



A Private Tree Preservation By-law # 101 -2021

For the City of St. Thomas

The Private Tree Preservation By-law 101-2021 is intended to preserve significant trees located on private property in the City of St. Thomas by regulating the injury and removal of trees which measure 30 centimeters in diameter or more as measured at 1.37 m above ground level and will protect and enhance St. Thomas' existing tree cover while respecting a landowner's right to make changes to the landscape of their property in an environmentally responsible manner.



CITY OF ST. THOMAS

A By-law to Prohibit or Regulate the Destruction or Injury of Trees on Private Property within the City of St. Thomas.

WHEREAS Section 10(2)6 of the *Municipal Act*, 2001 S.O. 2001 c.25 (hereinafter called “the Act”) authorizes the Council of the Corporation of the City of St. Thomas to pass a By-law respecting the health, safety and well-being of persons;

AND WHEREAS Section 11(2)5 of the Act provides that a local municipality may adopt by-laws for the economic, social and environmental well-being of the municipality;

AND WHEREAS Section 135(1) of the Act authorizes the Council of the Corporation of the City of St. Thomas to pass a By-law to prohibit or regulate the destruction or injuring of trees, without limiting the municipality’s authority under Sections 9, 10 and 11 of the Act;

AND WHEREAS Section 436 of the Act provides that a municipality may pass by-laws providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine compliance with a by-law or an order made pursuant to the by-law;

AND WHEREAS Section 141 of the Act provides for planting Trees on Private Property adjacent to Highways with the consent of the landowner;

AND WHEREAS Section 62 of the Act authorizes a municipality, at reasonable times, to enter upon land lying along any of its highways to inspect trees, and conduct tests on trees, and to remove decayed, damaged, or dangerous trees or branches of trees if, in the opinion of the municipality, the trees or branches pose a danger to the health or safety of any person using the highway;

AND WHEREAS Section 429(1) of the Act provides that a municipality may establish a system of fines for contraventions of a by-law passed under this Act;

AND WHEREAS Section 444 of the Act provides that a municipality may make an order to require a Person to discontinue contravening a by-law and to do work, if required, to correct the contravention;

AND WHEREAS Section 445 of the Act provides that a municipality may make an order requiring a Person who contravened a by-law or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to do work to correct the contravention;

AND WHEREAS Section 446 of the Act provides that a municipality may proceed to do work at a Person’s expense which that Person is otherwise required to do under a by-law but has failed to do and the costs incurred by a municipality may be recovered by adding the costs to the tax roll and collecting them in the same manner as property taxes;

AND WHEREAS Section 391(1) of the Act provides that a municipality may impose fees or charges on Persons for service or activities provided or done by the municipality and Section 398(2) of the Act provides that such fees and charges may be added to the tax roll for any property in the municipality owned by the same Persons and collected in the same manner as taxes;

AND WHEREAS the Council of the Corporation of the City of St. Thomas recognizes the ecological and aesthetic value of trees and is desirous of managing the injury and destruction of trees;

**NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CITY OF ST. THOMAS
ENACTS AS FOLLOWS:**

INTERPRETATION

1. (1) In this By-law, the following definitions will apply:

“**Applicant**” and “**Permit Applicant**” means an applicant for a Permit under this By-law who is the registered owner(s) of the land where the subject Tree(s) or Dead Tree(s) is located and also means a contractor, Arborist, occupant or other agent authorized to apply,

or to otherwise act, on behalf of the Owner(s). The City may request written verification of such authorization. Note: In sub-section 1(2) of this By-law, an exception to the ownership requirement.

“Application” has the corresponding meaning, as detailed in Section 5 of this By-law.

“Arborist” means a Person with a certificate, diploma or degree involving arboriculture from an accredited college or university, and a Person who is a registered professional forester, an accredited arborist certified under the International Society of Arboriculture or a consulting arborist registered with the American Society of Consulting Arborists or a Person otherwise having a demonstrated history of tree preservation experience satisfactory to the Director.

“Arborist Report” means a technical report prepared by an Arborist which identifies the surveyed location, the species, size and the condition of the Tree(s) or Dead Tree, provides the reasons for any proposed Injuring or Destruction of a Tree or Felling of a Dead Tree, provides author information including the Arborist’s contact information and qualification, and describes any Tree planting plan and Tree protection measures or other mitigating activities to be implemented.

“City” means the Corporation of the City of St. Thomas and **“City Council”** means the elected Council of the City.

“DBH” means the diameter of a Tree, or Dead Tree, at breast height, measured on the Tree stem 1.37 metres (4.5 feet) above the ground surface.

“Dead Tree” means a standing dead tree located on Private Property. For purposes of this By-law, a tree is deemed to be dead if less than 10% of the tree’s crown is alive, or the condition of the tree meets such other science based criteria for death of a tree as maybe specified by the consulting Arborist in a report satisfactory to the Director.

“Deforestation” or **“Deforest”** means clearing of forest or Tress, beyond Good Forestry Practices, on Private Property.

“Destroy” means to remove, or Fell a Tree or to Injure a Tree in any way to such an extent that it has become a Hazard or its life processes have been compromised in such a way that it will not survive, and **“Destruction”** has a corresponding meaning.

“Director” means the Director of Parks and Recreation and Property Management for the City and any City employee, including a City appointed Urban Forester, designated by or acting under the direction of the Director.

“Drip Line” means that line which could be drawn running along the ground beneath and perpendicular to the outermost branches of the Tree.

“Emergency Tree Work” means work involving a Dead Tree, or Injury, Felling or other Destruction of a Tree, that is required to be performed immediately in order to prevent imminent danger, including tree maintenance or removal work necessary due to a Hazard resulting from natural events (such as ice storm, high winds, lightning), or removal of a Tree Felled by such a natural event as well as Tree maintenance work associated with emergency re-construction or repair of a drain, waterline, utility infrastructure or building.

“Fell” means to cut down, push or pull down, uproot or otherwise cause a Tree or Dead Tree to fall down, and **“Felling”** shall have the corresponding meaning.

“Golf Course” means an area of land laid out and operated as the playing area of a golf course and includes lands used for putting greens and driving ranges but does not include other land used for ancillary facilities and services of such property.

“Good Forestry Practices” means the proper implementation of harvest, renewal and maintenance activities known to be appropriate for the forest and environmental conditions under which they are being applied and that minimize detriments to forest values including significant ecosystems, important fish and wildlife habitat, soil and water quality and quantity, forest productivity and health and the aesthetics and recreational opportunities of the landscape, consistent with the forestry management practices as set out in the Ministry

of Natural Resources document "A Silvicultural Guide to Managing Southern Ontario Forests (2000)", or any successor document.

"Hazard" and **"Hazardous"** means a Tree, Dead Tree or part of a Tree that is destabilized, structurally compromised or obstructing views of vehicle operators or pedestrians in such a way that it is deemed, by the Director, to pose a potential safety concern to people or property.

"Highway" means any public highway or any part thereof under the jurisdiction of the City, including the boulevard and all land dedicated or assumed as a road allowance, and includes a street and a bridge forming part of a highway.

"Injury" means any action causing harm, damage, or impairment to a Tree, and includes, but is not limited to, causing stress or injury of Trees by changing grades or compacting or excavating soils within the Drip Line of a Tree, severing roots, the improper application of chemicals excessive or otherwise, excessive or improper pruning, attachments of any items, and the removal or slashing or defacing or girdling or burning of the bark, and **"Injure"**, **"Injured"** and **"Injurious"** shall have the corresponding meaning.

"Invasive Species" means a species of Tree that is not native to Ontario, or part of Ontario, and has been identified as an invasive plant species by the Canadian Food Inspection Agency or under the Ontario Invading Species Awareness Program of Conservation Ontario comprising representatives from the Conservation Authorities legislated under the Conservation Authorities Act, , R.S.O. 1990, c. C.27. Characteristically an invasive species has been determined to be harming the natural environment of Ontario or the part of Ontario in which it is present, or likely to harm the natural environment of Ontario or a part of Ontario, regardless of whether it is present in Ontario or in part of Ontario.

"Municipal Property" means any land owned, held, or used under statutory right by the City, or by any local board within the meaning of the Act or by any other municipal body and includes, but is not limited to, municipal road allowances, boulevards, parks, ravines, natural areas, Woodlots, Woodlands, public highways, rights-of-ways, municipal service facilities, and grounds of municipal buildings and facilities.

"Municipal Tree" means any Tree or Dead Tree, the trunk of which at ground level is located 60% or more on Municipal Property. A Tree or Dead Tree is not a Municipal Tree where more than 40% of its base at ground level is located on Private Property.

"Nursery" means land on which the principal business is propagation or transplanting of plants, shrubs and Trees and/or where the selling of same occurs.

"Officer" means an enforcement Officer appointed by the Council of the City pursuant to Section 11(1) of this By-law, which shall include any Urban Forester(s) appointed by the City.

"Order" means an Order made for enforcement of the provisions of this By-law, including an Order made pursuant to the Act as mentioned in Section 10 of this By-law.

"Owner" means the registered owner(s) of a lot or other land which is Private Property, and his, her, their or its respective successors, assigns, creditors in possession and an agent acting on behalf of the Owner(s). Owners include all of the Owners registered on title of the subject property in the Ontario Land System.

"Permit" means a permit issued under this By-law by the Director permitting Injury or Destruction of a Private Tree or permitting the cutting down or otherwise Felling of a Dead Tree.

"Permit Holder" a Permit is deemed to be held in all cases by all parties who are registered Owner(s) of the lands on which the subject Tree(s) or Dead Tree(s) is located and Permit Holder means the Owner(s) and all of the following to the extent such parties exist:

- a) an agent that has obtained a Permit purporting to do so on behalf of the Owner with the Owner's consent;
- b) any Person conducting work pursuant to a Permit; and
- c) an occupant of such lands where the occupant is the Applicant or where the occupant conducts, alters or deters work authorized or conditions required pursuant to a Permit.

“Person” means an individual acting either alone or in partnership or association, and a corporation.

“Private Property” means land not owned by a government of any level or by a governmental body, nor otherwise dedicated to a public purpose.

“Private Tree” means any Tree or Dead Tree, the trunk of which at ground level is located more than 40% on Private Property. A Tree or Dead Tree is not a Private Tree where 60% or more of its base at ground level is not located on Private Property.

“Prune” means the removal of a branch or branches from a Tree for non-detrimental purposes such as improving the health of a Tree, promoting structural soundness and maintaining the shape of the Tree compatible with its location and wellbeing and in any case shall not exceed removal of one-third of the live branches or limbs of a Tree and shall be performed in a manner that complies with the American National Standards Institute (ANSI) A300 Tree Pruning Standards.

“Tree” means a living tree of any species of perennial woody plant that has reached or can reach a height of 4.5 meters at physiological maturity. Tree includes the root system and all above ground parts of the Tree.

“Tree Preservation Plan” means a report and plan prepared by a qualified Arborist setting out recommended measures for protection and preservation of a Tree or Trees on a specific property or site.

“Tree Protection Zone” means the minimum required distances as set out in Schedule ‘D’ within which Tree protection restrictions or requirements are put in place under this By-law so that no construction, excavation or potentially Injurious activity of any kind will take place inside the Tree Protection Zone.

“Urban Forester” means one or more persons appointed by the City to that position, with responsibility for the co-ordination and implementation of City wide forestry maintenance functions and related duties on Private Property and Municipal Property.

“Woodlands” means land at least 1 hectare in area with a Tree population of at least one or more of the following:

- (i) 1000 Trees, of any size, per hectare; or
 - (ii) 750 Trees, measuring over five (5) centimetres at DBH, per hectare; or
 - (iii) 500 Trees, measuring over twelve (12) centimetres at DBH, per hectare; or
 - (iv) 250 Trees, measuring over twenty (20) centimetres at DBH, per hectare;
- but does not include a cultivated fruit or nut orchard, or a plantation established and maintained for the purpose of producing Christmas trees or Nursery stock.

“Woodlot” means land at least 0.2 hectare in area and no greater than 1 hectare in area, with a Tree population of at least one or more of the following:

- (i) 200 Trees, of any size, per 0.2 hectare; or
 - (ii) 150 Trees, measuring over five (5) centimetres at DBH, per 0.2 hectare; or
 - (iii) 100 Trees, measuring over twelve (12) centimetres at DBH, per 0.2 hectare; or
 - (iv) 50 Trees, measuring over twenty (20) centimetres at DBH, per 0.2 hectare
- but does not include a cultivated fruit or nut orchard, or a plantation established and maintained for the purpose of producing Christmas trees or Nursery stock.

(2) Notwithstanding the above definition of “Applicant” and “Permit Applicant”, an exception may be made in circumstances:

- a. where the current records of the Elgin Land Registry System do not recognize any owner for a parcel of land, or
- b. where it is not feasible to find the Registered Owner of a land parcel despite appropriate attempts to locate the registered owner and possible successors,

the City may, in such a case of ‘unowned’ lands, elect to allow an Application to be made by a Person that is the Owner of other lands which are directly abutting the ‘unowned’

Private Property and in close proximity to the location of the Tree or Dead Tree which is the subject of the Application. Such Person shall be deemed to be an Owner for purposes of being a Permit Applicant under this By-law, provided issuance of such Permit may be subject to any or all of the following additional conditions, in the City's discretion:

- i. verification of i. or ii. above, which may require a 'parcel register' report from the Elgin Land Registry System and/or a report satisfactory to the City from a solicitor authorized to practice law in the Province of Ontario, or other evidence satisfactory to the City, which is deemed pertinent to the ownership circumstances;
 - ii. the Applicant's written undertaking to be responsible for such fees and relevant financial requirements as the City determines shall apply and for fulfillment of other requirements or conditions which the City may impose, all in accordance with 6(3) of this By-law, and to financially ensure compliance with a Tree Protection Plan and/or Tree Protection Zone, if applicable; and
 - iii. written acknowledgments, to the satisfaction of the City, from other land owner(s), if any, whose land is also contiguous to the location of the subject Tree confirming that such other Person(s) does not object to the proposed Injury or Destruction of the Tree, or Felling of a Dead Tree as the case may be.
- (3) Throughout this By-law, any use of a singular term includes its plural, any use of a masculine term includes the feminine term (and vice versa) and any use of the present tense includes the past tense, where applicable in this By-law.
- (4) If any Section(s) or part(s) of this By-law is found by a court of law to be beyond the powers of the Council to enact, or otherwise illegal or unenforceable, such section(s) or part(s) shall be deemed to be severable and all other sections and parts of this By-law shall be deemed to be independent therefrom and shall separately continue in full force and effect.
- (5) If a provision of this By-law conflicts with an Act, a regulation or another by-law, the provision that is the most restrictive provision shall prevail.
- (6) Nothing in this By-law shall be interpreted in a manner that implies condonation of any practice that is subject to more stringent provisions in a Statute of Canada or a Statute of Ontario.

GENERAL PROVISIONS

2. (1) Administration

This By-law shall be administered by the Director.

(2) City Council Authority to overrule decision

Upon an Appeal under Section 9 of this By-law, City Council may consider and overrule, vary or confirm any decision(s) of the Director, made under Section 5(4), Section 6, Section 7 and Section 8 of this By-law.

PROHIBITED ACTIVITIES

3. (1) No Person shall, without a Permit, cause or permit Injury or Destruction of any Private Tree in the City having a trunk diameter of more than 30 cm at DBH.
- (2) No Person shall, without a Permit, cause or permit Destruction of a Private Tree which, although having a DBH less than 30 cm, had been planted to comply with an Order made under this By-law or to comply with a specific requirement or condition under the terms of a Permit issued under this By-law.
- (3) No Person shall, without a Permit, cause or permit the Felling of a Dead Tree which is a Private Tree having a trunk of more than 30 cm at DBH.
- (4) No Person shall, without a Permit, cause or permit Deforestation of a Woodlot or Woodlands, or a portion of a Woodlot or Woodlands.

- (5) Where a Permit has been issued, no Person shall Injure, Destroy or permit or cause to be Injured or Destroyed any Private Tree to which such Permit pertains unless they do so in accordance with the conditions and requirements of the Permit and in accordance with any other supporting documentation relevant to the issuance of the Permit.
- (6) No Person shall contravene an Order made under the provisions of this By-law.
- (7) No Person shall violate the terms of a Tree Protections Zone established under this By-law, as outlined in Schedule "D" to this By-law or a Tree Protection Plan approved under this By-law.
- (8) No Person shall cause or permit a Tree of an Invasive Species to be planted on Private Property.
- (9) Every Person who obstructs or hinders, or attempts to obstruct or hinder an Officer lawfully carrying out the enforcement of this By-law is guilty of an offence.
- (10) Every Person who obstructs or hinders, or attempts to obstruct or hinder the Director, or an Officer in the discharge of a power or duty authorized under this By-law and any Person who obstructs or hinders or attempts to obstruct or hinder any other employee or contractor of the City who is exercising a power or performing a duty authorized under this By-law, shall be considered to be committing an act in contravention of this By-law.

EXEMPTIONS

4. (1) Exemptions and exceptions to the prohibitions in Sections 3(3) and 3(4) of this By-law apply in the following circumstances:
 - a) activities or matters undertaken by the City for municipal purposes, including but not limited to Injury or Destruction of a Tree instigated by the City pursuant to Section of the Act with respect to a Private Tree on land lying along a public highway;
 - b) Injury or Destruction of Tree(s) or Felling of a Dead Tree(s) with a diameter of less than 30 cm at DBH, unless such Destruction is contrary to Sections 3(3) or 3(4) of this By-law;
 - c) Injury, Destruction of a Tree or Felling of a Dead Tree, which is carried out by a Person licenced under the *Surveyors Act*, R.S.O. 1990, c. S. 29 to engage in the practice of cadastral surveying, or his or her agent, while conducting a survey;
 - d) Emergency Tree Work as defined in this By-law;
 - e) Tree Pruning in accordance with good arboricultural practices or Good Forestry Practices;
 - f) Trees or Dead Trees on a Nursery or Golf Course;
 - g) transplanting of Trees which are stock that is propagated or sold in the operation of a Nursery;
 - h) the Injuring or Destruction of Trees or Felling of Dead Trees by a transmitter or distributor, as defined in the *Electricity Act, 1998*, S.O. 1998, c.15, Sched. A, for the purpose of constructing and maintaining a transmission system or a distribution system, as defined in that Act.
 - i) where the removal of a Private Tree(s) or Dead Tree(s) is specifically required in an Order made under the City's Property Standards By-law (72-2014) or Tidy Lot By-law (6-94);

PERMIT APPLICATION

5. (1) Where an Applicant applies for a Permit for the Injury or Destruction of a Tree(s), or for Felling of a Dead Tree, on the Owner's land, the Applicant shall initiate the Application by submitting the following to the Director:
 - a) a completed Permit Application form, in the form then currently approved by the Director;
 - b) the non-refundable Permit application fee as described in Schedule 'A',
 - c) an Arborist Report identifying the location, species, size and condition of the Tree(s) on the property that are to be Injured or Destroyed, tree planting plan, description of Tree protection zones if required and including contact information and qualification particulars for the author of the Report;

- d) the written consent of every adjacent property owner upon whose adjacent land the base of the tree(s) to be Injured, Destroyed or Felled is partially located;
 - e) the written consent of the Owner(s) of the land where the subject tree(s) is located, if the Person who is applying for the Permit is not the registered Owner(s) of the land and is therefore applying as agent for such Owner(s);
 - f) such additional information and documentation as the City may require at the time of the Application.
- (2) Within ten (10) business days of receiving an Application for a Permit under Sec. 5(1), the Director will review the Application and inform the Applicant of further information, documentation or other requirements, if any, that will be required to complete the Application. Such further requirements may include, but are not limited to, any or all of the following:
- a) additional particulars regarding the purpose for which the Permit is sought;
 - b) a Tree Protection Plan describing protection measures to be implemented for the benefit of Trees that are to be retained and, if applicable, describing other measures to be taken to address concerns that may be identified by the Director;
 - c) information or submissions included in all other applications currently filed or anticipated to be filed with the City relative to the site where the subject Tree(s) is located;
 - d) confirmation of compliance with the requirements of any Order issued to the Owner under this By-law or any order or directive issued to the Owner by a Provincial Ministry, Conservation Authority or other governmental agency that the Director finds is pertinent to the subject matter of the Permit Application.
 - e) such additional information and documentation as the Director may require.
- (3) A Permit Application is not complete until the Applicant has satisfied all requirements of the Application arising under 5(1) and 5(2) above.
- (4) If an Applicant for a Permit under Section 5(1) does not complete the Application by providing all the required documentation and information to the Director within fifteen (15) business days after being notified of further requirements under Section 5(2) or within such further time frame as may be specified by the Director, the Director may reject the Application and the Applicant shall be notified in writing that the Applications is terminated without refund.
- (5) Despite Section 5(4), the Director may extend the time frame for completing a Permit application where the Director determines that the Applicant is actively taking steps to complete the Permit Application, provided that in any case, subject to a longer time period specified by the Director under Section 5(2) above, if the Permit Application remains incomplete and one (1) year has elapsed from the date the Permit Application was first received by the Director, the Applicant shall be deemed to have withdrawn the Permit Application and shall not be entitled to refund of any payments made.
- (6) No Person shall submit false or misleading information in support of a Permit Application under this By-law.
- (7) While in the following cases Permits are nonetheless required for Destruction or Injury of a Tree or Felling of a Dead Tree, with respect to the described Permit Applications listed below the Application fee shall be waived by the City:
- a) Applications for Destruction of a Dead Tree or a severely diseased Tree;
 - b) Applications for Destruction or Injury of a Tree where the primary purpose is to remove a Tree, or a portion thereof, that is a Hazard;
 - c) Applications pertaining to Trees on properties owned by not-for profit entities providing housing on a not-for-profit basis or registered charitable organizations providing community services, including, but not limited to:
 - i. The Corporation of the City of St. Thomas;
 - ii. Habitat for Humanity;
 - iii. not-for-profit corporations and organizations providing social housing as defined in Section 7(1) of the *Residential Tenancies Act*, 2006, S.O. 2016, c.17;

- d) Owners who are individuals living in a household with household income below the low-income cut off (LICO) as determined by Statistics Canada.

ISSUANCE OF PERMITS

- 6. (1) The Director shall consider the relevant criteria set out in Schedule “B” to this By-law prior to approving or refusing a Permit, pursuant to a completed Application made under Section 5 of this By-law.
- (2) For purposes of the Director’s consideration of any of the criteria listed in Schedule “B” the Director may consider any reports prepared by qualified professionals and submitted by the Applicant with the Application or submitted subsequently by the Applicant at the Director’s request.
- (3) Upon issuing a Permit the Director may require that one or more conditions be fulfilled before the permitted work or actions can proceed and where a requirement involves work or actions that are to be completed after the Injury or Destruction for which the Permit is sought the Permit shall be issued upon the Owner concurrently providing a written undertaking or acknowledgment to the City for future compliance and fulfillment of the condition(s), in a form satisfactory to the Director. A Permit may be issued subject to requirements and/or conditions which may include but are not limited to any one or more of the following:
 - a) a replacement Tree or planting of equivalents as set out in Schedule “C” and Subsection 6(5) of this By-law;
 - b) submission of, and compliance with a satisfactory Tree Preservation Plan;
 - c) a Tree Protection Zone to be provided around a Tree(s) as set out in Schedule “D” to this By-Law and conforming to plans submitted by the Applicant indicating the location and features of the Tree Protection Zone, to the satisfaction of the Director;
 - d) the Director being satisfied that the Owner is proceeding with construction of a proposed site improvement or building in accordance with plans, submitted in connection with the Application and approved or permitted under the applicable municipal process;
 - e) A fee to be paid to the City, as a contribution to the City’s Tree Replacement Fund, equal to the appraised value of the Tree(s) that is to be removed;
 - f) financial security to be held by the City where the conditions or requirements of the Permit involve the planting of replacement trees, contributions for tree plantings or the construction, installation and grading for tree protective measures in conformity with an approved site plan, Tree Protection Zone or Tree Preservation Plan and completion and maintenance of such required measures.
 - g) all fees required for the Permit, together with such financial security as may be required, to the satisfaction of the Director, are required to be paid at the time of Permit issuance. Such security may be provided to the City in cash or by bond or letter of credit in accordance with the City’s practice for security held, in an amount not less than the amount set by the Director.
 - h) an Arborist Report setting out a work plan, satisfactory to the Director, for a permitted Injury of a Tree in a manner that assures continued viability of the Tree.
 - i) an Arborist Report confirming satisfactory completion of the permitted work and the Tree related plans as well as the condition of the site and/or of the subject Tree(s).
 - j) an undertaking in writing that the Owner agrees to notify in writing any transferee, renter or other occupant of the subject property of the specific municipal requirements, undertakings, Tree Protection Zones or other continuing Tree related restrictions or obligations set out in the Permit or the Tree Protection Plan, if any, which affect the subject property and by their nature must effectively run with the Owner’s lands, extending to successors in title.
 - k) in co-ordination with City records of property standards and site, subdivision and building permit plan documents for the address of the Owner’s property, filing by the City of copies of any Tree Protection Zone, Tree Protection Plan or requirement for onsite tree replacement, approved pursuant to Permit requirements or Orders arising under this By-law to be maintained as part of the municipal record for the specific Private Property(s) to which such requirements or Order applies.
 - l) a requirement(s) for removal from the site, and appropriate disposal of, the remains of a Felled Dead Tree or Tree, or of the severed portions of a Tree, where applicable.

- (4) When a Permit is issued subject to any preliminary conditions, or advance requirements, the Permit shall be marked “conditional” and no work on the Tree(s) or Dead Tree(s) shall proceed under such Permit until those conditions and requirements have been fulfilled to the Director’s satisfaction, upon which the “conditional” designation shall be removed by the Director;
- (5) Where the planting of a replacement Tree(s) has been imposed as a Permit requirement, the Director may require any one or more of the following:
 - a) that replacement Tree(s) be located on the same Private Property in a location, number, size and/or species satisfactory to the Director;
 - b) that a number of replacement Tree(s), be planted by the Owner on other lands owned by the Owner at a location approved by the City, or equivalent Tree cost contributions to the City’s tree replacement fund, satisfactory to the Director pursuant to Schedule “C”, be provided by the Owner to facilitate plantings in the community at sites determined in the Director’s discretion to assist in maintaining the ecological and aesthetic value of trees in the urban forest within the City;
 - c) a written undertaking by the Owner to carry out the physical replacement planting, if applicable;
 - d) and in every case where a payment is required for a replacement Tree or equivalent Tree not replanted on the Owner’s land, such payment shall be made to the City’s replacement tree planting fund as set out in Schedule “C” and all such payments to the City shall be delivered to the City on or before the issuance of the Permit.
- (6) A Permit Holder shall comply with, or ensure compliance with, all of the provisions and conditions of the Permit and this By-law;
- (7) A Permit Holder shall ensure that the Permit is securely and visibly posted on the Private Property where the Tree(s), Dead Tree(s) or Deforestation to which the Permit applies is/are located. The posting shall be visible from the access street frontage for the entire period during which work is carried out to comply with conditions of the Permit and the performance of the permitted Injury or Destruction of a Tree(s), Felling of a Dead Tree(s) or Deforestation as specified in the Permit;
- (8) The issuance of a Permit under this By-law does not relieve any Person from the necessity of acquiring any other license or permit or of complying with any other applicable laws, by-laws, regulations, and requirements of other governmental authorities or complying with other requirements of the City pertaining to works or circumstances on the subject site.

PERMIT REFUSAL

- 7. (1) The Director shall not issue a Permit for the Injuring or Destruction of a Tree(s) or for the Felling of a Dead Tree, or for Deforestation where:
 - a) the Application is not complete or the Applicant has failed to pay required fees, including Tree replacement and contributions, or to provide financial security where required;
 - b) information or a report, required under Section 6 of this By-law, has not been provided to the satisfaction of the Director;
 - c) the Director determines that, after considering the applicable criteria listed in Schedule “B”, the Destruction or Injury of the Tree(s), the Felling of a Dead Tree, or Deforestation has not been justified based on those criteria and the requirements of Sections 5 and 6.
- (2) If the Director refuses to issue a Permit, the Director shall inform the Applicant and provide the Applicant with written reasons for the refusal.

REVOCAION OF PERMITS

- 8. (1) The Director may revoke a Permit, at any time, for any one (1) or more of the following reasons:

- a) The decision to issue the Permit was based upon mistaken, false, or incorrect information;
 - b) The Permit Holder has failed to comply with a requirement or undertaking that was a condition of the Permit;
 - c) The Permit Holder is non-compliant with any Order(s) whatsoever issued under this By-Law;
 - d) The Permit Holder is non-compliant with any of the provisions of this By-Law in respect to the property or site affected by the Permit.
- (2) Upon revocation of a Permit, the Permit Holder of the revoked Permit shall immediately cease, or ensure the immediate cessation of, all activities for which the Permit had been issued.
- (3) Where a Permit Holder of a revoked Permit has Injured or Destroyed any Tree under the revoked Permit, the Permit Holder may be ordered to replace or protect the Tree at the expense of the Permit Holder
- (4) A Permit is the property of the City and shall be deemed to be revoked upon a change of Owner. A Permit is not transferable unless the Director consents to a specific transfer, in writing. However nothing in this section shall release a transferee or occupant of Private Property from compliance with and fulfillment of maintenance conditions or ongoing replacement or protection requirements of a Permit as set out in Section 13(12).

APPEALS

9. (1) An Applicant for a Permit pursuant to this By-law may appeal to City Council by submitting a written request to the Director within thirty (30) days after the date of the applicable occurrence indicated below:
- a) the Director refuses to issue a Permit;
 - b) the Director fails to make a decision on an Application within forty-five (45) days after the Application received by the Director is complete;
 - c) the Permit is issued subject to a condition or requirement to which the Applicant objects;
 - d) the Permit Holder receives notice that the Permit has been revoked by decision of the Director;
 - e) Pursuant to an Order issued in accordance with the provisions of this By-law the Permit Holder is required to cease the work described in the issued Permit.
- (2) Where at the time set for hearing of the Appeal Council is satisfied that, in regard to a matter listed in 9(1) above:
- a) the Applicant has submitted to the Director a written request for reconsideration by the Director, which request has not resulted in a resolution satisfactory to the Applicant within a period of not more than fifteen (15) business days following the Director receiving the request for reconsideration;
 - b) within ten (10) business days after:
 - i. being notified of the Director's response to the request for reconsideration, or
 - ii. the Director has failed to give notice of such response within the fifteen (15) business day period for doing so,
 the Applicant has submitted to the City Clerk a written appeal submission to Council requesting that the matter be placed on the agenda of a Council Meeting;
 - c) such appeal is accompanied by the Applicant's written summary of the background and outlines the concerns of which the Applicant wishes Council to be aware in advance of the Applicant's presentation at the Council meeting, along with any written report Council may receive from the Director regarding the basis for the Director's decision.

Council will then proceed to consider the merits of the Applicant's written request and hear the Applicant's oral submissions as well as the criteria listed in Schedule "B" of this By-law to the extent applicable and any written report Council may receive from the Director regarding the basis for the Director's decision, and Council may:

- uphold the decision of the Director; or

- require the Director to vary a condition(s) or requirement(s) on a Permit, or;
- require the issue of the Permit or the reinstatement of a revoked Permit which may be upon such conditions or requirements as the Council considers appropriate.

INSPECTION

- 10.(1) Pursuant to Section 436(1) of the *Municipal Act*, an Officer may, at any reasonable time, enter and inspect any land to determine whether this By-law is being complied with or whether a direction or Order under this By-law, or an Order made pursuant to subsection 431 of the *Municipal Act* is being complied with.
- (2) Pursuant to Orders issued under Section 438 of the *Municipal Act*, an Officer may undertake inspections to enforce compliance with this By-Law or to determine whether or not this By-Law is being complied with including compliance with a Permit issued under this By-Law.
- (3) An Officer carrying out an inspection under subsection 1 or 2 above may:
 - a) require the production of documents or things relevant to the inspection;
 - b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extras;
 - c) require information from any Person concerning a matter related to the inspection, and;
 - d) alone or in conjunction with a Person possessing special or expert knowledge, make examination or take tests or photographs necessary for the purpose of the inspection.

OFFENCES

- 11.(1) Every Person who engages in a prohibited activity referred to in the provisions of Section 3 of this By-law or who contravenes any other provision of this By-law or fails to comply with an Order issued under this By-law, is guilty of an offence.
- (2) Every Person who hinders or obstructs, or attempts to hinder or obstruct an Officer lawfully carrying out the enforcement of this By-law is guilty of an offence.
- (3) The court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the Person convicted, and such order shall be in addition to any other penalty imposed on the Person convicted.
- (4) Contraventions of any provision(s) of this By-law or of an Order issued under this By-law are designated pursuant to Section 429(2) of the *Municipal Act* as multiple offences and continuing offences where applicable to the facts establishing the offence.

PENALTIES

- 12.(1) Every Person who contravenes any provision of this By-law is guilty of an offence and on conviction is liable to a fine as provided for the *Provincial Offences Act*, R.S.O. 1990, C.P.33, or any successor thereof. Where any Person has in contravention of this By-law Injured or permitted the Injury of a Tree that has been consequently assessed by the Director as damaged beyond repair, or the Tree has been partially or fully removed following such Injury, the appraised value of the Tree(s) in accordance with industry standards, or the cost of replacement of the Tree(s) as set out in Schedule "C", whichever is greater, may be taken into consideration when determining the amount of the fine(s). Upon summary conviction under Part 1 of the *Provincial Offences Act*, R.S.O.1990, c. P 33 for offences listed in Schedule "E" of this By-law, a Person shall be liable for the respective set fines provided in Schedule "E" of this By-law.
- (2) The court in which a conviction has been entered, and any court of competent jurisdiction thereafter, may make an Order prohibiting the continuation or repetition of the offence by the Person convicted, and such Order shall be in addition to any other penalty imposed on the Person convicted.

ENFORCEMENT

- 13.(1) This By-law shall be enforced by one or more Officers appointed by the Council of the City.

- (2) An Order may be issued by such Officer(s) for any contravention of this By-law including, but not limited to, requiring a Person to cease and desist from all actions causing Injury or Destruction of Trees contrary to this By-law or to cease and desist from other acts prohibited under Section 3 of this By-law.
- (3) If an Officer is satisfied that this By-law has been contravened, the Officer may make an Order requiring the Person who contravened the By-law or who caused or permitted the contravention, and if different, the Person who is the Owner or occupier of the Private Property on which the contravention occurred, to discontinue the contravention by ceasing and desisting from an activity which contravenes this By-law and/or requiring such Person(s) to correct the contravention.
- (4) The Order shall set out:
 - a) the municipal address or legal description of the Private Property where the contravention occurred;
 - b) the municipal address(es), if different, of the Person(s) who is/are named in the Order as responsible for the contravention;
 - c) reasonable particulars adequate to identify the contravention of this By-law and the work to be done, if any, to remedy the contravention;
 - d) the date by which there must be compliance with the Order; and,
 - e) notification of the fees, charges, costs and fines which may become payable under the provisions of this By-law due to the contravention and in the event of non-compliance with the Order.
- (5) All Notices and Orders under this By-law may be served by:
 - a) personal delivery to the Person to whom it is directed, or;
 - b) regular mail to the last address known to the City for the Person to whom the Order is directed, in which case service shall be deemed effective five (5) business days after the date the Order is mailed;
- (6) If the delay necessary to serve an Order under the preceding subsection would result in immediate danger to the health of any Person, the Order may be served to the Person to whom it is directed by posting a placard, stating the terms of the Order, in a conspicuous place upon the property that can be seen by members of the public.
- (7) In default of the work required by an Order being performed by the Person directed or required to do it, the City, in addition to all other remedies the City may have, may do the work or cause the work to be done at the Person's expense and may enter upon Private Property, at any reasonable time, for this purpose. The City may recover the costs incurred by it doing the work or causing the work to be done, including in the manner referred to in this Section 13(11) of this By-law.
- (8) If a Permit Holder fails to comply with an Order made under this Section above of this By-law, the City may use any security posted with the City as a requirement for the Permit under the Permit or revoked Permit to replace the Tree(s) and to pay for any costs associated with carrying out the work deemed necessary for compliance with the Order.
- (9) If the costs incurred by the City in carrying out any work under this Section 13 are greater than the security posted by the Permit Holder under the Permit, any costs not covered by the security shall be a debt owed by the Permit Holder to the City and the City may recover the costs of carrying out the work by adding the costs to the tax roll of the property in question and collecting them in the same manner as property taxes.
- (10) A Property Owner who fails to comply with an Order under this Section 13 shall, at the Director's discretion where merited, be subject to a further fee of up to \$5000.00 pertinent to the City's services for inspection, for enforcement and for administration relative to remedial work deemed necessary by the Director in accordance with sub-Section 13(9) above.
- (11) Fees, and charges, including but not limited, to the expense of work and services performed or contracted by the City, imposed under any provision of this By-law, shall constitute a debt of the Person by whom the fee or charge is payable and the fees and charges may be

added to the tax roll and collected in the same manner as taxes on any property in the City for which all the Owners are responsible for paying the taxes.

- (12) Where work has proceeded upon a Private Property subject to the terms of a Permit issued under this By-law, every transferee or occupant of the subject Private Property is required to comply with and fulfill outstanding conditions or requirements of the Permit, including compliance with on-going requirements for a Tree Protection Zone or other continuing requirements of a Tree Preservation Plan or onsite tree replacement condition, which requirement(s) shall be deemed to attach to the Private Property owned or formerly owned by the Permit Applicant at the time of the issuance of the Permit and shall be deemed to extend to successors in title provided information mentioning the outstanding or continuing requirements under the terms of the Permit is a matter of record available from the City to Persons requesting same in accordance with municipal practices and policies for searching of municipal records pertaining to Private Property.

REPEAL

14. By-laws #131-2017, #61-2019 and #83-2021 of the Corporation of the City of St. Thomas are hereby repealed upon the date this By-law comes into force.

SHORT TITLE

15. This By-law may be cited as the "Private Tree Preservation By-law".

IN FORCE


This By-law shall come into force and take effect on the date it is passed.

READ a First and Second time this 14th day of June, 2021.

READ a Third time and FINALLY PASSED this 14th day of June, 2021.



Maria Konefal, City Clerk



Joe Preston, Mayor

Schedule 'A'
Permit Fees

Permit Application Fee Schedule	
Less than 10 Trees	\$100.00
10 to 100 Trees	\$150.00
More than 100 Trees	\$250.00
Not-for-profit housing Associations or charitable organizations	\$0.00
Verified Dead, Diseased or Hazardous Trees or permitted work required due to disease affecting Tree	\$0.00
Other, as set out in By-law	\$0.00

Total Fee included in Application. Permit Fees are to be paid at time of Application submission

Schedule 'B'

List of Criteria referred to in 6(1) – Issuance of Permits

- a) the condition and size of the Tree(s);
- b) whether the location of the Tree(s) conflicts with any of the following:
 - i. a site plan, subdivision plan or building permit plan that has been proposed, approved or issued for development of Private Property, in compliance with the zoning of the land;
 - ii. a proposed pool enclosure; or
 - iii. the expansion of parking areas that comply with the zoning of the land;and whether all alternatives have been exhausted for avoiding or resolving such conflicts.
- c) the species of the Tree(s);
- d) whether the Tree(s) is/are of a classification such as “endangered”, “threatened” or “at risk” as defined in the *Endangered Species Act 2007*, S.O. 2007, c. 6, as amended, or is/are of a Tree species classified as an endangered or threatened, or a Tree species of special concern, as defined in the *Species at Risk Act*, S.C. 2002, c. 29, as amended;
- e) whether the Tree(s), or a significant portion thereof, is/are dead, terminally diseased or Hazardous;
- f) whether all reasonable measures of Tree preservation have been diligently attempted or considered;
- g) protection of:
 - i. environmentally sensitive areas;
 - ii. natural landforms or contours;
 - iii. significant vistas.
- h) erosion and storm water control;
- i) whether the Tree(s) is/are in a Natural Heritage Area as defined in the Official Plan of the City of St. Thomas;
- j) a written report or research prepared by an Arborist or historian expressing the opinion that the Tree(s) is/are of an important species or example for heritage reasons relative to the Tree's age, size, species, location or association with a historical period or event;
- k) whether the Private Property on which the Tree(s) is/are located is designated under the *Ontario Heritage Act*, R.S.O. 1990, c. O 18, as amended and, if so, whether a written report approved by the City's Municipal Heritage Advisory Committee has been provided, indicating that:
 - i. the Tree is or is not described as a heritage attribute in the designation or is otherwise relevant to the heritage designation of the site; or,
 - ii. the Tree is relevant to the heritage designation of the site but the Municipal Heritage Advisory Committee acknowledges and approves of the proposed Injury or Destruction of the Tree.
- l) whether the Tree(s) is/are located in a Woodlot or Woodland where the purpose is cutting of wood for fuel or other personal use and in accordance with Good Forestry Practices and an approved Tree Preservation Plan;
- m) whether a proposed harvest of wood for fuel exceeds 2.5 full cords per hectare of wooded area;
- n) whether the Injury or Destruction of the Tree is otherwise acceptable to the Director;

Schedule 'C'

Replacement Trees

Size of Removal (Measured by DBH – Diameter at Breast Height)	# of Replacements required	Cost of Replacements
30cm to 49.99cm at DBH	1	\$400.00
50cm to 74.99cm at DBH	2	\$800.00
75cm to 99.99cm at DBH	3	\$1200.00
100cm or greater than at DBH	4	\$1600.00

1. If adequate space is not available on the property where the tree(s) was removed, or the Property Owner does not wish to plant trees on their property, the associated fees as laid out above will be required to be paid to the City by the Property Owner at the time of permit issuance that will go towards the enhancement and management of the City's Urban Forest in accordance with Section 6(5) of this By-law

2. Where the Property Owner chooses to plant Trees on their property themselves, replacement Trees are to be:
 - a. a minimum of 35mm diameter measured at 15cm above root collar;
 - b. of a species that will one day contribute to the Urban Forest Canopy; and
 - c. not an Invasive Species.

Schedule 'D'

Tree Protection Zones

A Tree Protection Zone (“TPZ”) is to be established within barriers constructed around all Trees that are not subject to permitted destruction within a construction area unless that mandatory requirement is waived or modified upon written approval by the Director.

The dimensions and terms of a TPZ shall be determined in accordance with ISA Standards at a minimum of 30.5 cm or 1 foot of diameter from the trunk for 2.54 cm or 1 inch diameter at breast height (DBH) or located at the drip line of the canopy. Therefore, a tree having a 35 inch DBH would require a 35 foot diameter or placed along the drip line.

The barrier shall be at least 1.2m (4 ft.) high and be plywood or orange plastic snow fence or equivalent as approved by the Director.

All supports and bracing for the barrier should be outside the TPZ. All such supports should minimize damaging roots outside the TPZ.

All TPZ shall have Tree Protection Signage indicating that it is a TPZ

Within the Tree Protection Zone there must be:

- No construction;
- No altering of grade by adding fill, excavating, trenching, scraping, dumping or disturbance of any kind;
- No storage of construction materials equipment, soil, waste or debris;
- No disposal of any liquids;
- No movement of any vehicles or machinery;
- Directional micro-tunnelling and boring may be permitted within the limits of the TPZ subject to approval by the Director;
- Open faced cuts outside requirements of a TPZ extend outside the TPZ where any open faced excavation cuts which will require root pruning must be consistent with a plan approved by the Director and root pruning shall be performed under the supervision of an Arborist or a tree care professional approved by the Director;

Tree protection Barriers

Tree Protection Zones: Trunk Diameter (DBH)₁	Minimum Protection Distances Required₂ City-owned and Private Trees	Minimum Protection Distances Required Trees in Areas Protected by the Ravine and Natural Feature Protection By-law
< 10 cm	1.2 m	Whichever of the two is greater: The drip line or 1.2 m The drip line or 3.6 m The drip line or 4.8 m The drip line or 6.0 m The drip line or 7.2 m The drip line or 8.4 m The drip line or 9.6 m The drip line or 10.8 m The drip line or 12.0 m 12 cm protection for each 1 cm diameter or the drip lines
10 – 29 cm	1.8 m	
30 ₃ – 40 cm	2.4 m	
41 – 50 cm	3.0 m	
51 – 60 cm	3.6 m	
61 – 70 cm	4.2 m	
71 – 80 cm	4.8 m	
81 – 90 cm	5.4 m	
91 – 100 cm	6.0 m	
> 100 cm	6 cm protection for each 1 cm diameter	

Schedule "E"
The Corporation of the City of St. Thomas
Part I Provincial Offences Act
By-law No. 101-2021:
Private Tree Preservation By-law

Part 1 Provincial Offences Act
Set Fine Schedule

Item	Short-form wording	Provision creating or defining offence	Set Fine
1.	Without a Permit, cause or permit the Destruction of a Tree with a DBH greater than 30 cm.	3.(1)	\$1000.00
2.	Without a Permit, cause or permit the Injury of a Tree with a DBH greater than 30 cm.	3.(1)	\$500.00
3.	Without a Permit, cause or permit Felling of a Dead Tree with a DBH greater than 30 cm.	3.(3)	\$1000.00
4.	Without a Permit, cause or permit Deforestation in a Woodlot or Woodlands.	3.(4)	\$1000.00
5.	Fail to comply with terms of a Permit	3.(5)	\$500.00
6.	Contravention of an Order	3.(6)	\$500.00
7.	Contravention of an Order to discontinue activity	3.(6)	\$1000.00
8.	Cause or permit non-compliance with terms of a Tree Protection Zone.	3.(7)	\$500.00
9.	Failure to post Permit as required.	6(7)	\$250.00

NOTE: The general penalty provision for the offences listed above is Section 12 of this By-law, a certified copy of which has been filed.