

THE CORPORATION OF THE TOWN OF PERTH
BY-LAW NO. 4132

**A by-law of the Corporation of the Town of Perth respecting the protection,
maintenance and control of trees on Town property ("Tree By-law") and to repeal
By-law Nos. 2935, 3521 and 3550**

WHEREAS the Council of the Town of Perth deems it expedient and in the public interest to protect, maintain and promote the stock of healthy trees located on Town property;

AND WHEREAS Council has the authority pursuant to the *Municipal Act* to govern and regulate the use of its property as it deems appropriate;

AND WHEREAS Council wishes to further amend the Tree By-law as hereinafter set forth.

NOW THEREFORE the Corporation of the Town of Perth enacts as follows:

1. In this By-Law,
 - a) "Abutting tree" includes a tree the bole of which at ground level is partially on the property line.
 - b) "Director" means the Director of Environmental Services of the Corporation or their authorized designate.
 - c) "Corporation" means The Corporation of the Town of Perth.
 - d) "D.B.H." means Diameter Breast Height, 1.37m above the ground.
 - e) "Forest-type tree" means any tree which has outgrown its location due to a limited amount of space available for roots and branches to develop and without limiting the generality thereof includes elm, sugar maple, ash and basswood trees.
 - f) "Tree" includes a growing tree or shrub planted or left growing on property of the Corporation for the purpose of shade or ornament.
 - g) "Nuisance Tree" means a tree, other than a rare or locally significant tree, that is causing physical damage to a structure, or obstructs vehicle or pedestrian access, in a manner which cannot be substantially corrected by limbing or pruning; or a tree that by virtue of its root structure, reproductive methods or substances exuded is: interfering with vegetation growth on private property; impeding the physical use or development of private property; or causing hardship due to increased property maintenance costs; in a manner that can not be substantially corrected by limbing or pruning.
2. Abutting trees which are dead shall be removed at the expense of the Corporation.
3. Healthy trees on the property of the Corporation may be removed for the construction of public services including, but not limited to, water, sewer, electricity, however the utility company responsible for the said construction shall replace the trees with at least 7.5 cm calliper trees D.B.H. at its own expense, at a location reviewed with the owners of the adjacent property and approved by the Director.
4. If the owner of a property that abuts property of the Corporation is denied proper access to the use of their property by the existence of healthy trees on property of the Corporation, the Director may approve the removal of the healthy trees on condition that the owner of the abutting property replace the trees, at their own expense, with at least 7.5 cm calliper trees D.B.H. at a suitable location. In instances where site plan control is required, approval will be given by the Director of Planning or designate.

- 4A. If the owner of a property that abuts property of the Corporation submits a written request, complete with sufficient information/justification to demonstrate to the satisfaction of the Director, that an otherwise healthy tree is a nuisance tree or creates an annoyance or inconvenience to the use or enjoyment of their property, said tree may be removed subject to satisfying the following conditions:
- (a) The property owner agreeing in writing to pay the cost of removing the tree and purchasing and planting replacement trees of a comparable tree type, (e.g. a conifer with conifers), with the species to be determined by the Town. Subject to the tree specifications needed to suit the replacement tree planting location, the species of preference, and the cost of planting replacement trees, Town staff will obtain sufficient replacement trees such that the total of the diameters of the replacement trees will approximate the average diameter of the tree to be removed, as measured at calliper height, with no replacement tree having a diameter of less than 2.5 centimetres measured at 1 metre above grade. The tree replacement cost to be paid by the applicant shall be determined as per subsection (c) below.
 - (b) The property owner acknowledging in writing that one or more of the replacement trees may be placed adjacent to the Owner's property, except where it is deemed impractical by the Director due to growing conditions, installation costs or maintenance of safe sight lines. Except where the Director determines planting to be impractical, the owner shall be entitled to request that up to two of the replacement trees be planted on adjacent land owned by the Corporation. Any remaining replacement trees are to be planted on the lands of the Corporation anywhere within the Town in accordance with the tree planting practices and needs of the Corporation as determined from time to time by the Director or Council.
 - (c) The property owner agreeing in writing, prior to any work commencing, to submit an initial payment equal to 50% of the cost estimate for all tree removal and replacement work, as prepared by the Director, the balance of the payment due within 30 days of the work being completed. The cost of replacement trees shall be calculated based on a charge of \$75.00 per each 2.5 cm in the average diameter, as measured at calliper height, of the tree to be removed. Within the Business Improvement Area, when the Director determines that a replacement tree will require the protection of a grate for root protection, or a trunk cage or both, then in addition to the tree replacement charge, there shall be a charge for protective devices as follows: for a grate \$185.00; for a trunk cage \$95.00; for both grate and cage \$275.00. The tree replacement charge or the charges for protective devices may be changed by Council from time to time through an amendment to the Town's Fees and Charges By-law.
- 4B. Where the Director is not satisfied that a tree has been demonstrated to qualify as a nuisance tree, or that the tree creates a demonstrable or justified annoyance or inconvenience to the property owner, the Director shall provide the owner with an explanation in writing, and advise of the option of appeal his/her decision to Council. If there is a dispute with regard to the Director's findings or if an owner wishes relief from the requirements of the By-law, the owner may appeal directly to Council, or to a Committee authorized by Council, to make a final determination as to whether a healthy tree may be removed. In the event that Council or the Committee determines that an independent assessment of the health of the tree or options for addressing the concerns being raised should be received from a qualified arborist, the matter will proceed upon the owner agreeing to pay the cost of the assessment based on an estimate for the work.

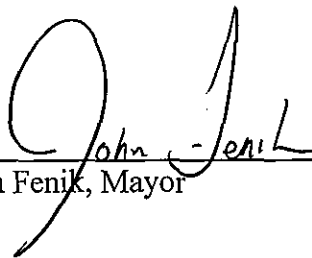
- 4C. No person shall plant trees on property of the Corporation without written consent of the Town of Perth.
5. Property Owner Rights:
- (a) Even though a tree may be located entirely on a public road allowance it is acknowledged that the abutting private property owner may derive a particular benefit from it and that benefit shall not be removed without good reason and without opportunity for the abutting property owner to register objection. The property owners will be notified in writing and will be given ten (10) days to register his objection.
 - (b) In cases of emergency where it is deemed not possible to follow the procedure of written notification an attempt should always be made to contact the abutting property owner or tenant by phone or in person to inform them of the action being taken.
6. (a) The Director shall cause the removal of healthy forest-type trees on property of the Corporation at the expense of the Corporation when a property owner produces a soil report by a qualified person that clearly states that the forest-type trees on the property of the Corporation are responsible for soil shrinkage and existing or possible subsequent foundation damage.
7. Where a tree is located on property of the Corporation, no person shall affix any poster, notice, sign, guide wire or other fastening or fixture to said tree without first obtaining the written approval of the Corporation so to do.
8. (a) The Director may cause to be trimmed, all trees on private property, the branches of which extend over property of the Corporation.
- (b) The Director may, at the request of an abutting property owner, have trees located on the property of the Corporation that extend on or over private property, trimmed.
9. Subject to the provisions hereof, the owner of land adjacent to property of the Corporation may plant trees upon the portion thereof contiguous to his land, upon obtaining written approval of the Director except when site plan control is required then the approval will be by the Director of Planning or designate.
- 9A. Every tree planted on property of the Corporation set aside for park purposes shall be planted in accordance with the applicable park development plan.
10. The Director may refuse to permit the planting of trees, or the planting of any one or more species or variety of trees, upon property of the Corporation, or part thereof, where, by reason of the nature of the pavements, walks, sewers, watermain, electrical power lines, and other works thereon, or the use to which the lands abutting on the property of the Corporation are put, or in consequence of the extent and nature of the traffic thereon, or the insufficient breadth thereof, or by reason of the existence of rock or unfertile soil thereunder, such planting thereon is deemed impracticable or dangerous to traffic or constitutes a nuisance to the property of the Corporation.
11. Any tree planted or growing on property of the Corporation contrary to the provisions hereof may be removed by the Director without notice or compensation.
12. Except as otherwise provided herein, no person shall cut or otherwise remove branches, injure, remove, or cut down any tree planted or growing on property of the Corporation.
13. Subject to Section 14, where a tree is located on property of the Corporation within 6 m of property upon which work is to be executed, the owner or contractor shall:

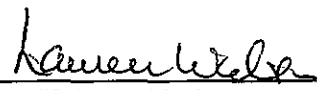
- (a) Prior to commencing any work notify the Director as to the proposed method of protecting the tree, and obtain their approval of the method of protection before any work is commenced, and;
 - (b) In the event of damage to any tree, agree to reimburse the Corporation for the cost of treatment, removal, or replacement of the tree to the satisfaction of the Director.
- 14. In carrying out construction work or excavation within the vicinity of any trees, the following provisions shall be complied with;
 - (a) All trees shall be completely planked around with a plank of not less than 2.5 cm in thickness prior to commencing any work;
 - (b) Planks shall be placed so as to extend up the main part of the trunk for at least 2.4 m and shall be wired to each other. In no event shall planks be wired to the tree;
 - (c) No building materials of any kind shall be attached to or leaned against a tree;
 - (d) No signs shall be attached to any tree;
 - (e) The existing grade around any tree shall not be raised or lowered with prior consultation with and approval from the Director;
 - (f) Utmost care shall be taken at all times in order not to damage any roots or branches of any tree;
 - (g) All branches or roots of any tree which may be approved for removal are to be cut with a 2.5 cm stub and a suitable preservative applied to them;
 - (h) The removal of any trees which interfere with the construction may be effected only upon the receipt of written permission from the Director, and;
 - (i) The cost of any removal referred to in paragraph (h) plus the cost of any removal of trees irreparably damaged shall be borne by the person obtaining the written permission and is conditional upon a tree replacement of at least (3") inch calliper D.B.H. being carried out in the same vicinity and approved by the Director.
- 15. Any proposal for future street reconstruction shall illustrate those trees which are required to be removed due to said reconstruction together with a report on the number, types, and size of trees being removed and the number, types and sizes of trees which will replace those being removed.
- 16. All trees removed as a result of street reconstruction are to be replaced with a like number or greater number of a species of trees of at least three (3") inch calliper D.B.H. as approved by the Director.
- 17. Every person who contravenes any of the provisions of this By-law is guilty of an offence and on conviction is liable to a fine of not more than two thousand (\$2,000.00) dollars, exclusive of costs.
- 18. When a person has been convicted of an offence under this By-law,
 - (a) The Provincial Court (Criminal Division) of the Judicial County of Lanark, or;
 - (b) Any court of competent jurisdiction thereafter may, in addition to any other penalty imposed on the person convicted, issue an order prohibiting the continuation or repetition of the offence of the doing of any act or thing by the person convicted directed toward the continuation or repetition of the offence.

19. (1) The Corporation hereby establishes a "Do-it-Yourself Program" for the planting of trees on the boulevard portion of a highway under the jurisdiction of the Corporation in accordance with the provisions of this section.
- (2) An owner of property that adjoins the boulevard portion of a highway may request the Director to provide the owner with small calliper trees that are less than 7.6 cm D.B.H. for planting in the adjacent boulevard portion of the highway, as the trees become available.
- (3) The Director shall review with the property owners of the adjoining property the following matters in accordance with the current practice:
- (a) The location on the boulevard where the tree is to be planted;
 - (b) The species of trees to be planted;
 - (c) The spacing of the trees;
 - (d) The required clearances from public utilities, and;
 - (e) Any other required approvals.
- (4) The owner of the property that requested the tree shall maintain the tree for the twelve-month period following the planting of the tree.
- (5) Upon the expiration of the twelve-month period referred to in subsection (4), the Corporation shall maintain the tree in accordance with the current operating practices.
- (6) This program is not available to persons to provide trees to satisfy any tree planting requirements set out as a requirement of site plan approval designating the area within the limits of the Town of Perth as a Site Plan Control Area, as amended.
- (7) The Corporation may allow the tree to be located in the front yard providing that a location cannot be provided in the boulevard. However, the expense of the planting and maintenance shall be the property owner's responsibility.

20. That By-law Nos. 2935, 3521, and 3550 be and are hereby rescinded in their entirety.

Read a first time, second and third time and finally passed this 19th day of November, 2010.


John Fenik, Mayor


Lauren Walton, Clerk

(Seal)