

Guide to Tree Ordinances and Policies for Vermont Municipalities

This guide is intended to act as a tool for Vermont communities as they consider developing a tree ordinance.

A tree ordinance is a municipal regulatory tool used by communities to attain and support healthy, vigorous, and well managed urban & community forests. A municipality's tree ordinance reflects the goals and perspectives of the community, and should be based on local management goals, needs and capacity.



Vermont Urban and Community Forestry Program

Vermont Department of Forests, Parks and Recreation in partnership with the University of Vermont Extension

January 2013

INTRODUCTION

A tree ordinance is an important tool used by communities to attain and support a healthy and well managed community forest. While a *policy* is a general statement of principles, an *ordinance* is an adopted decree that has legal authority. A policy, while easier to change, is less enforceable than an ordinance. Tree ordinances can protect trees, preserve green space, and help prevent or control damage from forest pests. They provide the legal framework, authorization, and standards and process for management activities based on how a municipality wants to enhance, maintain and protect its tree population. A municipality's tree ordinance should be built on and integrated into a comprehensive urban & community forestry strategy, where the goals and practices to ensure forest growth and health are established and clear to the responsible parties.

Vermont statutes also support community trees and forests. In 1884, the Vermont General Assembly passed an act to encourage the planting of shade trees in public areas. Vermont's forests had largely been cut in the name of progress, and the legislators felt a need to encourage their return for shade and beauty. One way is to provide for the appointment of a tree warden to act as the overseer of public trees through organizing and implementing planting, maintenance and protection programs. Appointed by the town's governing body, tree wardens have three major responsibilities – to remove the trees that cannot be saved, to salvage those that can be saved, and to implement a tree enhancement and preservation program for the town.

While the statutes begin to set the stage for regulating the care and protection of public trees, there are several gaps that would benefit from local clarification. For example, several key terms are not defined, including what qualifies as a public shade or ornamental tree, nor do they provide specific provisions regarding the planting, maintenance, removal and treatment of trees, specifications for planting and care, and protection of public trees during construction, to name a few. In choosing to develop a tree ordinance, a municipality has the opportunity to determine how its tree resources are managed and what person(s) or groups have authority and responsibility regarding their community forest.

In general, a municipal tree ordinance should:

- Create municipal goals for urban & community forestry management;
- Establish authority and responsibility over public trees;
- Set basic performance guidelines and standards for tree planting, maintenance, protection and removal;
- Establish process for managing trees when they constitute a hazard to public safety or infested with or infected by a recognized tree pest;
- Define nuisance conditions for both public and private trees.
- Address enforcement, fees, appeals, and fines; and

Additionally, the person or persons drafting the tree ordinance should work with the municipality (i.e. City Council, Selectboard or Village Trustees) as they develop or revise their tree ordinance and secure legislative approval.

Finally, a successful tree ordinance will reflect the goals and perspectives of the community and should be based on local management needs, goals, capacity, resources, and circumstances. A tree ordinance is one way that community members can have input regarding municipal development and natural resource management and so the ordinance development process should include a mechanism for public input.

HOW TO USE THIS GUIDE

This guide is intended to act as a tool for Vermont communities as they consider developing a tree ordinance. In it you will find the recommended sections to include with a general description, key points to consider, and examples of language from existing ordinances. This sample language, indicated in italics and purple color throughout, has been pulled primarily from municipalities in Vermont and Wisconsin; the latter because of Wisconsin communities' experiences dealing with an invasive forest pest (the emerald ash borer). Forest pests should be addressed in a tree ordinance in light of current pest threats to Vermont's forests. Throughout the document there are references to the Vermont Tree Warden Statutes. They are indicated by italics and red color.

It is important to reiterate that a successful tree ordinance will be specific to each municipality and should be integrated into an overall urban & community forestry management strategy. Therefore, this guide should facilitate the development of tree ordinance, but should not be considered the exact or most appropriate model for each specific municipality.

CONTENTS

SECTION 1: TITLE	3
SECTION 2: INTENT & PURPOSE.....	3
SECTION 3: DEFINITIONS.....	3
SECTION 4: JURISDICTION	4
SECTION 5: ADMINISTRATIVE RESPONSIBILITIES.....	4
SECTION 6: PROVISIONS FOR THE MANAGEMENT OF COMMUNITY TREES	5
TREE PLANTING	6
TREE PROTECTION.....	7
TREE MAINTENANCE	8
NON-HAZARDOUS TREE REMOVAL.....	9
SECTION 7: CONTROL OF HAZARDOUS TREES & TREES INFESTED WITH A PEST OR PATHOGEN 10	
INSPECTION & DETERMINATION	10
CONTROL & ABATEMENT.....	11
PUBLIC NOTICE.....	Error! Bookmark not defined.
SECTION 8: APPEALS	12
SECTION 9: PENALTY FOR VIOLATION	13
SECTION 10: SEVERABILITY	14
APPENDIX A: SAMPLE DEFINED TERMS FOR DEFINITIONS SECTION.....	15
APPENDIX B: SAMPLE OUTLINE OF MUNICIPAL TREE ORDINANCE.....	17

SECTION 1: TITLE

The ordinance should have a brief and descriptive title. Examples include *Comprehensive Tree Policy* (Hartford, VT) and *City of South Burlington Tree Ordinance* (South Burlington, VT).

SECTION 2: INTENT & PURPOSE

This section provides the basis for interpreting the ordinance and is essentially its' mission statement; it should answer these general questions: what are the overall goals and objectives to be achieved through the ordinance and what overall purpose will it serve?

Key considerations

- Clearly state the purpose of the ordinance and the goals and objectives your municipality hopes to achieve by enacting the ordinance. It might be most effective to draft this section last, considering it is effectively an executive summary of the information included in the ordinance.
 - *It is the purpose of this ordinance to promote and protect the public health, safety and general welfare of the citizens of the City of South Burlington ("City") by providing for the regulation of planting, maintenance, protection, and removal of trees and shrubs on public streets, parks, and city-owned properties. This ordinance also establishes the office of City Arborist in the Department of Public Works and provides for the formation of a City Tree Board. (South Burlington, VT)*
 - *It is the purpose of this policy to promote, protect, and enhance public health, safety, and general welfare by providing a policy governing the planting, maintenance, protection, and removal of trees, shrubs, and other woody plant material within public rights-of-way and public places within the Town of Grand Isle. (Grand Isle, VT)*

SECTION 3: DEFINITIONS

The Vermont Tree Warden Statutes lacks a Definitions section; therefore, many of the terms present in the document are ambiguous and may be open to interpretation in a legal situation. It is important to clearly define potentially ambiguous terms so that residents know how to comply with the ordinance provisions and so it will stand up to any legal challenges.

Key considerations

- As the ordinance is drafted, it should become clear which terms require a definition. The more extensive your definition section is, the clearer your ordinance will be. However, it is recommended that, at the very least, your tree ordinance define *public/shade/ornamental/street trees, public right-of-way, and public nuisance/hazards*. Examples of these terms, as well as an extensive list of additional defined terms taken from sample ordinances, can be found in [Appendix A](#).
- Some municipalities assign different provisions for trees based on town zoning. For example, trees in a residential area might fall under one set of maintenance standards, while trees in commercially-zoned areas might be managed another way. If this is the case for your

municipality, make sure to define these zoning designations in your Definitions section. See [Appendix A](#) for examples.

SECTION 4: JURISDICTION

As noted in the introduction to this guide, the Vermont Tree Warden Statutes are the default legislation that assign jurisdiction of public trees to a municipal tree warden. In developing a municipal tree ordinance, this section should explicitly assign jurisdiction to a tree warden under 24 VSA, Chapter 67 or describe alternative local provisions.

Key considerations

- Who will have jurisdiction over municipal trees?
 - *The Select Board shall appoint a Tree Warden, under VSA 24, 871. The Tree Warden may appoint a Deputy Tree Warden under VSA 24, 2505. The Tree Warden shall have control of all public trees and shall have the authority to plant, maintain, remove, and replace such vegetation. (Peacham, VT)*
 - *The commissioner of public works, as city tree warden, shall have authority over any and all trees on public rights of way or any public property in the City of Rutland not under the jurisdiction of the recreation and parks department or school department. Trees so located shall be deemed public shade trees. (Rutland, VT)*
 - *The office of City Arborist is hereby established in the Department of Public Works. The City Arborist shall have the authority to issue or deny permits for planting, maintenance, removal, pruning and protection of city trees as authorized. It shall also be his or her duty to supervise or inspect all work done under a permit issued in accordance with the terms of this ordinance. (South Burlington, VT)*

SECTION 5: ADMINISTRATIVE RESPONSIBILITIES

In addition to establishing jurisdiction over municipal trees, the tree ordinance should also designate authority and responsibility to enact the provisions detailed in the tree ordinance itself. It is in this section that a municipal tree committee or advisory board may be established, and/or the operation of the municipal tree committee or advisory board can be detailed.

Key considerations

- Will this tree ordinance establish a municipal tree committee or advisory board? What will be the role of that body?
 - *There is hereby created and established the Brattleboro Tree Advisory Board (hereafter referred to as the Board) which shall consist of five members, whom shall be appointed by the Selectboard. The Brattleboro Tree Advisory Board shall function under this ordinance and 24 VSA, Chapter 67, or its successor provision. The Brattleboro Tree Advisory Board shall be an advisory organization that works with the Tree Warden to promote the improvement and preservation of a healthy environment of the town as it relates to Public Trees. (Brattleboro, VT)*
 - *The Selectboard may appoint a Tree Advisor Committee for specific purposes as outlined in the Tree Committee's Charter. In general the Committee shall develop a written plan to include an inventory of all Town trees and for the planting and care of additional*

trees. They shall also educate the citizens of Shelburne about the benefits and care of this resource. In concert with Town staff, the Committee may apply for grant funds to accomplish the Tree Inventory and Plan, to plant and care for Town trees and other similar purposes. (Shelburne, VT)

- Who is responsible for overseeing all tree-related activities and provisions outlined in the ordinance? Is it one person (the tree warden or a municipal arborist), a body (such as an advisory board or a commission), or are the responsibilities shared?
 - *The Tree Warden shall have complete power and authority over any and all trees, shrubs, or plants planted and growing or hereafter to be planted and grown in the public right-of-way, or any public highway property of the City of Montpelier not under the jurisdiction of the Park Commission or the Cemetery Commission. Trees so located shall be deemed public shade trees. The Tree Warden shall have all powers granted to Tree Wardens under 24 V.S.A., Chapter 67, or successor provisions. He or she may refer violations of this ordinance or that chapter to the City Attorney or State's Attorney for prosecution. The Tree Warden will advise the City Tree Board and any other regulatory boards of the City in matters of tree health, care and maintenance as needed. All actions taken by the Tree Warden will be reported to the Tree Board and maintained in an historical file. (Montpelier, VT)*
 - *The purpose of the City Tree Board shall be to work in cooperation with the City Arborist to promote responsible planting, maintenance and care of trees on public property and to educate the citizens of South Burlington about the benefits and requirements of the City's tree resource. Unless the City Council otherwise prescribes, the City Natural Resource Committee shall serve as the City Tree Board. (South Burlington, VT)*
- Sub-sections under this heading might specifically address the following topic areas:
 - Term of Office of members of the responsible party/advisory board/commission
 - Compensation for the responsible party/advisory board/commission
 - Duties and responsibilities of the responsible party/advisory board/commission
 - Operation of the responsible party/advisory board/committee (meeting schedule, if and where meeting minutes are posted, etc.)

SECTION 6: PROVISIONS FOR THE MANAGEMENT OF COMMUNITY TREES

This section and the next should establish the guiding principles to be followed in order to achieve the goals of the tree ordinance. Regulations and specific performance and implementation standards that pertain to the planting, protection, and maintenance of the municipality's trees should be included, in addition to removal of non-hazardous trees on public property. Generally speaking, a hazardous tree has visibly defined structural defects likely to cause failure of all or part of the tree, and is a danger to public safety, while a non-hazardous tree may need to be removed because, for example, it blocks a traffic sign or interferes with the operation of a snow plow.

The tree ordinance is also a tool to help Vermont municipalities mitigate the threat of invasive forest pests, such as Asian longhorned beetle, emerald ash borer, and hemlock woolly adelgid. Section 7 will specifically address policies regarding the identification, control, and abatement of forest pests and hazardous trees, which may in fact fit under your municipality's *Provisions for the Management of Public*

Trees section. In other words, your municipality might find it more appropriate to combine Section 6 and Section 7 of this guide.

As you draft this section, keep in mind that vague standards and policies may not be enforceable and could be legally challenged. However, this section should not be so full of technical detail that the basic performance standards are lost. Don't include information that can quickly become outdated or include methods and materials that could change; instead, consider directly referring to documents that are often updated, such as your municipality's urban & community forestry management plan or a technical manual such as the ANSI A300 Standards.

Key considerations

- How does your municipality address the establishment and maintenance of tree cover? The ordinance should address provisions covering planting, protection, maintenance, and removal of trees on public and private land.

TREE PLANTING

- What are your municipality's specifications for tree plantings? What species may be planted? Are there species that are prohibited (for example, many communities have stopped planting ash trees in light of the emerald ash borer and other communities prohibit the planting of non-native invasive species) Are there spacing, distance, and/or buffer specifications for tree plantings? How will tree stock be selected?
 - *No tree in a street, public park, or other city property, shall be planted except with the approval of the city manager who shall have the power to prescribe how such trees shall be planted, at what distance apart, and of what variety. A tree shall be provided with supports and guards whenever, in the opinion of the city manager such supports or guards may be desirable. (St. Albans, VT)*
 - *Tree species shall be selected from the booklet, "Recommended Trees for Vermont Communities", published by Vermont's Urban & Community Forestry Program, a copy of which shall be maintained by the Zoning Administrative Officer. The planting of trees shall conform to standards and recommendations found in the aforementioned publication, pertinent ISA publications, and any applicable American National Standards Institute standards. Trees shall be planted based on available green space, soil volume, site-specific considerations, and the avoidance of infrastructure conflicts. Trees purchased, donated, or by any other means planted in public spaces shall conform to American Standard for Nursery Stock, ANSI Z60.1. All newly planted public trees will carry a three-year maintenance and replacement guarantee. (Grand Isle, VT)*
 - The publication referenced above "Recommended Trees for Vermont Communities" was updated in 2010 and now bears a new name "Vermont Tree Selection Guide." The Guide is scheduled to be updated periodically and can be downloaded on our website at www.vtcommunityforestry.org.
 - It should also be noted that many communities have stopped planting ash trees in light of emerald ash borer. There are also several tree species on Vermont's exotic pest
 - *Trees should be sited based on above and below ground site condition. Minimum offsets for intrusion elements should be as followed.*
 - Light standard: 18 feet*
 - Utility pole: 10 – 18 feet depending on cross arm size*

Hydrant: 15 feet
Driveway: 10 feet
Cross walk: 5 feet
Transformer, connection box: 6 feet
Underground utility connection: 15 feet
Street sign: 6 feet

Exceptions may be granted only by approval of the Tree Warden. (Shelburne, VT)

- The following publication offers minimum offset recommendations: '[A Road to a Thoughtful Street Tree Master Plan](http://www.myminnesotawoods.umn.edu/2008/12/road-to-a-thoughtful-street-tree-masterplan/)' by Ken Simons and Gary Johnson. <http://www.myminnesotawoods.umn.edu/2008/12/road-to-a-thoughtful-street-tree-masterplan/>

TREE PROTECTION

- Are there general provisions for the protection of public trees in your municipality? Does your municipality prohibit or regulate various activities that may harm trees? For example, a municipal tree ordinance might define and prohibit the act of topping or severely pruning public trees.
 - *Unless specifically authorized in writing by the City Arborist, no person or agency shall do anything reasonably likely to harm a city tree, including but not limited to the following acts which are prohibited as to any part of a city tree: cutting, carving, transplant removal, piercing, tying, girdling, topping, burning, charring, poisoning, painting, marking, contacting with a harmful substance, or attaching any foreign object (such as but not limited to rope, wire, nails, posters). (South Burlington, VT)*
 - *It shall be unlawful, as a normal practice, for any person, firm or city department to top any Street Tree, or other tree on public property. 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 so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstruction where other pruning practices are impractical may be exempted from this ordinance at the determination of the City Tree Board upon recommendations by the Tree Warden. (Montpelier, VT)*
 - *No person shall attach a board, card, notice, advertisement, wire, stay, or support to a tree, in a street, public park, or other city property, without the written consent of the city manager. (St. Albans, VT)*
- Are there standards for tree protection in conjunction with new construction? For example, some municipalities establish provisions to protect trees during construction and others require developers to plant or replant trees in new construction areas.
 - *Public trees shall be protected from construction related damage in accordance with standards defined in the publications: "Tree Preservation During Construction" by Gary Johnson, and "[Protecting Trees from Construction Damage, A Homeowners Guide](#)", by Johnson, Rathke, & Miller, copies of which shall be maintained by the Zoning Administrative Officer. (Grand Isle, VT)*
 - *In the erection or repair of a building or structure, the owner shall place guards around all nearby trees on public rights of way to effectually prevent injury to them. (Rutland, VT)*

- *Any construction within 10 lateral feet of Public Trees requires consultation with the Tree Warden who may provide specific written requirements for additional protections of trees. (Shelburne, VT)*

TREE MAINTENANCE

- Are there standards according to which public trees will be maintained?
 - *All Public Tree care shall be in accordance with ANSI A300 Standards for Tree Care Operations. (Shelburne, VT)*
 - *All contractors to work on Public Trees should have on staff a certified arborist. (Shelburne, VT)*
 - *It shall be unlawful for any person or firm to engage in the business or occupation of pruning, treating, or removing street or park trees within the City without first applying for and procuring a license. The license fee shall be \$25 annually, in advance; provided however, that no license shall be required of any public service company or city employee doing such work in the pursuit of their public service endeavors . . . All tree work performed in the public right-of-way must conform with the National Arbor Society NC 300 Standards. (Montpelier, VT)*

- Are there any responsibilities for maintenance of trees, either public or private, that are assigned to property owners?
 - *It shall be the responsibility of each property owner of any tree overhanging any public road or right-of-way within the Town to prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection, so that there shall be a clear area above the travel surface to allow for pedestrian and vehicular traffic and safety. Said owners shall remove all dead, diseased, insect infested, or dangerous trees, or broken or decayed limbs, which constitute a threat to public safety. The Town shall have the right, in consultation with the Tree Warden, to prune any tree on private property when such tree interferes with the proper spread of light along the street from a streetlight, or interferes with visibility of any traffic control device, sign, sight distance, or sight triangle at intersections, Town roads, or right-of-ways. Pruning shall conform to applicable ANSI and ISA standards. (Grand Isle, VT)*
 - *It shall be the duty of any person owning real property bordering on a public street, sidewalk, recreational path, or other public ROW to ensure trees that are dead, diseased, or injured do not pose an unreasonable risk of property damage or bodily injury occurring within such public ROW. Should any person owning real property fail to comply with the above provision, the City Arborist shall order the owner to correct such a violation within 21 calendar days of issuance of written notice. The order required herein shall be served by mailing a copy to the last known address of the property owner. The City Arborist, upon advance notice of at least three days, may enter upon land of property owners to take action with regard to insect or disease pest infestations. (South Burlington, VT)*
 - *No person shall allow limbs of trees, shrubbery, fence posts, gates, or other material to obstruct the sidewalks so as to interfere with their free use by pedestrians. (Brattleboro, VT)*
 - *Every owner of every tree overhanging any street or Class 3 highway within the Town of Wallingford shall prune the branches so that such branches shall not (severely) obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of thirteen feet (13') above the street surface or eight feet*

(8') above the sidewalk surface. Said owners shall remove all dead, diseased or dangerous 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, or interferes with visibility of any traffic control device or sign or sight triangle at intersections. (Wallingford, VT)

NON-HAZARDOUS TREE REMOVAL

- What is the process for the removal of non-hazardous trees on **public property**? Is there a process for public notification?
 - *If, in the opinion of the Tree Warden, a Public Shade/Ornamental Tree constitutes no hazard to public safety and is determined to be healthy but needs to be removed, then the Tree Warden will warn a public hearing and shall be held. . . . Two weeks before the scheduled removal, the public will be notified via the Selectboard meeting and/or paper of record and a sign will be posted on the Public Tree of the proposed action to be taken, and the Public Hearing time, date, and place. . . (Brattleboro, VT)*
 - *Every attempt will be made to notify residents of major work to be performed in the three Peacham villages. Usable portions of felled trees in public rights-of-way will be left for the landowner, unless requested otherwise. Should a landowner have a grievance concerning a proposed project on the right-of-way adjacent to his or her property, the grievance should be submitted in writing to the Peacham Selectboard. The Selectboard will have the final authority in determining the outcome of the grievance. (Peacham, VT)*

- Does the municipality require replacement trees or fees for removal of non-hazardous trees on **public property**?
 - *Permission for removal of city trees shall require the permittee to provide suitable replacements. The value of existing city trees is to be calculated on a DBH inch-by-inch replacement basis . . . exercise of discretion shall be guided by the characteristics of the tree(s) removed, including: status as an ornamental or shade; age and health; location; species. (South Burlington, VT)*
 - *City trees removed due to being in poor, dead, or diseased condition, which condition must be assessed and validated by the City Arborist, shall not require replacement. (South Burlington, VT)*
 - *For every non-hazardous Public Shade Tree taken down, a tree or trees shall be planted equal to the total caliper of inches taken.....In lieu of replacement tree(s), the Tree Warden may allow payment to be made into a mitigation fund. (Brattleboro, VT)*
 - *The cost of replacement or compensation for tree removal of a Public Shade Tree will be established by the Tree Warden in the permit for removal. The property owner will bear the cost of replacement and removal. The Tree Warden will administer this section of the ordinance. Should the Tree Warden or property owner deem it necessary to further negotiate the fee, the mitigation board will be called in to consult and advise. The mitigation board will consist of three members, one of whom will be the Tree Warden. The value and cost of the tree will be determined by the mitigation board and Tree Warden based on location, health, species, community value, and other considerations. Failure to apply for mitigation does not preclude assessment of a mitigation fee. (Brattleboro, VT)*

SECTION 7: CONTROL OF HAZARDOUS TREES & TREES INFESTED WITH A PEST OR PATHOGEN

In order to prepare for invasive forest pests, protect public safety and maintain community forest health, your municipal tree ordinance should establish the procedures for inspection, public notice, control, and abatement of diseased, infested, and hazardous trees. This section should specifically address the ability to enter private property for inspection, the ability to order the removal of diseased/infected tree(s), the ability to abate diseased/infected tree(s) upon non-compliance of a property owner, and should explicitly define who will be responsible for paying for tree removals.

Developing a tree ordinance provides an opportunity for community leaders to consider the best ways to handle an infestation and to design a system for abatement based on local capacity and values. It is important to reiterate that developing a municipal tree ordinance allows key stakeholders to collaboratively establish a process for how a municipality will mitigate the hazards from trees that are deemed unsafe and/or are infected with a pest on both public and private land.

Key considerations

- What is the municipality's definition of a hazardous tree? Of a forest pest? Of a public nuisance? Note that a public nuisance not only includes trees infested with a pest or pathogen, but also other non-hazardous trees such as those that conflict with utility lines or obstruct the line of sight along roadways. See [Section 3](#): Definitions or refer to [Appendix A](#): Sample Defined Terms for Definitions Section for guidance.

INSPECTION & DETERMINATION

- Who has the authority to determine a public nuisance/hazard tree and what are the processes involved in evaluating potential nuisance or hazardous trees? In Vermont, authority and responsibility are by default designated to the municipal tree warden according to the language below, but municipalities can determine their own provisions in their tree ordinance.
 - **§ 2511. Control of infestations** *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.* (Vermont Tree Warden Statutes, Amended 1969, No. 238 (Adj. Sess.), § 8.)

CONTROL & ABATEMENT PUBLIC PROPERTY

- What is the municipality's method of abatement of the nuisance/hazard trees on **public spaces**? Abatement could include tree removal, tree replacement, and/or treatment with insecticides.
 - The default process is outlined in the Vermont Tree Warden Statutes. It is important to note that the process presented in the statutes is established for the 'residential' part of town. However, 'residential' is not defined in the statutes and allows for interpretation. It reads: *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. (Amended 1969, No. 238 (Adj. Sess.), § 6.)*
 - *The Town has an active policy to maintain the safety of public from potentially hazardous trees. The Town will strive to eliminate, in a timely fashion, any tree deemed hazardous. When available fiscal and human resources limit the ability of the Town to remove high-risk trees, priority shall be placed on trees deemed to carry the highest risk. The standard for rating the level of risk of a tree will be the USDA Forest Service hazards evaluation form. . . (Hartford, VT)*
 - *The city will permit residents to chemically treat a public ash tree under the conditions of hiring a City of Saint Paul licensed tree service that is bonded and insured, is a State of Minnesota Licensed Commercial Pesticide Applicator using state approved trunk injection pesticides only. Limiting to trunk injections hopefully reduces pesticide exposure to others and the environmental overall. (Note: Chemical treatment would not preclude future removal of said ash tree if deemed necessary.) (Saint Paul, MN)*
- Is there a process for public notification about the detection of invasive pests within the borders of the municipality? Will the public be notified of specific removal/abatement activities?
 - *The Town Tree Warden may remove or cause to be removed any public Shade Tree or part thereof which is infested by a recognized tree pest or when it constitutes a hazard to public safety. Pursuant to 24 VSA §2509, no public hearing shall be required when a public Shade Tree is infested, infected or when it is a hazard to public safety. (Brattleboro, VT)*

CONTROL AND ABATEMENT ON PRIVATE PROPERTY

- What is the policy for abatement of the nuisance/hazard trees on **private property**? What is the procedure for property owner notification and appeal?
 - *The Town of Wallingford shall have the right to cause the removal of any dead or diseased trees on private property within the town, when such trees constitutes a hazard to life and property, or harbor insects or disease which constitutes a potential threat to other trees within the town. The Tree Warden will notify in writing the owners of such trees. (Wallingford, VT)*
 - *The City shall have the right to cause the removal of any dead or diseased tree on private property within the city, when such tree constitutes a hazard to life and property, or harbor insects or disease which constitutes a potential threat to other trees within the city. The City Tree Board will notify in writing the owners of such trees. (Montpelier, VT)*
 - *The Town Tree Warden may remove or cause to be removed any private Shade Tree on private property within the town when such private tree is infested with or infected by a*

recognized tree pest or when it constitutes a hazard to public safety. The Town Tree Warden shall notify the owner of such private Shade Tree in writing by certified mail that removal of the tree is necessary. The appeal of this action may be taken by the private property owner, to the Selectboard. This appeal must be in writing within 15 days of the receipt of certified written notification from the Tree Warden. The Selectboard will make their decision at its next meeting. The property owner will receive their decision and findings in writing. (Brattleboro, VT)

- *The City Arborist, upon advance notice of at least three days, may enter upon land of property owners to take action with regard to insect or disease pest infestations. (South Burlington, VT)*
- *If the city forester shall determine with reasonable certainty upon inspection or examination that any nuisance tree or shrub as herein defined exists in or upon any private premises within the city, he/she shall notify the owner of such premises, or his agent, in writing that said nuisance tree or shrub must be treated, trimmed, removed, or otherwise abated. Said written notice shall specify the nature and exact location of the nuisance, the manner in which the nuisance shall be abated, and the time limited in which the nuisance shall be abated which shall not be less than fifteen (15) days after issuance of said notice unless the city forester shall determine that immediate action is necessary for the public safety. (Steven's Point, WI)*
- Is it the responsibility of **private property** owners to cover the costs of nuisance/hazard tree removal?
 - *Removal shall be done by said owners at their own expense within sixty days after the date of service of notice. In the event of failure of owners to comply with such provisions, the City shall have the authority to remove such trees and charge the cost of removal on the owner's property tax notice. (Montpelier, VT)*
 - *The cost to be charged against any property for the removal of any dead, diseased or dangerous trees, shrubs, vines, hedges, plants, logs or branches shall be an amount equal to one hundred (100) percent of the actual contract price paid and one hundred (100) percent of the costs incurred by the City of Oak Creek for the removal of trees, shrubs, vines, hedges, plants, logs or branches . . . (Oak Creek, WI)*
- Are there provisions for the movement of woody material/firewood to prevent an infestation?
 - *No person may possess firewood that originates from outside the borders of Marinette County in any Marinette county campgrounds or on Marinette county park or forest property. Firewood includes all wood, processed or unprocessed, intended for use in a campfire. Department staff may seize and dispose of firewood possessed in violation off this ordinance. (Marinette County Firewood Ordinance, WI)*

SECTION 8: APPEALS

This section should establish a procedure by which decisions made by the authority can be appealed.

Key considerations

What types of decisions are subject to appeal? What is the procedure for filing appeals? Are there time limitations for appeals and responses to appeal?

- *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. (VT Tree Warden Statutes, Amended 1969, No. 238 (Adj. Sess.), § 6.)*
- *Any person aggrieved by an action of decision of the City Arborist may, within 21 calendar days from the date of receipt of notice of such action or decision, deliver to the City Arborist at the Department of Public Works a request in writing for review by the City Tree Board. The City Tree Board shall offer such person the opportunity to be heard and present evidence and shall issue findings and conclusions. Three (3) members of the City Tree Board must be present and constitute a quorum. By a majority vote of the members present, the City Tree Board shall affirm, modify, or reverse an action appealed. A tie vote shall be an affirmance of the decision from which the appeal is taken. The board shall give written notice of the decision no later than 45 days after the date of the hearing. (South Burlington, VT)*
- *The Wallingford Board of Selectmen shall have the right to review the conduct, acts, and decisions of the Tree Warden. Any person may appeal any ruling or order of the Tree Warden to the Wallingford Board of Selectmen who may hear the matter and make a final decision. (Wallingford, VT)*
- *Any person aggrieved by the administration or interpretation of any of the terms or provisions of this section may appeal to the Board of Park Commissioners by filing a notice of appeal, stating the grounds therefore, with the President of the Park Commission. The Board of Park Commissioners may, after a hearing, with notice to the appellant, reverse, affirm or modify, in whole or in part, the decision or determination of the Madison Tree Subcommittee or the City Forester. The decision of the Board of Park Commissioners shall be a final administrative determination, subject to judicial review as may be provided by law. (Madison, WI)*

SECTION 9: PENALTY FOR VIOLATION

Specific penalties for violations should be established in this section and a position or person responsible for enforcement should be designated.

Key considerations

- What kinds of penalties are enforced and what are the penalties?
 - *The default process outlined in the Vermont Tree Warden Statutes is: **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.** (Amended 1969, No. 238 (Adj. Sess.), § 7.)§ 2511.*
 - *Any person violating any provision of this ordinance shall be subject to a fine of \$500.00 for each offense; and a separate offense shall be deemed committed on each day on which a violation occurs or continues. (Brattleboro, VT)*
 - *A violation of this policy shall be subject to civil enforcement in accordance with the provisions of 24 VSA 1974a and 1977 et seq. A civil penalty of not more than \$500.00 may be imposed for a violation of this civil policy and the waiver fee shall be set at*

\$50.00 for the first offense, \$100.00 for the second offense within a six month period, and \$200.00 for all subsequent offenses within a six month period. Each day violation shall constitute a separate violation of this policy. (Hartford, VT)

- *Any person violating any provision of this ordinance shall be, upon conviction or plea of guilty, subject to a fine not to exceed \$500 plus the cost of tree removal. (Montpelier, VT)*

SECTION 10: SEVERABILITY

The Severability section prevents the whole ordinance from becoming invalid if a court declares any part of it invalid.

Key consideration

- The municipal attorney or legal counsel will likely complete this section.
 - *Should any part or provision of this ordinance be declared by a court competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof obtain injunctive and other appropriate relief. (South Burlington, VT)*

APPENDIX A: SAMPLE DEFINED TERMS FOR DEFINITIONS SECTION

- Arboricultural Specifications and Standards of Practice: A manual developed and maintained by the City Arborist and the City Tree Board that contains the standards and specifications for the planting, maintenance, protection, and removal of all city trees and shrubs (South Burlington, VT)
- Caliper: The diameter in inches of a tree trunk that is taken six (6) inches above the ground for up to and including four (4) inch caliper size, and twelve (12) inches above the ground for larger sizes (South Burlington, VT)
- City Tree: All trees and shrubs for which any part of the trunk at Diameter Breast Height (DBH) is located in any public street, park, right of way, or easement, or other public place within the City limits, including but not limited to state of Vermont right-of-ways managed or maintained by the City (South Burlington, VT)
- Critical Root Zone: The area around the trunk of the tree circumscribed by a radius of one (1) foot per inch of DBH (South Burlington, VT)
- DBH (Diameter at Breast Height): The diameter of tree trunks measured at a height of four (4) feet six (6) inches from the finished grade at the base of the tree (South Burlington, VT)
- Diseased Tree: any tree with a combination of structural defects and/or a health condition, which makes it subject to a high probability of failure (Lynnwood, WA)
- Drip Line: An imaginary vertical line which extends from the outermost branches of a tree's canopy to the ground (South Burlington, VT)
- Hazard: Any tree, public or private, with visibly defined structural defects likely to cause failure of all or part of the tree, and be a danger to public safety (Boise, IA)
- Heritage Tree: A tree designated as a "heritage tree" based on size, character, species, age or historical significance. "Heritage tree" shall mean any public tree having a self-supporting woody main stem or trunk usually characterized by the ability to grow to considerable height and size and the development of woody branches at some distance above the ground, and meeting criteria set forth in Article VI of this chapter (Hartford, VT)
- Plant pest: any living stage of: insects, mites, nematodes, slugs, snails, protozoa or any other invertebrate animals; bacteria, fungi, mycoplasma or other parasitic plants, weeds or reproductive parts thereof; viruses or any organisms similar to or allied with any of the foregoing; and any genetically modified organisms or biological control agents that may directly or indirectly injure or cause disease or damage to any beneficial organisms, plants, parts of plants, or plant products (VT Invasive Forest Pest Action Plan)
- Private Trees: Any tree or shrub or any substantial portion of a tree, shrub, or plant which is in a private location along a public right-of-way (Hartford, VT)
- Private Tree: any tree not located on property owned or controlled by the City (Lynnwood, WA)
- Public property. All property owned, leased, or occupied by the Town or any of its administrative agencies or departments (sample language)

- *Public nuisance: any tree or shrub or part thereof, including firewood, existing anywhere in the city which is:*
 - *Interfering with the use of any public area,*
 - *Infected with a plant disease,*
 - *Infested with insects, or*
 - *Endangering the life, health, or safety of other trees/shrubs/persons or property..... (sample language)*
- *Public Right-of-Way: Standard right-of-way is three rods or 49.5 feet. Right of way is measured as ~25 feet on either side of the center line of the road (Peacham, VT)*
- *Public Shade/Ornamental trees are herein defined as: Any tree 9 inches or greater in caliper (trunk diameter one foot above ground level) in the Rural Residential zoning districts; any tree 6 inches in caliper or greater in the Residential, Multiple Residential, and Residential Office zoning districts; any tree 3 inches or greater in caliper in all other zoning districts; and any Public Tree intentionally planted which has not yet attained the requisite size (Brattleboro, VT)*
- *Public Trees: "Public Trees" are herein defined as trees and shrubs located on town-owned land or within the town right-of-way (Brattleboro, VT)*
- *Public Trees: Trees, shrubs, and all other woody vegetation on any Town park, or other property owned or controlled by the Town on any public street, alley, median, sidewalk or highway within the public right-of-way, school district trees and easements (Grand Isle, VT)*
- *Removal: the actual removal or causing the effective removal through damaging, poisoning, or other direct or indirect actions resulting in the death of a tree (Lynnwood, WA)*
- *Shade tree pest: The Council may by ordinance declare any vertebrate or invertebrate animal, plant pathogen, or plant in the community threatening to cause significant damage to a shade tree or community forest to be a shade tree pest and prescribe control measures to effectively eradicate, control, or manage the shade tree pest, including necessary timelines for action (sample language)*
- *Street Trees: "Street Trees" are herein defined as Public Trees on either side of all streets, avenues, bike paths, and located within the bounds of a Town owned public right-of-way (Brattleboro)*
- *Topping: The severe cutting back of limbs to stubs within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree (South Burlington, VT)*
- *Tree: any self-supporting woody plant together with its root system, growing upon the earth with one trunk of at least three inches in diameter at a height of four and one-half feet about the ground, or a multi-stemmed trunk system with a definitely formed crown. This excludes any ornamental shrubs (Lynnwood, WA)*
- *Tree: any self-supporting single- and multi-stem woody plant of a species which grows to at least a height of fifteen feet in the environs of the city . . . (Tampa, FL)*

APPENDIX B: SAMPLE OUTLINE OF MUNICIPAL TREE ORDINANCE

SECTION 1: TITLE

SECTION 2: PURPOSE

SECTION 3: DEFINITIONS

SECTION 4: JURISDICTION

SECTION 5: ADMINISTRATIVE RESPONSIBILITIES

SECTION 6: PROVISIONS FOR THE MANAGEMENT OF COMMUNITY TREES

TREE PLANTING

TREE PROTECTION

TREE MAINTENANCE

NON-HAZARDOUS TREE REMOVAL

SECTION 7: CONTROL OF HAZARDOUS TREES & TREES INFESTED WITH A PEST OR PATHOGEN

INSPECTION & DETERMINATION

CONTROL & ABATEMENT

PUBLIC NOTICE

SECTION 8: APPEALS

SECTION 9: PENALTY FOR VIOLATION

SECTION 10: SEVERABILITY