SUMMARY OF CONNECTICUT LAW
ON
UTILITY VEGETATION MANAGEMENT
(Tree and Shrub Pruning and Removal)

I. Municipal Tree Warden's Appointment, Powers and Duties (*municipal roads only*)
   A. Appointment
   B. General Powers
   C. Tree Warden Permits
   D. Tree Warden Posting of Trees and Shrubs for Removal or Pruning*
   E. Tree Warden Hearings
   F. Tree Warden Regulations

II. Commissioner of Transportation's (DOT) Powers and Duties (*state highways only*)
   A. General Powers regarding Trees and Shrubs in the public right-of-way
   B. DOT Permits for Utility Pruning and Removal

III. Legal Standards for Utility Vegetation Management
    A. Utility Protection Zone
    B. Vegetation Management
    C. Performance of Vegetation Management*
    D. Hazardous Tree

IV. Notice Requirements Prior to Utility Pruning and Removal

V. Property Owner Objection, Request for Modification, Request for Information and Request for Consultation

VI. PURA Mediation and Hearing Process (*within public right-of-way*)

VII. Vegetation Management by Utilities on Private Land (*outside of public right-of-way*)

VIII. DEEP and PURA Review of Utility Vegetation Management Practices

* Revised after adoption of PA 16-86, effective October 1, 2016**
I. Municipal Tree Warden's Appointment, Powers and Duties (municipal roads only)

A. Tree Warden Appointment (Sec. 23-58 and 23-59a, CT General Statutes)^1

1. The selectmen of each town or the warden or burgesses of each borough are required to appoint a town or borough tree warden within thirty days of their election, unless the town has identical boundaries to a city within it and the city has an officer having similar duties to a tree warden and assumes control over the entire territory.

2. The tree warden is appointed for a two-year term, and may appoint and dismiss deputy tree wardens. The tree warden's term continues until a successor has been appointed and has qualified.

3. Within one year after appointment or reappointment, a tree warden must successfully complete a course approved by the Commissioner of Energy and Environmental Protection, which must cover tree biology, tree maintenance and pruning, urban forest management and tree laws. Upon written request of the chief elected official who appointed the tree warden, the Commissioner may grant an extension of six months to complete the course. The tree warden is required to maintain a record of completing the course.

4. A tree warden is not required to complete the course if the tree warden is a CT licensed arborist or has appointed a deputy tree warden who is a CT licensed arborist or has successfully completed the course.

B. General Powers (Sec. 23-59)

1. The tree warden has “care and control” over “all trees and shrubs in whole or in part within the limits of any public road or grounds and within the limits of his town or borough,” and includes "such limbs, roots or parts of trees and shrubs as extend or overhang the limits of any such public road or grounds."

2. "The tree warden shall enforce all provisions of law for the preservation of such trees and shrubs and of roadside beauty."

3. The tree warden also has the obligation to prune and remove trees and shrubs for the protection of “public safety.”

C. Tree Warden Permits (Sec. 23-65(f)):

1. The utilities must get a permit from the municipal tree warden before doing any pruning and removal of trees and shrubs in the public right-of-way of municipal roads and highways, including for hazardous trees as defined in Sec. 16-234(a)(3), C.G.S.: "any tree or part of a tree that is (A) dead, (B) extensively decayed, or (C) structurally weak, which, if it falls, would endanger utility infrastructure, facilities or equipment."

2. The only exception to the permit requirement is that a utility may “prune or remove a tree, as necessary, if any part of a tree is in direct contact with an energized electrical conductor or has visible signs of burning.” Sec. 16-234(e).

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^1 All subsequent citations to sections in the CT General Statutes will reference only the section itself, and include all amendments made in the 2014 session of the General Assembly, specifically to Sections 16-32h, 16-234 and 23-65(f).
3. Sec. 16-234(c)(5) explicitly states that its provisions do not limit the power and authority of a tree warden under Sec. 23-65(f).

D. Tree Warden Posting of Trees and Shrubs for Removal or Pruning

1. Unless the condition of the tree, shrub or group of shrubs constitutes an "immediate [emphasis added] public hazard," a tree warden is required to post a notice of the tree warden's intention to prune or remove a tree, shrub or group of shrubs on each tree, shrub or group of shrubs a minimum of ten days before removal and pruning is to begin. Sec. 23-59. Public Act 16-86 amended Sec. 23-59 to provide that the tree warden may post a group of shrubs rather than each individual shrub.

2. Since this is a minimum requirement, a tree warden can do such posting after application by a utility for the tree warden's permit to prune or remove a tree, shrub or group of shrubs, but before issuance of a permit, if the tree warden considers this to be the best process to follow, considering the different time requirements for notice, objection and request for modification and appeal set forth in Sec. 16-234(c), as amended. (See hearings below.)

E. Tree Warden Hearings

1. Sec. 23-65(f) provides that a tree warden may hold a public hearing on a utility's plans, in accordance with Sec.23-59. Sec. 23-59 provides that any "person, firm or corporation" can object to proposed removal or pruning as posted, and may file a written appeal to the tree warden, who is then required to hold a public hearing after giving "reasonable notice" to "persons known to be interested" and by posting a notice of the hearing on the tree or shrub at issue. The tree warden has to reach a decision within three days from the hearing and the party aggrieved by the decision has ten days to appeal the decision to the superior court having jurisdiction in the town or borough. However, Sec. 23-65(f) explicitly provides that, after the tree warden decision is issued following a public hearing, "when the applicant is a public utility corporation, the party aggrieved by such decision may, within ten days, appeal therefrom to . . . [PURA]," not to the Superior Court.

2. Many tree wardens do hold such a hearing in connection with tree removals by utilities or by the municipality, even when no appeal from "any person" in response to a posting has been made. The appeal and mediation procedures and time limits for appeal to PURA under Sec. 16-234(c) may be considered limited to any decisions by tree wardens in response to objections and requests for modification by abutting property owners in response to a utility notice, and thus to utilities and abutting property owners appealing those decisions. An appeal by any person to PURA from a tree warden decision following a Sec. 23-59 hearing is a separate process, and a utility or any person appealing pursuant to that section should follow the time limits (presumably 10 calendar days rather than the 10 business days required under Sec. 16-234(c)(3)) to file the appeal.

3. The existence of two separate processes for objections to tree wardens' decisions in response to utility plans for utility tree pruning and removal presents issues of timing and coordination for tree wardens and utilities, which are beyond the scope of this summary.
F. Tree Warden Regulations

1. Under Sec. 23-59, a "tree warden may prescribe such regulations for the care and preservation of such trees and shrubs as the tree warden deems expedient and may provide therein for a reasonable fine for the violation of such regulations . . ." If approved by the board of selectmen or borough warden and "posted on a public signpost" or "near the office or the town or borough clerk," the regulations are considered to be a town or borough ordinance.

2. Tree ordinances can also be adopted under a municipality's general power to adopt ordinances pursuant to Sec. 7-148 or in accordance with their charters, if they operate under a charter. Such ordinances can grant authority to the tree warden to regulate and put limitations and conditions on tree pruning and removal within a municipality.
II. Commissioner of Transportation’s (DOT) Powers and Duties (state highways only)

NOTE: Your municipal tree warden will know whom to contact at DOT regarding utility tree removal and pruning along state highways in your city, town or borough.

A. General Powers regarding Trees and Shrubs in the public right-of-way

Sec.13a-140 C.G.S. provides that DOT "may cut, remove or prune any tree, shrub or other vegetation situated wholly or partially within the limits of any state highway so far as is reasonably necessary for safe and convenient travel thereon." For such planned cutting, removal or pruning by DOT on its own initiative, there is no requirement for posting of a tree or shrub, notice by DOT to an abutting property owner, or hearing.

B. DOT Permits for Utility Pruning and Removal

1. Sec. 13a-140 requires that a permit be obtained from DOT to "cut, remove or prune any tree, shrub or vegetation situated partially or wholly within the limits of" a state highway. It provides further that "nothing contained in [13a-140] shall limit the rights of public service companies [i.e. utilities] . . . to cut and trim trees and branches and otherwise protect their lines, wires, conduits, cables and other equipment from encroaching vegetation." No permit may be issued for a tree with a diameter greater then eighteen inches unless the chief elected official of the municipality is notified in writing. The notice must include the location of the tree to be "cut or removed."

2. Sec. 23-65(f) also requires the utilities to obtain a permit from DOT before doing any pruning and removal of trees and shrubs within the public right-of-way of state highways, including for hazardous trees as defined in Sec.16-234 (a)(3), C.G.S.: "any tree or part of a tree that is (A) dead, (B) extensively decayed, or (C) structurally weak, which, if it falls, would endanger utility infrastructure, facilities or equipment." Sec. 23-65(f) requires that the DOT must notify the tree warden of the municipality after granting the permit and before any pruning or removal of a tree or shrub takes place.

3. The only exception to these two statutory permit requirements is that a utility may “prune or remove a tree, as necessary, if any part of a tree is in direct contact with an energized electrical conductor or has visible signs of burning.” Sec. 16-234 (e).
III. Legal Standards for Utility Vegetation Management

A. Utility Protection Zone

The definition of utility protection zone ("UPZ") does not dictate a particular scope or method of pruning and removal within that zone. It is the rectangular area that is bounded by a vertical line 8 feet out from the outermost wire or conductor on either side of the distribution system, from ground to sky, and is simply a defined space in which vegetation management may take place “to secure the reliability of utility services." The tree warden and the DOT retain the authority to determine the scope and method of vegetation management within this zone, in accordance with Sec. 16-234, which includes appeal to the Public Utilities Regulatory Authority (PURA).

B. Vegetation Management

"Vegetation management" means the “retention of trees and shrubs that are compatible with the utility infrastructure" and the pruning or removal of trees, shrubs and other vegetation that “pose a risk to the reliability of the utility infrastructure." [Emphasis added.] Public Act 14-151 reversed the order of these clauses in Sec.16-234 (a)(4), C.G.S., presumably to emphasize retention of non-hazardous trees and shrubs as recommended in the State Vegetation Management Task Force Report.

C. Performance of Vegetation Management

1. A utility may only perform "vegetation management [as it is defined in the statute] within the utility protection zone ["UPZ"], as necessary, to secure the reliability of utility services." Sec.16-234 (b).

2. Authorized “pruning” is defined as the removal of plant parts only if it is “performed according to current professional tree care standards and in a manner that retains the structural integrity and health of the vegetation." Sec. 16-234(a)(5).

3. These are the criteria that a tree warden or DOT should use in determining whether to issue a permit for proposed utility tree pruning and removal within the UPZ.

4. The utility "shall provide for the removal or disposition of any debris generated as a result of [its] pruning or removal" under Sec. 16-234 or Sec. 23-65, C.G.S. Sec. 16-234 (h) [added by Public Act 16-86, effective October 1, 2016.]

5. By January 31, 2017 and each year after that, a utility must provide the tree warden or the chief elected official of a town or borough "1(1) A plan detailing the proposed roads or areas . . . where . . . vegetation management will take place in the forthcoming calendar year, and (2) the estimated time schedule for such proposed vegetation management." The town or borough is required to make the plan publicly available within fourteen days of receiving it and to keep it available throughout the calendar year. Sec, 16-234 (i) [added by Public Act 16-86, effective October 1, 2016.]

D. Hazardous Tree

1. A hazardous tree is "any tree or part of a tree that is (A) dead, (B) extensively decayed, or
(C) structurally weak, which, if it falls, would endanger utility infrastructure, facilities or equipment." Sec. 16-134(a)(3).

2. Within the public right-of-way, the tree warden or DOT determines whether a tree is hazardous, and no notice is given to the abutting property owner.

3. On private land within the UPZ, the utility is required to make a reasonable effort to notify the private property owner three days prior to pruning or removal. Sec. 16-234(d).
IV. **Notice Requirements Prior to Utility Pruning and Removal**

1. Notice must be given by the utility to the abutting property owner and to the private property owner.

2. The "abutting property owner" is the owner of the property abutting or adjacent to the portion of a road, highway or public ground where the tree or shrub that utility proposes to remove or prune is located. *(An abutting property owner cannot authorize removal or pruning of a tree or shrub in this area if the utility does not have a permit from the municipal tree warden or DOT, as applicable, to do the pruning or removal.)*

3. The "private property owner" means the owner (including a municipality) of the property where a tree or shrub the utility proposes to remove or prune is located.

4. Upon request by the private property owner, the utility, municipality or DOT, as appropriate, must provide a private property owner with information about whether the tree or shrub to be pruned or removed is in the public right-of-way or on the private property. *(A private property owner has the absolute right to refuse permission for pruning or removal on its private land, and must give affirmative written consent to the utility for such pruning or removal, unless the tree is deemed "hazardous." If the utility considers the tree hazardous, it must use reasonable efforts to notify the property owner three days before removal or pruning. The law is silent on the ability of the property owner to dispute the utility's judgment.)*

5. There are two exceptions to the notice requirement: (i) when a tree is burning or is in direct contact with an energized electrical conductor (Sec. 16-234(e)) or (ii) when the tree warden or DOT agrees with the utility in writing that the tree is hazardous ("dead, extensively decayed, or structurally weak, which, if it falls, would endanger utility infrastructure, facilities or equipment," and must be pruned or removed. *For trees on private property, however,* a reasonable effort must be made to notify the private property owner three days prior to the pruning or removal of a hazardous tree. *(Sec. 16-234(d))*

6. Notice is to be given to an abutting property owner or private property owner in one of the following ways: (1) by first class mail, electronic mail or text message; (2) in writing (door hanger) at the location of the abutting property owner or private property owner; or (3) verbally and in writing to an abutting or private property owner.

7. Notice must be sent or delivered at the location 15 business days prior to the start of pruning or removal.

8. The notice must state that the property owner may consent in writing to the pruning or removal, may object or request a modification, and provide instructions as to how to do so. It must also state that the abutting property owner may request a consultation with the tree warden or the DOT.

9. The notice must state that a property owner may obtain information from the tree warden, DOT or the utility as to whether the tree or shrub is within the public right-of-way or on private land. If it is on private land, the utility must receive affirmative written consent from the private property owner before pruning or removing a tree or shrub, except in the case of hazardous trees, where only a reasonable effort to notify the private property owner three days in advance of the removal or pruning is all that is required.

10. The notice must state that a property owner objecting to pruning or removal of a tree will not be billed by a utility if the tree falls and causes damage to any utility infrastructure. *(Sec. 16-234 (c)(1))

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*The Garden Club of New Haven*

*July 7, 2014, revised January 2017*
V. Property Owner Objection, Request for Modification, Request for Information and Request for Consultation

1. The property owner has 10 business days from the date of the notice in which to file a written objection or request for modification with the utility and with the tree warden or the DOT, as appropriate, as well as to request a consultation. The written objection or request is considered delivered on the postmark date. The objection or request for modification may also be delivered by electronic mail to the utility. The utilities are required to establish an electronic mail account dedicated to receipt of objections and requests for modification, as well as inquiries or complaints.

2. There is no deadline for the request for information about whether the tree or shrub is in the public right-of-way or on private land, but as a practical matter, the request should be made early enough to meet the deadlines for objection and request for modification, if applicable.

3. The tree warden or DOT must issue a decision within 10 business days of receipt of the objection or request for modification, but the decision cannot be made if a requested consultation has not yet taken place.

4. The utility or the abutting property owner may appeal to PURA from the decision of the tree warden or DOT within ten business days after the decision.

5. No pruning or removal to which objection or request for modification has been made can take place until a final decision has been reached, by consensual agreement, tree warden or DOT decision or, if appealed, by PURA - that is, until each party has had an opportunity to have their objections or requests for modification heard and no appeals are taken or possible.

VI. PURA Mediation and Hearing Process (within public right-of-way)

1. After receiving an appeal, PURA has 30 calendar days in which to hold a mediation, which an abutting property owner may decline. PURA must hold a hearing within 60 days after receiving the appeal if there is no mediation, or 30 days after mediation has failed to resolve the appeal. PURA may authorize stump grinding of any tree or shrub whose pruning or removal has been at issue in the hearing.

2. The burden of proving that public convenience and necessity requires pruning or removal rests with the utility.
VII. Vegetation Management by Utilities on Private land (outside of public right-of-way)

1. Upon request by a private property owner, the utility, municipality or DOT, as appropriate, must provide the private property owner with information about whether the tree or shrub to be pruned or removed is in the public right-of-way or on the private property.

2. For trees and shrubs outside of the public right-of-way and therefore solely on private land, private property owners have an absolute right to refuse permission to prune or remove a tree or shrub and must give affirmative written consent to the utility if they choose to allow pruning or removal. The property owner cannot be billed by the utility if the tree for which pruning or removal was refused falls on the utility infrastructure and causes damage to it. (Sec. 16-234 (c)(1)).

3. The only exception is that if a tree on private land within the UPZ is determined to be “hazardous,” the utility must make a reasonable effort to notify the private property owner at least three days prior to the pruning or removal. (Sec. 16-234(d)).

VIII. DEEP and PURA Review of Utility Vegetation Management

1. Section 2 of Public Act 14-151 requires DEEP to review the vegetation management practices of each "electric distribution company."

2. PURA is required to submit a report to the joint standing committee on energy of the General Assembly reviewing vegetation management practices of each electric distribution company not later than one year after June 25, 2014 and to do so every two years thereafter.

3. In its Final Decision in Docket No. 12-01-10, PURA indicates that it will seek assistance from the DEEP Forestry Division with regard to its review of utility vegetation management practices and in appeals of tree warden decisions.