

# Chapter IX

## Scenic Roads (Chapter 40, Section 15-C)

This chapter complements Chapter X. Public shade trees

### A. Optional designation

1. A city by vote of the city council or town by town meeting vote MAY designate almost any road within the city or town as a scenic road.
2. Recommendations or requests for scenic road designation may be made by the:
  - a. Planning Board
  - b. Conservation Commission
  - c. Historical Commission

### B. Limitations

1. After a road has been designated as a scenic road any repair, maintenance, reconstruction, or paving work done on such road shall not involve or include the following without a public hearing with statutory notice and prior written consent of the Planning Board or if none, the selectmen or city council:
  - a. cutting or removal of trees;
  - b. tearing down or destruction of stone walls, or portions thereof.
2. Numbered routes or state highways may not be designated as scenic roads.
3. Designation of a road as a scenic road shall not affect the eligibility of a city or town to receive construction or reconstruction aid for such road pursuant to the provisions of Chapter 90, M.G.L.
4. Although the statute is silent with regard to establishment of criteria for regulation of scenic roads, the city or town should adopt an ordinance or bylaw upon which the planning board will base its decisions.

Recommended provisions might include:

- a. Purpose;
- b. Definitions (trees, scenic roads, cutting, removal, tearing down, destruction, repair, maintenance, reconstruction or paving work);
- c. Procedure and criteria for designation as a scenic road;
- d. Procedure and criteria for approval to work on a scenic road;
- e. Enforcement procedures.

### C. Mandatory Joint Hearing in Some Circumstances

When trees are to be cut or removed in a scenic road and a public hearing is required under Chapter 40, Section 15-C, and when a public hearing must also be held under the provisions of Chapter 87, Section 3, M.G.L. relative to public shade trees, the Planning Board and Tree Warden SHALL hold a consolidated public hearing prior to such cutting or removal.

### D. Procedure for Issuance of Permit to Cut or Remove Trees Within Scenic Roads:

If there is no Planning Board, the Selectmen or City Council assume the Planning Board's duties as listed below.

Step 1:

Planning Board is requested to give written consent to cut or remove a tree.  
(In some cases the tree warden is requested to remove a public shade tree.)

Step 2:

Planning Board SHALL hold a public hearing before giving consent. (If a public hearing must be held under the scenic roads statute as well as the public shade tree statute, the hearings by the Planning Board and Tree Warden SHALL be consolidated into a single public hearing before the Tree Warden and the Planning Board.)

Step 3:

Planning Board SHALL give notice of the public hearing.

a. The notice SHALL CONTAIN:

1. Time, date, place of the public hearing.
2. Purpose of the public hearing.

b. The notice SHALL be given by:

1. Publishing twice in a newspaper of general circulation in the area, the last publication to occur at least seven (7) days prior to such hearing.

(If a consolidated hearing is held notice of the hearing SHALL be given by the tree warden or his deputy as provided in Chapter 87, Section 3, M.G.L. See Chapter VIII, D. Step 3 of this Manual.)

Step 4:

Public hearing is held.

Step 5:

Planning Board gives written consent for cutting or removal of a tree. (The tree warden issues a written permit for removal of a public shade tree if a consolidated hearing was held.)

## Chapter X

### Public Shade Trees, Consolidated Hearings (Chapter 87, Section 3)

#### A. Definition:

A public shade tree is any tree, shrub or growth within the right-of-way of a local public way. If it is doubtful whether the tree is within the public way, it shall be taken to be within the public way until the contrary is shown.

#### B. Mandatory Joint Hearing:

1. Public shade trees shall not be cut, trimmed or removed, in whole or in part, by any person other than the tree warden or the warden's deputy, except upon a permit in writing from the Tree Warden.  
In cities, some other official must be designated these responsibilities.
2. Before a public shade tree is cut down or removed, a public hearing must be held by the Tree Warden or a deputy.
3. The Planning Board and tree warden SHALL hold a consolidated public hearing if the cutting or removal of trees will be within a scenic road as provided under Section 15-C of Chapter 40, M.G.L.

#### C. Exemptions (Chapter 87, Section 5)

In the following cases a public shade tree or other plant materials may be removed without obtaining a permit and without a public hearing.

1. Tree wardens and their deputies may trim, cut down or remove trees less than one and one-half (1½) inches in diameter one foot from the ground and bushes standing in public ways.
2. The Mayor, Board of Selectmen, Road Commissioners or Highway Surveyor may order that a tree or bush be trimmed or cut down if such tree or bush is deemed to obstruct, endanger, hinder or incommode persons traveling on a public way, or to obstruct buildings being moved as provided by Section 18, Chapter 85, M.G.L.
3. The officers responsible for widening a highway may order the removal of any tree. Widening of a highway involves changing the boundaries of the right-of-way by taking additional land in eminent domain. It does not include mere widening of the traveled portion of the way. *Graham vs. Board of Public Works of Pittsfield* (1934) 285 Mass. 544.
4. Pests declared to be a public nuisance by Section 11, Chapter 132, M.G.L., including the Dutch elm disease may be suppressed on any tree or bush without interference.
5. Trees within state highways may be cut or removed only with permission from the State Department of Public Works. Trees within Metropolitan District Commission boulevards may be cut or removed only with permission from the M.D.C.

#### D. Procedure for issuance of permit to cut, trim, or remove a public shade tree:

##### Step 1:

Tree warden is requested to remove a public shade tree.

##### Step 2:

The tree warden or the warden's deputy SHALL hold a public hearing before removing any public shade tree.

Step 3:

Notice of the public hearing shall be given by the Tree Warden or the warden's deputy.

- a. The notice SHALL contain:
  1. Time and place of the public hearing;
  2. Identification of the size, type and location of the plant materials to be cut down or removed.
- b. The notice SHALL be given by:
  1. Posting in two or more public places in the city or town at least seven (7) days before the day of the hearing;
  2. Posting upon the tree or plant material to be moved at least seven (7) days before the day of the hearing; and
  3. Publishing in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than seven (7) days before the day of the hearing.

Step 4:

Public hearing is held by the Tree Warden. Public hearing is held jointly with the Planning Board when the public shade tree is within a scenic road pursuant to Section 15-C of Chapter 40, M.G.L.

Step 5:

1. Tree Warden issues a written permit for removal of a tree or other plant material. If written objection is made by one or more persons to the tree warden at or before the public hearing, a permit to cut or remove SHALL NOT be issued unless approved by the Board of Selectmen or by the Mayor.