



Tech Note #29

IF A TREE FALLS IN THE STREET...

Municipal Liability & Tree Wardens

In Massachusetts municipalities, Tree Wardens are responsible for maintaining street and park trees so that they are free of problems which could lead to property damage or personal injury. The law and the literature offer a general consensus about what makes a tree hazardous and how to rectify the risks once they are identified. Without exception, published references agree that a hazard tree must exhibit both a structural flaw that could cause the tree to fail and have a target of some value. In addition, tree roots in search of better growing conditions will often travel under the sidewalk to nearby residential lawns. Over time, the roots increase in diameter and lift up the sidewalk, creating a potential trip hazard. Given our culture's current fondness for litigation, such problems have the potential to result in significant lawsuits. A management strategy for a community's hazard trees will reduce the likelihood of damage and litigation.

Community Tree Management Programs

It is essential that a community's tree risk management program be systematic. This point cannot be overemphasized. In a court of law, a plaintiff must prove negligence on the defendant's part, in order to win a lawsuit.

Negligence arises from:

- 1) A **responsibility**, in this case, the responsibility of the Tree Warden to maintain safe trees in the community.
- 2) A subsequent **breach** of that responsibility, such as when a hazard tree is not removed.
- 3) **Damage or injury**, resulting from the breach of responsibility. For example, a hazard tree failed and damaged a car.

In many instances, it is impossible for a municipality to remove all of the potentially hazardous trees on its streets and in its parks. Therefore it must abide by the reasonable person standard. This standard is used to judge if a person or a municipality's actions were reasonable and prudent. In other words, would a reasonable person, given the same situation, have behaved similarly?

The best way for a Massachusetts community to enlist the reasonable person standard is to develop a written, systematic procedure for locating and evaluating potentially risky trees using a qualified Tree Warden as outlined in Massachusetts General Laws 41 & 87.

Massachusetts was the first state to mandate a Tree Warden for every municipality in 1899 (Chapter 330, 1899). On September 28, 1996, Governor Weld signed amendment (S-1082) to MGL Chapter 41 changing Section 106 relating to the appointment of Tree Wardens in towns and cities with populations greater than 10,000 "be qualified by training and experience in the field of arboriculture".

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POWERS OF THE TREE WARDEN

Changes in Massachusetts General Law Chapter 41, relative to the appointment of Tree Wardens, have generated many calls from communities seeking a definition of “qualified by training and experience.” The size of the town, its landmass and population combined with demographics and community wealth will determine the required sophistication of its tree division. Along with the previous article by Dennis P. Ryan and David Bioniarz, these specific objectives and duties have been outlined by the Massachusetts Tree Wardens and Foresters Association to define the job of being a Tree Warden.

Community Goals and Objectives



To encourage excellence in Community Forestry Management.



To perform services independently or with other community resources committed to the preservation of natural resources, community image and the development of community forestry programs.



To plan, organize, control and to be accountable for all authorized activities of the urban forest indigenous to the community represented.



To design, draft and maintain master plans for tree placement and care along community streets and throughout other areas of responsibility.



To provide leadership and motivation during communication with the general public, outside organizations and community departments while investigating and resolving a broad range of citizen concerns.



To direct work in accordance with community policy, observe and abide by all federal, state, local laws and professional arboricultural standards which in any way affect the performance of work.



To coordinate and implement annual Arbor day observance and provide field-related education services to school departments and the general public.



To conduct continuing research into Community Forest Management and actively participate, correspond and meet with other municipal offices and associations related to field of work.



To contact the general public in a businesslike manner and to be clear and precise while providing citizen assistance.



To strive for and maintain the highest standards of professional arboricultural conduct and to credibly reflect and increase the stature of the community tree program.

Individual Goals and Objectives



To exercise the duties of Tree Warden as defined in the Massachusetts General Laws and be qualified to enable efficient execution of the power and duties of that position.



To observe and abide by all the rules and regulations relative to the betterment of arboricultural practices as specified by industry standards such as ANSI 300 Pruning Specifications, Sec. Z133.



To evaluate and provide preventative tree maintenance programs, hazardous tree removal, utility clearance operations and oversee the work of outside contracts by timely inspections throughout the project.



To procure safety, training, record keeping, budget presentations, bid proposals, grant writing and help implement public service programs.



To control all aspects of regulations set forth by Massachusetts General Laws, Chapter 87, and determine all judgements and resolutions insuring the proper management of shade trees compatible with public concern.



To assist fellow Tree Wardens in all ways consistent with abilities, only when called upon to do so, and with support, cooperation, knowledge and involvement worthy of a professional reputation.



You can join the Massachusetts Tree Wardens' & Foresters' Association for \$35.00 per year by contacting:
MA Tree Wardens' & Foresters' Assn.
Eastern Extension Center
240 Beaver Street
Waltham, MA 02154

Membership Benefits Include:

- Professional Development Series
- An Education Annual Conference
- *Both the above at discounted rates*
- MTWFA Directory
- MTWFA Handbook *discounted rate*
- Resource of MA General Law
- Subscription to the Quarterly Newsletter: *BARK*
- Discounted rates on workshops & apparel
- An attractive MTWFA Window Emblem
- Great tree seedling resource for Arbor Day
- Membership Card
- Networking with fellow Tree Wardens & Municipalities
- On-going involvement in your field
- ISA/MCA and Pesticide educational credits



Qualified Tree Wardens

In order to outline what is considered to be “qualified”, the Massachusetts Tree Wardens & Foresters Association, the Massachusetts Department of Environmental Management, the USDA Forest Service Northeast Center for Urban & Community Forestry and the University of Massachusetts Arboriculture / Community Forestry Program have worked together to put forth a recommended set of requirements for Tree Wardens. This information is intended to serve as an advisory for cities and towns that are looking to clarify the definition of “qualified” as stated in MGL Chapter 41 section 106.

While the law did not establish a standard qualification, it is the intention of this committee to provide municipalities with the information that they need to insure that their municipality has a qualified Tree Warden. It is not the intention of this committee to replace all of the Tree Wardens in Massachusetts who do not meet the new recommended qualifications at this time. The committee believes that existing Tree Wardens, who are doing a commendable job, should be grandfathered. But, with municipalities that do not have a qualified Tree Warden or when a new Tree Warden is appointed the following guidelines should be followed, based on the population of the municipality:

Population Over 500,000

- A. Bachelor of Science Degree in Arboriculture / Urban Forestry or a related degree
- B. Certified Arborist
- C. Five (5) years supervisory experience in commercial or municipal tree care
- D. Massachusetts Pesticide License within 90 days of employment.

Population Over 100,000

- A. Associate of Science Degree in Arboriculture / Urban Forestry or a related degree
- B. Certified Arborist
- C. Five (5) years supervisory experience in commercial or municipal tree care
- D. Massachusetts Pesticide License within 90 days of employment

Population Over 75,000

- A. Associate of Science Degree in Arboriculture / Urban Forestry or a related degree
- B. Certified Arborist
- C. Three (3) years supervisory experience in commercial or municipal tree care
- D. Massachusetts Pesticide License within 90 days of employment

Population Over 10,000

- A. Associate of Science Degree in Arboriculture / Urban Forestry preferred but not required
- B. Certified Arborist
- C. Three (3) years supervisory experience in commercial or municipal tree care
- D. Massachusetts Pesticide License within 90 days of employment

While the new law does not apply to municipalities under 10,000, the committee recommends the following:

Population Under 10,000

- A. Certified Arborist
- B. Three (3) years supervisory experience in commercial or municipal tree care

In addition, the committee also suggests that in some instances, particularly in the case of smaller towns, that a consulting Tree Warden might be considered. The idea of a joint appointment might also be explored. That is, a single qualified individual might be able to serve several small adjoining communities. The committee also recommends that even the smallest communities should have their trees inspected by a qualified Tree Warden annually for hazards that could affect the public way or the health of our community forests. Failure to do so could become a very expensive liability for communities.

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For More Information...

Website for MA General Laws:

<http://www.state.ma.us/legis/laws/mgl/mgllink.htm>