

CITY OF CONCORD

POLICY MEMORANDUM

SUBJECT: Street Tree Removal Policy

DATE: January 2, 2025

BY: Earle M. Chesley, PE, General Services Director
Paul E. Gendron, LLS, City Surveyor

APPROVED: _____
Thomas J. Aspell, Jr., City Manager

1. PURPOSE.

This policy establishes basic guidelines for the appropriate removal, cutting down, and related trimming of street trees by City employees and revises the policy memorandums of the same subject dated February 17, 1999 and December 8, 2010. A “street tree” is defined herein at Section 3, Definitions.

The purpose of the policy is to establish guidelines and to set forth the duties, responsibilities, and procedures relative to pending or emergency tree removal by the City.

2. BACKGROUND.

The City of Concord often receives requests to remove or trim a tree that is located adjacent to or within a public highway right-of-way.

Many trees located within a public highway right-of-way belong to and are “owned” by the abutting property owner. The City is authorized to trim or remove any tree in the right-of-way if there is a need to do so for safety issues or road purposes. The City will not trim or remove a tree unless it is necessary for safety issues or road purposes. Road purposes include, but are not limited to road construction, drainage, sewer and water facilities, road maintenance, improving driver sight distance at public intersections, and removing hazardous trees that endanger the public.

If the tree is located within a public highway right-of-way easement and becomes a hazard to private property, the responsibility for the trimming or removal of the hazardous tree lies with the adjacent property owner, who is the legal “owner” of the tree.

3. **DEFINITIONS.**

- A. ***Street Tree.*** A tree situated within the limits of public highways, roads, or streets, whether the trunk is situated entirely within the public highway, road, or street, or partially located within the public highway, road, or street. The designation of a “street tree” is limited to identifying the potential City responsibility for maintenance or liability as the trustee of the public highway easement; it does not refer to the “ownership” of the tree, as that is determined by the fee ownership of the soil where the tree is located. Some public highways, roads, or streets are easements and therefore the underlying fee is “owned” by the abutting property owner.
- B. ***Private Tree.*** A tree not situated within the limits of public highways, roads, or streets, is located entirely on private property, and therefore “owned” by and is the responsibility of the private property owner. A private tree is one where no portion of the trunk is situated within the limits of public highways, roads, or streets, however, branches or foliage may actually overhang into and over the public highway, road, or street.
- C. ***Hazardous Tree.*** A tree, either alive or dead, situated within the limits of highways, roads, or streets and declared pursuant to RSA 231:145, to be a public nuisance by reason of danger to the traveling public, spread of tree disease, or the reliability of equipment installed at or upon utility facilities authorized under RSA 231:160 or RSA 231:160-a.
- D. ***Private Hazardous Tree.*** In addition, private trees, either alive or dead, situated on private property and adjacent to the limits of public highways, roads, or streets, can be declared a public nuisance by reason of danger to the traveling public or spread of tree disease. The private property owner will be put on notice and urged to remove the tree as soon as possible to avoid any injuries to the traveling public or property damage to the public roadway and infrastructure. The City could consider the abutting property owner liable, pursuant to RSA 236:39, for any injuries or damages caused by the hazardous tree.
- E. ***Routine Pruning and Removal.*** Pursuant to RSA 231:150, the scheduled removal of trees and bushes situated within the limits of city-maintained highways, roads, or streets, alive or dead, that may cause damage or pose a safety hazard to such highways or to the traveling public.
- F. ***Emergency Pruning and Removal.*** Pursuant to NH RSA 231:145, the unscheduled cutting and removal of hazardous trees or bushes, alive or dead, situated within the limits of City maintained highways, roads, or streets, which pose an imminent threat, which when deemed appropriate by the City shall be determined using the definition in the most current ISA TRAQ, or unreasonable danger to safety, the traveling public, or the public infrastructure.

4. RESPONSIBILITY FOR TREE REMOVAL AND PRUNING.

The following City employees are designated to act on behalf of the City for the purpose of making decisions related to the removal of street trees:

- A. ***Routine Pruning and Removal.*** The Tree Supervisor or Assistant Highway and Utilities Superintendent.
- B. ***Emergency Pruning and Removal.*** The Tree Supervisor, Assistant Highway and Utilities Superintendent, or Highway and Utilities Superintendent.

5. PROCEDURES FOR PRUNING AND REMOVAL OF TREES.

A. *Hazardous Trees.*

1. Determination of Ownership and Location of Trees.

When notified of a potentially hazardous tree, or as a result of inspections during the routine pruning and removal of trees under RSA 231:150, City personnel will inspect the tree to determine if there is in fact any deterioration of the tree, or its foundation, that would make the tree hazardous by reason of a danger to the traveling public, spread of tree disease, or danger to public utility infrastructure. In conjunction with the tree inspection, the City Surveyor will determine the location of the right-of-way of the public highway, road, or street in relation to the location of the tree, to determine whether it is a street tree or a private tree. The City Surveyor will determine the status of the public highway, road, or street to determine whether it is an easement or if the City owns the right-of-way in fee.

2. Hazardous Trees Entirely on Private Property.

If it is determined that the tree is not a street tree, and therefore a private tree, and the tree is deemed to be hazardous or poses an imminent threat, which when deemed appropriate by the City shall be determined using the definition in the most current ISA TRAQ, to the traveling public or public infrastructure, the abutting property owner will be informed and put on notice that it is their responsibility to resolve the safety issue and have the tree removed as soon as possible.

The property owner will also be informed that they could be considered liable, pursuant to RSA 236:39, for any injuries or damages caused by their failure to remove the hazardous tree. The City may, however, at its sole discretion, prune or trim any branches overhanging into or across the right-of-way that are a hazard to the traveling public or public infrastructure. This selective pruning or trimming shall be done in a workmanlike manner so as not to further damage the tree, and can be conducted within the entire public right-of-way and up to the right-of-way line without trespassing onto private property.

3. Trees on Public Right-of-Way.

If the City holds the right-of-way as an easement or the City owns the right-of-way in fee, and the tree or a portion of it are deemed to be hazardous, City personnel will remove the portions of the tree that are an imminent threat, which when deemed appropriate by the City shall be determined using the definition in the most current ISA TRAQ, or the entire tree.

Emergency Hazardous Tree Removal: Pursuant to RSA 231:145 and RSA 231:150, the City is permitted to remove a tree declared to be hazardous without notice to an abutting property owner when the delay would pose an imminent threat to safety or property, including electric transmission and distribution lines.

Non-Emergency Hazardous Tree Removal: Pursuant to RSA 231:146 and RSA 231:150, the City shall provide notice to an abutting property owner by hand delivery at their residence or through registered mail to the last known address when the circumference of a tree is 15 inches or more at a point 4 feet from the ground. Such notice shall state the intention of removal of such tree. The abutting property owner may appeal to the superior court as to the validity of such declaration within 30 days of delivery or mailing of said notice, and shall be entitled to a speedy hearing. The City shall be entitled to remove the tree following final judgment and expiration of the 30-day period of appeal, or if verbal consent is received (the verbal interaction should be documented internally), or consent through an email or seeclickfix is received.

Upon receipt of notice from the City of the hazardous condition tree, or upon the property owner's own accord, the abutting property owner is permitted, but not required, to remove the street tree located along its frontage at its sole cost when the tree is located on a public right-of-way held by the City as an easement. The property owner should contact the City Engineering Division to ensure that any required Dig Safe inspections are conducted and others permits (such as an encumbrance permit) are properly obtained.

B. *Pruning and Removal of Non-Hazardous Trees*

Pursuant to 231:150, trees and bushes may be removed from the right-of-way when they may cause damage or pose a safety hazard to such highways or the traveling public. When a tree to be removed has a circumference of 15 inches or more at a point 4 feet from the ground, notice to the abutting landowner shall be given by delivery at their place of residence or by sending by registered mail to his last known address. The City shall proceed with a removal if a verbal consent is received (the verbal interaction should be documented internally), or consent through an email or seeclickfix is received.

For trees that are smaller than the above-referenced measurements, notice to the abutting landowner of removal of a tree or bush shall be given by delivery at his place of residence or by sending by first class mail to his last known address. Such notice does not apply to the routine mowing of brush and overgrowth along the side of public streets.

It is recognized that given the nature of emergency conditions such as, but not limited to, a hurricane, blizzard, tornado, ice storm, or wind storm, factors such as the time of day of the emergency and the number of calls for service received, notifications might not be conducted until after the emergency situation passes.

6. UTILITY COORDINATION.

When possible, the City should also attempt to use the services of the public utility companies. In accordance with RSA 231:145, the City may require of the public utilities owning lines which pass through or near a tree or trees which are condemned for removal as a public nuisance to assist in their removal at their expense by either the temporary removal of their lines or by causing to be removed at their expense the top portion of said tree or trees from a point below their lines.

7. DISPOSITION OF CUT WOOD AND DEBRIS.

During routine pruning and removal of trees, the abutting property owner should be consulted prior to any work to determine which trees they would prefer to keep. Tree sections and debris left for use by the abutting property owner shall not remain within the limits of the public highway, road, or street such that they will interfere with the viatic use of the highway, road, or street. If the abutting owner does not thereafter remove the tree sections and debris within 30 days, the City may, after notice to the owner, dispose of the wood in a manner it deems appropriate.

During emergency removal situations, cleanup by City staff will occur as soon as practical after the emergency has passed. Given the nature of the situation and the number of service locations, material may stay on-site for several days until it can be removed by City effort, unless the abutting property owner wishes to retain possession of the sections and debris. Tree stems may remain intact and stumps will be left in place. If the property owner wants the stump removed they can do so on their own.

8. AUTHORIZATION.

The Concord City Council originally approved this Policy at its January 10, 2011, regular meeting.

This Policy Memorandum supersedes all prior policy statements on this subject.