

Danville Tree Ordinance

Third Draft – Revised November 2018

Proposed by Danville Conservation Commission

11/15/2018

Town of Danville Tree Ordinance

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SECTION I: Authority

The Select board shall appoint a Tree Warden, under 24 VSA, 871. The Tree Warden may appoint a Deputy Tree Warden, under 24 VSA, 2505. Through its Tree Warden, the Town shall have control of all public trees and shall have the authority to plant, maintain, protect and remove such trees.

SECTION II: Purpose

A tree ordinance provides the opportunity for a municipality to:

- Identify roles and responsibilities;
- Protect the Town from liability;
- Assign local definitions for use in the ordinance;
- Establish and prioritize procedures for tree plantings, removal and protection;
- Establish procedures for the prevention and control of damage from forest pests;
- Demonstrate a Town's commitment to its community forests

SECTION III: Definitions

1. ROW - Right of Way: The width of the highway right of way is typically three (3) rods (49.5 feet) or 24.75 feet on each side of the highway centerline. There are situations where the right of way exceeds the typical value. A list of exceptions is available at the Town Office.
2. DBH: Diameter at Breast Height or diameter at 4.5 feet above ground on the uphill side of tree.
3. Tree: Any self-supporting woody plant with its root system, growing upon the earth with one trunk of at least three inches DBH, or a multi-stemmed trunk system with a definitely formed crown.
4. Public Tree: Any tree located on public land.
5. Private Tree: Any tree located on private land.
6. Trees in the ROW: Trees in the ROW are owned by the land owner but the town has the right to remove trees that are a hazard to public safety or are limiting road maintenance and drainage. The wood from cut trees can be claimed by the land owner.
7. A Public Shade Tree refers to any tree within the Village specifically planted for its shade or ornamental value.
8. Hazard Tree: Any tree or part of a tree that is deemed a public hazard by decision of the Tree Warden or the Road Foreman.

9. Routine Highway Maintenance: Care and maintenance of the Town roads within the ROW including the pruning or removal of trees for safety, visibility and drainage.

10. Public Notice: Major maintenance and removal projects will be posted by the Tree Warden or Road Foreman on the Town bulletin board (outside of Town Hall) and other public media sites for example the Danville Town Website and Front Porch Forum at least 2 weeks prior to the start of the project. As a courtesy, the Road Foreman will notify the affected landowners of such a project. In the case of emergencies it may be necessary to waive this requirement.

SECTION IV: Jurisdiction and Authority

Shade and ornamental trees within the limits of public ways and places shall be under the control of the Tree Warden (24 VSA, 2502). The Tree Warden will work in collaboration with the Road Foreman for the maintenance of public trees. Unresolved issues will be brought to the Select Board for final administrative determination. (See Section VII on Appeals)

SECTION V: Provisions for Management of Community Trees

The Town is supportive of planting and maintaining trees along its streets, roads, and on other Town and private property. The benefits of street trees are well documented and this policy is consistent with and recognizes those benefits.

The Town shall have the right to plant, maintain, and remove Public Trees as may be necessary to insure public safety, or to preserve or enhance the symmetry and beauty of public right of ways and Village property as set forth in the following guidelines.

1. Tree planting

- a. All Public Trees shall be planted in accordance with American National Standards Institute (ANSI) A300 Standards for Tree Care Operations.
- b. Public Trees shall be selected from the booklet, "Vermont Tree Selection Guide", published by Vermont's Urban & Community Forestry Program.
- c. All newly planted Public Trees will carry a minimum one year maintenance and replacement guarantee by the tree vendor.
- d. Within the Danville Historic Districts (as determined by the Planning Commission), no trees shall be planted within right-of-ways or on Town property without written permission of the Tree Warden and Road Foreman.
- e. Public Trees should be sited based on above and below ground site condition. Minimum offsets for intrusion elements should be as follows:
 - Light standard: 18 feet
 - Utility pole: 10-18 feet depending on cross arm size
 - Hydrant: 15 feet
 - Driveway: 5 feet
 - Crosswalk: 5 feet

Transformer, connection box: distances will be determined by the utility company or by state law.

Underground utility connection: distances will be determined by the utility company or by state law.

Street sign: 6 feet

Intersections: 30 feet

Exceptions may be granted only by approval of the Tree Warden.

2. Tree Maintenance

a. All Public Tree care shall be in accordance with the ANSI A300 Standards for Tree Care Operations.

b. All contractors who work on Public Trees shall do so in accordance with ISA (International Society of Arboriculture) Standards.

c. It shall be the responsibility of any person owning property bordering on a Village public street, sidewalk, recreational path, or other public right-of-way to ensure private trees or shrubs that are dead, diseased, or injured do not pose an unreasonable risk of property damage or bodily injury occurring within such public right-of-way.

3. Tree Protection

a. No Public Tree within the Village shall be pruned, removed, or harmed in any way without the written permission of the Tree Warden.

b. Within the Village any construction within the outer most drip line of Public Trees requires consultation with the Tree Warden who may provide specific written requirements for additional protections.

4. Hazardous and Non-Hazardous Tree Removal

a. In accordance with 24 VSA, 2502, the Town Tree Warden may remove any Public Tree that is diseased, dying, or dead which creates a hazard to public safety or threatens the effectiveness of disease or insect control programs.

b. If, in the opinion of the Tree Warden, a Public Tree constitutes no hazard to public safety and is determined to be healthy but needs to be removed, the Tree Warden will warn a public hearing in accordance with 24 VSA, 2509:

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. 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.

c. Two weeks before the scheduled removal of the tree the public will be notified via the Selectboard meeting, other public media sites for example the Danville Town Website and Front Porch Forum and/or paper of record and a sign will be

posted on the Public Tree of the proposed action to be taken and Public Hearing time, date, and place.

d. Anyone contesting the take down of a Public Tree must do so to the Tree Warden between the time of posting the tree and the hearing, at the hearing or within 24 hours of the decision having been made. After informing the Tree Warden, a written appeal must be submitted within two weeks to the Tree Warden and the Selectboard. The Tree Warden will notify the appellant by certified mail of the hearing date with the Selectboard. The decision of the Selectboard is final. Its decision and findings will be in writing and mailed to the appellant.

e. Usable portions of felled trees that remain in public rights-of-way will be left for the landowner, unless requested otherwise. The landowner will then have 30 days to remove the wood.

f. Land owners who choose to cut and remove hazardous trees in the ROW shall contact the Tree Warden and will have 30 days from the date of permission to cut and remove.

SECTION VI: Control of Hazardous Trees & Trees Infested with a Pest or Pathogen

The Town, in consultation with the Tree Warden or Road Foreman, may remove or cause to be removed any Public or Private Tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to the Town infrastructure or other public improvements, or is affected with any injurious disease, insect, or other pest, in accordance with 24 VSA, 2511:

When an insect or disease pest infestation upon or in public or private shade trees threatens other public or private trees, is considered detrimental to a community shade tree preservation program or threatens the public safety, the tree warden may request surveys and recommendations for control action from the commissioner of agriculture, food and markets. On recommendation of the commissioner 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 commissioner, 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 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 right to enter on the lands of said owner to conduct recommended control measures, the cost of which shall be paid by the municipality.

If the Tree Warden shall determine with reasonable certainty upon inspection or examination that any hazardous tree herein defined exists in or upon any private premises within the Town, and may damage or cause injury in the Town ROW, the warden shall notify the owner of such premises, or their agent, in writing that said nuisance tree must be treated, trimmed, removed, or otherwise abated. Said written notice shall specify the nature and exact location of the hazardous tree, the manner in which the hazard shall be abated, and the time limit in which the hazard shall be abated which shall not be less than fifteen (15) days after issuance of said notice unless the Tree Warden shall determine that immediate action is necessary for public safety.

SECTION VII: Appeals

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. 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. (24 VSA, 2509)

SECTION VIII: Penalty for Violation

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. Any person who, willfully, 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 for each tree so injured or cut, for the use of the municipality. (24 VSA, 2510)

SECTION IX: Severability

If any section of this ordinance is held by a court of competent jurisdiction to be invalid, such finding shall not invalidate any other part of this ordinance.