

## TREE AND VEGETATION CONTROL

Vegetation is an issue in most, if not all, rights-of-way. Towns are compelled to remove or control vegetation in rights-of-way because of duties imposed on them by statute and common law. At the same time, town actions to remove vegetation are limited by statute and property owners' interests. If these statutes are not followed, the town is likely to encounter conflict with landowners and motorists. As general principles in managing vegetation in the right-of-way, towns should:

1. Attempt to maintain rights-of-way free of, or with only limited, obstructions caused by vegetation;
2. Follow the required procedures in the applicable statute when removing vegetation; and
3. Exercising town authority and activity only within the road right-of-way.

Before performing any vegetation management in the right-of-way, the town should learn how much right-of-way it has on the road at issue. Rights-of-way are not standardized or consistent, so it is not safe to assume that the town has a particular amount of right-of-way on all its roads.<sup>1</sup> Instead, the safest approach to determining the width of town rights-of-way is to assume the town's right-of-way extends only to the "width of actual use and maintenance."<sup>2</sup> This is a good rule of thumb to follow, except when a road is platted or supported with a road order recorded in the county recorder's office. The topic of road right-of-way width is not addressed in this document, but can be found in other documents in the MAT Information Library.

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### I. COMMON RIGHT-OF-WAY VEGETATION ISSUES

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Several vegetation management issues, like mowing, noxious weeds control, and use of chemicals, are common to nearly all townships with roads. The rules regarding each differs though, so we address each activity below.

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<sup>1</sup>Towns should not rely on the right-of-way widths represented on maps developed using Minn. Stat. § 164.35, commonly called the record-by-map procedure.

<sup>2</sup> Minn. Stat. § 160.05, subd. 1. For a further discussion on what "width of actual use and maintenance" means. Please see Document **TR3000**

## **A. Mowing Roadsides<sup>3</sup>**

Townships should mow or cut vegetation in the right-of-way to maintain sight lines and a run-off area for vehicles, allow effective drainage, protect the roadbed (structure supporting the road), and prevent saplings from becoming trees, among other reasons. But townships can cut or mow the right-of-way only at certain times and for certain purposes because of concerns about maintaining habitat. The rules for mowing are described here based on the area to be mowed:

- First 8 feet from the road surface or shoulder: Mow at any time, for any purpose and any height.
- Area beyond first 8 feet:
  - July 31 to August 31: May mow entire area to any height.
  - August 31 to July 30: May mow only for safety reasons, and to a minimum height of 12 inches.

This schedule is subject to exceptions. For example, any part of the right-of-way may be mowed at any time if the town has a safety reason for mowing, such as to maintain sight lines. Towns should not hesitate to mow or remove vegetation if they have a safety reason to do so. Despite the desires expressed in the mowing statute to maintain habitat, there can be no compromise on public safety merely to maintain habitat within a town right-of-way. Another exception would apply for noxious weed removal, described below.

## **B. Noxious Weed Control<sup>4</sup>**

Town boards must cause all noxious weeds in town road rights-of-way to be cut down, otherwise destroyed, or eradicated as often as may be necessary to prevent the ripening or scattering of seed and other propagating parts of such weeds. The town's duty to remove noxious weeds is not governed or affected by the mowing schedule described above, so towns may need to mow the right-of-way to remove noxious weeds even if the mowing would not otherwise be allowed by the mowing schedule. Noxious weed management is considered more fully in MAT Information Library Document TD 4000.

## **C. Brushing**

Brushing is not specifically defined in Minnesota law, but it is the practice of removing vegetation that is larger or thicker than grasses which may include shrubs or trees that do not meet the definition of a tree. Minnesota law defines a tree as “trees, woody perennial shrubs, or vines that are more than 6 inches in diameter and under 2 feet tall.”<sup>5</sup> So, if the town encounters a tree

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<sup>3</sup> Minn. Stat. § 160.232.

<sup>4</sup> Minn. Stat. § 160.23.

<sup>5</sup> Minn. Stat. § 260.22.

that does not fit the legal definition of a tree, the town may treat the small tree as ‘brush’ and remove it. Nevertheless, when brushing, the town board should follow several procedures:

- Determine the need for the brushing;
- Give notice to the owners of the board’s intent to brush as a courtesy; and
- Make sure no brushing occurs outside of the right-of-way. Make this very clear to the party that is doing the brushing.

#### **D. Use of Chemical in the Right-of-Way**

If the town is hiring someone to apply chemical, the person must hold a commercial applicator license. Beware to ensure it is a commercial license—for instance, a farmer’s license is not a commercial license. The town employee applying pesticide to the right-of-way must hold a non-commercial license if restricted-use pesticides are being used. In both cases, the person must have taken and passed the General Ground and Rights-of-Way categories of the licensing test. Contact the Department of Agriculture if there are any questions.

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## **II. TREES**

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Towns must be very careful when they consider removing trees from the right-of-way because that action is regulated by statute and trees in the right-of-way are often owned by the neighboring landowner. Towns do not usually own the land on which their roads and rights-of-way sit, and instead, they are given some rights to use land within the right-of-way to operate a public road. This is why town roads or rights-of-way are called easements—the town’s ownership interest is limited, and the neighboring landowners continue to have some ownership rights in the right-of-way. For many town roads, the neighboring landowners have ownership of the trees within the right-of-way. The definition of what is a tree is also important to understand.

#### **A. What is a “Tree”**

For purposes of the tree removal statutes, vegetation is a “tree” only if it is a tree or woody perennial shrub or vine that is at least 6 inches in diameter, when measured two feet above the ground.<sup>6</sup> The result is that many trees are not subject to the rules described in the statute because they are not large enough. Trees that are too small to be included are considered brush. Despite that distinction, it is best to give notice to landowners of the intention to cut trees in the right-of-way. It’s possible the landowner planted the small trees in the right-of-way, unaware of the right-of-way width or prohibitions of planting trees there. The town board will still be able to remove trees that pose a danger within the right-of-way, but can likely avoid disputes that would be caused by abruptly cutting the trees down.

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<sup>6</sup> Minn. Stat. § 160.22, subd. 7a.

## B. “Tree” Cutting Considerations

In determining who owns the tree, the adjacent landowner usually owns the trees that grow in the right-of-way. As said by a court considering this issue, “... the title of the owner of land extends to the center of a street or highway abutting thereon, and includes all trees, sand, gravel, and other appurtenances situated or being upon or within the same, subject to the general public right to take and use any thereof as may be necessary in the improvement of the highway for public use.”<sup>7</sup> This ownership, also includes the wood from the trees, meaning that the wood of trees owned by the landowners and cut in the right-of-way must be given back to the landowner.<sup>8</sup> This rule does not apply if the town owns the tree because it planted the tree, or acquired the tree through gift, purchase, or eminent domain. Nor does this rule apply to platted right-of-way, in which the trees within the right-of-way are dedicated to the township by the plat.<sup>9</sup>

If the town board decides to remove the tree, prior communication to the owners and renters is extremely important before undertaking any of the listed options. These options include, obtaining written permission, buying the tree through direct negotiation, invoking the statutory tree removal process, and using the tree removal procedure for platted roads.

### 1. **Obtain written permission from the adjacent landowner:**

When doing so, the town must specifically identify and the mark the trees to be cut. In the written consent, indicate how the town will handle the removed wood. Indicate to the tree remover which trees **to cut** and **not to cut**.<sup>10</sup>

### 2. **Purchase the trees through direct negotiation:**

This is the process of making a contract, agreeing on a reasonable price, and executing a written purchase agreement for the trees.<sup>11</sup> This is rarely used and can be more expensive than any of the other processes described.

### 3. **Invoke the statutory tree removal procedure:**

Found in Minn. Stat. § 160.22, subd. 10, the town must first establish reasons why the trees need to be removed, which includes determining that the trees interfere with the maintenance or reconstruction of the road, or pose a risk the safety and convenience of the public.

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<sup>7</sup> *Town of Rost v. O'Connor*, 176 N.W. 166 (Minn. 1920).

<sup>8</sup> Minn. Stat. § 160.22, subd. 8.

<sup>9</sup> *Id.* at subd. 11.

<sup>10</sup> *Id.* at subd. 10.

<sup>11</sup> *Id.* at subd. 3.

However, the town must be sensitive to the fact that the trees have likely been there for a long time and prior boards did not identify a need to cut them.

Next, the town must give written notice of intent to cut trees. This notice must be given at least 14 days before the cutting is to begin; written notice must also be given to the owner of the adjacent property. Also give notice to any renters of the property. The notice must plainly advise of the right to request a hearing. The owner must be allowed at least 14 days to request the hearing. The notice should state the specific deadline for requesting a hearing and how and to whom the request must be made.<sup>12</sup>

If a hearing is not requested, the cutting may proceed and the wood must be placed on the owner's property adjacent to the road, doing no unnecessary damage.<sup>13</sup> However, if a hearing is requested, the board must conduct a hearing.<sup>14</sup> The hearing process includes:

- The board must set a time and place for the hearing.
- At least ten days written notice of the hearing must be given to the owners and renters, if any.
- The owners must be given an opportunity to be heard at the hearing.
- Determine if the tree(s) interferes with safety or maintenance of the road – be as specific as possible.
- Develop a written order or resolution containing the reasons for cutting the tree, the board's findings, and the decision of whether the town will cut the tree(s).<sup>15</sup> The order or resolution must be delivered to the owner and renter. The board may also determine not to cut the trees.
- The owner has 30 days from receipt of the order to appeal the decision to the district court.<sup>16</sup> **Do not cut** the trees until after the appeal period is over.

#### 4. **Tree Removal Procedure for Platted Roads:**

Town boards have greater discretion to cut trees within a right-of-way dedicated by plat. Despite the much broader authority, it is still recommended the board give the owners notice before cutting.<sup>17</sup>

### C. **Tree Trimming Considerations**

There is no established statutory procedure for tree trimming in the right-of-way. However, the authority to trim arises out of the authority to maintain the road and protect public safety. The town may trim tree branches that extend over the road or within the right-of-way, to a

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<sup>12</sup> *Id.* at subd. 10.

<sup>13</sup> *Id.* at subd. 8.

<sup>14</sup> *Id.* at subd. 5

<sup>15</sup> *Id.* at subd. 6

<sup>16</sup> *Id.* at subd. 7

<sup>17</sup> *Id.* at subd. 11.

reasonable extent. The trimming should not damage or kill the tree, as that may amount to tree removal. The town should notify owners prior to trimming but the full tree removal process is not required. Towns should not trespass when trimming, overreach into private property, use chemical to trim, trim more than is needed, or leave a mess, even if it is in the right-of-way.

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### III. ADJACENT LAND-OWNER OBLIGATIONS

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Because the adjacent landowner’s conduct is key in keeping rights-of-way safe, clean, and maintained properly, landowners who live alongside a right-of-way may have few, but necessary, obligations assuring that the right-of-way is maintained to the proper standard.

#### A. Owner Obligation to Maintain Roadsides

Under Minn. Stat. § 366.015, the town board can decide to submit to the voters whether owners will be responsible for maintaining roadsides. This issue must be submitted by ballot question at the town annual meeting. The question must read:

“Shall persons who own or occupy real estate that adjoins a town road and is not a part of an incorporated municipality be required to remove rocks larger than five inches in diameter from and to cut, destroy or remove all weeds, grass and other plants up to three inches in diameter that grow upon the town road adjacent to their land?”

If the ballot question is passed, the adjacent owners become responsible to remove or cut the items listed. If they fail to perform the maintenance, the board can, after providing them written notice, have the work done and certify the costs to the county auditor to be placed on the person’s property taxes.<sup>18</sup> If the ballot question is passed, the board should adopt a resolution clarifying what the obligations are to help the owners understand what their obligations is and to aid in enforcement.

#### B. Owners planting in the ROW

Owners have a right to plant on their own property, but not within the right-of-way! Keep in mind the width of actual use and maintenance to recognize if the owners are actually planting on a town right-of-way rather than their own unencumbered property. It is a misdemeanor to plant vegetation on a town road, “obstruct any highway”; “plow or perform any other detrimental operations within the road right-of-way except in the preparation of the land for planting permanent vegetative cover”; erect a fence on the right-of-way of a ... town road, except to erect a lane fence to the ends of a livestock pass”; dig any holes in any highway”; and

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<sup>18</sup> Minn. Stat. § 366.015. **Note:** As this is one of the few times towns are authorized to assess bills, through county auditor certification, to the landowner’s property tax.

“obstruct any ditch draining any highway”<sup>19</sup> If a planting occurs and you are certain it is in the right-of-way:

- Determine if it is or will be a maintenance or safety problem;
- If the board determines it is a problem, record the reasons for its determination in the minutes of the meeting and promptly notify the owner of the need to remove the planted item(s);
- If the owner fails to remove the planted item, send the owner a written letter indicating the item must be removed by a specific date, and that if the obstructions are not removed, the town will have the item removed at the landowner’s cost;
- If the owner still does not act, and the board is sure the item is in the right-of-way, it can have the item removed. Consider the safety of the workers who will be removing the item. **Do no unnecessary** damage to the item or the property and return the property to the owner by placing it on the owner’s property outside of the right-of-way; and
- The town may send the bill to the owner, but absent specific statutory authority you **may not** place the costs on the owner’s property taxes. The town could possibly use a special assessment to collect the costs, but a fair amount or process is required. The town may also report the issue to law enforcement for ticketing and help in encouraging the landowner to remove the obstruction.

### C. Planted Snow Breaks

If working in cooperation with an owner to plant trees on private property to protect the road from drifting problems, be sure to execute and record an easement against the property.

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<sup>19</sup> Minn. Stat. § 160.27, subd. 5.

## NOTICE OF TREE REMOVAL

The Town Board of \_\_\_\_\_ Township, \_\_\_\_\_ County, Minnesota, hereinafter “Town”, hereby notifies the landowner, adjacent landowner, or renter at \_\_\_\_\_, \_\_\_\_\_ Township, \_\_\_\_\_ County, Minnesota, hereinafter “Resident”, that the Town intends to remove certain trees along the Right-of-Way adjacent to the Resident’s property. The Town has marked the certain trees for removal by:

The purpose of this notice is not only to notify the Resident of the Town’s intent to remove the certain trees, but also to notify the Resident of their right to request a hearing regarding these trees. Under Minnesota Statutes § 160.22, subdivision 10, if a town invokes the statutory tree removal process, the affected landowner, renter, and the adjacent landowner must receive notice of the right to request a public hearing 14 days prior to cutting the trees. If the affected landowner, renter, or adjacent landowner does not request a hearing, the affected landowner, renter, or adjacent landowner 14 days to request a hearing.

The Resident is hereby notified of the Town’s intent to remove the certain trees listed above, and that the Resident has the right to request a public hearing up to 14 days after receiving this notice. The Resident has until \_\_\_/\_\_\_/20\_\_\_ to request a time and day for a public hearing regarding the removal of the trees. In order to request a hearing, the Resident must \_\_\_\_\_  
\_\_\_\_\_ by contacting \_\_\_\_\_.

If The Resident **DOES NOT** request a hearing by the date and means listed in this notice, The Resident waives their right to a hearing on this issue.

**RESOLUTION DETERMINING THE TOWN BOARD'S REASONING FOR CUTTING TREES**

**WHEREAS**, Minn. Stat. § 160.22, subd. 10 authorizes a removal of a tree after a public hearing has been requested by one of the affected residents;

**WHEREAS**, Affected resident(s) have requested a public hearing;

**WHEREAS**, Minn. Stat. § 160.22, subd. 5 requires the town board to fix a time and place of hearing in the county where the lands are located to consider the cutting and removal of such trees and hedges;

**WHEREAS**, Minn. Stat. § 160.22, subd. 4 requires the town board to determine that the trees and hedges interfere with the maintenance or reconstruction of the highway or interfere with the safety and convenience of public travel thereon at the public hearing;

**WHEREAS**, The town board conducted the proper hearing found in Minn. Stat. § 160.22, subd. 5;

**WHEREAS**, At the hearing conducted under Minn. Stat. § 160.22, subd. 5, the town board found the trees and hedges the trees and/or hedges interfere with maintenance or safety and convenience of public travel;

**NOW, THEREFORE BE IT RESOLVED**, That the town board of \_\_\_\_\_ Township, \_\_\_\_\_ County, Minnesota, hereinafter "The Town", shall remove the marked trees:

**NOW, THEREFORE BE IT FURTHER RESOLVED**, That The Town may cut down the marked trees because **Exhibit A** identifies the specific reasons for The Town's need to cut down the marked trees.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BY THE BOARD

\_\_\_\_\_  
Town Board Chair

Attest: \_\_\_\_\_  
Town Clerk

## NOTICE OF TOWN'S DETERMINATION TO REMOVE TREES

The Town Board of \_\_\_\_\_ Township, \_\_\_\_\_ County, Minnesota, hereinafter "The Town", hereby notifies the landowner, adjacent landowner, or renter at \_\_\_\_\_, \_\_\_\_\_ Township, \_\_\_\_\_ County, Minnesota, hereinafter "The Resident", that The Town has decided to remove certain trees along the Right-of-Way adjacent to The Resident's property. The Town has marked the certain trees for removal by:

The purpose of this notice is not only to notify The Resident of The Town's determination to remove the certain trees, but also to notify The Resident of their right to appeal the determination to remove the trees. Under Minnesota Statutes § 160.22, subdivision 7, after the town has made their determination, the affected landowner, renter, and the adjacent landowner must receive notice of the right to appeal the determination within 30 days of reception of this appeal. The Resident may appeal by filing with the court administrator a notice of appeal, together with a bond of not less than \$500.

The Resident is hereby notified of The Town's determination to remove the certain trees, and that The Resident has the right to appeal within 30 days of receiving this notice. The Resident has until \_\_\_/\_\_\_/20\_\_\_ to request a time and day for an appeal regarding The Town's determination to remove the trees. In order to request an appeal, The Resident must contact District Court Administrator with jurisdiction over The Town. If The Resident **does not** request an appeal by the date, The Resident waives their right to an appeal.

**Attached to this appeal is the determination as resolved by The Town.**