

# PUBLIC TREES

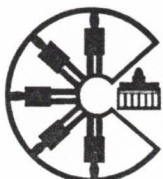
## DUTIES AND LIABILITIES

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**I. POWERS AND DUTIES OF TREE WARDENS –C.G.S. 23-59****A. Tree Wardens have care and Control of all Trees and Shrubs in Whole or in Part Within the Limits of any Public Road**

- trees along state highways under the control of the Commissioner of Transportation are excepted.
- trees in public parks or grounds under the jurisdiction of Park Commissioners are excepted unless Park Commissioner asks tree warden to care for such trees.

**B. Care and Control Extends to Limbs, Roots or Branches Extending or Overhanging the Public Right-of-Way**

- tree wardens can care, maintain, prune or remove any portion of a tree extending into the limits of the public right-of-way.

**C. Tree Warden's Responsibility to Enforce all Provisions of the Law regarding the Preservation of Trees and Shrubs and of Roadside Beauty**

- Conn. Gen. Stat. §23-65 forbids any person to remove, prune or injure any shrub or ornamental tree within the limits of the public right-of-way without written permission of the tree warden.

**D. Removal or Pruning of Trees**

- Tree warden has power to remove or prune any tree in public right-of-way whenever, in his or her opinion, the public safety demands removal or pruning.
- there is no mandatory inspection requirement.
- tree warden is not obligated to remove or prune any specific tree, decision is discretionary.

**E. Procedure for Removal****a. Immediate Hazards**

- if the condition of a tree or shrub to be removed constitutes an immediate public hazard, tree warden can remove it immediately.
- tree warden has the option to retain private tree services to accomplish removal.

**b. Removing or Pruning Trees that are not Immediate Public Hazards**

- when immediate removal is not required the tree warden must post a suitable notice stating an intention to remove or prune a tree or shrub.
- after posting notice, tree warden must wait 10 days before such removal or pruning to see if any objection is raised.
- if any person, firm or corporation objects they must do so by so writing to the tree warden.
- tree warden shall hold a public hearing after giving reasonable notice of the hearing to all persons known to be interested and posting a notice thereof on the tree or shrub to be pruned.
- within three days after the hearing the tree warden must render a decision.
- any party aggrieved by such decision may, within 10 days, appeal to the Connecticut Superior Court.

**F. Trees Infected with Insects or Fungus**

- tree warden may remove any trees or other plants within the public right-of-way that are "particularly obnoxious as hosts of insects or fungus pests," upon approval of the selectman or borough warden.



## II. TREES WHOLLY ON PRIVATE PROPERTY

- are outside the control and responsibility of tree wardens.
- however, local ordinances frequently give tree wardens the power to declare hazardous trees a nuisance.
- in most ordinances tree wardens have the power to order a hazardous tree pruned or removed.
- absent removal by the homeowner, the tree warden may cause the tree to be removed, and secure payment for services from the homeowner, backed by a potential tax lien.

## III. NEGLIGENCE LIABILITY

### Elements of a Negligence Action:

#### 1. Existence of a Duty

- Common law duty to act as would a reasonable, prudent person under the circumstances

-e.g. Tree warden comes upon a public tree that is hanging so low after a storm that it obstructs traffic just past a sharp curve. Tree warden will have a duty to take action—if, under the circumstances, it is reasonably foreseeable that cars will encounter this condition and accidents will occur.

- Duty can also arise from policy, order or directive

-e.g. If a specific policy or directive required monthly inspection of certain public areas, tree warden would have a duty to make the inspection.

## 2. Breach of Duty

### a. Action or inaction can breach the duty owed.

**-e.g.** The failure to take corrective action regarding the low hanging tree that obstructs traffic can be negligence. Cutting down the low hanging limb and leaving it in the roadway where it may cause an accident may also be negligence.

## 3. Proximate Cause of Damages

Injury caused must be foreseeable, and related to the breach of duty. If the injury is within the scope of foreseeable risk damages will be awarded.

**e.g.** a sore neck and back following a car accident caused by the low hanging tree is within the scope of foreseeable risk. If the injured party is then assaulted and robbed at gunpoint while he or she is awaiting EMS arrival, that is most likely outside the scope of foreseeable risk.

## IV. GOVERNMENTAL IMMUNITY--MUNICIPAL EMPLOYEES ARE GENERALLY ENTITLED TO IMMUNITY FROM NEGLIGENCE LIABILITY WHEN IN THE PERFORMANCE OF GOVERNMENTAL FUNCTIONS

### 1. Definition of "Governmental Function" 2 Elements - Public Duty and Discretionary Act

#### a. **Public Duty** - The act serves and affects the public generally.

#### **Examples of Public Duty:**

- a public works director's duty to maintain buildings and parks.
- a police officer's duty to protect the public.
- Tree warden's duty to inspect and maintain trees on public land.

**Example of Private Duty:**

- a municipality contracts with X Company for excavation services but fails to advise X of hazardous and explosive chemicals the municipality knew were buried at the excavation site

- b. Discretionary Act** - The act requires the exercise of judgment or discretion and is not "ministerial," or capable of being performed in a prescribed manner without the exercise of judgment or discretion.

**Examples of Discretionary Acts:**

- The decision of a police commissioner on the training patrolmen will receive.
- The decision of a park director as to areas to be opened to public.
- The decision of tree warden whether to prune or remove decayed tree.

**Examples of Ministerial Acts:**

- Dog warden is required by law to quarantine rabid dogs.
- Town clerk required to record deed.
- Public officials required to obey motor vehicle laws.

**Beware that a specific regulation or directive can make an otherwise discretionary act ministerial.**

**1. Kolaniak v. Board of Education, 28 Conn. App. 227 (1992).**

- Adult education student slipped on an icy sidewalk and was injured.
- Board of Ed had issued a detailed policy mandating daily inspection and clearing/sanding.
- Court held this made an otherwise discretionary task mandatory, and denied immunity.

**2. Beach v. Regional School District 13, 42 Conn.App. 542 (1996)**

- School food service employee slipped on icy sidewalk, and claimed the maintenance of walkways was no longer discretionary after Kolaniak.
- Court disagreed, noting that RSD 13 had no similar directive that created a mandatory policy for snow removal or sanding/salting icy patches.
- The Supervisor of maintenance and grounds was in charge of five buildings in three locations; he supervised custodians; determined staffing and approved overtime; determined when custodians should begin the work of snow removal and sanding; and the Bd. Of Ed. did not prescribe the manner in which he carried out his duties.
- Court held that Supervisor was acting with discretion and affirmed judgment for defendant based on governmental immunity.



2. **Identifiable Person/Imminent Harm Exception to the General Rule of Employees' Immunity from Negligence Liability for Governmental Acts**

If it is apparent to a municipal employee that his/her failure to act will likely subject an **identifiable** person to **imminent harm**, immunity will not apply.

**Example:**

- Police officer observes a fist fight between two parties, one of whom he believes may be armed, but leaves the scene. The fight escalates and one party is shot and killed.

**NOTE** - the Connecticut Supreme Court has expanded this exception so a claimant need not be an identifiable person so long as he or she is a member of a "class of foreseeable victims".

- also "imminent harm" has been equated to "foreseeability" in cases involving injuries to school children. Purzycki v. Fairfield, 244 Conn. 101 (1998).

**V. CASELAW EXAMPLES**

1. **Deconti v. McGlone**, 88 Conn. App. 270 (2005)

- Plaintiff was operating a motor vehicle in New Britain when a rotted tree fell on her car causing personal injuries.
- plaintiff conceded that maintenance of the tree limbs constituted a public discretionary act but claims she was an identified person at imminent risk of harm given the fact that she lived five houses away from the tree.



- Court agreed that the defendant's actions were discretionary: "the duty to inspect and care for trees undoubtedly involves exercise of judgment, and is properly classified as discretionary."
- The Court disagreed that plaintiff was an identified person subject to imminent harm, given there was no evidence plaintiff lived or owned property within falling distance of where the tree stood.
- mere travelers on a particular road do not present identifiable persons or an identifiable class of persons.

2. **Browning v. Palmer**, 35 Conn.L.Rptr. 381 (8-19-03).

- Tolland resident objected to Tolland Tree Warden's posting and removal of a tree on public grounds.
- resident claimed he had lived four years in Town and used the Town green for recreation and enjoyment and was consequently "affected by its alteration."
- Court dismissed claim claiming plaintiff had no standing to set the judicial appeal process in motion.
- plaintiff did not plant the tree, did not purchase the tree, nor did he live adjacent to the tree in question. Court dismissed the claim.

3. **Curtin v. Town of Brookfield**, 2005 W.L. 1092574 (4-14-05)

- large, rotted maple tree fell onto roadway and one person, injured three others.
- tree warden had not inspected tree prior to fall.
- Court held tree warden had no mandatory obligation to make inspection of trees within the public right-of-way.
- Court held that tree warden was not mandated to remove any tree deemed hazardous, because the decision was totally discretionary.
- because decision was discretionary tree warden was granted immunity.
- mandatory inspection obligations are unrealistic and not recommended.

4. **Olsen v. Town of Sherman**, 2004 W.L. 203124 (1-21-04)
  - Town citizens fought to save a damaged tree.
  - tree warden held the required hearing and decided to take the tree down.
  - Town citizens appealed to the Superior Court, however, during pendency of the appeal tree deteriorated to the point where it was an immediate public hazard.
  - tree warden took the tree down summarily rather than waiting for outcome of appeal process.
  - Court dismissed the citizens' appeal as moot once tree was removed, tacitly approving tree warden's quick decision made in the name of public safety.
  - when in doubt take a dangerous tree down.
  
5. **Donaruma v. City of New Haven**, 2004 W.L. 2284277 (9-20-04)
  - City of New Haven Parks & Recreation employee was cutting down a tree in a City park when another tree fell on him, causing his death.
  - City granted summary judgment based on exclusivity provisions of Worker's Compensation Act.
  - however, dangers associated with untrained crews utilizing chain saws to remove trees were readily apparent in this case.
  - tree warden should seek authority over trees in the parks from Park Commissioner to avoid similar problems.
  
6. **Estate of Addario v. Yannes**, 2002 Ct. Sup. 7952 (2002).
  - plaintiff killed while operating a motor vehicle in Seymour when a large rotted maple tree fell from private property.

- plaintiff sued abutting landowner where tree stood, as well as Town and tree warden.
- Court held that the duties imposed upon a tree warden are public duties involving the exercise of discretion.
- any claim of failure to inspect a tree on private property involves exercise of discretion by tree warden.
- tree warden cannot be held liable for negligence for failure to detect a hazardous tree located on private property.

**7. Metropolitan v. Town of Fairfield, 2002 Ct. Sup. 11243 (2002).**

- tree fell on second floor of plaintiff's home during nor'easter storm causing property damage and emotional distress.
- tree had previously been filled with cement and cabled.
- plaintiff sued claiming tree should have been taken down and that Town was on notice of tree's problem, due to the presence of the concrete and the cabling.
- Court held there could be no negligence liability if there is no mandatory obligation to remove any tree.
- plaintiff attempted to establish a nuisance, claiming that the Town, through the positive act of an employee, created a hazardous condition likely to cause injury (namely, the rotted tree that had been filled with cement and cabled).
- due to a lack of evidence as to who filled the tree with concrete and cabled it, the Court ruled in favor of the defendant.
  - evidence at trial was that filling with concrete likely does more harm than good and tree probably should have been taken down.



### 23-59. Powers and duties of wardens

The town or borough tree warden shall have the care and control of all trees and shrubs in whole or in part within the limits of any public road or grounds and within the limits of his town or borough, except those along state highways under the control of the Commissioner of Transportation and except those in public parks or grounds which are under the jurisdiction of park commissioners, and of these the tree warden shall take the care and control if so requested in writing by the park commissioners. Such care and control shall extend to such limbs, roots or parts of trees and shrubs as extend or overhang the limits of any such public road or grounds. The tree warden shall expend all funds appropriated for the setting out, care and maintenance of such trees and shrubs. The tree warden shall enforce all provisions of law for the preservation of such trees and shrubs and of roadside beauty. The tree warden shall remove or cause to be removed all illegally erected signs or advertisements, placed upon poles, trees or other objects within any public road or place under the tree warden's jurisdiction. The tree warden may prescribe such regulations for the care and preservation of such trees and shrubs as the tree warden deems expedient and may provide therein for a reasonable fine for the violation of such regulations; and such regulations, when approved by the selectmen or borough warden and posted on a public signpost in the town or borough, if any, or at some other exterior place near the office of the town or borough clerk, shall have the force and effect of town or borough ordinances. Whenever, in the opinion of the tree warden, the public safety demands the removal or pruning of any tree or shrub under the tree warden's control, the tree warden may cause such tree or shrub to be removed or pruned at the expense of the town or borough and the selectmen or borough warden shall order paid to the person performing such work such reasonable compensation therefore as may be determined and approved in writing by the tree warden. Unless the condition of such tree or shrub constitutes an immediate public hazard, the tree warden shall, at least ten days before such removal or pruning, post thereon a suitable notice stating the tree warden's intention to remove or prune such tree or shrub. If any person, firm or corporation objects to such removal or pruning, such person, firm or corporation may appeal to the tree warden in writing, who shall hold a public hearing at some suitable time and place after giving reasonable notice of such hearing to all persons known to be interested therein and posting a notice thereof on such tree or shrub. Within three days after such hearing, the tree warden shall render a decision granting or denying the application, and the party aggrieved by such decision may, within ten days, appeal therefrom to the superior court for the judicial district within which such town or borough is located. The tree warden may, with the approval of the selectmen or borough warden, remove any trees or other plants within the limits of public highways or grounds under the tree warden's jurisdiction that are particularly obnoxious as hosts of insect or fungus pests.

