

THE CORPORATION OF THE CITY OF PORT COLBORNE

BYLAW NO. 6175/01/15

**BEING A BY-LAW TO AUTHORIZE AND REGULATE THE PLANTING,
CARE, MAINTENANCE AND REMOVAL OF TREES ON OR
AFFECTING PROPERTY OF THE CITY OF PORT COLBORNE**

WHEREAS subsection 11(1) of the *Municipal Act 2001*, S.O. 2001, c. 25, as amended (the "Act") provides that a municipality may pass bylaws within the sphere of jurisdiction of highways;

AND WHEREAS subsection 9(1) of the Act provides that Section 11 shall be interpreted broadly so as to confer broad power and authority on municipalities to enable them to govern their affairs as they consider appropriate and to enhance their ability to respond to municipal issues;

AND WHEREAS subsection 62(1) of the Act authorizes a municipality, at reasonable times, to enter upon land lying along any of its highways to inspect trees, and to 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 and safety of persons using the highway;

AND WHEREAS subsection 62(2) of the Act provides that an employee or agent of the municipality may remove a decayed, damaged or dangerous tree or branch of a tree immediately and without notice to the owner of the land upon which the tree is located, if, in the opinion of the employee or agent, the tree or branch poses an immediate danger to the health or safety of any person using the highway;

AND WHEREAS Section 141 of the Act provides that a municipality may provide trees to the owners of land adjacent to any highway and may plant the trees on the owner's land with consent;

AND WHEREAS Section 391 of the Act provides that a municipality may pass bylaws imposing fees or charges on any class of persons for services or acts provided or done by or on behalf of it;

NOW THEREFORE the Corporation of the City of Port Colborne enacts as follows:

1. Definitions

In this Bylaw,

- (a) "**Adjacent Tree**" means a tree which directly abuts and/or impacts City Property;
- (b) "**Boulevard**" means that portion of a road allowance within the limits of the City of Port Colborne which is not used as a sidewalk, driveway, travelled roadway or shoulder;
- (c) "**City**" means the City of Port Colborne;
- (d) "**City Property**" includes but is not limited to City parks and City streets;
- (e) "**City Street**" includes but is not limited to a common or public highway, road, street, boulevard, lane or other road allowance or any portion thereof under the jurisdiction of the City of Port Colborne;
- (f) "**Council**" means the Council of the Corporation of the City of Port Colborne;
- (g) "**Deface**" includes but not is limited to painting or carving of words, figures, symbols or any other markings to the bark of a tree;
- (h) "**Destroy**" shall mean to change the structure or condition of a tree such that it cannot reasonably be returned to its original structure or condition;
- (i) "**Director**" means the Director of Engineering and Operations or any person designated to act on their direction;
- (j) "**Drip Line**" means the area on the ground directly located under the outer circumference of Tree branches;

- (k) **“Private Tree”** means a tree located on private property which is not an Adjacent Tree;
- (l) **“Tree”** means a plant of any species of woody perennial including its root system, which has reached or can reach a height of at least 2 metres at physiological maturity;
- (m) **“Tree Removal Notification”** means a notification provided to a property owner at least 30 calendar days prior to the removal of an Adjacent Tree.
- (n) **“Registered mail”** means mail that require proof of mailing and/or proof of delivery and shall include Xpresspost

2. Administration

- (1) This Bylaw shall be administered and enforced by the Director.
- (2) The Director is hereby authorized to plan, regulate, supervise and carry out the planting, care and maintenance, protection, preservation and removal of all City Trees.
- (3) The Director is hereby authorized to trim or remove Adjacent Trees as set out in this Bylaw.
- (4) The following schedules and appendices attached to this Bylaw and listed below form part of this Bylaw:

Appendix A - Inspection Policy and Procedure re: City highways
 Appendix B - Tree Removal Policy and Procedure
 Appendix C - Fees

3. General Provisions

City Trees

- (1) Without limiting the generality of Section 2 above, the Director is hereby authorized to take or cause the following action:
 - (a) To plant Trees on City Property;
 - (b) To care for and maintain Trees on City Property including removal where required;
 - (c) To identify the species of Trees which may be planted on City Property;
 - (d) To remove without notice or compensation to any person, any object or thing that adversely affects a Tree or part of a Tree located on City Property;
 - (e) To implement all necessary treatments for insect and disease problems associated with Trees on City Property;
 - (f) To stop any work causing injury or destruction to a Tree located on City Property that is taking place without the permission or approval of the Director;

Adjacent Trees – Decayed, Damaged or Dangerous Trees or branches of Trees

- (2) The Director is hereby authorized to prune Adjacent Trees where branches extend over a City Street which are hazardous or which create an unsafe condition.
- (3) The Director is hereby authorized, upon notification to a property owner, to enter land adjacent to a City Street to remove decayed, damaged or dangerous Trees or branches of Trees extending over a City Street, if in the opinion of the Director, the Trees or branches pose a danger to the health or safety of any person using the City Street.
- (4) The Director is hereby authorized to remove decayed, damaged or dangerous Trees or branch of Trees extending over a City Street immediately and without notice to the owner of land upon which the Tree is located if, in the opinion of the Director, the Trees or branches pose an immediate danger to the health or safety of any person using a City Street.

4. Prohibitions against Injury, Destruction or Interference with Trees on City Property

- (1) No person shall:
 - (a) Injure or destroy, or cause to be injured or destroyed, a Tree growing on City Property;
 - (b) Remove or cause to be removed a Tree growing on City Property;
 - (c) Deface, tack, paste or otherwise attach a bill or note to any other thing or object to a Tree growing on City Property, or to a stake, post, guard or other object supporting such Tree;
 - (d) Plant or cause to be planted any Tree or any part of a Tree on City Property without permission of the Director.
- (2) Any person undertaking work within the Drip Line of a public Tree shall not undertake work without the consent of the Director, and shall follow all regulations and conditions that form part of the Director's approval.
- (3) No person shall trim any Tree located on City Property.

5. Planting of Trees

- (1) No person shall plant a Tree on City Property.
- (2) The plantings of the following Tree species on private property shall be a minimum of 4.5 metres from any property line adjacent to City Property:
 - (a) Manitoba Maple
 - (b) Silver Maple
 - (c) All Poplar Species
 - (d) All Willow Species
 - (e) All Ash Species
 - (f) All Coniferous Species

6. Removal of City Trees

Request for Removal of City Trees by Adjacent Property Owner

- (1) Where the Director agrees to a request for the removal of a Tree on City Property, all costs shall be payable by the person requesting the Tree removal prior to removal of the Tree, except in the case of a tree that is, in the opinion of the Director, severely damaged or decayed.
- (2) All Tree removals on City Property shall be carried out by the Director.
- (3) The Tree removal cost shall include a fee for planting, care and maintenance during a 2 year establishment period of a replacement Tree on City Property.
- (4) The Director shall plant the Tree close to the location of the Tree which was removed where the Director determines it is reasonably possible to do so, or if not reasonably possible, at a location determined by the Director.

Removal by Director

- (5) Should the Director remove a Tree on City Property in front of or adjacent to private property, the owner of the affected private property may request that the Director provide a replacement Tree.
- (6) When a Director approves a replacement Tree on private property, the location of the replacement Tree shall be in front of or adjacent to the City Property where the original tree was located. Replacement Trees shall be set back a minimum of 1.5 metres from City owned Property, unless the Tree is a species as listed in Section 5(2).
- (7) The City shall install and supply a replacement Tree, the variety being one from the approved tree replacement list.

- (8) Once planted, a replacement Tree on private property is the sole responsibility of a property owner.

7. Maintenance, Trimming and/or Removal of Adjacent Trees

- (1) Every owner of an Adjacent Tree shall ensure that the Adjacent Tree is maintained in good condition and state of repair, free of decay and damage, such that the Adjacent Tree does not pose a danger to persons using City Property.
- (2) Without limiting section 7(1), every owner of an Adjacent Tree shall:
- a. ensure that all low hanging branches including live branches shall be trimmed or removed to a height of 4 metres from ground level; and
 - b. ensure that all low hanging branches including live branches are trimmed or removed to clear any obstructions and to improve visibility of regulatory signs, warning signs or traffic movement.
- (3) Decayed, damaged or dangerous Trees or branches of Trees may be removed by the Director in accordance with subsections (2), (3) and (4) of section 3 of this Bylaw.
- (4) Where an Adjacent Tree, or the branches of an Adjacent Tree, has been designated for removal by the City under section 3(3), notice shall be provided by the City to the property owner by way of registered mail or personal service
- (5) Where a property owner has received a Notice of Designation for Removal of Tree or branches under section 7(4), the property owner shall:
- a. request that the City remove the Adjacent Tree or branches as set out in the Notice of Designation; or
 - b. remove the Adjacent Tree or branches within a reasonable time as agreed to by the City; or
 - c. dispute the Notice of Designation for Removal of Tree or branches by filing a Notice of Objection with the Director within fourteen (14) days of the date of the Notice of Designation for Removal;
- (6) Where a Director receives a Notice of Objection, the Director may cause the matter to be heard by Council;
- (7) Council may affirm, revoke or vary a Notice of Designation for Removal, or may waive all or a portion of the fees required to be paid by section 7(8) below;
- (8) Where an Adjacent Tree is removed by the City in accordance with this By-law, the costs shall be borne by the property owner in accordance with Schedule "C" of this By-law.
- (9) Where an Adjacent Tree which has been designated for removal encroaches on municipal property, the costs of removal shall be equally apportioned between the City and the property owner.

8. Removal of Adjacent Tree by Property Owner

- (1) No person shall remove an Adjacent Tree without written notice to and approval of the Director.
- (2) The Director's approval to remove an Adjacent Tree may be given after an inspection of the Adjacent Tree and a determination of the limit of the road allowance.

9. Enforcement

- (1) In addition to the Director, the administration and enforcement of this Bylaw may be performed by persons designated by Council as Municipal Law Enforcement Officers.
- (2) No person shall hinder or obstruct or attempt to hinder or obstruct the Director in the exercise of his or her powers and performance of duties under this Bylaw.

10. Offences and Penalties

- (1) Any person who contravenes any provision of this Bylaw is guilty of an offence and upon conviction is liable to a penalty as prescribed by the *Provincial Offences Act*, R.S.O. 1990, c.P.33, as amended.

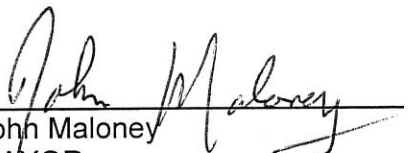
11. Interpretation

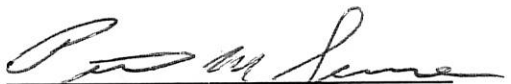
- (1) Should a Court of competent jurisdiction declare part or whole of any provision of this Bylaw to be invalid or of no force or effect, the provision or part is deemed severable from this Bylaw, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with the remaining terms to the fullest extent possible under law.
- (2) If there is a conflict between a provision of this Bylaw and a provision of any other City Bylaw, the provisions of this Bylaw shall apply.
- (3) This Bylaw shall come into effect on the day that it is passed.

12. Short Title

- (1) The short title of this Bylaw shall be the "Bylaw Regulating Trees Affecting City Property".

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 12TH DAY OF JANUARY, 2015.


John Maloney
MAYOR


Peter M. Senese
DEPUTY CLERK

POLICY # T1 - 14

TITLE: INSPECTION POLICY AND PROCEDURE

SCOPE:

The following sets out the Protocol and procedure for inspections with respect to:

- Road Patrols and complaints received

PURPOSE:

To establish the procedure regarding tree inspections within the City of Port Colborne.

SUMMARY:

1. The City of Port Colborne Engineering and Operations Department while on regular patrol will identify any trees with falling branches or limbs and any damaged trees due to storm or accidents.
2. The City of Port Colborne Roads Division will enter into the Service 4.6 Database any trees which they have found that may require any work, such as trimming, removal or expert arborist review.
 - a. Any tree complaints received via email, phone or in person, shall be entered into the Service 4.6 Database.
3. The status of the tree is then established, by the Roads Foreman or additional expert review as required.
4. The location of the tree is then established to determine if the tree is an adjacent tree. If it is determined to be an adjacent tree, the percentage of ownership shall be determined by the Engineering and Operations Department, for cost recovery purposes.
5. The status to trim the tree or remove it will be made and placed on the appropriate work order. Depending on the severity of the tree issue, will determine its position on the list to trim or remove. Funding will determine if the list can be completed in any one year.
6. A photograph of the tree shall be taken before and after removal, and such photos shall be placed in the Service 4.6 Database for cost recovery purposes.
7. Any inspections or remedial work that is done prior to removal shall be noted in the Service 4.6 Database. Noting the date and time of such inspection.
8. If trimming is required, then the trimming shall be done and entered into the Service 4.6 Database to keep track of the history of the tree status.
9. All trees that have been trimmed due to storm or other damage shall be reinspected within a 1 year period, to determine the status/health of the tree.
 - a. A Due Date reminder can be entered into the file and a work order shall be issued to review the status of the tree.

10. Once the tree has been removed the file can be closed.
11. Private Trees - Should it be determined that the status of the tree is a private tree, the complaint, or Road Patrol information regarding such tree shall be forwarded to the By-law Enforcement Division for review of any by-law violations.

POLICY # T2 - 14

TITLE: REMOVAL POLICY AND PROCEDURE

SCOPE:

The following sets out criteria and responsibilities with respect to:

- removal of trees

PURPOSE:

The objective of tree removal:

- a) to remove dead, decayed, damaged, dangerous or diseased trees;
- b) to remove trees which seriously obstruct the vision or otherwise present a hazard to the travelling public;
- c) to remove trees which interfere with road construction, utilities, or private developers, but only when no other reasonable alternative can be found;
- d) to remove trees growing on Public property, contrary to any Council approved By-laws or agreements.

SUMMARY:

1. All trees requiring removal shall be inspected by the City prior to the commencement of any work. This inspection shall generally include locating the limit of the road allowance to determine the status of the tree.
2. Adjacent Tree removal shall be done by the City at the property owner's expense. Only upon the execution of the Director.
3. Removal includes the stump to ground level.
4. Prior to the tree removal, the City shall notify the property owner via "Notice of Designation for Removal of Adjacent Tree". Except, trees that are causing an immediate danger.
5. Compliance with the City's Policy respecting the disposal of wood cut on City property.

Removal Costs:

1. Adjacent Tree removal will be the sole responsibility of the private property owner, including removal of the stump to ground level, unless Section 3(3) or 3(4) of the Tree By-law are invoked.
2. Tree removal for the installation of a new entranceway will be the sole responsibility of the property owner.

POLICY # T3 - 14

TITLE: FEES

SCOPE:

The following sets out the Fees for Trees within the City of Port Colborne.

PURPOSE:

To establish the fees regarding trees within the City of Port Colborne.

SUMMARY:

1. Listed below are the rates and fees for tree trimming and removal

Description	Rates & Fees
Tree Trimming	\$200/hr
Tree Removal	\$300/hr
Stump Removal	\$100/ hr
Tree Replacement	\$350 per tree
Tree Inspection – by Arborist	\$500 per report
Municipal Consent for Tree Removal	No Charge

The above noted rates and fees shall be increased each year as per the percentage of the Construction Cost Index.