

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2005-19

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 the *Municipal Act*, 2001, S.O. 2001, c. 25, Sections 8 and 9, provides municipalities with the powers of a natural person to govern their affairs as they consider appropriate and to enhance their ability to respect to municipal issues;

AND WHEREAS the *Municipal Act*, 2001, S.O. 2001, c. 25, Section 62 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 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 pursuant to Section 135 of the *Municipal Act*, 2001, S.O. 2001, c. 25, a local municipality may prohibit or regulate the destruction or injuring of trees;

AND WHEREAS it is deemed expedient to regulate the maintenance of trees, including the cleanup of debris falling from such trees, within the Town of Amherstburg;

NOW THEREFORE THE COUNCIL FOR THE CORPORATION OF

THE TOWN OF AMHERSTBURG HEREBY ENACTS AS FOLLOWS:

1. DEFINITIONS:

In this By-law:

- a) "Council" means the Council for the Corporation of the Town of Amherstburg;
- b) "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;
- c) "Hedges" includes all plants of similar variety grown together forming a visual or physical barrier as well as any mass planting or groupings of plants used for visual or physical barriers;
- d) "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;
- e) "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;
- f) "Park" includes all public parks, environmentally significant areas, natural park areas, playgrounds and sports fields under the jurisdiction of the Town;

- g) "Person" means any person, firm, partnership, association, corporation, company or organization of any kind;
- h) "Property line" means the line between the public right-of-way and abutting property;
- i) "Public place" includes all parks and all streets or highways;
- j) "Sidewalk" means the hard surface in front of, alongside, or at the rear of occupied or unoccupied premises, intended for pedestrian use;
- k) "Site triangle" refers to the measured area found at the intersection or corner of two streets where its location is measured back thirty feet (30') from the intersection along each edge forming a triangle free of obstruction;
- l) "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;
- m) "Town" means The Corporation of the Town of Amherstburg;
- n) "Trees" include all shrubs, hedges and woody vegetation now or hereafter growing on any public or private place.

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 the 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 advantage.
- 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
- 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 Town, 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 prune trees or clear away and remove any branches or debris having fallen from a tree onto a public sidewalk or highway, in accordance with Section 5 of this by-law, the Town may enter upon the property to prune such trees or clear away and remove such branches or debris at the owner's expense. The Town may recover any expenses 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 Town, endangers the life, health, safety or property of the public and should be corrected or removed. 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 Public Works Department, 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 any gaseous, liquid or solid substance which is 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; or
- 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 Town. Every attempt shall be made to retain the tree in its existing location or with the permission of and to the satisfaction of the Town 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 Town before removing such tree and shall also, if the Town is to remove such tree, forward the removal costs as determined by the Town in accordance with the accepted formula for tree evaluation of the International Society of Arboriculture (latest edition), 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 4" and 12" caliper as determined necessary by the Town.

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 Public Works Department.
- b) The Public Works Department 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;
 - 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 Town shall be notified at least two (2) 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 Town.

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 Town, by means of a snow fence barrier or other barrier as necessary. The barrier shall be set within ten feet (10') or within the drip line whichever if 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 ten feet (10') or greater 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, provided that this provision shall not apply to the operation of a public utility or municipal service.
- b) No person shall excavate any ditches, tunnels, trenches or lay any driveway within a radius of ten feet (10') or within the drip line of the tree whichever is greater from any tree growing in a public place without written permission from the Town, provided that this provision shall not apply to the operation of a public utility or municipal service.

11. PENALTY:

Every person who contravenes any provisions of this by-law is guilty of an offence and on conviction is liable to a fine and/or penalty as provided for in the *Provincial Offences Act*.

12. ENFORCEMENT:

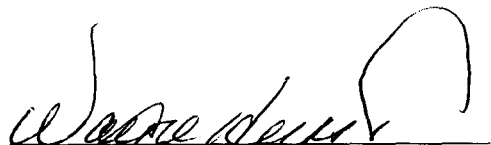
The Public Works Manager or By-law Enforcement Officers of the Town shall enforce the provisions of this by-law; provided that any person may refer any matter of dispute to the Council of the Town of Amherstburg whose decision on such matter is final.

13. REPEAL:

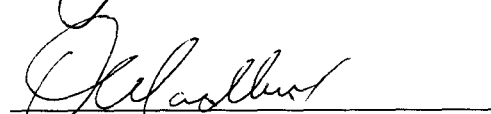
By-law 2003-40, being a by-law to regulate the planting, preservation, maintenance and removal of trees in public places within the Town of Amherstburg, passed June 9, 2003, be and the same is hereby repealed.

This By-law shall come into force and take effect on the final day of passage thereof.

Passed this day **14** of **March**, 2005 .



 MAYOR



 CLERK

1st Reading: **Feb. 28, 2005**
 2nd Reading: **Feb. 28, 2005**
 3rd Reading: **Mar. 14, 2005**

Certified to be a true copy of By-law
 No. 2005-19 passed by Council of the
 Town of Amherstburg on the
 day of _____,

 Clerk

THE CORPORATION 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 five (5) 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 20' to 30' 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
B/C	<i>Corylus colurna</i>	Turkish Hazel	Hardy pyramid tree
C	* <i>Fagus</i> (all species)	Beech	Shallow root, dense shade
A	<i>Ginko biloba</i>	Maidenhair Tree	Use non fruit variety
B/C	* <i>Gleditsia Tiancanthos</i> & variations	Honey Locust	Light open canopy
B/C	* <i>Gymnoclads dioicus</i>	Kentucky Coffeetree	Large seed pod
B/C	<i>Liquirdambar styraciflua</i>	Sweetgum	Corky bark
A/C	* <i>Liriodendron tulipifera</i>	Tulip Tree	Interesting leaves/flower
B/C	* <i>Nyssa sylvatica</i>	Blackgum	Bright red fall colour
A	<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
B/C	<i>Tilia americana</i>	Basswood	Small round seed

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>Amelachier Arborea</i>	Serviceberry	Small tree/bush
A/C	* <i>Cercis cnadensis</i>	Eastern Redbud	Excellent spring colour
C	* <i>Cornus florida</i>	Flowering Dogwood	Red berry, white flower
A/C	<i>Prunus serrulata</i> & variations	Japanese Cherry	Pink flower
A/C	<i>Prunus virginiana</i>	Schubert Cherry	White Flower mid-spring
A/B/C	<i>Pyrus calieriana</i> & variations	Callery Peat	Spring flower, fruitless
A/B/C	<i>Quercus robur fastigiata</i>	Columnar English Oak	Upright form
A/C	<i>Syringa amerensis japonica</i>	Japanese Tree Lilac	White mid-summer flowers