

## Chapter 277

### TREES

#### GENERAL REFERENCES

Trees blocking building numbers — See Ch. 120, § 120-33. Recycling of leaves — See Ch. 253.

Posting signs on trees — See Ch. 262.

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#### § 277-1. Purpose.

It is the purpose of this chapter to promote and protect the public health, safety, general welfare, and environmental well being by providing for the regulation of the planting, maintenance, and removal of trees and shrubs, and the management of City-owned forested areas within Middletown, Connecticut. A program shall be established for:

- A. The planting, protection, maintenance, and removal of trees, shrubs and forested areas within the City;
- B. The reasonable protection of City employees, community residents and visitors from personal injury and property damage, caused by inadequate, improper or unsafe maintenance or removal of trees, shrubs, or forested areas located within the community.
- C. The adherence to current professional standards of practice by those planting or performing other maintenance work on trees, shrubs or forested areas owned by the City of Middletown.

#### § 277-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ARBORICULTURAL SPECIFICATIONS AND STANDARDS OF PRACTICE FOR MIDDLETOWN (hereinafter, "Arboricultural Specifications Manual") — A manual prepared by the City Forester pursuant to the ordinance containing specifications and standards for the planting, maintenance, and removal of trees, shrubs, and forested areas upon City-owned property.

ARBORIST — A person holding a valid arborist license issued by the State of Connecticut Department of Consumer Protection.

CITY-OWNED PROPERTY — Property owned by the City of Middletown, Connecticut, whether within the City limits or not, either:

- A. Owned by the City in fee simple absolute; or
- B. Implied or expressly dedicated to the public for present or future use for purposes of vehicular or pedestrian traffic, or for public easements.

COMMISSION — The Middletown Urban Forestry Commission as established herein.

FORESTED AREA — A biological community dominated by trees and other woody vegetation, occupying an extensive area of land.

FORESTER — The City Forester of the City of Middletown

PROPERTY OWNER — The owner of record or contract purchaser of any parcel of land.

SHRUBS — A woody plant, branched from the base, usually less than 15 feet tall at maturity.

TREES — A woody plant usually with one main trunk, reaching a height at maturity of at least 15 feet.

URBAN FOREST MANAGEMENT PLAN — The Long Range Management Plan and resulting annual work plans prepared by the Forester and approved by the Commission from data generated from the Urban Forestry Inventory.

### **§ 277-3. Urban Forestry Commission.**

- A. Establishment. The Middletown Urban Forestry Commission, hereinafter referred to as the "Urban Forestry Commission" is hereby established. Its function and duties are limited to those set forth in this chapter.
- B. Composition. The Urban Forestry Commission shall be composed of seven Commissioners, who shall be appointed by the Mayor with the confirmation of the Common Council. These seven Commissioners shall serve without pay and shall reside within the City of Middletown. The Urban Forestry Commission shall also include ex officio members who shall not vote. These shall include the City Forester, and the directors from appropriate departments or their designated representatives. Subject to the exceptions in Subsection C, each Commissioner of the Urban Forestry Commission shall serve for a term of three years.<sup>1</sup>
- C. Appointment of members. Two of the seven Commissioners initially appointed to the Urban Forestry Commission, who are not ex officio members, shall serve for a term of one year; two of the seven Commissioners initially appointed shall serve for a term of two years; and three of the seven Commissioners initially appointed shall serve for a term of three years. All terms shall start on a common date. Determination of the length of terms of the seven Commissioners initially appointed shall be by lot. The Mayor shall designate the Chairperson of the Urban Forestry Commission.
- D. Expiration or vacation of terms. Within 30 days following the expiration of the term of any appointed Commissioner, a successor shall be

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1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

appointed by the Mayor with the confirmation of the Common Council, and the successor shall serve for a term of three years. A member shall serve until the successor is appointed. Should any Commissioner resign or be removed from the Urban Forestry Commission, a successor shall be appointed by the Mayor and shall serve for the unexpired period of the vacated term. A member of the Urban Forestry Commission may be removed in accordance with Section 4 of Chapter VIII of the Charter of the City of Middletown, as amended.

E. Duties. The Urban Forestry Commission shall perform the following duties:

- (1) Within a reasonable time after the appointment of the Urban Forestry Commission, upon call of the Chairperson of the Urban Forestry Commission, the Urban Forestry Commission shall meet and adopt rules of procedure for regular and special meetings to fulfill the duties imposed upon it by this chapter.
- (2) The Urban Forestry Commission shall advise and consult the Forester on any matter pertaining to this chapter and its enforcement. The topics under which this advice and consultation may be given may include, but are not limited to, any of the following:
  - (a) Amendments to this chapter, and alterations or revisions to the Arboricultural Specifications Manual, and alterations or revisions of the Urban Forest Management Plan;
  - (b) Policy concerning selection, planting, maintenance, and removal of trees and shrubs, and management of forested areas within the City;
  - (c) Allocation of funds and expenditure for the Urban Forestry Program;
  - (d) Establishment of educational and informational programs;
  - (e) Development of policies and procedures regarding the Forester's duties;
  - (f) Issuance of permits required by this chapter.
- (3) The Urban Forestry Commission, upon the request of any person who disagrees with the decision of the Forester, shall hear all issues of the disputes which arise between the City Forester and any such person whenever those issues involve matters or the interpretation or enforcement of the Arboricultural Specifications Manual, the Urban Forest Management Plan, or of the interpretation or enforcement of this chapter, including disputes regarding the issuance of permits, or the concurrence or nonconcurrence of the Forester in permits required under other ordinances or laws, or the abatement of nuisances. The decision of

a majority of the appointed members of the Urban Forestry Commission with regard to such dispute shall be binding upon the Forester. Nothing in this section shall be construed to limit the jurisdiction of any court of law with respect to such disputes.

**§ 277-4. City Forester.**

- A. Establishment. The position of the City Forester is hereby established to be under the jurisdiction of the Environmental Planner.
- B. Duties. The Forester shall perform the following duties:
- (1) The Forester shall have and perform the duties and powers of the Tree Warden as by law and/or ordinance provided.
  - (2) The Forester, with the assistance of the Urban Forestry Commission, shall administer and update the Urban Forest Management Plan at least every three years. The Plan shall outline urban forestry program activities and annual work plans for a minimum of the next five years. This Plan shall describe the urban forestry management activities to be undertaken by the City, the reasons for those activities, the possible funding source(s), the means of accomplishing the activities, the alternatives available to the City to fund or accomplish the activity, the projected date of completion, and the consequences if the activity is not completed. Activities may include but are not limited to pruning, fertilizing, watering, mulching, inspection, insect or disease control, municipal tree inventory, planting, tree removal, forestry practices, beautification projects, and educational projects.
  - (3) The Forester, with the assistance of the Urban Forestry Commission shall develop and periodically review and revise, as necessary, the Arboricultural Specifications Manual. This manual shall contain specifications and standards for the planting, maintenance, and removal of trees and shrubs and management of forested areas upon City-owned property, including specifications for selection of plant materials and recommended practices regarding insect, disease and weed control.
  - (4) The Forester shall cause the Urban Forest Management Plan and the Arboricultural Specifications Manual, and all revisions and amendments to them, to be published and promulgated and shall cause copies of the Manual, and all revisions and amendments to it, to be available for public inspection at the office of the City/Town Clerk. Notice that such information is available for public inspection shall be published in a newspaper of general circulation within Middletown at least one weekday of each of two consecutive weeks immediately following the initial availability of the Arboricultural Specifications Manual, or revisions or amendments thereto. The Arboricultural Specifications Manual, and any revisions and additions thereto shall become effective on the fifth day

following the final publication in a newspaper of general circulation required pursuant to this subsection.

- (5) The Forester shall make available to any interested person copies of this chapter, information about the activities of the Urban Forestry Commission, copies of the Arboricultural Specifications Manual and copies of the Urban Forest Management Plan.
- (6) The Forester with the assistance of the Urban Forestry Commission shall administer the Urban Forest Management Plan, this chapter, and the provisions of the Arboricultural Specifications Manual.
- (7) The Forester shall direct, manage, supervise and control whatever acts are necessary, including the planting, maintenance, or removal of trees and shrubs and management of forests located on City-owned property, to insure that all work performed conforms with the Urban Forest Management Plan, the Arboricultural Specifications Manual, this chapter, and all other state, federal and local laws, regulations and ordinances. Pursuant to this duty, the Forester, in accordance with normal City procedures regarding contracts, may arrange contractual agreements, including the procurement of easements for the purposes of planting public trees on private property.
- (8) The Forester shall, in accordance with City regulations, review and comment upon applications for new development, proposed regulations, construction projects, conservation easements, open space plans or any other sites or documents as may be required or requested by other City departments. The comments shall address the conformance of such proposals to the provisions and specifications of the Urban Forest Management Plan, Arboricultural Specifications Manual and other documents, listed in Subsection B(7), and shall offer suggestions for remedial action, if necessary.
- (9) The Forester shall issue such permits as are required by this chapter and shall obtain as a condition precedent to the issuance of such permits the written agreement of each person who applies for such permits that he or she will comply with the requirements of this chapter, the Urban Forest Management Plan, and with the regulation and standards of the Arboricultural Specifications Manual. The Forester shall have the right to inspect all work performed pursuant to such permits. If the Forester finds that the work performed is not in compliance with the requirements of this chapter, the Urban Forest Management Plan, and/or with the specifications and/or standards of the Arboricultural Specifications Manual, the Forester shall provide written notice of his/her finding to the permit applicants. The notice shall contain a copy of § 277-4 of this chapter; and
  - (a) The permit shall be nullified and shall be void; and

- (b) The Forester may issue a written order that the permit applicant cease and desist all work for which the permit was required; and
  - (c) The permit applicant shall be subject to penalty under the terms of this chapter; and
  - (d) The Forester may take steps to correct the results of the noncomplying work, and the reasonable costs of such steps shall be charged to the permit applicant.
- (10) The Forester shall establish, or cause to be established, and maintain a program of information and education that will serve to inform and educate the public about the Annual Work Plan and goals of the Urban Forest Management Plan. The information and education program shall also be structured to provide specific information regarding construction damage to trees, urban wildlife management, plant selection, planting techniques and other details of Urban Forest Management as the needs are prioritized and the program is developed and implemented, and furthermore, to educate the public about how Middletown's urban forest is providing environmental and economic benefits to the community.

#### **§ 277-5. Permits.**

- A. Scope of requirement. No person except the Forester, an agent of the City of Middletown or a contractor hired by the City of Middletown may perform any of the following acts without first obtaining a permit from the Forester:
- (1) Plant on City-owned property, or treat, prune, remove, or otherwise disturb any tree, shrub, or forested area located on City-owned property, except that this provision shall not be construed to prohibit owners of property adjacent to City-owned property from watering or mulching without a permit any tree, shrub, or forested areas located on such City-owned property;
  - (2) Trim, prune, or remove any tree, shrub or portions thereof if such tree, shrub or portions thereof reasonably may be expected to fall on City-owned property thereby having potential to cause damage to persons or property;
  - (3) Place on City-owned property, either above or below ground level, a container for trees, shrubs, or forested areas;
  - (4) Damage, cut, tap, carve, or transplant any tree, shrub, or other plant located on City-owned property;
  - (5) Attach any rope, wire, nail, sign, poster, or any other man-made object to any tree or shrub located on City-owned property;

- (6) Cause damage to the root zone of any City-owned tree by digging a tunnel or trench, moving or storage of construction vehicles, materials, or equipment or changing of the grade within the dripline.
- B. Issuance. Within seven working days of receipt of the application, the Forester shall issue a permit to perform within 30 days of the day of issuance any of the acts specified in Subsection A, for which a permit is requested whenever:
- (1) Such acts would result in the abatement of a public nuisance; or
  - (2) Such acts are not inconsistent with the development and implementation of the Urban Forest Management Plan or with any specifications or standards of the Arboricultural Specifications Manual; and whenever
  - (3) A legible application has been signed by the applicant and submitted to the Forester detailing the location, number, size, and species of trees, shrubs, or forested areas that will be affected by such acts, setting forth the purpose of such acts and the methods to be used, and presenting any additional information that the Forester may find reasonably necessary; and
  - (4) The applicant agrees to perform the work for which the permit is sought in accordance with the provisions of this chapter, the Urban Forest Management Plan and with the specifications and standards set forth in the Arboricultural Specifications Manual; and
  - (5) The applicant certifies that he or she has read and understands those provisions of the Urban Forest Management Plan, this chapter and of the Arboricultural Specifications Manual which are pertinent to the work for which the permit is sought; and
  - (6) If the work for which a permit is issued entails the felling of any tree or part thereof, located on private property, which, as a result of such felling reasonably may be expected to fall upon City-owned property, and if such felling is done by one other than the owner of the property on which such felling is done, then the applicant shall agree to indemnify and to hold the City of Middletown harmless for all damages resulting from work conducted pursuant to the permit and shall deposit with the City/Town Clerk a liability insurance policy in the amount to be determined by the Risk Manager of the City of Middletown, which policy shall name Middletown as an additional insured.
- C. Public utility companies. Nothing in this section shall be construed to exempt public utility companies or their agents from any of the requirements of this chapter, except as provided by C.G.S. § 16-234, as amended.

**§ 277-6. Public nuisances.**

- A. Defined. The following are hereby declared public nuisances under this chapter:
- (1) Any dead or dying tree or shrub whether located on City-owned property or on private property, which by reason of location or condition constitutes, in the judgment of the Forester, an immediate public hazard or an imminent danger to the health, safety, or welfare of the general public;
  - (2) Any otherwise healthy tree or shrub whether located on City-owned property or on private property, which in the judgment of the Forester harbors insects or diseases which reasonably may be expected to injure or harm any tree or shrub on City-owned property;
  - (3) Any tree or shrub or portion thereof whether located on City-owned property or on private property which obstructs the free passage or pedestrian or vehicular traffic or which obstructs a streetlight, traffic light or sight line as determined by the Forester in conjunction with the Public Works Department.
- B. Right to inspect. The officers, agents, servants and employees, of the City have the authority to enter onto private property, with the permission of the property owner, whereon there is located a tree, shrub, or portion thereof that is suspected to be a public nuisance.
- C. Abatement. The following are the prescribed means of abating public nuisances under this chapter:
- (1) Any public nuisance under this chapter which is located on City-owned property shall be pruned, removed, or otherwise treated by the Forester in whatever fashion is required to cause the abatement of the nuisance within a reasonable time after its discovery and according to notification procedures for posting as required in C.G.S. § 23-59, as amended.
  - (2) Public nuisance on private property.
    - (a) Any public nuisance under this chapter which is located on private-owned property shall be pruned, removed, or otherwise treated by the property owner or his/her agent in whatever fashion is required to cause the abatement of the nuisance. No property owner may be found guilty of violating this provision unless and until the following requirements of notice have been satisfied:
      - [1] The Forester shall cause a written notice to be personally served or sent by certified mail, return receipt requested, to the property owner;
      - [2] Such notice shall describe the kind of tree or shrub or portion thereof, which has been declared to be a public



nuisance; its location on the property; and the reason for declaring it a nuisance;

[3] Such notice shall describe by legal description or by street the location of the property;

[4] Such notice will require the elimination of the nuisance no less than 30 days after the notice is delivered or sent to the person to whom was sent the tax bill for the general taxes for the last preceding year and shall specify preferred methods of abatement;

[5] Nothing in this chapter shall be construed to eliminate the requirement to obtain a permit for work intended to abate a public nuisance;

[6] Such notice shall include a copy of this chapter and a copy of C.G.S. §§ 23-58 through 23-65, inclusive, as amended.

(b) In the event that the nuisance is not abated by the date specified in the notice, the Forester is authorized to cause the abatement of said nuisance. The reasonable cost of such abatement shall be filed as a lien against the property on which the nuisance was located. In addition, the property owner of the property upon which the nuisance is located shall be subject to the penalties prescribed under § 277-8 of this chapter. Nothing in this provision shall be construed to exempt any person from the requirements of obtaining permits under § 277-5 of this chapter.

(3) The Forester is empowered to cause the immediate abatement of any public nuisance, provided that the nuisance is determined by the Forester to be an immediate threat to any person and/or property.

(4) The Forester is hereby empowered to seek from any court of competent jurisdiction an order directing immediate abatement of any public nuisance.

#### **§ 277-7. Interference.**

No person shall unreasonably hinder, prevent, delay, or interfere with the Forester or his/her agents while engaged in the execution or enforcement of this chapter.

#### **§ 277-8. Penalties for offenses.**

Any person who violates any provision of this chapter or who fails to comply with any notice issued pursuant to the provisions of this chapter shall be subject to a fine not to exceed \$100 for each separate offense; each day during which any violation of the provisions of this chapter shall occur or continue shall be a separate offense. If, as a result of the violation of any

provision of this chapter, the injury, mutilation, or death of a tree, shrub, or forested area located on City-owned property is caused, the cost of repair or replacement of such tree, shrub, or forested area shall be borne by the party in violation. The replacement value of trees and shrubs shall be determined in accordance with the inventory or appraised value.<sup>2</sup>

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**2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).**