

Chapter 449. Trees

[HISTORY: Adopted by the Common Council of the City of Middletown as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Parks and recreation — See Ch. 348.

Property maintenance — See Ch. 359.

Article I. Street Trees

[Adopted 6-14-1982 (Ch. 113, Art. II of the 1971 Code); amended 10-28-2002]

§ 449-1. Legislative findings.

- A. It is hereby found and declared that the City of Middletown, New York, is situated in an area covered with a wide variety of trees and shrubs that are a vital part of the heritage passed on to us by nature and our forefathers.
- B. Trees are valued as a valuable asset, providing a healthier and more beautiful environment in which to live. They provide oxygen, shade, beauty and a contrast to the man-made, urban setting. They help prevent erosion, fill in streams, flash floods and air, noise and visual pollution.
- C. Trees are economically beneficial in attracting new industry, residents and visitors. Healthy trees of the right size and species enhance the value and marketability of property and promote the stability of neighborhoods.

§ 449-2. Definitions.

For the purpose of this article, the following terms shall have the meaning given herein:

PARK

Includes any public park having an individual name.

PROPERTY LINE

The boundary line between private property and the City right-of-way.

PROPERTY OWNER

The person owning such property as shown by the tax map of the City of Middletown, New York.

PUBLIC TREES

All trees hereafter planted by the City on any street, park or any other public place.

RIGHT-OF-WAY

City-owned or -controlled area of ground between the private property line and the edge of the curb or street.

STREET TREES AND SHRUBS

Any and all trees and shrubs within the City rights-of-way.

TREE LAWN

That part of the street or highway not covered by sidewalk or other paving, lying between the property line and that portion of the street or highway usually used for vehicular traffic.

TREE PROTECTION ZONE

All tree lawns, parks and other City-owned property, and all land within any right-of-way of any street or highway.

TREES AND SHRUBS

Any woody plants which have self-supporting aboveground parts which are viable year round.

§ 449-3. Shade Tree Committee.

- A. There is hereby created and established a Shade Tree Committee for the City of Middletown, New York, which shall consist of nine members, who shall be residents of or own a business in the City, or who live within a thirty-mile radius of the City but reside or work in New York State, and who shall be appointed by the Mayor with the approval of the Common Council.
[Amended 10-14-2003; 1-6-2015]
- B. To help coordinate the work of this Committee with the other departments of government, a representative member of the Public Works Department or the Department of Recreation and Parks or the Community Development Office or the Common Council should be appointed on an advisory basis to this Committee. Lacking the appointment of such a member, the above-named entities will be kept apprised of this Committee's work via the receipt of the Tree Committee's minutes.
- C. Term of office. The term of the nine persons appointed by the Mayor shall be five years, except that the term of office of two of the members appointed to the first Committee shall be for only three years, and the term of two members of the first Committee shall be for two years. In the event that a vacancy shall occur during the term of any one member, his successor shall be appointed for the unexpired portion of the term. Two of the members of the Tree Committee shall be trained in the fields of forestry, botany, horticulture or landscape design.
- D. Duties and responsibilities.
- (1) It shall be the responsibility of the Committee to study, develop and/or update annually and administer a written plan for the care, preservation, planting, replanting, and removal of trees and shrubs in parks, with the approval of the Recreation Commission, and along streets and in other public areas. Such plan will be presented annually to the Common Council and upon its acceptance and approval shall constitute the Official Comprehensive City Tree Plan for the City of Middletown, New York.
[Amended 10-14-2003]
 - (2) The Committee may provide educational programs and information regarding the protection, maintenance, removal and planting of trees in the City.
 - (3) The Committee shall choose its own officers, make its own rules and regulations and keep minutes of its monthly meetings to be filed with the City Clerk's office. A majority of its members shall be a quorum for the transaction of business.
[Amended 1-7-2008]
 - (4) It will be the duty of the Tree Committee to disseminate news and information emanating from its work to the Common Council.
 - (5) It shall be the duty of the Committee to recommend the type and kind of trees and shrubs to be planted upon streets and parks.
 - (6) It shall be the duty of the Committee to review applications for the planting of street trees and shrubs with the purpose of populating the City with desirable tree and shrub types.

§ 449-4. Planting on public and private lands.

- A. No person shall plant any tree or shrub on any public street or right-of-way, park or other City-owned property without the written permission of the Shade Tree Committee.
- B. No street tree shall be planted at a distance of less than 30 feet from an existing street tree. No street tree or street shrub shall be planted closer than 10 feet to any fire hydrant. No street tree shall be planted within 15 lateral feet of an overhead utility line, five lateral feet of a water or sanitary sewer line, five feet of a driveway or 25 feet of a traffic control sign.
- C. No tree shall be planted nearer than four feet to the sidewalk line or other impervious surface, such as curb and gutter line of the street. No tree or shrub that will grow above 30 inches in height shall be planted closer than 25 feet to any street corner, measured from the point of nearest intersecting curbs or edge of pavement lines.

- D. Exceptions to the restrictions in this section can be made in extenuating circumstances with the written permission of the Shade Tree Committee.

§ 449-5. Trimming, treatment and removal.

- A. It shall be the duty of any person or persons owning or occupying real property abutting on any street to trim or remove trees or shrubs growing on their property so that they will not obscure or interfere with the view of motorists entering any intersection of the City, obstruct the passage of pedestrians on sidewalks or obstruct the streetlights or traffic signs. The minimum clearance of any overhanging portion of any tree shall be eight feet over sidewalks and 14 feet above the surface of the traveled portion of any street.
[Amended 10-14-2003]
- B. The owner or occupant of property shall treat or remove any trees suffering from a transmittable disease or insect infestation which are on such property for which a quarantine order has been issued and which may affect the health of other trees within the City limits on public and private property.
- C. It shall be the duty of the Department of Public Works to trim or remove street trees or shrubs so that they will not obscure or interfere with the view of motorists entering any intersection of the City, obstruct the passage of pedestrians on sidewalks or obstruct the streetlights or traffic signs. The minimum clearance of any overhanging portion of any tree shall be eight feet over sidewalks and 14 feet above the surface of the traveled portion of any street. Stumps and roots of street trees shall be removed at ground level.
[Amended 10-14-2003]

§ 449-6. Tree protection.

- A. Persons conducting regular maintenance work on trees or shrubs in the tree protection zones may be granted general permits by the City of Middletown Department of Public Works to regulate their work on a yearly basis.
- B. All trees and shrubs in any tree protection zone within 15 feet of any excavation or construction of any building, structure or street work shall be guarded through the length of the project as follows:
- (1) For trees or shrubs with a crown spread of eight feet or less, a good substantial fence, frame or box, which prevents work or storage inside such structure, not less than four feet high and eight feet square, shall surround the tree or shrub.
 - (2) For trees or shrubs with a crown spread of over eight feet, a good substantial fence, frame or box, which prevents work or storage inside such structure, not less than six feet high and placed at the dripline of the tree or shrub, shall surround the tree or shrub.
 - (3) All equipment, building materials, chemicals, dirt or other debris shall be kept outside the above barriers at all times and shall not be allowed to leach into barriers that are on grades.
- C. No person shall excavate any ditches, tunnels or trenches, or lay any drive, or substantively alter any grade within a radius of 10 feet of any tree in a tree protection zone without first obtaining the approval of the Department of Public Works.
- D. No person shall damage, cut, or carve any tree or shrub in a tree protection zone; attach any rope, wire, nails, advertising posters or other contrivances to any tree or shrub; allow any gas, liquid, or solid substance which is harmful to trees or shrubs to come in contact with any such tree or shrub; or set fire or permit any fire to burn when such heat of the fire thereof may injure any portion of any such tree or shrub, without first obtaining a written permit from the Department of Public Works, said permit to be valid for only the time period indicated thereon.
- E. No person or City agency shall deposit, place, store or maintain upon any tree protection zone any stone, brick, sand, concrete or other materials which may impede the free passage of water, air or fertilizer to the roots of any tree or shrub growing thereon, except by written permission by the Commissioner of Public Works.
- F. No person shall drive, park, haul or store any automobile, truck, trailer, boat, motorcycle, snowmobile or other motorized vehicle within 25 feet of any tree or shrub in any tree protection zone, except while within the clearly delineated travel or parking zones of any roadway, alley or parking lot, without first obtaining permission from the Department of Public Works. This shall not be construed as to preclude parking on any gravel, concrete or bituminous driveway or entryway or operating a motor vehicle on any gravel-surfaced roadway within 25 feet of such a tree.

§ 449-7. Emergencies.

In case of emergencies, such as windstorms, ice storms or other disasters, the requirements outlined under §§ 449-5 and 449-6 of this article shall be waived so that the requirements of this article would in no way hinder private or public works to restore order in the City. this article shall not be construed to prohibit any emergency activity immediately necessary to protect life, safety or property. Any such activity shall incorporate reasonable efforts to protect trees and shrubs in tree protection zones from unnecessary damage.

§ 449-8. Enforcement; penalties for offenses.

- A. Whenever the Commissioner of the Department of Public Works determines that there has been a violation or that there are reasonable grounds to believe that there has been a violation of any provisions of this article, he or his designee may give notice of such violation or alleged violation to the person or persons responsible for such violation. Such notice shall be in writing, specify the alleged violation, provide a stated time for compliance and be served upon the person or persons responsible. Such notice shall be deemed to be properly served upon such person or persons if a copy is served upon him personally, or posted conspicuously upon the property affected by such violation, or if a copy thereof is sent by certified mail to the last known address of such person, or by such other method authorized by the laws of the State of New York. Such notice shall contain an outline of remedial action which, if taken, will effect compliance with the provisions of this article.
- B. If the person upon whom such notice is served fails, neglects or refuses to complete the remedial action required to effect compliance with the provisions of this article within the time period specified in such notice, the City may take appropriate action to effect compliance at the violator's expense.
- C. Any person who violates any of the provisions of this article or who fails to comply with a notice issued pursuant to Subsection A of this section shall be guilty of an offense within the meaning of the Penal Law of the State of New York and shall be subject to a fine of not less than \$50 nor more than \$500 and/or up to 15 days in jail, and to a conditional discharge and restitution as provided in § 65.10 of the Penal Law of the State of New York, and each day on which such violation occurs or continues shall constitute a separate offense.
- D. The imposition of the penalties herein prescribed shall not preclude the City from instituting an appropriate action or proceeding in a court of competent jurisdiction to prevent, correct or abate a violation of the provisions of this article.