

Tree Ordinance



southburlington
VERMONT

CITY CLERK'S OFFICE

Received Jan. 4, 2017 at 11:00 M
Recorded in Vol. Ord. # 1 on page 151-158
Of So. Burlington Land Records

Attest:

A handwritten signature in black ink, appearing to read "Donna Kinville".

Donna S. Kinville, City Clerk

Table of Contents

1. Purpose and Authority	3
2. General Definitions	3
3. Functions of City Arborist and City Tree Board.....	4
4. Protection of City Trees	4
5. Removal of City Trees	5
6. Obstruction of Streets and Sidewalks	6
7. Dead, Diseased, or Injured Trees on Private Property.....	6
8. Appeals.....	6
9. Enforcement	7
10. Civil Penalty; Waiver Fee.....	7
11. Other Relief	7
12. Severability.....	7

The Council of the City of South Burlington hereby ordains:

1. Purpose and Authority

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. This Ordinance is enacted by the City Council under the authority of 24 V.S.A. § 2291(3) and Section 104 of the South Burlington City Charter. This Ordinance shall constitute a civil ordinance within the meaning of 24 V.S.A. Chapter 59.

2. General Definitions

The following terms and phrases, when used in this Ordinance, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

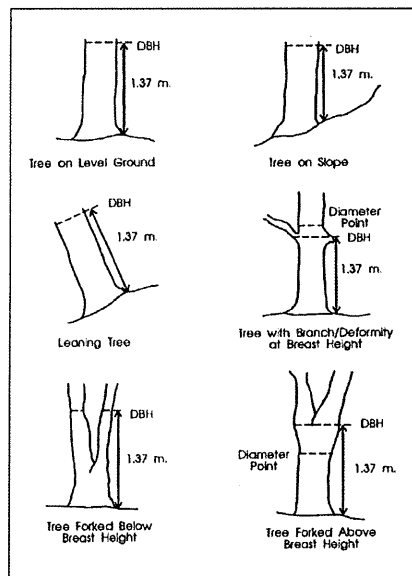
Arboricultural Specifications and Standards of Practice A manual developed and maintained by the City Arborist and the City Tree Board that contains the standards and specifications for the planting, maintenance, protection and removal of all City Trees.

Caliper The diameter in inches of a tree trunk that is taken six inches (6") above the ground for up to and including four inch (4") caliper size, and twelve inches (12") above the ground for larger sizes.

City Tree Any tree or shrub for which any part of the trunk at four feet, six inches (4'6") from the finished grade at the base of the tree or shrub is located in any City-owned property, City park, or City highway, street or right of way.

Trunk Measurement

Note: 4'6" = 1.37 meters



Critical Root Zone The area around the trunk of a tree circumscribed by a radius of one foot (1') per inch of DBH.

Diameter Breast Height (DBH) The diameter of tree trunks measured at a height of four feet, six inches (4'6") from the finished grade at the base of the tree.

Drip Line An imaginary vertical line which extends from the outermost branches of a tree's canopy to the ground.

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.

3. Functions of City Arborist and City Tree Board

(A) 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/her duty to supervise or inspect all work done under a permit issued in accordance with the terms of this Ordinance.

(B) The City Arborist, in consultation with and approval by the City Tree Board, shall have the authority to adopt a manual of Arboricultural Specifications and Standards of Practice. These regulations shall govern specific practices and protocols for the planting, maintenance, removal, pruning, and protection of City Trees and shall include a list of approved street and park tree species.

(C) It shall be a violation of this Ordinance for any person to prevent, delay, or interfere with the City Arborist or his/her agents in the execution or enforcement of any of the provisions of this Ordinance.

(D) 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 City Trees 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.

4. Protection of City Trees

(A) 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 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).

(B) No person shall conduct any land development or construction activity below, at, or above grade within the Critical Root Zone of any City Tree, including but not limited to a prohibition of the following: placing a structure, excavation, laying a drive, walkway, or impervious surface, laying utility pipes or conduits.

(C) All construction, excavation, maintenance, or other site work conducted within five feet (5') or less of the perimeter of the Critical Root Zone of a City Tree shall require the prior erection of a fence, frame, box, or other like barrier not less than four feet (4') high around the perimeter of the Critical Root Zone. All activity, equipment, and material shall be kept outside the barrier.

(D) No person shall deposit, place, store, or maintain upon the Critical Root Zone of any City Tree any stone, brick, sand, concrete, or other materials which may impede the free passage of water, air, and fertilizer to the roots of said tree.

(E) Upon good cause shown, the City Arborist may alter or waive the foregoing restrictions.

(F) This Ordinance shall not govern any emergency activity immediately necessary to prevent, treat, or minimize bodily injury or property damage. This Ordinance also shall not prohibit a person from removing a City Tree that obstructs access to such person's primary residence or business property, provided that actions taken shall be the minimum necessary to afford such access and shall be carried out so as to minimize damage to City Trees. Notice of any such activity affecting a City Tree shall be given to the City Arborist as soon as reasonably practicable, and within three (3) calendar days of commencing such activity at the latest.

5. Removal of City Trees

(A) No person shall plant, spray, fertilize, prune, cut, remove, replace, or otherwise disturb any City Tree without first obtaining a permit from the City Arborist. All work for which such permission is granted shall be performed in accordance with the Arboricultural Specifications and Standards of Practice adopted pursuant to this Ordinance.

(B) 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. Replacements shall be at least 2" Caliper, nursery grown stock. For example, if an 18" DBH City Tree is removed, the City Arborist shall require replacement with nine 2" Caliper trees. The City Arborist may exercise discretion to require larger than 2" Caliper replacements, to reduce the number of required replacements, and to waive the replacement of City Trees required by this provision. Exercise of discretion shall be guided by the characteristics of the tree(s) removed, including: status as ornamental or shade; age and health; location; and species.

(C) In cases where replacement is required, the permittee shall either:

(1) Arrange for suitable replacements and completion of all necessary work to plant replacements in accordance with the Arboricultural Specifications and Standards of Practice and subject to the City Arborist's approval of trees, planting methods, and completion of work; or

(2) Compensate the City with monetary payment in an amount the City Arborist estimates to equal the cost of replacement including purchase, planting, maintenance, and related expenses. Funds paid to the City under this provision shall be exclusively used to defray the cost of replacement trees or to otherwise further the purpose of this Ordinance.

(D) Replacement trees shall be made available for inspection by the City Arborist prior to planting. A permittee shall warrant the health of all replacement trees for a period of two years after planting and shall provide further replacements in the event of death or disease.

(E) 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.

(F) In the consideration of the removal of City Trees, the City Arborist shall exercise his/her judgement and discretion and all decisions by the City Arborist shall be final. Factors to be considered for both assessment and, if appropriate, mitigation should include but not be limited to: relative likelihood

and gravity of potential property damage or bodily injury; costs of monitoring, assessing, remediation, and removing trees (including allocation of human resources, supplies, and equipment); and environmental impacts. The USDA Forest Service tree risk evaluation form (revised version for New England) may be consulted in assessing potential risk. This provision shall not apply to City Trees located in areas that are primarily in a natural state.

(G) Upon good cause shown, including but not limited to protecting City property or public health, the City Arborist may alter or waive the foregoing restrictions.

6. Obstruction of Streets and Sidewalks

(A) It shall be the duty of any person owning real property bordering on a public street, sidewalk, recreational path, or other public right of way to ensure the trees, shrubs, and other plantings on that property are maintained in a manner that will not obstruct: street lights from illuminating street level; the passage or visibility of vehicles or pedestrians; vision of traffic signs and signals; or the view of any intersection.

(B) 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 twenty-one (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.

(C) To the extent this section is violated by virtue of a portion of a tree, shrub, or other planting which has a Drip Line extending into the City's right of way, the City may prune back such portion extending into the right of way.

7. Dead, Diseased, or Injured Trees on Private Property

(A) It shall be the duty of any person owning real property bordering on a public street, sidewalk, recreational path, or other public right of way 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 right of way.

(B) 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 twenty-one (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.

(C) 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.

(D) Trees and shrubs on privately-owned property may be subject to permits and approvals issued under the South Burlington Land Development Regulations. Property owners should refer to the Land Development Regulations, and such permits and approvals, for additional conditions and requirements applicable to these trees and shrubs.

8. Appeals

(A) Any person aggrieved by an action or decision of the City Arborist may, within twenty-one (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 to 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 affirmation of the decision from which the appeal is taken. The Board shall give written notice of its decision no later than forty-five (45) days after the date of the hearing.

(B) The decision of the City Tree Board shall be final, subject to appeal under V.R.C.P. 74.

9. Enforcement

Any person who violates a provision of this Ordinance shall be subject to a civil penalty of up to \$800 per day for each day that such violation continues. The City Arborist shall be authorized to act as Issuing Municipal Official to issue and pursue before the Judicial Bureau a municipal complaint. Each day the violation continues shall constitute a separate violation. A municipal complaint may, at the discretion of the Issuing Municipal Official, be dismissed upon the successful completion of a restorative justice program before the South Burlington Community Justice Center.

10. Civil Penalty; Waiver Fee

An Issuing Municipal Official is authorized to recover civil penalties in the following amounts for each violation:

First offense	\$160
Second offense	\$320
Third offense	\$480
Fourth offense	\$640
Fifth and subsequent offenses	\$800

An Issuing Municipal Official is authorized to recover a waiver fee, in lieu of a civil penalty, in the following amounts, for any person who declines to contest a municipal complaint and pays the waiver fee:

First offense	\$100
Second offense	\$250
Third offense	\$400
Fourth offense	\$550
Fifth and subsequent offenses	\$700

11. Other Relief

In addition to the enforcement procedures available before the Judicial Bureau, the City Manager is authorized to commence a civil action to obtain injunctive and other appropriate relief, and to pursue any other remedy authorized by law.

12. Severability

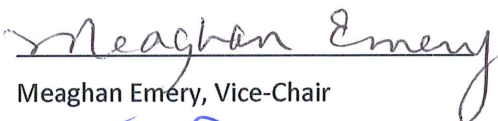
Should any part or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the Ordinance as a whole, or any part thereof, other than the part held to be invalid.

Adopted at South Burlington, Vermont this 3rd day of January, 2017, and to be effective upon adoption.

SOUTH BURLINGTON CITY COUNCIL



Helen Riehle, Chair



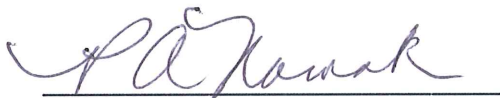
Meaghan Emery, Vice-Chair



Tim Barritt, Clerk



Thomas Chittenden



Pat Nowak

Received and recorded this 4 day of January, 2017.



Donna Kinville, City Clerk