

CORPORATION OF THE TOWNSHIP OF WARWICK

BY-LAW NO. 59 OF 2011

BEING A BY-LAW TO AUTHORIZE, REGULATE, AND PROTECT THE PLANTING, MAINTENANCE, PROTECTION AND REMOVAL OF TREES ON MUNICIPAL RIGHTS-OF-WAY

WHEREAS Council of the Township of Warwick deems it advisable to authorize, regulate and protect the planning, care, maintenance, protection and removal of trees on municipal rights-of-way.

NOW THEREFORE THE COUNCIL OF THE TOWNSHIP OF WARWICK HEREBY ENACTS AS FOLLOWS:

1. Definitions:

In this By-law:

“Agent” means Professional Tree Company, Conservation Authority and/or Arborist;

“By-law Enforcement Officer” means a Police Officer, By-law Enforcement Officer, special constable and any other public officer engaged in the enforcement of this or any other law;

“Township” means the Corporation of the Township of Warwick or the geographic limits of the Township as the context requires;

“Destroy” means to ruin or harm a tree by cutting, burning or girdling the tree or roots, interfering with the roots or uprooting, interfering with the water supply, applying one or more chemicals, improper pruning, compacting of soil or re-grading within the drip line of a tree or by other means including causing irreversible injury to a tree which may result from accident or design and “destroyed”, “destroying” and “destruction” have similar meaning;

“Diameter” means the measurement of the trunk of a tree at a height of 1.2 meters above the existing grade of the ground adjoining its base;

“Public Works Superintendent” means the Township of Warwick Roads Services and includes his or her authorized designate;

“Injury” means lasting damage to a tree which has or is likely to have the effect of inhibiting or terminating its growth and “injure”, “injured”, “injuring” have similar meaning;

“Maintenance” includes all work or operations related to trimming, pruning, spraying, injecting, fertilizing, treating, cabling and bracing a tree and “maintain”, maintaining, and “maintained” have similar meaning;

“Municipal” means the Corporation of the Township of Warwick or the geographic limits of the Township as the context requires;

“Owner” includes the person holding registered title to land and the person for the time being managing or receiving the rent or paying the municipal taxes on the land in question, whether on his, her or its own account, or as agent or trustee of any other person or who would so receive the rent if such were let, and shall also include a lessee or occupant of the land. Where the person holding registered title to land is a condominium corporation, the Owner is the corporation and not its members;

“Person” includes any individual, firm, partnership, association, corporation, company or organization of any kind;

“Pruning” means the removal, as appropriate of the live and/or dead branches or limbs of a tree and “prune” or “pruned” have similar meanings;

“Remove” means to cut down a tree and “removal” and “removed” have similar meanings;

“Right-of-way” means every road, road allowance and laneway under the Township authority or jurisdiction, whether opened or unopened and includes the travelled portion of the road, shoulders, curb, ditch, boulevard and sidewalks and all other land between the lateral limits;

“Right-of-way tree” means any tree, where any part of the diameter of the tree is on the right-of way;

“Street line” means the property line dividing the road allowance from the real property of an adjoining land owner; and

“Tree” means any species of woody perennial plant, including its root system, which has reached or can reach a minimum height of four hundred and fifty (450) centimetres at physiological maturity.

2. Scope

- 1) This By-law applies to right-of-way trees.
- 2) Property owners shall adhere to the "Property Standards By-law" wherein dead, decaying or damaged trees or other natural growth, and branches and limbs which can create unsafe or unsightly conditions, be kept neat and tidy and free from the above.
- 3) When a healthy tree or branch is in dispute between abutting property owners (not abutting municipal property), this is then a civil matter and shall be dealt with by the said property owners

3. Administration

- 1) The Public Works Superintendent is responsible for the administration and implementation of this by-law.
- 2) Any owner may submit to the Public Works Superintendent, a request for the planting or maintenance or removal of a right-of-way tree located on the right-of-way adjacent to the property of the owner and shall use such form, provide such information and supporting documentation as the Public Works Superintendent may require to investigate the request and make a determination. The initial request may be made in writing or orally.
- 3) The Public Works Superintendent shall direct the planting and maintenance and removal of right-of-way trees in accordance with priorities and processes established by the Public Works Superintendent from time to time and/or the Public Works Committee.
- 4) The Public Works Superintendent shall conduct an annual review in the fall of each year setting priorities for maintenance, removal and planting of trees in the next years Roads budget taking into consideration of Health and Safety circumstances as a priority I.E. sidewalks buckling, dead trees and/or branches as well as the trimming of low branches over public walkways and sidewalks etc.
- 5) Public Works Superintendent shall budget annually to regulate and protect the planning, care, maintenance, protection and removal of trees on municipal rights- of-way.
- 6) Public Works Superintendent will determine if a tree is within the municipal rights- of-way and any trees requiring action as outlined in 3. 4) that are located on the "Street line" shall be assessed and determination if any or all costs are to be born/paid by the land owner.

4. Approval to Plant Required

- 1) The Public Works Superintendent shall direct the planting of right-of-way trees by authorized Township personnel and/or Agent in accordance with guidelines on **Schedule "A"**.
- 2) No person shall plant a tree of a species on **Schedule "B"** in a location which is in whole or in part on a right-of-way.
- 3) No person, not being authorized Township personnel, shall plant or shall cause or authorize a tree to be planted in a location which is in whole or in part on a right-of-way without the prior written approval of the Public Works Superintendent.
- 4) No person having approval of the Public Works Superintendent to plant a tree on a right-of-way, shall plant or cause or authorize the planting of the tree contrary to any conditions of the approval.
- 5) Where a right-of-way tree is not planted by Township personnel, the owner of the land adjacent to the right-of-way on which the right-of-way tree is planted, shall be deemed to have planted the right-of-way tree or authorized or caused the right-of-way tree to be planted.

5. Removal of Unauthorized Tree

- 1) Where an owner has planted or is deemed to have planted a tree contrary to Section 4 , the Public Works Superintendent may give notice in writing to the owner at the address shown on the tax roll for the owner's property directing the owner to remove the tree by the date specified in the Notice.
- 2) In the event that the owner does not remove the tree by the date specified in the Notice, the Public Works Superintendent may cause the tree to be removed and may enter onto the owner's property without notice to remove the tree. The cost of removing the tree shall be a debt owing by the owner to the Township, enforceable by any means open to the Township. If unpaid, the debt may be added to the property tax roll for the owner's property and collected in the same manner as taxes.

6. Maintenance of Right-of-Way Trees

- 1) The Public Works Superintendent shall direct the maintenance of right-of-way trees by authorized Township personnel or Agent.
- 2) No person, not being authorized Township personnel, shall prune or engage in other forms of maintenance of a right-of-way tree.
- 3) Utility Companies shall advise the Public Works Superintendent of maintenance programs or emergencies.

7. Right of Entry – Plant / Maintain

- 1) The Public Works Superintendent may authorize or direct Township personnel or Agent, together with such persons and such equipment or facilities as may be necessary, to inspect, conduct tests on, engage in maintenance of a right-of-way tree or to plant a right-of-way tree.

8. Prohibition – Damage to Right-of-Way Trees

- 1) No person shall:
 - a) Injure a right-of-way tree or engage in an activity likely to injure a right-of-way tree;
 - b) Destroy a right-of-way tree or engage in an activity likely to destroy a right-of-way tree;
 - c) Affix a poster, notice or sign to a right-of-way tree;
 - d) Affix any guy line or other fastening or fixture to a right-of-way tree;
 - e) Use a right-of-way tree to secure or support any object, structure or animal; or
 - f) Remove or interfere with any fence, tree guard or other protective device placed around a right-of-way tree.
- 2) Nothing in Subsection 8(1) shall prohibit the removal of a right-of-way tree by authorized Township personnel.

9. Removal of Trees – Dead or Damaged Etc.

- 1) The Public Works Superintendent may authorize the removal by Township personnel of any right-of-way tree or branch thereof which the Public Works Superintendent determines to be dangerous, damaged, decayed, broken, diseased, dying or dead.

10. Removal – Healthy Tree

- 1) The Public Works Superintendent may authorize the removal of a healthy right-of-way tree by authorized Township personnel or Agent where the Public Works Superintendent determines it to be necessary for municipal purposes, including sidewalks and other issues deemed health and safety matters, or for the purpose of construction or installation of other public utilities, including hydro, gas, cable and telephone.
- 2) The Public Works Superintendent shall consider an application for the removal of a healthy right-of-way tree in accordance with the Guidelines in **Schedule “C”** attached hereto.

11. Notice of Decision

- 1) The Public Works Superintendent shall advise the applicant for the removal of a healthy right-of-way tree of his or her decision.
- 2) In the event that the applicant is not satisfied with the Public Works Superintendent’s decision to not remove a healthy right-of-way tree, the applicant shall be entitled to appeal the decision to the Public Works Committee.
- 3) In appropriate circumstances, where more than one property is affected by an application to remove a healthy right-of-way tree, the Public Works Superintendent shall give notice of the appeal to the affected adjoining owners.

12. Removal – Process – Right of Entry

- 1) The Public Works Superintendent may authorize or direct Township personnel or Agent, together with such persons and such equipment or facilities as may be necessary, to enter onto land lying along a municipal right-of-way as necessary for the removal of a right-of-way tree.
- 2) No person, not being authorized Township personnel or Agent, shall remove a right-of-way tree.
- 3) Subsection 12(2) shall not prohibit a person removing a right-of-way tree in accordance with the direction of the Public Works Superintendent under Subsection 5(1).

13. Replacement Tree

- 1) Where the Public Works Superintendent has authorized the removal of a right-of-way tree, he or she shall direct the planting of a replacement right-of-way tree unless the Public Works Superintendent determines that it is inappropriate in the circumstances to do so.

14. Offences and Penalties

- 1) Every person who contravenes any of the provisions of this By-law and any director or officer of a Corporation, who concurs in such contravention, is guilty of an offence and on conviction shall be assessed a penalty of:
 - a) **Five Hundred Dollars (\$500.00) for the first Offence**
 - b) **One Thousand Dollars (\$1,000.00) for the second Offence**
 - c) **Two Thousand Dollars (\$2,000.00) for the third or more Offence(s).**

This penalty, if not paid voluntarily, within 30 days, shall be assessed as a penalty for an infraction of this By-law and added to the taxes owing against that property and collected in the same manner as Municipal Taxes.

- 2) The making of a false or intentionally misleading recital of fact, statement or representation in application form required by this By-law, shall be deemed to be a violation of the provisions of this By-law.
- 3) This By-law may be enforced by any By-law Enforcement Officer.
- 4) No person shall hinder or obstruct, or attempt to hinder or obstruct, any person exercising a power or performing a duty under this By-law.
- 5) This By-law is in conjunction with and also enforced under the provisions of the following by-laws: Official Plan, Zoning, Property Standards, Cleaning Of Land, Fences, Boulevards, and Noise.

15. Short Title

- 1) This By-law may be referred to as the "Trees on Municipal Right-of-Way By-law".

16. Schedules

- 1) The following schedules are incorporated into and form a part of this By-law:
 - a) Schedule "A" Guidelines for Planting Right-of-Way Trees
 - b) Schedule "B" Species Not to be Planted on Right-of-Way
 - c) Schedule "C" Guidelines for the Removal of a Healthy Right-of-Way Tree on request of an Owner

17. Conflict/Validity

- 1) Where a provision of this By-law conflicts with the provisions of another By-law in force in the Township, the provision that establishes the higher standard to protect the health, safety and welfare of the general public shall prevail.
- 2) If a court of competent jurisdiction declares any provision or a part of a provision of the By-law to be invalid or to be of no force and effect, it is the intention of Township that the remainder of this By-law shall continue to be in force.

18. Enactment

- 1) This By-law shall come into force and take effect immediately upon the final passing thereof; and all prior Tree By-Laws and Policies be rescinded.

READ A FIRST AND SECOND TIME THIS 26TH DAY OF OCTOBER, 2011.

READ A THIRD TIME AND FINALLY PASSED THIS 26TH DAY OF OCTOBER, 2011.

Mayor – Todd Case

Clerk – Frances Woods

SCHEDULE "A" TO BY-LAW NO. 59 of 2011

GUIDELINES FOR PLANTING TREES ON MUNICIPAL RIGHT-OF-WAY

1. The Public Works Superintendent may authorize the planting on a right-of-way or partly on a right-of-way one of the following species of tree:
 - Ash – fall gold, green
 - Locust – shade master
 - Maple – amur, tatarian, royal red, sugar, norway
 - Hackberry
 - Hawthorn – thornless
 - Flowering Crab – spring snow
 - Oak – burr, red
 - Japanese lilac
 - Linden – pyramidal
 - Elm – prospector
 - Mayday

2. Generally one tree will be planted on a standard 66 foot lot.

3. Two trees may be planted on a corner lot, in the discretion of the Public Works Superintendent.

4. Despite Section 2 and 3, the Public Works Superintendent shall not authorize the planting of a right-of-way tree in a location where:
 - As a result of existing or proposed infrastructure or other circumstances in the area, it is unlikely that a tree will grow successfully or it is likely that any tree planted will be injured or have to be removed;
 - As a result of soil and drainage conditions, setback of buildings from the right-of-way, existing plants and trees, and similar considerations, the proposed location is not suitable for a tree;
 - The surface of the land is or may become water impervious, negatively impacting the health of any tree planted; or
 - The surface of lands covered by water impervious surfaces such as asphalt, concrete, stone or brick may be damaged by the roots or trunk of a tree planted in the area.

SCHEDULE "B" TO BY-LAW NO. 59 OF 2011

SPECIES OF TREES NOT TO BE PLANTED ON A MUNICIPAL RIGHT-OF-WAY

1. No person shall plant and the Public Works Superintendent shall not authorize the planting of a tree of the following species on a right-of-way or partly in a right-of-way:

- Manitoba Maple
- Walnut
- Butternut
- Chestnut
- Poplars (all types)
- Willows (all types)
- Cherry
- Silver maple
- Elm (all types), except Elm – prospector
- Evergreens (all types)
- Any fruit bearing tree

SCHEDULE "C" TO BY-LAW NO. 59 OF 2011

**Guidelines for the Removal of
Healthy Trees on a Municipal Right-of-Way, on Request of Owner**

Problem	Action Prohibited Species on Schedule B	Action Species other than Prohibited Species On Schedule B
Allergic reactions to tree / sap / insects / pollen	Tree will not be removed	
Stress to homeowner caused by fear or dislike of trees and/or branches being blown down in a windstorm <i>Or</i> Trees drop things on "their" property such as seeds, fruit, leaves, twigs, sap and insects which require cleanup	If tree may cause damage to a house and/or occupant due to proximity, lean and size (age) of tree, and is causing stress to homeowners and all other means to save the tree have been exhausted (i.e. pruning, volunteers to clean fruit, etc.) the P.W.S. on consultation with the Public Works Committee, may authorize the removal of the tree	Tree will not be removed
Trees attract unwanted critters such as wasps, bees caterpillars, birds, insects, chipmunks, squirrels, etc	Tree will not be removed	

SCHEDULE "C" TO BY-LAW NO. 59 OF 2011

Problem	Action Prohibited Species on Schedule B	Action Species other than Prohibited Species On Schedule B
Tree takes up too much space, is too big, roof at risk, roots in sewer, weeping tile or foundation	<p>If the applicant proves to the satisfaction of the P.W.S. that sewer lines are being blocked by the roots of the healthy right-of-way tree, the P.W.S. in his or her discretion may arrange to have the sewer re-lined at the Township's expense or alternatively arrange to have the tree removed</p> <p>If the applicant proves to the satisfaction of the P.W.S. that there are roots from the healthy right-of-way tree in the applicant's weeping tiles or foundation, the P.W.S. may in his discretion authorize the removal of the tree</p>	
Tree causes soil shrinkage, roots ruin lawn, tripping hazards, tree at risk of falling	<p>If the applicant proves by way of a soils report or other evidence satisfactory to the P.W.S. that hazardous conditions have resulted from soil shrinkage caused by the healthy right-of-way tree, the P.W.S. may authorize the removal of the tree</p>	
Damage by a tree of a Prohibited Species on Schedule B to a house, lawn, vehicles or driveway	<p>Where it will solve the problem, the tree will be pruned and placed on a future priority list for removal</p> <p>Where damage cannot be mitigated, the P.W.S. may authorize the removal of the tree</p>	Not applicable

SCHEDULE "C" TO BY-LAW NO. 59 OF 2011

2. Where the Public Works Superintendent authorizes the removal of a healthy right-of-way tree for any reasons noted above, it shall be put on a replacement list and removed within six to twelve months. The tree removed will be replaced at a future date in accordance with the guidelines in **Schedule A**.