

Chapter 14

STREETS AND SIDEWALKS

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Art. V Regulation of Public Trees

ARTICLE 1 GENERAL USE REGULATIONS

Sec. 14-1 (a). Obstruction of sidewalks by trees, shrubbery, etc. prohibited.

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.

Sec. 14-1(b). Obstruction of Vision.

No wall, fence or other structure shall be erected or maintained, and no hedge, tree or other obstruction shall be maintained that does, will or may cause danger by obstructing the view of traffic, vehicular or pedestrian, on a public sidewalk or street.

Sec. 14-2. Placement, maintenance of signs, awnings, shades, etc., restricted. (amended 5/4/10)

In addition to permits as set forth in this Section, a zoning permit may also be required pursuant to the Brattleboro Zoning By-Law, Article IV, Section 4500, et seq. It shall be the obligation of any applicant to ensure that all necessary permits are obtained prior to placement or installation of any thing over any sidewalk or street in the town.

- (a) No person shall suspend or display or cause to be suspended or displayed any sign, flag, article, awning, shade, or merchandise or other thing over any sidewalk or street in the town unless the same be safely and securely fastened and so located and constructed as to leave the way unobstructed to a height of at least seven (7) feet above the sidewalk or street. In no case shall an awning or shade extend beyond the line of the sidewalk.
- (b) No sign, article or merchandise or other thing shall be placed on or maintained on public sidewalks or parking area without a permit issued by the administrative officer appointed by the Selectboard. Such a permit shall be revocable. Any person having such a permit for any such signs, articles or merchandise or other things placed on public sidewalks or parking area shall in all respects conform to any direction in relation to the location, extent, construction and maintenance thereof as described by the permit.
- (c) No sign, article of personal property, merchandise, artifacts or works of art shall be displayed or maintained on any public street, sidewalk, parking area, common or other

public property unless it allows at least forty-eight (48) inches free passage to individuals on foot, wheelchair, or scooter. No sign controlled by these regulations shall: exceed four (4) square feet of text area; exceed four (4) feet in height; have text exceeding six (6) inches in height; or be located more than five hundred (500) feet from the entrance of the advertised business. Signs not immediately adjacent to the business advertised (within 10 feet of the business entrance), shall require permission from the business or property owner adjacent to the site where the sign is to be displayed. Such permission must be submitted with any permit application. Only one (1) sign per address is allowed.

- (d) Current signs placed on public sidewalks shall meet the dimensional standards for area, height and text size by March 31, 2011. Any sign not conforming by this date may be removed by the Town.
- (e) Signs shall be displayed only during a business' hours of operation.
- (f) The permit to display or maintain on any public street, sidewalk, parking area, common or other public property a sign, article of personal property, merchandise will be in effect from April the 1st until November the 15th. It shall be good for a period of one year. The fee shall be \$30.00 per business annually. Planters, artifacts, works of art, or seating intended for use by the general public shall be exempt from the permit fee. Signs shall require no additional fee for a zoning permit, excepting only the recording fee as set by the State of Vermont.
- (g) If it reasonably appears that granting the permit shall jeopardize the public's health, safety or welfare, the application shall be denied by the administrative officer. Within ten days of the date of a denial by the administrative officer, the applicant may appeal the decision in writing to the Selectboard. The Selectboard may deny or grant the permit application and may set terms and conditions consistent with the provisions of this Section when it deems it necessary for the protection of the public's health, safety or welfare. No sign, article of personal property, merchandise, artifacts or works of art shall be placed on a public street, sidewalk, parking area, common or other public property, pending the appeal of the administrative officer's decision. The decision of the Selectboard shall be final.
- (h) The administrative officer, and the Director of Public Works, and all law enforcement officials are authorized to enforce the provisions of this section. A violation of this Section is punishable by a civil penalty of Two Hundred Fifty (\$250.00) Dollars for a first offense and confiscation of the offending object(s) at the owner's expense. The waiver penalty for such first offense is One Hundred Fifty (\$150.00) Dollars. Each subsequent violation shall be subject to a civil penalty of Five Hundred (\$500.00) Dollars, and confiscation of the offending object(s) at the owner's expense. An enforcement action may be brought by any authorized official through the Judicial Bureau.

Sec. 14-3. Roof guards required in certain instances.

A person owning or controlling a building from which snow, ice or water slides or falls, or may slide or fall upon a street or sidewalk within the limits of the town, shall construct and maintain such guard upon the roof of said building as will prevent snow, ice or water from sliding or falling from the same upon the street or sidewalk.

Sec. 14-4. Removal of snow from sidewalks on certain streets - Required.

Upon the following streets or portions of streets each property owner shall clear all snow and ice from any sidewalk or sidewalks adjacent to his property within twenty-four (24) hours of the accumulation thereof: Main Street, Elliot Street to its intersection with School Street, Harris Place, Flat Street, Elm Street, High Street to its intersection with Retting Place, Canal Street to its southerly intersection with Clark Street, and Bridge Street.

Sec. 14-5. Same - By town upon owner's failure; collection of costs.

- (a) In the event that any property owner shall neglect or otherwise fail to remove all snow and ice within twenty-four (24) of the accumulation thereof, the town may remove or cause to be removed the same at the expense of the property owner.
- (b) In the event that said property owner shall not reimburse the town for such expense within a reasonable time after receiving notice thereof, the town may recover such expense, together with all legal costs, in an action of contract brought under this section.

Sec. 14-6. Reserved.**Sec. 14-7. Removal of litter and debris from sidewalks.**

- (a) Upon the following streets or portions of streets it shall be the duty of each property owner or person in possession of any business located on the street level of a building to maintain in a clean and orderly fashion any sidewalk or sidewalks and curbs adjacent to their property and sweep or otherwise remove and dispose of debris, including, but not limited to, litter and dirt within twenty-four (24) hours of accumulation thereof: Main Street; Elliot Street to its intersection with School Street; Harris Place; Flat Street; Elm Street; High Street to its intersection with Retting Place; Canal Street to its southerly intersection with Clark Street; and Bridge Street. Debris shall not be placed in streets or in storm sewers or drains but shall be disposed of in a sanitary manner.
- (b) Failure to comply Section 14-7(a) shall be deemed a public nuisance and unlawful. Persons found in violation of Section 14-7(a) shall receive a warning for the first offense and a twenty dollar (\$20.00) fine for each subsequent offense and the waiver fee shall be ten dollars (\$10.00). Each day that a violation shall continue to exist shall constitute a separate violation.

Sec. 14-8. Penalty.

A person who violates Section 14-4 of this Ordinance shall be fined the sum of Two Hundred Dollars (\$200.00) for each day that the violation exists, and the waiver fee for such offense shall be One Hundred Dollars (\$100.00) per violation.

ARTICLE II. NAMING OF STREETS AND ROADS

Sec. 14-9. Naming of Streets

The Board of Selectmen shall name all streets within the town. The Board of Selectmen may change the names of streets within town when necessary to promote the public welfare.

ARTICLE III. NUMBERING OF BUILDINGS AND PROPERTY**Sec. 14-10. Numbering system established.**

A uniform system of numbering properties and principal buildings as shown on the property tax maps which are maintained by the Board of Listers is hereby adopted for use in the Town of Brattleboro.

Sec. 14-11. Administration.

The Board of Listers shall number parcels as necessary and update the property tax maps annually according to the method of numbering set forth in section 14-12. Existing numbering of parcels not in conformity with this chapter shall be changed to conform to the system herein adopted only where necessary to maintain the integrity of the overall system or to protect the public safety.

Sec. 14-12. Method of numbering.

All parcels on public streets and roads shall be assigned numbers with the number "1" on the right hand and the number "2" on the left hand, and shall proceed continuously using whole numbers only, from the place of beginning with the odd and even numbers on opposite sides. Five numbers shall be allowed for each side in 100 feet increments. Each principal building shall bear the number assigned to the frontage on which the main entrance is located. A multiple family structure composed of three or more units, shall bear one number for the principal building and each dwelling unit shall affix a letter or apartment number suffix.

Sec. 14-13. Display of Number. (amended 2/5/11)

- (a) Each principal building shall post numerals of a minimum of four (4) inches in height which shall be clearly identifiable from the public highway. If numerals on the building are not visible from the street, numerals shall be installed on a post or mailbox near the main driveway and adjacent to the public highway.
- (b) The Street Numbering Ordinance shall be enforced by an Administrative Officer designated by the Selectboard. The penalty for failing to post street numbers shall be \$100.00 for the first offense; the waiver fee shall be \$50.00. The penalty for a second violation shall be \$200.00; the waiver fee shall be \$100.00. For the purpose of Section 14-13, each calendar month shall constitute a separate violation. No fine shall be issued unless the property owner has failed to comply with Section 14-13 within 30 days of the posting of a written notice by the Administrative Officer. Any landowner who fails to properly affix a street

number in compliance with Sec. 14-13 shall hold harmless and release the Town of Brattleboro for any damages or liability in conjunction with any emergency response.

ARTICLE IV. REGULATION OF COASTING, SLEDDING, AND SKATEBOARDING ON SIDEWALKS AND STREETS

Sec. 14-14. No person shall course, coast, slide upon any skateboard, board, sleigh, sled, vehicle, or other thing, excluding children's carriages and wheelchairs (with or without motors), upon any sidewalk or on any street or highway except such sidewalks or streets as may be designated by the selectmen.

Sec. 14-15. It shall be lawful to operate a skateboard in compliance with the regulations set forth in section 14-16 except it shall be unlawful to operate a skateboard on any of the following public places, streets and sidewalks adjacent to said streets:

a) Numbered Routes:

- Route 5, Putney Road

b) Downtown Business District:

- Arch Street -- entire length
- Bridge Street -- entire length
- Bullock Street -- entire length
- Chapin Street -- entire length
- Elliot Street from Main Street to School Street
- Elm Street -- entire length
- Flat Street -- entire length
- Green Street from High Street to Church Street
- Grove Street -- entire length
- Harris Place -- entire length
- High Street from Main Street to the intersection of Western Avenue and Green Street
- Linden Street from Main Street to Cedar Street
- Main Street -- entire length
- Oak Street -- entire length
- Park Place -- entire length
- South Main Street from Main Street to Pearl Street
- Walnut Street -- entire length
- Whipple Street -- entire length

c) West Brattleboro:

- Garfield Drive -- entire length
- George Miller Drive -- entire length
- Hayes Court -- entire length

- Melrose Terrace -- entire length
- (d) All Municipal Parking Lots, including the entire Brattleboro Transportation Center.
(Amended 12/2/03)

Sec. 14-16. Skateboard operators shall follow the applicable provisions of the Town Traffic Code and the following regulations. Skateboard operators shall:

- (1) stop operating in order to yield the right of way to any pedestrian;
- (2) obey all traffic control devices, use due care at intersections and give hand signals when turning and stopping;
- (3) keep to the right of sidewalks and ride in single file;
- (4) wear a reflective vest or jacket that can be seen clearly in the dark and/or a white light armband visible for at least 500 feet and red reflector visible for 300 feet to rear while operating from one half hour after sunset until one half hour before sunrise

Sec. 14-17. Penalty.

Any person who violates any section of Article IV of this Chapter shall be fined fifty dollars (\$50.00) and the waiver fee shall be twenty five dollars (\$25.00).

ARTICLE V. REGULATION OF PUBLIC TREES

(Amendment of 04/25/23)

Sec-14-20. This ordinance serves as the implementation document for the State of Vermont's statute, Title 24, Chapter 67, Parks and Shade Trees, as regards the paragraphs 2501a through 2511. The definition of "Shade Tree" is expanded from the state minimum to include trees that were not planted by the town, but which are on town property and/or within the town right-of-way, and certain shrubbery as defined in Section 14-21.

Sec.14-21. Definitions

Public Trees and Shrubs: All trees and shrubs located on town-owned land and within the town right-of-way.

Street Trees: Public Trees on either side of all streets, avenues, and bike paths and located within the town right-of-way.

Shade Trees: Any Public Tree or Shrub which meets the following criteria:

- 9 inches or greater in caliper, 4½ feet above ground level, in the Rural and waterfront zoning districts.
- 6 inches or greater in caliper measured 4½ feet above ground level, in the Urban Center, Village Center, Neighborhood Center, Mixed Use, Residential Neighborhood, and Industrial and Institutional zoning districts.
- 3 inches or greater in caliper measured 4½ feet above ground level, in all other zoning districts.

Any tree intentionally planted, which has not attained the requisite size.

Any Public Shrub intentionally planted.

Any tree or shrub listed as invasive on the website, <https://vtinvasives.org>, shall not be considered a Shade Tree nor offered any of the protections described in this ordinance, except for trees that were intentionally planted. (The development of the VT Invasives website was a joint effort between the University of Vermont Extension, the Vermont Department of Forests, Parks and Recreation, the Vermont Department of Environmental Conservation and the Vermont Chapter of the Nature Conservancy. The website was funded by the USDA Forest Service Urban and Community Forestry Assistance Program at the recommendation of the National Urban & Community Forestry Advisory Council. If this link stops working, contact the Invasive Plant Program at Vermont Department of Forests, Parks, & Recreation.)

Shade Tree Preservation Plan: This ordinance shall be considered to be the town's Shade Tree Preservation Plan in accordance with the State Statute, Title 24, Chapter 67.

Sec. 14-22. Creation and Establishment of a Town Tree Board.

There is hereby created and established the Brattleboro Tree Advisory Board ("the Board") which shall consist of five members, who shall be appointed by the Selectboard. The Board shall function under this ordinance and State Statute, Title 24, Chapter 67, or its successor provision. The Board shall be an advisory organization that works with the Tree Warden to promote the improvement and preservation of a healthy environment in the town as it relates to Public Trees. The Board is subject to the Vermont Open Meetings Law, per State Statute, Title 1, Chapter 5, Subchapter 2.

1. **Term of Office of Members of the Brattleboro Tree Advisory Board**
Each member shall be appointed for a period of three years. In the event that a vacancy shall occur during the term of any member, his or her successor shall be appointed for the unexpired portion of their term. Any member may be removed from the Board for good cause. Cause shall include but not be limited to, excessive absences from scheduled board meetings, and clearly identified conflicts of interest. Removal from the Board shall require a majority vote of the Board and the concurrence of the Selectboard.
2. **Compensation for members of the Brattleboro Tree Advisory Board**
Members shall serve without compensation.
3. **Duties and Responsibilities of the Brattleboro Tree Advisory Board**
Board members shall study, investigate, and develop and/or update a written plan, as needed, for the care, preservation, pruning, planting, removal, or disposition of Public Trees and Shrubs. The Board, when requested by the Tree Warden or any town department, board or commission, shall consider, investigate, make findings, report and recommend upon any special matter of question coming within the scope of its responsibilities.
4. **Operation of the Brattleboro Tree Advisory Board**
The Board shall choose its own chairperson on an annual basis during a regularly scheduled meeting in the month of July. A member will also be chosen as secretary and will properly warn and keep the minutes of each meeting. The Tree Warden

should attend all meetings and shall serve in the capacity of advisor to the Board. Meetings shall be held once each month. If less than a quorum of the members is in attendance, no official action can be taken.

Sec. 14-23. Tree Warden's Jurisdiction

The Tree Warden shall have the sole authority over all Shade Trees within the town. If another jurisdiction requests help or advice from the town's Tree Warden, the costs associated with those services shall be borne by the requesting jurisdiction.

The Tree Warden shall have all powers granted to Tree Wardens under State Statute Title 24, Chapter 67, or its successor provisions.

The Tree Warden shall advise any regulatory boards of the town in matters of tree health, care, and maintenance, as needed. All actions taken by the Tree Warden shall be reported to the Tree Advisory Board and maintained in the Board's official files.

Sec. 14-24. Planting of Public Trees and Shrubs. This section does not apply to non-conforming Shade Trees and Shrubs that were pre-existing the adoption of this ordinance, February 17, 2004.

- 1. Street Tree Species to be Planted.**

All species planted as Street Trees shall be selected from the "Vermont Tree Selection Guide", by Vermont's Urban and Community Forestry Program, available on-line at VTcommunityforestry.org/sites/default/files/pictures/complete_vt_tree_selection_guide_2019.pdf. Note that this link may change as the guide is revised. See vtcommunityforestry.org for updates. The planting of non-conforming species may be appealed to the Tree Warden.

- 2. Spacing**

Spacing of Street Trees shall be in accordance with the spacing and soil volume recommendations given in the "Vermont Tree Selection Guide", and in accordance with any applicable requirements of the Brattleboro Land Use and Development Regulations, Section 315.

- 3. Distance from Curb and Sidewalk**

Street Trees shall be planted per the requirements of the Brattleboro Land Use and Development Regulations, Section 315, and ensuring adequate soil volume as discussed in the booklet, "Vermont Tree Selection Guide".

- 4. Distance from Street Corners and Fire Hydrants**

No Street Tree shall be planted closer than 30 feet from any street corner, measured from the point of nearest intersecting curbs or edges of roads. No Street Tree shall be planted closer than 10 feet of any fire hydrant. Exception may be granted only by approval of the Tree Warden, in consultation with the Department of Public Works and the Tree Advisory Board, as appropriate.

- 5. Utilities**

No Street Trees, other than those species listed with mature heights of 30 feet and under, may be planted under or within 10 lateral feet of any overhead utility wire. Larger trees shall be planted one-half of the listed canopy diameter from any overhead utility line. Small trees (mature height of 30 feet) shall be planted at least 5 feet, medium trees

(mature height of 30 to 50 feet) at least 10 feet, and large trees (mature height of more than 50 feet) at least 15 feet from any underground utility line.

Sec. 14-25. Construction in Vicinity of Public Trees and Shrubs

Any construction within 10 lateral feet of a Public Tree or Shrub requires consultation with the Tree Warden, who may provide specific written recommendations for protection of those trees and/or shrubs. Any required pruning shall be done per American National Standards Institute's standard, A300.

Sec. 14-26. Care of Public Trees and Shrubs

The town shall have the right to plant, prune, maintain, and remove Public Trees and Shrubs as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds as set forth in the following guidelines. Certain maintenance and/or removal of Public Trees and Shrubs may require approval of appropriate town departments. Notification should be made to any department directly affected by the work, and permission granted if the work is to be performed by a private company.

1. **Maintenance:** The care and maintenance of Public Trees located on public property are the responsibility of the public agency responsible for the property, unless arrangements have been made with others for such maintenance (e.g. charitable organizations, garden clubs, public service organizations, etc.). The care and maintenance of Public Trees located on town rights-of-way on private property are the responsibility of the property owner.
 - a. All Public Tree and Shrub maintenance and pruning shall be in accordance with ANSI A300.
 - b. The Tree Warden may hire an arborist to obtain further information and options on tree issues, but only with the prior approval of the Selectboard or relevant town department.
 - c. **Topping:** It shall be unlawful for any person, firm, or town Department to top any Public Tree. 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 as to remove the normal canopy and disfigure the tree. Public Trees severely damaged by storm or other cause, or certain trees under utility wires or other obstruction where other pruning practices are impractical may be exempted from this section of the ordinance with the approval of the Tree Warden. If topping occurs, the requirements of Section 14-27 shall apply.
 - d. **Corner and Street Clearance:** It shall be the responsibility of each property owner of any tree overhanging any town right-of-way or town-owned land to prune the branches so that such branches shall not obstruct the light from any streetlamp or obstruct the view of any street or alley intersection, and so that there shall be a clear area above the surface of the street and/or sidewalk to allow for pedestrian and vehicular safety and travel. Said owners shall remove all dead, diseased, or dangerous trees, or broken or decayed 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 from a state

or town streetlamp or interferes with visibility of any state or town traffic control device or sign, or to maintain an appropriate clear space above the surface of the street or sidewalk.

- e. **Utilities:** If trees are interfering with utility wires, it is the obligation of the appropriate utility company to correct the situation.

2. Removal of Hazardous, Infected, or Infested Public Trees and Shrubs:

- a. Town employees who have been notified of, or recognize, a concern or a problem with Public Tree or Shrub must determine if the concern or problem is a hazard to the public's safety.
- b. If the employee, in his or her judgement, determines that there is a hazard to public safety, the employee shall contact a supervisor and secure the area, if needed.
- c. The supervisor shall contact the Tree Warden for a formal determination. If the Tree Warden determines that the Public Tree or Shrub needs to be removed, the process shall be per standard town practices.
- d. If the Tree Warden feels that further information should be obtained before a decision can be made, the area should be secured, until such determination can be made.
- e. The Tree Warden may remove, or cause to be removed, any Public Tree or Shrub, or any part thereof, which is infested with, or infected by, or at risk of being infested with or infected by a recognized tree pest, if the tree is within an infestation area designated by the State Agency of Agriculture Food and Markets and the State Department of Forests, Parks and Recreation. No posting or public posting is required in these cases.
- f. The Tree Warden may remove, or cause to be removed, any Public Tree or Shrub, or any part thereof, which is injurious to town sewers, electric power lines, water lines, or other public improvements or which can otherwise be considered a public nuisance. In these cases, the requirements for notifying the public per this section 3, below, apply.

3. Removal of Non-Hazardous and Healthy Shade Trees:

If the Tree Warden determines that a Shade Tree constitutes no hazard to public safety and is determined to be healthy, but needs to be removed to comply with State or federal law, permitting requirements, construction, or other perceived needs, then the following actions are required. If a property owner wishes to remove a Shade Tree for reasons not related to safety (as described in Section 14-26 (2), the following actions are also required.

- a. At least 15 days prior to the scheduled removal the Tree Warden shall create a public notice which shall be posted in the Town Clerk's office, and on the tree scheduled for removal. The notice shall include the proposed action to be taken. If the tree(s) is located on property of another, the Tree Warden shall notify the other landowner at their address of record.

- b. Anyone contesting the removal must do so to the Selectboard within 15 days of the posting, in writing. The Selectboard must notify the Tree Warden.
- c. A public hearing shall be scheduled within 10 business days of receipt of the appeal, with the Tree Warden, to receive public comment on the proposed Shade Tree or Shrub removal. No action may proceed until the Selectboard has rendered a final decision.
- d. The decision of the Selectboard is final.
- g. Shade Trees may be removed with prior notice to, and approval by, the Tree Warden, by town employees who are maintaining road banks or engaging in accepted practices of right-of-way clearance and tree and shrub maintenance, following the requirements of this section.

Sec. 14-27. Tree Removal Penalties

1. Penalties shall be considered for every non-hazardous Shade Tree removed, whether with Tree Warden approval, or not, and for any reason, by any party except for the town. Penalties shall be determined by the Tree Warden as part of the process for approval for the taking of a non-hazardous tree, or if no approval was granted, when the taking of the Shade Tree is discovered.
2. Penalties, when required, shall be assessed equal to the value of the tree(s) being removed. The valuation shall be per the “Reproduction Method, Trunk Formula Technique” as given in the Guide for Plant Appraisal by the Council of Tree and Landscape Appraisers, available from the International Society of Arboriculture (ISA). In no case may the penalty be less than the amount given in state statute, Title 13, Chapter 77, section 3602, or its successor provisions.
3. The penalty may be appealed to the Selectboard within thirty days of written notification to the person or agency responsible for payment.

Sec. 14-28. Prohibited Activities and Substances Harmful to Tree Life.

It shall be unlawful for any person or agency owning, using, or having control of substances harmful to plant life to allow such substances to come into contact with the soil surrounding the roots of any Public Tree or Shrub in such a manner as may injure or destroy the tree or shrub. If this type of damage occurs, it shall be considered to be equivalent to the removal of a Shade Tree and penalties shall be assessed per Section 14-27.

Unless specifically authorized in writing by the Tree Warden, no person or town agency shall damage, cut, carve, attach any rope, wire, nails, advertising posters or other contrivance to any Public Tree or Shrub. Anyone found to be willfully marring or defacing a Shade Tree shall be subject to the penalty established by state statute Title 24, Chapter 67, section 2510 or its successor provisions.

Sec. 14-29. Tree Removal on Private Property

1. When an insect or disease pest infestation upon or in Public or private Trees threatens other Public or private Trees, is considered detrimental to a municipal shade tree preservation program, or threatens the public safety, the tree warden may request a survey and recommendation for control action from the Secretary of Agriculture, Food

and Markets or Commissioner of Forests, Parks and Recreation in accordance with 6 V.S.A. Chapter 84, sections 8 and 2.

2. The Tree Warden may remove or cause to be removed any tree or part thereof which is injurious to town sewers, electric power lines, water lines or other public improvements or can otherwise be considered a public nuisance. The Tree Warden shall notify the owner of such tree in writing by Certified Mail that removal of the tree is necessary. The property owner may appeal this decision per section 14-26 (3). If it is determined that such tree(s) needs to be removed, the town may remove it at its own expense.

Sec. 14-29. Arborist and Bond

Before securing a contract with the town for arboricultural services, a contractor shall have possession of liability insurance in the minimum amounts of \$1,000,000 aggregate, general liability per occurrence indemnifying the town or any person injured or damage resulting from the pursuit of such endeavors as herein described. All tree work performed on Public Trees and Shrubs must conform to the most recent ANSI A300 standards.

Sec. 14-30. Distance from Street Corners and Fire Hydrants.

No Street Tree shall be planted closer than 30 feet of any street corner measured from the point of nearest intersecting curbs or edges of roads. No Street Tree shall be planted closer than 10 feet of any fire hydrant. Exceptions may be granted only by approval of the Town Tree Warden, after the Tree Warden's consultation with the Department of Public Works and the Tree Advisory Board as appropriate.

Sec. 14-31. Utilities.

No Street Trees other than those species listed as small trees (30' and under) may be planted under or within 10 lateral feet of any overhead utility wire. Medium and large trees shall be planted one-half the listed canopy diameter from any overhead utility line. Small trees shall be planted at least 5 feet, medium trees at least 10 feet, and large trees at least 15 feet from any underground utility line. Refer to (Appendix A) for overhead utilities recommendations.

Sec. 14-32. Construction in Vicinity of Town Trees.

Any construction within 10 lateral feet of Public Trees requires consultation with the Town Tree Warden who may provide specific written recommendations for additional protection of trees. American National Standards Institute – A300 or the current version available at the Planning Services Department will apply.

Sec. 14-33. Public Tree Care.

The Town shall have the right to plant, prune, maintain and remove Public Trees within the Town rights-of-way and on Town-owned land, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds as set forth in the following guidelines.

Maintenance:

1. All Public Tree maintenance, pruning and planting shall be in accordance with ANSI A300 standards.
2. Every reasonable effort should be made to inform the public when potentially hazardous Public Trees need extensive pruning.
3. The Town Tree Warden, at times, may need to hire an arborist to obtain further information and options on tree issues, but only upon the prior approval of the Selectboard or relevant Town Department.

Removal:

1. Department of Public Works and Recreation & Parks Department employees who have been notified of or recognize a concern or a problem with a Public Tree need to determine if the concern or problem is a hazard to the public's safety.
2. If the employee, in his or her judgment, determines that there is a hazard to public safety, then the employee shall contact a supervisor and secure the area, if needed.
3. The supervisor will then contact the Tree Warden for a determination. If the Tree Warden determines that the Public Tree needs to be removed, the process will proceed according to standard Town practices.
4. If the Tree Warden feels that further information should be obtained before a decision can be made, then the area should be secured, if needed, until a determination can be made.
5. 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 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.
(Amended 1969, No. 238 (Adj. Sess.), § 6.)

6. Two weeks or more before 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.
7. 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.

8. (a) The Town Tree Warden may remove or cause to be removed any public Shade Tree or part thereof which is infested with or infected 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. Such tree shall be considered a hazardous tree.

(b) The Town Tree Warden may remove or cause to be removed any Public Shade Tree or part thereof which is injurious to town sewers, electric power lines, water lines or other public improvements or can otherwise be considered a public nuisance. Such tree shall be considered a nuisance tree. A public hearing shall be held before such public Shade Tree is removed. Public hearing guidelines stated above in this section will be followed.
9. Exceptions may be made with prior notice to, and acceptance by, the Tree Warden for Town employees who are maintaining roadbanks or engaging in accepted practices of right of way clearance and tree management.

Sec. 14-34. Tree Removal Mitigation. (Amended 5/18/04)

- a) For every non-hazardous Public Shade Tree taken down, a tree or trees shall be planted equal to the total caliper of inches taken. The tree(s) planted shall be consistent with Section 4344 of the Town of Brattleboro's zoning bylaws. Bare root plantings may be no less than 1 ½" in caliper when planted. Trees shall be replaced by the caliper inch, such that for every inch of diameter at 4½ feet (DBH) removed, one or more trees totaling an equal number of caliper inches shall be planted. In lieu of replacement tree(s), the Tree Warden may allow payment to be made into a mitigation fund.
- b) The planting need not be done at the site of the take-down, but shall be carried out in accordance with the needs of the most current version of the Streetscape Master Plan. The Tree Advisory Board may advise the Tree Warden as to where the new tree or trees shall be planted.
- c) 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, specie, community value, and other considerations. Failure to apply for mitigation does not preclude assessment of a mitigation fee. The mitigation fee may be appealed to the Selectboard within thirty days of written notification to the person or agency responsible for payment.

- d) For construction projects requiring the removal of over five Public Shade Trees, a tree removal mitigation plan will be developed prior to the removal of the trees, and enacted within a year of the project's completion.
- e) In cases of appeal or litigation, a professional arborist will be consulted to appraise tree values, using ISA formula. All projects using federal funds are required to use the ISA formula for valuing trees.
- f) If no present need is identified, mitigation funds (equal to what a planting would have cost) will be set aside for future planting or maintenance in a fund created for that purpose.
- g) A property owner can expect to access their property. If a Public Tree is a hindrance to their access and no reasonable alternative exists, after consultation with the Tree Warden no penalties for tree removal will be levied.
- h) The Town will not be held to the mitigation clause.

Sec. 14-35. Tree Topping.

It shall be unlawful for any person, firm or Town department to top any Public Tree. 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. Public 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 section of the ordinance at the determination of the Tree Warden.

Sec. 14-36. Prohibited Activities and Substances Harmful to Tree Life.

It shall be unlawful for any person or agency owning, using or having control of substances harmful to tree life to allow such substance or substances to come in contact with the soil surrounding the roots of any Public Tree in such a manner as may injure or destroy the tree or plants.

Unless specifically authorized in writing by the Tree Warden, no person or town agency shall damage, cut, carve, attach any rope, wire, nails, advertising posters or other contrivance to any Public Tree or shrub.

Sec. 14-37. Pruning, Corner Clearance.

It shall be the responsibility of each property owner of any tree overhanging any Town right-of-way or Town-owned land 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, and so that there shall be a clear area above the surface of the street and/or sidewalk to allow for pedestrian and vehicular safety and travel. Said owners shall remove all dead, diseased or dangerous trees, or broken or decayed 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 from a State or Town street light or interferes with visibility of any State or Town traffic control device or sign, or to maintain an appropriate clear space above the surface.

Sec. 14-38. Tree Removal on Private Property.

(a) 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 submitted 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.

In the event of the failure of the owner to comply, after a final adjudication that the private tree constitutes a hazard to public safety, the town shall have the right to remove the private Shade Tree pursuant to 24 VSA § 2511. A person who violates subsection (a) and fails to remove the private Shade Tree within the time required, after a final adjudication that the private tree constitutes a hazard to public safety, shall be subject to a fine of \$500.00 for each day the private Shade Tree remains and is not removed.

(b) The Town Tree Warden may remove or cause to be removed any private Shade Tree or part thereof which is injurious to town sewers, electric power lines, water lines or other public improvements or can otherwise be considered a public nuisance. 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 property owner may appeal this decision. Guidelines for appeal shall be the same as section 14-38 (a) . If it is determined that such private Shade Trees need to be removed, the town may remove it at its own expense.

Sec. 14-39. Obstruction of Streets.

It shall be the duty of any person owning private property bordering on a public street to ensure that trees and shrubs on that property are pruned in a manner that will not obstruct or shade streetlights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs or obstruct the view of any street or alley intersection. If trees are interfering with utility wires, it is the obligation of the appropriate utility company to correct the situation.

Sec. 14-40. Arborist and Bond.

Before securing a contract with the Town for arboricultural services, a contractor must have possession of liability insurance in the minimum amounts of \$1,000,000 aggregate, general liability per occurrence indemnifying the Town or any person injured or damage resulting from the pursuit of such endeavors as herein described. All tree work performed on Public Trees must conform to the most recent ANSI A300 Standards.

Sec. 14-41. Penalties

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.