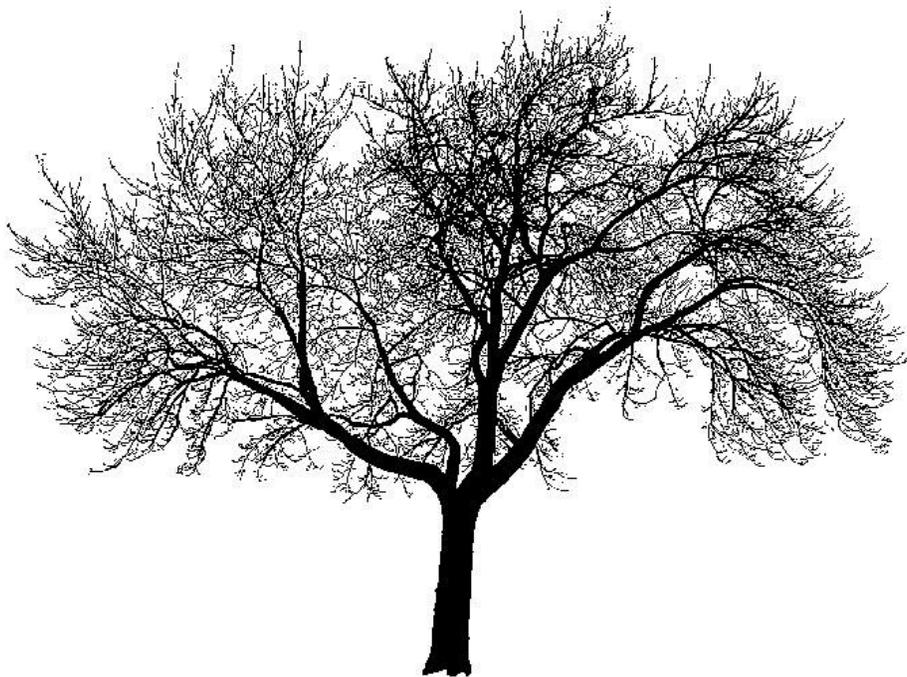




A Private Tree Preservation By-law # 131-2017

For the City of St. Thomas

The Private Tree Preservation By-law 131-2017 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 the work 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) is located and also means a contractor, arborist, occupant or other agent authorized to act on behalf of the Owner(s). The City may request written verification of such authorization. **“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, 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, species, size and the condition of the Tree(s), provides the reasons for any proposed Injuring or Destruction of a Tree, Author Information including contact information and qualification, tree planting plan and describes 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 at breast height, measured on the Tree stem 1.37 metres (4.5 feet) above the ground.

“Destroy” means to remove, cut down, or 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 cannot survive, and **“Destruction”** has a corresponding meaning.

“Director” means the Director of Parks and Recreation for the City and any City employee, including a City appointed Arborist, 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 Injury or Destruction of a Tree required to be performed immediately in order to prevent imminent danger including Tree maintenance work necessary due to a Hazard resulting from natural events (e.g. ice storm, high winds, lightning), as well as Tree maintenance work associated with emergency re-constructs or repair of a drain, waterline, utility or building.

“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, 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 a City appointed Arborist or the Director, to pose a potential safety concern to property or Persons.

“**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.

“**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 any other municipal body and includes, but is not limited to, road allowances, boulevards, parks, ravines, natural areas, woodlots, Highways, rights-of-ways and grounds of municipal facilities.

“**Municipal Tree**” means any Tree, the trunk of which at ground level is located 60% or more on Municipal Property. A 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 occurs.

“**Officer**” means an enforcement Officer appointed by the Council of the City pursuant to Section 11(1) of this By-law, which may include the City Arborist if so appointed.

“**Owner**” means the registered owner(s) of a lot or other lands, and his, her, their or its respective successors and assigns, and an agent acting on behalf of the Owner(s). Owners include all of the Owners registered on title in the Land Registry Office.

“**Permit**” means a permit issued under this By-law by the Director permitting Injury or Destruction of a Private 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) 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 Applicant conducts, alters or deters work that is 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, the trunk of which at ground level is located more than 40% on Private Property. A Tree is not a Private Tree where 60% or more of its base at ground level is located on Municipal 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 more than 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.

“woodlands” means land at least 1 hectare in area with at least:

- (i) 1000 trees, of any size, per hectare;
- (ii) 750 trees, measuring over five (5) centimetres DBH, per hectare;
- (iii) 500 trees, measuring over twelve (12) centimetres DBH, per hectare; or
- (iv) 250 trees, measuring over twenty (20) centimetres 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; and

“woodlot” means land at least 0.2 hectare in area and no greater than 1 hectare in area, with at least:

- (i) 200 trees, of any size, per 0.2 hectare;
- (ii) 150 trees, measuring over five (5) centimetres DBH, per 0.2 hectare;
- (iii) 100 trees, measuring over twelve (12) centimetres DBH, per 0.2 hectare; or
- (iv) 50 trees, measuring over twenty (20) centimetres 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) Any use of a singular term includes its plural, any use of a masculine term includes the feminine term and any use of the present tense includes the past tense, where applicable in this By-law.
- (3) 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.

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 of the Director, made under Section 6 or Section 7 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 DBH.

(2) 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 any other supporting documentation relevant to the issuance of the Permit.

(3) Any 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 Section 3 of this By-law apply in the following circumstances:

- a) activities or matters undertaken by the City for municipal purposes;
- b) Injury or Destruction of trees with a diameter of less than 30 cm DBH;
- c) the Injury or Destruction 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;
- e) Tree Pruning in accordance with good arboricultural practices or Good Forestry Practices;
- f) removal of a dead, terminally diseased or Hazardous Trees(s) or a portion of such a Tree(s), provided an Arborist Report has been submitted to the Director, which report confirms, to the satisfaction of the Director, the need for Injury or Destruction of the subject Tree(s);
- g) Trees on a Nursery or Golf Course;
- h) transplanting of Trees which are stock propagated or sold in the operation of a Nursery;
- i) the Injuring or Destruction of 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.
- j) where the removal of a Private 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) on the Owner's lot, 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 of the Tree(s) to be Injured or Destroyed, tree planting plan, description of Tree protection zones if required and including Author Contact information and details of qualification;
 - d) the written consent of every adjacent property owner upon whose adjacent land the base of the tree(s) to be Injured or Destroyed 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 Director may require.
- (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, 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) such additional information and documentation as the Director may require.
- (3) A Permit Application is not complete until the Applicant 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, provided that if the Permit Application remains incomplete and one (1) year has elapsed from the date the Permit Application was 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.
- (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.
- (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, with respect to the following Permit Applications the Application fee shall be waived by the City:
 - a) Applications for Destruction of a dead or a severely diseased Tree;

- b) Applications for Destruction or Injury 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 including:
 - 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 conditional upon the Owner providing a written undertaking for compliance satisfactory to the Director. A Permit may be issued subject to such requirements and/or conditions which may include but are not limited to any one or more of the following:
 - a) a replacement Tree(s) as set out in Schedule “C”;
 - b) submission of 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 indicating the location and type of 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 equal to the appraised value of the Tree(s) that is to be removed;
 - f) all permit fees are required to be paid at the time of Permit issuance or financial security satisfactory to the Director, provided to the City in cash or by bond or letter or credit in accordance with the City’s practice for security held, in an amount not less than the amount set by the Director
 - g) an Arborist Report confirming satisfactory completion of the Tree related plans and the condition of the site and/or of the subject Tree(s).
- (4) A Permit issued subject to any conditions shall be marked “conditional” and no work shall proceed under such Permit until conditions 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 condition, the Director may require any one or more of the following:
 - a) that a number of replacement Tree(s) satisfactory to the Director, or Tree(s) equivalents be provided by the Owner;

- b) that replacement Tree(s) be located on the same lot in a location, number, size and/or species to the satisfaction of the Director;
 - c) that a replanting plan be filed to the satisfaction of the Director;
 - d) a written undertaking by the Owner to carry out the replacement planting;
 - e) that payment for each replacement Tree not replanted on the Owner's Land be made to the City's replacement tree planting fund. The payment for each such Tree shall be the costs of planting an equivalent Tree as set out in Schedule "C".
- (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 posted on the property on which the Tree(s) are to be Injured or Destroyed are located. The posting shall be visible from the access street frontage for the entire period during which work is undertaken to Injure or Destroy a Tree(s) under the Permit and to comply with conditions of 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 complying with any other applicable laws, by-laws, regulations, and requirements of other governmental authority or other requirements of the City pertaining to the subject site work or circumstances.

PERMIT REFUSAL

7. (1) The Director shall not issue a Permit for the Injuring or Destruction of a Tree(s) where:
- a) the Application is not complete or the Applicant failed to pay required fees;
 - b) the information or a report, required by 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) has not been justified based on those criteria.
- (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 Permit was issued because of mistaken, false, or incorrect information;
 - b) The Permit Holder has failed to comply with a requirement or undertaking(s) 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 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.

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 Applicant receives notice that the Permit has been revoked by decision of the Director.
- (2) Where Council is satisfied that:
- 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 submission to the Council requesting that the matter be placed on the agenda of a Council Meeting;
 - c) such request 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.
- (3) Council will consider the merits of the Applicant's written request and hear the Applicant's oral submissions as well as any written report Council may receive from the Director regarding the basis for the Director's decision and Council may:
- a) uphold the decision of the Director;
 - b) require the Director to vary a condition(s) or requirement(s) on a Permit, or;
 - c) require the issue of the Permit or the reinstatement of a revoked Permit on 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.

ENFORCEMENT

- 11.(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 for any contravention of this By-law including, but not limited to, requiring a Person to cease and desist all actions causing Injury or Destruction of Trees contrary to this By-law or 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 cause or permitted the contravention, and if different, the Person who is the Owner or occupier of the land 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.
- (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 11(11) of this By-law.
- (8) If a Permit Holder fails to comply with an Order made under this Section of this By-law, the City may use any security posted with the City as a requirement for the Permit under the 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 11 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 11 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 of remedial work deemed necessary by the Director.

(11) Fees, and charges, including but not limited to the expense of work performed by the City, imposed under any provision of this By-law, 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.

OFFENCES

12.(1) Every Person who contravenes any provision of this By-law or an Order issued under Section 11 of this By-law is guilty of an offence.

(2) 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.

(3) Contraventions of any provision(s) of this By-law or an Order issued under Section 11 of 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

13.(1) Upon conviction of an offence under this By-law, a Person is liable to a fine as follows:

a) as allowed by Section 429 of the *Municipal Act*, the minimum fine for an offence is \$500.00 and the maximum fine for an offence is \$100,000.00;

b) as allowed by Section 429 of the *Municipal Act*, in the case of a continuing offence, for each day or part of a day that the offence continues the minimum fine shall be \$500.00 and the maximum fine shall be \$10,000.00 and despite paragraph 13(1)a) above the total of all fines for each included offence is not limited to \$100,000.00

c) as allowed by Section 429 of the *Municipal Act*, in the case of a multiple offence for each act or omission pertaining to each Tree the minimum fine shall be \$500.00 and the maximum fine shall be 10,000.00 and despite paragraph 13(1)a) above the total of all fines for each included offence is not limited to \$100,000.00

(2) Where any Person has Injured or permitted the Injury of a Tree that has been assessed by the Director as damaged beyond repair, or the Tree has been partially or fully removed, 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).

(3) In addition to being liable to a fine, a Person convicted of an offence under this By-law may by court order:

a) be prohibited from continuing or repeating the offence; and,

b) be required to correct the contravention or remediate the damage in the manner and within the period of time the court considers appropriate.

SHORT TITLE

14. 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.

First Reading: _____

Passed this ____ day of _____, 2019.

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	\$0.00
Dead, Diseased or Hazardous Trees	\$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;
- b) whether the Tree location 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;
- d) whether the Tree is 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 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, or a significant portion thereof, is 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 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 is 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 is 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 located in a woodlot or forested area 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
Up to 30cm at DBH	1	\$400.00
Up to 50cm at DBH	1	\$400.00
Up to 75cm at DBH	2	\$800.00
Up to 100cm at DBH	3	\$1200.00
Up to or greater than 100cm 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
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 and
 - b. of a species that will one day contribute to the Urban Forest Canopy

Schedule ‘D’

Tree Protection Zones

A Tree Protection Zone (TPZ) is to be constructed around all trees that are not subject to destruction within the construction area unless otherwise approved by the City Urban Forester.

The TPZ shall be determined in accordance with ISA Standards at a minimum of 30.5cm 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 City Arborist

All Supports and bracing 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 City Arborist
- Open faced cuts outside a TPZ that are consistent with an approved plan and that require root pruning, require the services of a qualified Arborist or approved tree care professional.

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 10 – 29 cm 30 ³ – 40 cm 41 – 50 cm 51 – 60 cm 61 – 70 cm 71 – 80 cm 81 – 90 cm 91 – 100 cm > 100 cm	1.2 m 1.8 m 2.4 m 3.0 m 3.6 m 4.2 m 4.8 m 5.4 m 6.0 m 6 cm protection for each 1 cm diameter	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 ⁵