

State of Vermont
Commissioner's Office
Department of Forests, Parks & Recreation
1 National Life Drive, Davis 2
Montpelier, VT 05620-3801
<http://fpr.vermont.gov>

Agency of Natural Resources
Michael C. Snyder, Commissioner

[phone] 802-828-1534
[fax] 802-828-1399

To: Representative Carolyn W. Partridge, Senator Robert A. Starr
From: Michael Snyder, Commissioner of Forests, Parks and Recreation
Date: January 29, 2019
Subject: Legislative Proposal to Modernize Vermont's Tree Warden Statutes

Last year, the Department started the discussion about amending the tree warden statutes, Chapter 67 of Title 24 of the Vermont Statutes Annotated, and related provisions in Titles 19 and 30. As presently enacted, there are existing conflicts and outdated provisions that are increasingly causing problems for communities in Vermont. The tree warden statutes were enacted in 1904, have had minimal amendments since, and would benefit from updates to clarify key elements to improve implementation and minimize conflicts that are on the rise. Based on the input from the House Committee of Agriculture and Forestry, interested agencies, and partners last year, I am providing updated amendment language for your consideration to address this important issue.

Background – Existing Statutes

The tree warden is appointed by the selectboard and has the responsibility of caring for all public trees in public ways and places. Although “public trees” are also called “shade” and “ornamental” trees, the terms “public trees,” “shade” and “ornamental” trees are not defined. Likewise, “public ways and places” are not defined. This lack of definition of the key elements of the statute has resulted in different interpretations, confusion, and conflicts. Additionally, the role of the tree warden has become more important as Vermont communities become more developed, as citizens move to more rural areas, and as the importance of trees, especially roadside trees for stormwater management and other ecological, social and economic values, are realized. Our Urban & Community Forestry Program works closely with tree wardens and other town officials to manage public trees. The call for clearer language has been repeatedly voiced from all interested parties and would benefit everyone. Recently, a town has considered a fine in the range of one million dollars against landowners abutting public rights-of-ways for cutting trees in a public right-of-way that the landowner believed they had the authority to cut. This confusion is due to the conflicting and unclear existing statutory provisions. Also, there is conflicting authority provided in existing statute for trees in rights-of-way as between Title 24 (tree wardens), Title 19 (town highways) and Title 30 (public utilities).

The primary purpose of the proposed amendments is to provide clarification in the interpretation and implementation of the statutes by including specific definitions, clarifying authority and removing conflicts, and to enhance both local flexibility and technical assistance to communities.

Overview of Proposed Amendments

The proposed amendments are a combination of housekeeping and substantive changes. The housekeeping elements seek to eliminate conflicting provisions in Title 24, Title 19 (town highways) and Title 30 (utilities) related to the authority of the tree warden versus town highway and utility authority for removal of public trees and penalties for unauthorized removal of public trees. The substantive elements include providing definitions of “public tree,” “hazard tree” and “public ways and places” and to eliminate existing conflicting statutory provisions in different titles and establish a clear appeal and hearing process in municipalities.

Amendment objectives:

1. Define terms: Several key terms are lacking a definition including “public tree,” “hazard tree” and “public ways and places.”
2. Create consistent language: There are several statutes that reference the management of roadside trees that are in conflict, including penalties and authority over such trees.
3. Establish a hearing process: The statutes call for a hearing process when removing certain trees but lacks clarity regarding the required process.
4. Update state governance: To be consistent with other statutes, an update to the section on ‘Control of infestation’ to include the Commissioner of Forests, Parks and Recreation.
5. Add reporting element: To enhance technical assistance to communities, establish a reporting element of tree warden appointments to the Department of Forests, Parks and Recreation.

The Department’s proposed amendments are attached for your review. The Department worked with the Agency of Transportation and incorporated input related to town highway concerns.

Please contact me if you have any questions.