

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2016-94

Being a By-law to regulate the planting, preservation, maintenance and removal of public trees, including the cleanup of debris falling from such trees, within the Town of Amherstburg.

WHEREAS Section 10 of the *Municipal Act*, 2001, S.O. 2001, c. 25 as amended (“the *Municipal Act*, 2001”) provides that a single-tier municipality may pass by-laws respecting the economic, social and environmental well-being of the municipality;

AND WHEREAS Section 62 of the *Municipal Act*, 2001, S.O. 2001 authorizes a municipality, at any reasonable time, 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 opinion of the municipality, the trees or branches pose a danger to the health or safety of any person using the highway;

AND WHEREAS pursuant to Section 135 of the *Municipal Act*, 2001, S.O. 2001, provides that the municipality may prohibit or regulate the destruction or injuring of trees;

AND WHEREAS Section 425 of the *Municipal Act*, 2001 S.O. 2001, c 25, as amended, provides that a municipality may pass by-laws providing that a person who contravenes a bylaw of the municipality passed under this Act is guilty of an offence.

AND WHEREAS Section 429 of the *Municipal Act*, 2001 S.O. 2001, c 25, as amended, provides that a municipality may establish a system of fines for offences under a by-law of the municipality passed under this Act.

AND WHEREAS Section 446 of the *Municipal Act*, 2001 S.O. 2001, c.25, as amended, provides that a municipality may proceed to do things at a person’s expense which that person is otherwise required to do under a bylaw 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 it is deemed expedient to regulate the maintenance of public trees, including the cleanup of debris falling from such trees, within the Town of Amherstburg;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF AMHERSTRBURG ENACTS AS FOLLOWS:

1. DEFINITIONS:

In this by-law:

- a) “CAO” means the Chief Administrative Officer of the Corporation of the Town of Amherstburg or his or her designate;
- b) “Council” means the Council of the Corporation of the Town of Amherstburg;
- c) “Drip Line” refers to an imaginary line (circle) found under an existing tree as measured by the diameter of the crown from the farthest branch on the opposite side;

- d) "Enforcement Officer" means an individual appointed by the Town under the Police Services Act for the purpose of enforcing Town by-laws;
- e) "Hedges" includes all plants of similar variety grown together forming a visual or physical barrier, as well as any mass planting or groups of plants used for visual or physical barriers;
- f) "Owner" shall include any person who is an owner of land either jointly or in common with any other person or persons and shall include any or all such person;
- g) "Occupant" shall include:
 - i. The person who is in physical possession of a building or land; or
 - ii. A person who has responsibility for and control over the condition of a building or the activities carried on therein or control over persons allowed to enter the building notwithstanding that there may be more than one occupant of the same building or land;
- h) "Park" includes all public parks, environmentally significant areas, natural park areas, playgrounds and sports fields under the jurisdiction of the Town;
- i) "Person" means any person, firm, partnership, association, corporation, company, or organization of any kind;
- j) "Property line" means the line between the public right-of-way and abutting property;
- k) "Public place" includes all parks and all streets or highways;
- l) "Sidewalk" means the hard surface in front of, alongside, or at the rear of occupied or unoccupied premises, intended for pedestrian use;
- m) "Sight triangle" refers to the measured area found at the intersection or corner of two streets where its location is measured back ten metres (10m), (or any other distance as determined by the CAO), from the intersection along each edge forming a triangle free of obstruction;
- n) "Street" or "Highway" means the entire width of every public way or right-of-way in the Town open for the use of the public for the purpose of vehicular or pedestrian traffic;
- o) "Town" means the Corporation of the Town of Amherstburg
- p) "Trees" includes all shrubs, hedges and woody vegetation now or hereafter growing on any public or private place.
- q) "Woodlands" means woodlands as defined in the Forestry Act that are 1.0 hectare or more in area.

2. PERMISSION TO PLANT:

No person may plant any tree in any public place without first having received permission in writing from the Town and any person receiving such permission shall comply with instructions of the Town.

3. PROHIBITED SPECIES

- a) Schedule "A" attached, lists trees acceptable for planting in public places in the Town of Amherstburg. Existing and future utility and environmental factors shall be considered when recommending specific species of trees for streets or other public places. Trees considered undesirable shall not be recommended for general planting and their use shall be restricted to locations where, because of certain characteristics of adaptability or landscape effect, they can be used to the advantage of the geographic area.
- b) The following species of trees may not be planted on highways in the Town:
 - i. Black Walnut
 - ii. Chinese Elm
 - iii. Manitoba Maple
 - iv. Mulberry
 - v. Poplar and Willow (all varieties)
 - vi. Tree of Heaven
 - vii. Thorny Hawthorns
 - viii. Black Locust
 - ix. Ash Trees
 - x. Siberian Elm
- c) If a tree is planted in conflict with the provisions of Section 3 of this by-law, the Town may remove or cause removal of the same at the owner's expense.

4. DUTIES OF OWNERS/OCCUPANTS OF PRIVATE PROPERTY:

- a) Any person owning or occupying property abutting any public sidewalk or highway and upon which property there are trees, shall prune using sound and correct horticultural practices, as directed by the CAO, and these trees shall be pruned in such a manner that they will not obstruct the passage of pedestrians on sidewalks, obscure street lighting, traffic signs, or interfere with power lines, or obstruct the view of any intersection. The minimum height over any portion of a sidewalk shall be nine feet (9') and over the traveled portion of the highway shall be fourteen feet (14') except truck thoroughfares for which the minimum clearance shall be sixteen feet (16').
- b) Owners and occupants of property abutting a public sidewalk or highway shall clear away and remove from public sidewalks located alongside, in front of, or at the rear of his/her property, any branches or other debris having fallen onto public sidewalks from any tree, whether such tree is located on his/her own or publicly-owned property.
- c) If any person fails to clear away and remove any branches or debris having fallen from a tree onto a public sidewalk or highway, in accordance with Section 4 of this by-law, the Town will perform the work and may recover any expenses related to the work incurred in like manner as municipal taxes.

5. DANGEROUS TREES:

Where any tree or part thereof is growing upon private property, but overhanging or interfering with the use of any public place and, in the opinion of the CAO, endangers the life, health, safety or property of the public, the owner shall be notified in writing by the Town of the existence of the danger or of the requirements to remove the tree and given reasonable time for its correction or removal. If not corrected or removed within the time allotted, the Town may cause the danger to be corrected or the tree removed, at the owner's expense.

6. DAMAGE OF TREES:

No person shall, without the prior written authorization of the CAO or designate; do or cause or permit to be done to any tree on publicly owned property, any of the following:

- a) Plant, remove, or cut down a tree or any part of a tree;
- b) Mark, cut, break, debark, deface, damage, climb or in any manner injure or destroy a tree, or any part of a tree;
- c) Spray, fertilize, prune, trim, disturb, remove or alter a tree or any part of a tree;
- d) Tack, paste, or attach a bill or note or any other thing to a tree or to a stake, post, guard or other object supporting such tree;
- e) Do or cause to be done any work on any public highway or lands adjacent thereto which will affect any tree growing thereon;
- f) Allow gaseous, liquid or solid substances which are harmful or toxic to trees to come into contact with any tree;
- g) Interfere with fences, boxes or other protective devices placed around any tree;
- h) Alter or change soil levels in the vicinity of any tree in a manner likely to cause injury to the tree;
- i) Excavate, disturb or compact soil within the drip line of a tree; or
- j) Cause or permit any animal under their control or ownership to deface or injure any tree or plant material.

7. REMOVAL

No person shall remove any tree growing in any public place for the purpose of construction or for any other reason without having obtained written permission from the CAO. Every attempt shall be made to retain the tree in its existing location or with the permission of and to the satisfaction of the CAO to move the tree and place it in an alternative location. Any person removing a tree shall forward the replacement value of the tree being removed to the CAO before removing such tree (in accordance with accepted formula for tree valuation of the International Society of Arboriculture) and shall also, if the Town is to remove such tree, forward the removal costs as determined by the CAO provided that in the case of the public utility or municipal operations, the compensation payable for trees removed shall be the cost of replacing same with suitable trees of a caliper between 80 mm and 100mm caliper as determined necessary by the CAO.

8. MAINTENANCE AND CARE OF TREES ON PUBLIC PROPERTY:

- a) The planting, care, removal and maintenance of all trees located on publicly owned property shall be under the supervision of the CAO.
- b) The CAO is hereby authorized:
 - i. To plant, or cause to be planted trees on any highway or public property;

- ii. To water, fertilize, spray, trim or cause to be watered, fertilized, sprayed or trimmed, any tree growing on any highway or public property, or on private property where the branches extend over a highway;
 - iii. To remove or cause to be removed without notice or compensation to any person, anything which in his or her opinion adversely affects a tree, including a stake, post, guard or other object that supports a tree;
 - iv. To remove or cause to be removed any tree or part of a tree which in his or her opinion is decayed, diseased or hazardous to the public;
 - v. To remove or cause to be removed any tree or part of a tree which interferes with existing or proposed municipal services; and
 - vi. To take whatever measures deemed necessary in his or her judgment to extend the useful life of a tree without impacting on public liability.
- c) Whenever it is necessary for a public utility, or in connection with municipal operations, to trim trees growing in public or perform other operations affecting trees, the CAO shall be notified at least seven (7) days in advance regarding such trimming or other operation. Any trimming or other work performed on such trees shall be limited to the actual necessities of the services of such utility or municipal operation, and shall be performed in a neat and workmanlike manner to the satisfaction of the CAO.

9. PROTECTION WHEN TREES ARE NEAR EXCAVATION:

All trees on any public place near any excavation or construction of any building, structure or street work, shall be protected to the satisfaction of the CAO, by means of a snow fence barrier or other barrier necessary. The barrier shall be set within three metres (3m) or at the drip line, whichever is greater, of any tree growing within the construction or project area.

10. DAMAGE TO ROOT:

- a) No person may deposit, place, store or maintain upon any public place within three metres (3m) or within the drip line of any tree growing thereon, any stone, brick, sand, concrete, other materials, machines or equipment which may impede the free passage of water, air and fertilizer to the roots of any tree growing thereon, or compact the soil around any existing tree or add soil around any existing tree.
- b) No person shall excavate any ditches, tunnels, trenches or lay any driveway within a radius of three metres (3m) or within the drip line of the tree, whichever is greater from any tree growing in a public place without written permission from the CAO.

11. ENFORCEMENT:

- a) The Enforcement Officer of the Town or other duly appointed individual shall enforce the provisions of this by-law.
- b) No person shall obstruct, hinder or otherwise interfere with an Enforcement Officer or other duly appointed individual in the lawful carrying out of their duties and responsibilities under the provisions of this by-law.

12. PENALTY:

- a) Any person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to the following penalties:
 - i) Where the proceeding is commenced by a Certificate of Offence under Part I of the Provincial Offences Act, a minimum fine of not less than \$500 and a maximum fine of not more than \$1,000;
 - ii) In the case of multiple offences, where the proceeding is commenced by a Certificate of Offence under Part I of the Provincial Offences Act, for each offence, a minimum fine of not less than \$500 and a maximum fine of not more than \$1,000, and a total fine of not more than \$10,000;
 - iii) Where the proceeding is commenced by an Information under Part III of the Provincial Offences Act, a minimum fine of not less than \$500 and a maximum fine of not more than \$10,000;
 - iv) In the case of multiple offences, where a proceeding is commenced by an Information under Part III of the Provincial Offences Act, for each offence, a minimum fine of not less than \$500 and a maximum fine of not more than \$10,000, and a total fine of not more than \$100,000; and
 - v) Where a proceeding is commenced by an Information under Part III of the Provincial Offences Act and where it is proven that the contravention was for the purpose of economic advantage or gain, a special fine may be imposed exceeding \$100,000
- b) Any damage to or the destruction of each tree is a separate offence for the purpose of this by-law.

13. REMEDIAL ACTION:

Whenever this by-law directs or requires any matter or thing to be done by a person, in default of its being done by the person Ordered to do so, the matter or thing may be done by the Town and the Town may recover the costs incurred by action or by adding the costs to the tax roll and collecting the in the same manner as property taxes.

14. SEVERABILITY:

- a) Should any paragraph, clause or provision of the By-law be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of the By-law as a whole or any part of thereof, other than the part which was declared to be invalid.
- b) When any requirement of this by-law is at variance with any other by-law in effect in the Town or with any applicable provincial or federal statute or regulation, the more restrictive requirement shall apply unless otherwise stated in such legislation.

15. SHORT TITLE:

This By-law may be cited as the Public Tree By-law.

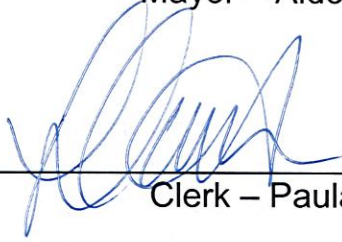
16. REPEAL:

By-law 2005-19; being a by-law to regulate the planting preservation, maintenance and removal of trees in public places within the Town of Amherstburg is hereby repealed.

Read a first, second and third time and finally passed this 11th day of October 2016.



Mayor – Aldo DiCarlo



Clerk – Paula Parker

THE CORPORTION OF THE TOWN OF AMHERSTBURG

SCHEDULE "A"

GUIDELINES FOR TREE PLANTING ON THE RIGHT-OF-WAY

RECOMMENDED TREE SPECIES

- (1) Only deciduous trees are recommended for street planting (see list below)
- (2) Where several trees are to be planted, no more than three (3) trees of one species are to be planted consecutive.
- (3) The following trees are coded as to the most suitable and adaptable locations for planting and development:
 - A – Parks and Cemeteries
 - B – Core area of Town
 - C – Residential
- (4) Whenever possible Carolinian Tree Species should be planted.
(*Depicts a Carolinian Tree Species)

SHADE TREES (Plant 6m to 10m apart)

Area	Botanical Name	Common Name	Notes
A/C	<i>Aesculus carnea</i> , "Briotti"	Ruby Red Horsechestnut	Large leaf, fruitless only
A/C	* <i>Cladrastis lutea</i>	Yellowwood	White flower in June
A	* <i>Fagus</i> (all species)	Beech	Shallow root, dense shade
A	<i>Ginko biloba</i>	Maidenhair Tree	Use non fruit variety
A/B/C	* <i>Gleditsia triacanthos inermis</i> & variations	Honey locust	Light open canopy
A/B/C	* <i>Gymnocladus dioicus</i>	Kentucky Coffeetree	Large seed pod
A/C	<i>Liquidambar styraciflua</i>	Sweetgum	Corky bark
A/C	* <i>Liriodendron tulipifera</i>	Tulip Tree	Interesting leaves/ flowers
A/C	* <i>Nyssa sylvatica</i>	Blackgum	Bright red fall colour
A/B/C	<i>Platanus acerifolia</i>	London Plane Tree	Sheds bark, large tree
A/C	* <i>Quercus alba</i>	White Oak	Dense shade, acorns
A/C	<i>Quercus rubra</i>	Red Oak	Dense Shade, acorns
A/C	<i>Quercus macrocarpa</i>	Bur Oak	Dense shade, acorns
A/C	<i>Tilia americana</i>	Basswood	Small round seed
A/B/C	<i>Tilia cordata</i>	Littleleaf Linden	Conical shape
A/B/C	* <i>Celtis occidentalis</i>	Hackberry	Unique bark
A/C	<i>Acer rubrum</i>	Red Maple	Red Fall colour

ORNAMENTAL TREES (Narrow highways or under wires)

Area	Botanical Name	Common Name	Notes
A/B/C	<i>Acer platanoides columnar</i>	Columnar Norway Maple	Upright form
A/C	* <i>Amelanchier arborea</i>	Serviceberry	Small tree/ bush
A/C	* <i>Cercis canadensis</i>	Eastern Redbud	Excellent spring colour
A/C	* <i>Cornus florida</i>	Flowering Dogwood	Red berry, White flower
A/B/C	<i>Pyrus calleryana</i> & variations	Callery Pear	Spring flower, fruitless
A/B/C	<i>Quercus robur fastigata</i>	Columnar English Oak	Upright form
A/B/C	<i>Syringa reticulata</i>	Japanese Tree Lilac	White mid-summer flowers
A/C	<i>Cercidiphyllum japonicum</i>	Japanese Katsura	Small tree

OFFICE OF THE REGIONAL SENIOR JUSTICE
ONTARIO COURT OF JUSTICE
WEST REGION

80 DUNDAS STREET, 10TH FLOOR, UNIT L
LONDON, ONTARIO N6A 6A8



CABINET DU JUGE PRINCIPAL RÉGIONAL
COUR DE JUSTICE DE L'ONTARIO
RÉGION DE L'OUEST

80, RUE DUNDAS, 10^E ÉTAGE, UNITÉ L
LONDON (ONTARIO) N6A 6A8

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November 15, 2016

Nicole Rubli
Town of Amherstburg
271 Sandwich St. South
Amherstburg, ON N9V 2A5

Dear Ms. Rubli:

**Re: Set Fines - Provincial Offences Act - Part I
By-law Number 2016-94, of the Town of Amherstburg**

Enclosed herewith is an original Order, and an original schedule of set fines for the above referenced By-Law, the By-law indicated in the schedule.

The setting of the fines does not constitute my approval of the short form of wording used to describe the offences.

I have forwarded the copy of the Order and the schedules of set fines to the Provincial Offences Court in Windsor together with a copy of the By-law.

Yours truly,

A handwritten signature in black ink, appearing to read "S. Fuerth".

Stephen J. Fuerth
Regional Senior Justice
West Region

encl.
/cb

PROVINCIAL OFFENCES ACT

Part I

IT IS ORDERED pursuant to the provisions of the Provincial Offences Act and the rules for the Ontario Court of Justice that the amount set opposite each of the offences in the schedule of offences under the Provincial Statutes and Regulations thereunder and Municipal By-law No. 2016-94 of the Town of Amherstburg, attached hereto are the set fines for those offences. This Order is to take effect November 15, 2016.

Dated at London this 15th day of November, 2016.



Stephen J. Fuerth
Regional Senior Justice
West Region

**The Corporation of the Town of Amherstburg
By-law No. 2016-94: Public Tree By-law
Part I Provincial Offences Act
Set Fine Schedule**

Item	COLUMN 1 Short Form Wording	Column 2 Provision creating or defining offence	Column 3 Set fines
1.	Fail to clear away and remove any branches or debris from public sideway or highway	4 (b)	\$500.00
2.	(Remove/Cut down) a tree on public property	6 (a)	\$1000.00
3.	(Plant/Remove/Cut down) any part of a tree on public property	6 (a)	\$750.00
4.	(Mark/Cut/Break/Debark/Deface/Damage/Injure/Destroy) any part of a tree on public property	6 (b)	\$750.00
5.	(Spray/Fertilize/Prune/Trim/Disturb/Alter) any part of a tree on public property	6 (c)	\$500.00
6.	(Tack, Paste, Attach) any object to a (tree, tree supporting object) on public property	6 (d)	\$500.00
7.	(Do/Cause) work on lands adjacent to trees on public property which will affect growth	6 (e)	\$750.00
8.	Allow harmful gaseous, liquid or solid to contact trees on public property	6 (f)	\$500.00
9.	Interfere with protective devices around trees on public property	6 (g)	\$500.00
10.	Alter soil levels around trees on public property in harmful manner	6 (h)	\$500.00
11.	(Excavate/Disturb/Compact) soil within drip line of a tree on public property	6 (i)	\$750.00
12.	(Cause/Permit) an animal to deface or injure a tree or plant	6 (j)	\$500.00
13.	Impede the free passage of water, air, fertilizer to the roots of any public tree	10 (a)	\$500.00
14.	(Lay/Excavate) driveway within 3 metres or within a drip line of a tree on public property	10 (b)	\$750.00

NOTE: A Penalty provision for the offences indicated above is Section 12 of By-law 2016-94, a certified copy of which has been filed and Section 61 of the Provincial Offences Act, R.S.O. 1990, c. P. 33.