

The Vermont Statutes Online

The Vermont Statutes Online have been updated to include the actions of the 2023 session of the General Assembly.

NOTE: The Vermont Statutes Online is an unofficial copy of the Vermont Statutes Annotated that is provided as a convenience.

Title 19 : Highways

Chapter 009 : Repairs, Maintenance, and Improvements

Subchapter 001 : General Duties of Towns

(Cite as: 19 V.S.A. § 904)

§ 904. Tree and brush removal

The legislative body of a municipality, if necessary, shall cause to be cut and burned, or removed from within the limits of the highways under its care, trees and bushes 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. 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 highways, the Secretary shall have the same authority as the legislative body. (Added 1985, No. 269 (Adj. Sess.), § 1; amended 2019, No. 171 (Adj. Sess.), § 3, eff. Nov. 1, 2020.)

The Vermont Statutes Online

The Vermont Statutes Online have been updated to include the actions of the 2023 session of the General Assembly.

NOTE: The Vermont Statutes Online is an unofficial copy of the Vermont Statutes Annotated that is provided as a convenience.

Title 24 : Municipal and County Government

Chapter 067 : Parks and Shade Trees

(Cite as: 24 V.S.A. § 2504)

§ 2504. Removal of shade trees; exception

(a) The tree warden may remove or cause to be removed from the public ways or places any trees 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) The tree warden may determine that an owner or lessee of abutting property has sufficiently controlled all insect pests or tree diseases upon the trees within the limits of a public way or place abutting the property and may determine that it is not necessary to remove the trees. (Amended 1969, No. 238 (Adj. Sess.), § 3; 2019, No. 171 (Adj. Sess.), § 2, eff. Nov. 1, 2020.)

The Vermont Statutes Online

The Vermont Statutes Online have been updated to include the actions of the 2023 session of the General Assembly.

NOTE: The Vermont Statutes Online is an unofficial copy of the Vermont Statutes Annotated that is provided as a convenience.

Title 24 : Municipal and County Government

Chapter 067 : Parks and Shade Trees

(Cite as: 24 V.S.A. § 2509)

§ 2509. Cutting shade trees; notice and hearing

(a) 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) 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. (Amended 1969, No. 238 (Adj. Sess.), § 6; 2017, No. 74, § 100; 2019, No. 171 (Adj. Sess.), § 2, eff. Nov. 1, 2020.)

What is a “shade tree”?

A shade tree is defined by the law as a shade or ornamental tree that is located in whole or in part within the limits of a public way or public places, provided the tree: was planted by a town; or is designated as a shade tree pursuant to a town’s Shade Tree Preservation Plan (“Plan”). In order to be designated as a “shade tree” under a town’s Plan, the selectboard and tree warden must agree that the tree is critical to the cultural, historical, or aesthetic character of the town. This is presumably a relatively low bar, but we would advise that a legislative record be created, which is either captured in the hearing minutes or the plan itself, that states why such trees are critical to the cultural, historical, or aesthetic character of the town. A “public way” means a right-of-way held by a town, including a town highway. A “public place” means any municipal property (e.g., a park, recreation area, municipal building, etc.), but explicitly excludes any municipal forestland or property subject to any ownership interest held by the VT Agency of Transportation.

If a shade tree located within the town’s highway right-of-way is cut or removed, to whom does the wood go?

To help answer this question, it may help to think of property rights as a bundle of sticks. Each stick represents a different right on the property. The abutting landowner holds the stick of ownership while the selectboard holds the stick to control what occurs within the limits of the town highway right-of-way including, subject to the limitations enumerated herein, the right to cut a tree down. A property owner has not lost their interest in their land, including the trees that grow there, just because it is subject to a public easement even though the existence of the town’s right-of-way does very much limit the landowner’s use of that property. Accordingly, it’s safe to assume that the abutting landowner probably has the greatest claim to any of the wood resulting from the cutting of any tree within the town highway right-of-way.

Who owns trees located in the town highway right-of-way?

It depends on the particular right-of-way, but the most common relationship is that the town holds a public easement and the abutting property owner owns the underlying land, including the trees that grow on it. The landowner’s right to use the property located within that right-of-way is limited by law and often subject to the control of the selectboard.

How do towns cut trees located in the town highway right-of-way?

It depends on several factors. The selectboard has the authority to remove trees and bushes within the town highway right-of-way that obstruct the view of the highway ahead, cause damage to the highway, or that are objectionable from a material or scenic standpoint. This is going to include most routine town highway right-of-way maintenance. Trees that have been set out or marked by abutting landowners and shade trees must be preserved, so long as 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 are also to be preserved.

The answer to this question also depends on who does the cutting. The law also says that “[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 town highway without first having obtained the consent of the legislative body.” The negative implication is that an abutting landowner may cut a tree without permission of the selectboard, assuming it’s not a shade tree.

Who has control over the town’s trees?

The answer to this question depends on what kind of tree it is and where it is located. The tree warden has control over “all shade trees within the municipality.” [24 V.S.A. § 25062\(a\)](#). This includes all trees located on town property including those located in a park, recreation area, or near a town building or within the town right-of-way that was either been planted by the town or has been designated as a “shade tree” pursuant to the town’s Shade Tree Preservation Plan. If a tree was not planted by the town or designated as a shade tree and it is located on town property then it is either under the control of the library trustees if it is located on library property, the cemetery commissioners if on cemetery property, the town manager, or the selectboard for those towns without the town manager form of government.

Who can remove a shade tree?

A shade tree can only be removed by the tree warden, their deputy, or a person with the written permission of the tree warden. In addition, a Shade Tree Preservation Plan may specify that the approval of another town officer is required prior to removing a tree on specific town property, regardless of whether it is a shade tree. Shade trees can also be removed from the town highway right-of-way under certain circumstances under the direction of the selectboard.

Who makes the decision to remove a shade tree?

The initial decision to remove a shade tree is made by the tree warden or their deputy, but if the tree warden’s decision is appealed, the ultimate decision is made by the selectboard. Additionally, the selectboard can cause to be removed any tree within the highway right-of-way that obstructs the view of the highway ahead, causes damage to the highway, or that is objectionable from a material or scenic standpoint. Shade trees or trees that have been set out or marked by abutting landowners must be preserved unless the usefulness or safety of the highway is impaired in which case no notice or hearing would be required prior to their removal. [19 V.S.A. § 904.](#)

What is the process for removing a shade tree?

In most instances, the tree warden must post a public notice 15 days prior to cutting or removing a shade tree. The proposed tree cutting or removal may be appealed within the 15-day notice period to the selectboard. If appealed, the selectboard must hold a public hearing with the tree warden within 10 business days from receipt of the appeal

to receive public comment on the proposed tree cutting or removal. The tree warden cannot act until the selectboard renders its decision. The purpose of the hearing is for the selectboard to receive public comment to help inform its decision as to whether to uphold the tree warden's proposed cutting or removal. There are a few exceptions; please see the question, "Must notice and an opportunity to appeal be provided prior to cutting or removing every shade tree?" below.

What notice must the tree warden provide prior to cutting or removing a shade tree?

The tree warden must post public notice of the intent to cut or remove a shade tree or a group of shade trees in at least two conspicuous places in town and in or near the town clerk's office. If the shade tree or group of shade trees are located on another's property, the tree warden must also notify each abutting landowner at their address of record. This notice must occur at least 15 days prior to the tree warden's action. There are a few exceptions to this notice requirement; please see the question, "Must notice and an opportunity to appeal be provided prior to cutting or removing every shade tree?" below.

Must notice and an opportunity to appeal be provided prior to cutting or removing every shade tree?

No. Notice and a public hearing on appeal is not required for a shade tree removal when the shade tree meets any of the following criteria:

1.
 - a. infested or infected, [24 V.S.A. § 2504\(a\)](#);
 - b. infested or infected (or at risk to become so) and are also located in an infestation area designated by the Agency of Agriculture, Food and Markets and Department of Forests, Parks and Recreation;
 - c. a hazard to public safety; or
 - d. required to be removed by the municipality in order to comply with state or federal laws or permitting requirements. [24 V.S.A. § 2509\(a\)](#).

This would include, for example, cutting or tree removal to manage the emerald ash borer. A notice and appeal hearing would also not be required to be held prior to removal of any shade tree located within the town highway right-of-way that impairs the usefulness or safety of the highway. Because no hearing is held, no public notice is required in these instances either.