to ~~public~~ shade trees and may ~~prescribe such~~ propose to the legislative body of the municipality the rules and, ordinances, or regulations for the planting, protection, care, or removal of

public shade trees as he or she deems expedient. ~~Such~~ The legislative body of the municipality may adopt the rules, ordinances, or regulations shall become effective pursuant to the provisions of chapter 59 of this title.

§ 2507. COOPERATION

~~The~~ With consent of the legislative body of the municipality, the tree warden may:

(1) enter into financial or other agreements with the owners of land adjoining or facing public ways and places for the purpose of encouraging and effecting a ~~community-wide~~ the shade tree planting and preservation program. ~~He or she may plan;~~

(2) enter into agreements with other municipal corporations to provide tree warden services or training; and

(3) cooperate with federal, State, county, or other municipal governments, agencies, or other public or private organizations or individuals and may accept ~~such~~ on behalf of the municipality any funds, equipment, supplies, or services from organizations and individuals, or others, as deemed appropriate for use in carrying out the purposes of this chapter.

§ 2508. CUTTING SHADE TREES; ~~REGULATIONS~~ PROHIBITED

~~Unless otherwise provided, a public~~ Except as otherwise provided in 19 V.S.A. chapter 9, a shade tree shall not be cut or removed, in whole or in part, except by a tree warden or his or her deputy or by a person having the written permission of a tree warden.

§ 2509. CUTTING SHADE TREES; NOTICE AND HEARING

(a) ~~A public shade tree within the residential part of a municipality shall not be felled without a public hearing by the tree warden, except that when it is infested with or infected by a recognized tree pest, or when it constitutes a hazard to public safety, no hearing shall be required.~~ The tree warden shall post public notice of the intent to cut or remove a shade tree. The notice shall be posted a minimum of 15 days prior to cutting or removing the tree. If the cutting or removal is appealed pursuant to subsection (c) of this section, the legislative body of the municipality shall hold a public hearing. This subsection shall not apply to the cutting or removal of a shade tree or trees that:

(1) 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;

(2) are a hazard to public safety; or

(3) must be removed for the municipality to comply with State or federal law or permitting requirements.

~~(b)(1) In all cases the decision of the tree warden shall be final, except that when the tree warden is an interested party or when a party in interest so requests in writing, such final decision shall be made by the legislative body of the municipality.~~ The tree warden shall post public notice of the intent to cut or remove a shade tree or group of shade trees pursuant to subsection (a) of this

section in at least two conspicuous locations within the municipality. The tree warden shall post the public notice in or near the office of the clerk of the municipality.

(2) When the shade tree or group of shade trees are located on property held in fee by another, the municipality shall notify each abutting landowner at the landowner's address of record.

(c)(1) Within 15 days after the posting of public notice, a resident or landowner may appeal in writing to the legislative body of the municipality to object to the cutting or removal of a shade tree. The legislative body of the municipality shall give notice of the appeal to the tree warden.

(2) Within 10 business days after receipt of an appeal, the legislative body of the municipality shall hold a public hearing with the tree warden to receive public comment on the proposed cutting or removal of the shade tree. The tree warden shall stay action on the proposed removal until the legislative body of the municipality renders a final decision on the appeal.

(d) In all cases, the decision of the legislative body of the municipality shall be final.

§ 2510. PENALTY

(a) Whoever shall, willfully, mar or deface a ~~public~~ shade tree without the written permission of a tree warden or legislative body of the municipality shall be fined not more than \$50.00 for the use of the municipality.

(b) Any person who, ~~willfully, and~~ critically injures or cuts down a ~~public~~ shade tree without written permission of the tree warden or the legislative body of the municipality shall be fined ~~not more than \$500.00~~ pursuant to 13 V.S.A. § 3602 for each tree so injured or cut, for the use of the municipality.

§ 2511. CONTROL OF INFESTATIONS

When an insect or disease pest infestation upon or in ~~public or private~~ public or private shade or private trees threatens other public or private trees, is considered detrimental to a ~~community~~ municipal shade tree preservation program, or threatens the public safety, the tree warden may request surveys and recommendations 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. ~~On recommendation of the Secretary of Agriculture, Food and Markets, the tree warden may designate areas threatened or affected in which control measures are to be applied and shall publish notice of the proposal in one or more newspapers having a general circulation in the area in which control measures are to be undertaken. On recommendation of the Secretary, the tree warden may apply measures of infestation control on public and private land to any trees, shrubs, or plants thereon harboring or which may harbor the threatening insect or disease pest. He or she may enter into agreements with owners of such lands covering the control work on their lands, but the failure of the tree warden to negotiate with any owner shall not impair~~

~~his or her right to enter on the lands of said owner to conduct recommended control measures, the cost of which shall be paid by the municipality.~~

* * *

Sec. 3. 19 V.S.A. chapter 9, subchapter 1 is amended to read:

Subchapter 1. General Duties of Towns

§ 901. REMOVAL OF ROADSIDE GROWTH

Except for work that is part of the Transportation Program under section 10g of this title:

(1) A person shall not remove shade trees, as defined in 24 V.S.A. § 2501a, without prior approval of the tree warden pursuant to 24 V.S.A. chapter 67.

(2) 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 state or town highway, without first having obtained the consent of the agency for state highways or the board of selectmen for town highways legislative body.

(3) A person, other than the Agency or the abutting landowner, shall not cut, trim, remove, or otherwise damage any grasses, shrubs, vines, or trees growing within the limits of lands subject to any ownership interest held by the Agency without first obtaining the Agency's written consent.

§ 902. PENALTY FOR REMOVAL

(a) A person, other than the Agency, the abutting landowner, the municipality, or the tree warden, who ~~wilfully~~ willfully or maliciously cuts, trims, removes, or otherwise damages trees within the limits of a State highway or municipal right-of-way shall be fined pursuant to 13 V.S.A. § 3602, unless the person has obtained prior written consent from the Agency, municipality, or tree warden.

(b) A person, other than the Agency, the abutting landowner, the municipality, or the tree warden, who willfully or maliciously cuts, trims, removes, or otherwise damages grasses, shrubs, or vines, ~~or trees~~ within highway limits in violation of section 901 of this title shall be fined not more than \$100.00 nor less than \$10.00, for each offense, unless the person has obtained prior written consent from the Agency or municipality.

* * *

§ 904. TREE AND BRUSH REMOVAL

The ~~selectmen~~ legislative body of a ~~town~~ municipality, if necessary, shall cause to be cut and burned, or removed from within the limits of the highways under their care, trees and bushes ~~which~~ 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. ~~Shade and fruit trees~~ Trees that have been set out or marked by the abutting landowners and shade trees that have been designated pursuant to 24 V.S.A. chapter 67 shall be preserved if the

usefulness or safety of the 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, shall be preserved. On ~~state~~ State highways, the ~~secretary~~ Secretary shall have the same authority as the ~~selectmen~~ legislative body.

* * *

Sec. 4. EFFECTIVE DATE

This act shall take effect on November 1, 2020.

Date Governor signed bill: October 8, 2020