

CITY OF ST. THOMAS

BY-LAW NO. 61 - 2019

A by-law to amend By-Law 131-2017, being a by-law to Prohibit or Regulate the Destruction or Injury of Trees on Private Property within the City of St. Thomas.

THE COUNCIL OF THE CITY OF ST. THOMAS ENACTS AS FOLLOWS:

1. THAT Section 1 be deleted and replaced with the following:

“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. THAT Section 4. (1) be deleted and replaced with the following:

“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) Trees on a Nursery or Golf Course;
- g) transplanting of Trees which are stock propagated or sold in the operation of a Nursery;
- h) the Injuring or Destruction of Trees by a transmitter or distributor, as defined in the *Electricity Act, 1998*, S.O. 1998, c.15, Schedule 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) is specifically required in an Order made under the City's Property Standards By-law (72-204) or Tidy Lot By-law (6-94)."

3. THAT Section 5. (1) be deleted and replaced with the following:

"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); such additional information and documentation as the Director may require."

4. THAT: Section 5. (2) be deleted and replaced with the following:

"5. (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."

5. THAT Section 6. (3) be deleted and replaced with the following:

“6. (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; minimum \$400.00 or whichever is greater;
- 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).”

6. THAT Section 13. (2) be deleted and replaced with the following:

“13. (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).”

7. THAT Schedule ‘A’ be deleted and replaced with the following:

“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.”

8. THAT Schedule ‘B’ be deleted and replaced with the following:

“Schedule ‘B’

List of Criteria referred to in Section 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 stormwater 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.”
- o)

9. THAT Schedule ‘C’ be deleted and replaced with the following:

“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

- 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 that will go towards the enhancement and management of the City’s Urban Forest;
- Where the Property Owner chooses to plant trees on their property themselves, replacement trees are to be:
 - a minimum of 35mm diameter measured at 15cm above root collar and
 - of a species that will one day contribute to the Urban Forest Canopy.”

10. THAT Schedule ‘D’ be deleted and replaced with the following:

“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.

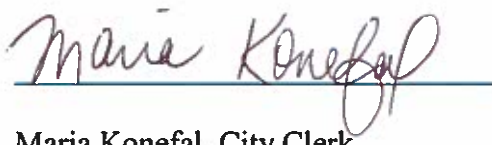
Tree Protection Barriers

Tree Protection Zones: Trunk Diameter (DBH)	Minimum Protection Distances Required 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– 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 e.g 12 cm protection for each 1 cm diameter or the drip line

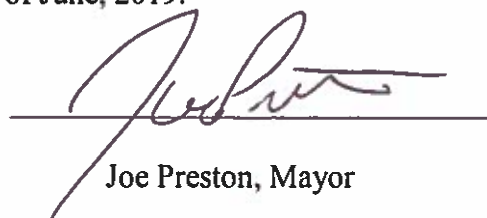
11. This by-law shall come into effect on the day of passing.

READ a First and Second time this 3rd day of June, 2019.

READ a Third time and Finally passed this 3rd day of June, 2019.



Maria Konefal, City Clerk



Joe Preston, Mayor