THE CORPORATION OF THE CITY OF NIAGARA FALLS A CONSOLIDATED BY-LAW

Being By-law No. 2004-173 as amended by By-law 2013-69, By-law 2015-58

A by-law to prohibit or regulate the destruction, injury and planting of trees on municipal property within the City of Niagara Falls.

WHEREAS section 135 of the Municipal Act, 2001, S.O. 2001, c.25, as amended, provides that the Council of a local municipality may pass by-laws to prohibit or regulate the destruction or injury of trees, and to require persons to obtain permits for the injuring or destruction of tees;

AND WHEREAS subsection 135(11) of the Municipal Act, 2001 provides that the Council of a local municipality may delegate the authority to issue permits and impose conditions to permits to an appointed officer;

AND WHEREAS section 252 of the Municipal Act, 2001 authorizes the Council of a local municipality to provide for a committee of Council to hear interested parties in place of the Council;

AND WHEREAS the Council of the Corporation of the City of Niagara Falls recognizes the ecological and aesthetic value of trees and deems it expedient to regulate or prohibit certain acts relating to trees within the City of Niagara Falls.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF NIAGARA FALLS HEREBY ENACTS AS FOLLOWS:

Definitions

- 1. In this By-law,
 - a. "City" means The Corporation of the City of Niagara Falls;
 - b. "Council" means the Council of The Corporation of the City of Niagara Falls:
 - c. "dead" means a tree that has no living tissue:
 - d. "Director" means the Director of Municipal Works for the Corporation of the City of Niagara Falls, or his or her designate;"
 - e. "dying" means a tree that is infected by a lethal pathogen, or where 70% or more of its crown is dead;
 - f. "emergency work" means the work necessary to terminate an immediate threat to life or property;

- g. "Forestry Supervisor" means any person designated from time to time by resolution of Council for purposes of carrying out the provisions of this By-law;
- h. "hazard" means a tree that is a potential hazard to property or life, but not an immediate threat;
- i. "highway" means a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, and part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof;
- j. "injure or destroy a tree" means the injury or destruction of a tree by removal, cutting, girdling of the tree or roots, interfering with the water supply, application of chemicals, compaction and regrading within the drip line of the tree, or by other means including irreversible injury which may result from neglect, accident or design;
- k. "Permit" means a permit issued pursuant to this By-law;
- I. "person" shall include the Regional Municipality of Niagara, a company, corporation or partnership, as is applicable;
- m. "public property" means land vested in, controlled or owned by The Corporation of the City of Niagara Falls;
- n. "public tree" any tree which has greater than, or equal to, fifty (50) per cent of the truck diameter on public property.
- o. "Region" means The Regional Municipality of Niagara;
- p. "site" means the lands which are the subject of an application for a Permit pursuant to this By-law;
- q. "tree" means any species of woody plant which has reached or can reach a height of at least 4.5 metres (14.8 feet) at physiological maturity;
- r. "tree lawn" means the land within which a tree is planted or is to be planted.

Application of By-law

- 2 No person shall:
 - a. injure or destroy a tree growing on public property; or
 - b. plant any tree or any part of a tree on public property, without first having obtained a Permit issued by the Forestry Supervisor pursuant to this Bylaw.
- Notwithstanding section 2, a Permit is not required:

- if the injury or destruction of a tree is required as a consequence of any activities or matters undertaken by the City, Region, a School Board for the development of a school, or any other government authority or utility corporation; or
- b. for emergency work.
- 4 Notwithstanding section 3, no compensation shall be payable by the City to any person performing any of the acts set out in the said section 3 upon a tree located on public property.

Prohibited Acts

- 5 No person shall:
 - a. mark, cut, break, debark, deface, damage, tie, wire, rope, prune or trim a tree growing on public property;
 - remove a tree growing on public property;
 - c. tack, paste or attach a bill or note or any other thing or object to a tree growing on public property, or to a stake, post, guard or other object supporting such tree; or
 - d. deposit, place, store or maintain any stone, brick, sand, soil, concrete, vehicle, equipment or other matter or material that may impede the free passage of water, air or nutrients to the roots of a tree growing on public property.

Permit Application

- A person applying for a Permit shall submit the following to the Forestry Supervisor:
 - a. a complete application in the form attached hereto as Schedule "A", which form may be amended from time to time by the Director;
 - b. a plan, sketch or drawing showing the location of the site, and clearly illustrating which tree(s) are to be injured or destroyed, and the location of any proposed planting; and
 - c. where the applicant is not the owner of the lands adjacent to the site of the proposed injury, destruction or planting, the written authorization of the owner consenting to the application.

Issuance of Permit - Injury or Destruction

7 The Forestry Supervisor shall review all completed applications and shall issue a Permit for the injury or destruction of a tree on public property where:

- a. the tree location conflicts with any proposed building permit plans that comply with the City's Zoning By-law;
- b. there will be no negative impact on flood or erosion control, or slope stability, as the case may be; or
- c. the injury or destruction of the tree is otherwise acceptable to the Forestry Supervisor.

Issuance of Permit – Planting

- The Forestry Supervisor shall review all completed applications and shall issue a Permit for the planting of a tree on public property where the tree is in a location, and is of a species satisfactory to the Forestry Supervisor.
- A person who receives a Permit to plant a tree on public property pursuant to this By-law shall comply with all directions and requirements of the Forestry Supervisor, and shall comply with the following conditions, unless varied in writing by the Forestry Supervisor:
 - a. The Forestry Supervisor shall approve the selection of an acceptable species and planting location of the tree, as set out in Schedule "B" to this By-law;
 - b. Based on a 40-year cycle, a tree which will attain a trunk diameter greater than 30.48 cm to 36.1 cm (12 to 15 inches) shall not be planted in a tree lawn less than 1.83 m (6 feet) in width. Where overhead wires or a building set-back present a special problem in tree lawns less than 1.83 m (6 feet) in width, the selection of the site and species of tree shall be determined by the Forestry Supervisor.
 - c. All trees shall be planted a minimum of 15.24m (50 feet) from a highway intersection, and if the tree is small upon reaching maturity it shall be planted a minimum of 1.52m (5 feet) from all driveways, otherwise it shall be planted a minimum of 4.57m (15 feet) from all driveways.
 - d. The spacing of a tree shall be determined by the Forestry Supervisor according to the species to be used, mature height, spread and form, the local surrounding environment, and any other matter the Forestry Supervisor determines is relevant.
 - e. An applicant proposing to plant a tree on an unpaved street without a curb shall require the approval of the Forestry Supervisor who will then determine the tree location so the tree will not be injured or destroyed when the street is paved.

Refusal to Issue Permit Revocation of Permit

Where the Forestry Supervisor recommends that a Permit not be issued, he shall advise the applicant forthwith.

- 11 Within 30 days of receiving notice of the Forestry Supervisor's recommendation to refuse the application, the applicant may request to appear before The Park in the City Committee to make representations regarding the Forestry Supervisor's recommendation.
- The Park in the City Committee may, after reviewing the Forestry Supervisor's report, and hearing the applicant's representations, if any, uphold the refusal, or issue the Permit subject to any conditions the Committee deems appropriate. The decision of The Park in the City Committee shall be final in all respects.
- The Forestry Supervisor may revoke a Permit issued pursuant to this By-law if it was issued because of mistaken, false or incorrect information provided by the applicant, or the applicant's agent or designate.

Terms and Conditions

14 The Forestry Supervisor may impose terms and conditions upon the issuance of any Permit, including a condition that any person to whom a Permit is issued pursuant to this By-law for the injury or destruction of a tree be required to plant two (2) replacement trees meeting the City's street tree specifications in the vicinity of the injured or destroyed tree, and in a location otherwise acceptable to the Forestry Supervisor. If, in the opinion of the Forestry Supervisor acting reasonably, the planting of two (2) replacement trees is not possible, one (1) replacement tree shall be planted in accordance with the foregoing provisions, and the Permit holder shall be required to pay to the City, by cash or certified cheque, that sum set out in the City's Fee Schedule, as amended from time to time, in lieu of the second, unplanted tree. If, in the opinion of the Forestry Supervisor acting reasonably, the planting of any replacement tree(s) is not possible, the Permit holder shall be required to pay to the City, by cash or certified cheque, that sum set out in the City's Fee Schedule, as amended from time to time, in lieu of the two (2) unplanted trees.

Compliance with Plans and Conditions, Applicable Law

- Where a Permit has been issued pursuant to this By-law, no person shall injure or destroy any tree on public property, or plant any tree, or part of any tree on public property except in accordance with the plans, documents and any other information on the basis of which the Permit was issued, and in compliance with any terms, conditions and design guidelines imposed by the Forestry Supervisor.
- Notwithstanding the issuance of a Permit pursuant to this By-law, an applicant and/or owner shall comply in all respects with all other applicable federal, provincial and municipal laws, by-laws and ordinances.

Request for Inspection

An applicant for a Permit, or his or her authorized agent, shall, where a Permit has been issued pursuant to this By-law, request the Forestry Supervisor to

make inspections at the commencement and at the conclusion of the work which is the subject of the Permit, and shall request such further inspection as may be required by the Forestry Supervisor.

Time Limit for Permits

A Permit issued pursuant to this By-law shall be valid for a period of six (6) months from the date of issuance, but shall expire three (3) months from the date of issuance if work has not been commenced by that date. A Permit which is no longer valid or which has expired pursuant to this section may be renewed within a six (6) month period following the date of expiration upon written application to the Director, provided that the proposed work which was the subject of the Permit has not been revised in any way.

Enforcement of By-law

- The administration and enforcement of this By-law shall be performed by the Director, his or her designates, and those persons designated from time to time by Council as Forestry Supervisors under this By-law. The Director, his or her designates, and any duly designated Forestry Supervisor shall have all powers necessary to carry out the administration and enforcement of this By-law.
- Where a person has injured or destroyed any tree, or planted any tree in contravention of a Permit issued pursuant to this By-law, without a Permit where a Permit is required under this By-law, or contrary to any other provision of this By-law, the Director may make an Order directing the person to do any or all of the following:
 - a. comply with the conditions of the Permit and this By-law;
 - b. cease the work which is the subject of the contravention; and/or
 - c. require work to be done to correct the contravention to the satisfaction of the Director, and within the time specified in the Order.
- The Order issued by the Director pursuant to section 20 shall set out:
 - a. the municipal address or location of the land;
 - b. reasonable particulars of the contravention; and
 - c. the period within which there must be compliance with the Order.
- Where a person has failed to correct any such contravention to the satisfaction of the Director within the time specified in an Order issued pursuant to this Bylaw, the City, in addition to all other remedies it may have, may take all necessary steps to bring the lands into compliance with the terms of this Bylaw.
- The City may recover those costs incurred by it under the preceding section, plus interest accrued to the date payment is made at the rate of fifteen percent

(15%) per annum, from the owner of the land by action or in like manner as municipal taxes.

Exemption from By-law

- The provisions of this By-law do not apply to:
 - a. activities or matters undertaken under a licence issued under the Crown Forest Sustainability Act, 1994;
 - b. the injuring or destruction of trees by a person licensed under the Surveyors Act to engage in the practice of cadastral surveying or his or her agent, while making a survey;
 - c. the injuring or destruction of trees imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under section 41, 51 or 53, respectively, of the Planning Act, or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;
 - d. the injuring or destruction of trees imposed after December 31, 2002 as a condition to a development permit authorized by regulation made under section 70.2 of the Planning Act, or as a requirement of an agreement entered into under the regulation;
 - e. the injuring or destruction of trees by a transmitter or distributor, as those terms are defined in section 2 of the Electricity Act, 1998, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
 - f. the injuring or destruction of trees undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the Aggregate Resources Act; or
 - g. the injuring or destruction of trees undertaken on land in order to lawfully establish and operate or any large any pit or quarry on land that has not been designated under the Aggregate Resources Act, or a predecessor of that Act, and on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the Planning Act.

Offence and Penalty

- Every person who contravenes any provision of this By-law, or an Order issued hereunder, is guilty of an offence and is liable to a fine of not more than \$10,000.00 or \$1,000.00 per tree, whichever is greater, on a first conviction, and not more than \$25,000.00 or \$1,000.00 per tree, whichever is greater, on any subsequent conviction, as provided in subsection 138(1) of the Municipal Act, 2001, S.O. 2001, c.25, as amended.
- Every corporation that contravenes any provision of this By-law, or an Order issued hereunder, is guilty of an offence and is liable to a fine of not more than

\$50,000.00 or \$5,000.00 per tree, whichever is greater, on a first conviction, and not more than \$100,000.00 or \$10,000.00 per tree, whichever is greater, on any subsequent conviction, as provided in subsection 138(1.1) of the Municipal Act, 2001, S.O. 2001, c.25, as amended.

If a person is convicted of an offence for contravening the provisions of this Bylaw, or an Order issued pursuant to this By-law, the Court in which the conviction has been entered, and any Court of competent jurisdiction thereafter, may order the person to rehabilitate the land or to plant or replant such tree(s) in such manner and within such time period as the Court considers appropriate, including any silvicultural treatment necessary to re-establish the tree(s).

Severability

In the event that any provision or part of this By-law is found to be invalid or unenforceable for any reason whatsoever, then the particular provision or part thereof shall be deemed to be severed from the remainder of the By-law and all other provisions or parts thereof shall remain in full force and shall be valid and enforceable to the fullest extent permitted by law.

Short Title

First Reading:

The short title of this By-law is the City of Niagara Falls Municipal Property Tree By-law.

Passed this twentieth day of September, 2004.

(Original Bylaw Passed September 20, 2004)

"DEAN IORFIDA"	"R. TED SALCI"

R. T. (TED) SALCI, MAYOR\

September 20, 2004.

DEAN IORFIDA, CITY CLERK

Second Reading: September 20, 2004.

Third Reading: September 20, 2004.

CITY OF NIAGARA FALLS

By-law No. 2013-

SCHEDULE "A"

APPLICATION FOR PERMIT TO INJURE, DESTROY OR PLANT TREES ON PUBLIC PROPERTY

1	Registered Owner of Affected Property:
2	Mailing Address of Owner:
Postal	Code: Phone Number: (H) (W)
Email:	
3	Legal Description of Affected Property: Plan Number:
	Lot Number:
4	Street Address (location of tree if different from above)
5	Existing Land Uses(s):
6	Present Land Use Designation: Existing Zoning:
7	Purpose of Proposed Tree Activity:
8	Commencement/Completion Dates:
9	Description of Proposed Activity (if necessary, attach addendum):

11		ude a plan of affected area drawn to scale, accurately delineating the wing:									
	a.	property boundaries, buildings and structures;									
	b.	existing topography (including contour intervals);									
	C.	location/dimensions of proposed tree cutting, planting or removactivities (including the location of access roads or other associate works);									
	d.	photographs									
		of Owner or Authorized Agent Date: (day/month/year)									
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Schedule "B"

Botanical Name	Common Name	Description	Native	Form	Size	Soil Type/ Conditions	Urban Tolerant	For Use Under Hydro	Picture	Additional Notes
Acer ginnala	Amur Maple	Can occur as a multi-stemmed shrub or as a small tree. Rounded shape. 5 meters in height, occasionally up to 8 meters	No	Rounded	Ornamental	Tolerates wind, dry soil and drought	Yes	Yes		Easy to transplant. Adaptable. Can be planted in full sun or partial shade. It can withstand heavy pruning
Amelanchier canadensis	Serviceberry	Small tree: height of 5m by 4 m spread	Native to Canada	Rounded	Ornamental	N/A	Yes`	Yes		N/A
Cornus florida	Flowering dogwood	20' in height, with spread equaling or greater than that. Growth up to 30-40ft in height	Native to Canada	Rounded	Ornamental	acid, well drained soil, in partial shade, although sun is acceptable	Yes	Yes		Fruit which is poisonous to humans, dyingout in wild due to fungus
Crataegus crus galli var.inermis.	Thornless Cockspur Hawthorn (Crusader Hamthorn)	15-20 ft in height & spread	Thornless Cultivars of native species	Rounded	Ornamental	loam, clay	Yes	Yes		N/A
Malus spp.	Flowering & Domestic Crab Apple	15-25 in height	No	Rounded/ Spreading	Ornamental	Heavy Loam	N/A	Yes		Flowering period of April- late May/early June.
Prunus spp.	Kkwanzan (Shubert cherry)	7-10m height, 5-7m spread	Varies	Rounded/ Vase	Ornamental	Infertile, dry solis.	N/A	Yes		Somewhat short lived, 20 years.Leaves emerge green and mature purple.

Botanical Name	Common Name	Description	Native	Form	Size	Soil Type/ Conditions	Urban Tolerant	For Use Under Hydro	Picture	Additional Notes
Syringa reticulata	Japanese Lilac Tree (Ivory Silk)	20-30 ft height, 15-25 in spread	No	Rounded	Ornamental	Loose, well drained, slightly acidic	N/A	Yes		N/A
Acer nigrum	Black Maple	60-75 ft	Native to Canada	Oval	Large	Loam, Silt-Loam	Yes	Yes		Black maple is often found in mixed hardwood forest setting in nature.
Acer platanoides spp.	(Crimson King, Globe	40' to 50', but growth up to as much as 90'. Width of 35' to 45', rounded symmetrical crown	No	Rounded /Columnar	Medium	Sand, Clay	Yes	N/A		Has ability to outshade native species and outcompete them in habitat
	Red Maple (Fremani, Autumn Blaze)	Medium sized tree, 13 - 20 m, occasionally to 33 m or more, with ascending branches. Irregular or rounded crown.	Native to Canada	Oval/ Rounded	Medium	Sand, Loam	N/A	N/A		Grows in moderately moist sites, likes sandy loam but often found on rocky uplands. Transplant balled and burlapped. Does not tolerate city conditions as well as the Norway Maple Cultivars.
Acer saccharum	Sugar Maple	17m x 12 m in height, growth up to 35m in height at maturity	Native to Canada	Oval/ Rounded	Large	Loam, Clay	N/A	N/A		Does not do well in a restricted root zone location. Moderate pollution tolerance and leaf scorch can develop with drought.
Celtis occidentalis	Common Hackberry	Medium sized tree 12-25m height & 30-60cm round. Trunk divides into several arching branches.	Native to Canada	Vase	Large	Loam, Clay	Yes	N/A		Fast growing and tolerant of species. Fruit of this tree is sought after by a variety of birds and small mammals.

Botanical Name	Common Name	Description	Native	Form	Size	Soil Type/ Conditions	Urban Tolerant	For Use Under Hydro	Picture	Additional Notes
Fagus sylvatica	European Beech (Rivers Beech, Purple Beech, Tri-colour Beech (not as big)	17-20m x 12-15m	Non-native	Oval/ Rounded	Large	Moist, slightly acidic	N/A	N/A		Does not make for good street tree, but withstandss heavy pruning and is useful in hedge material
Ginkgo biloba	Maidenhair tree	50-80 ft height, variable spread of 30-40 ft	No	Pyramidal Spreading	Large	Sandy, Deep, Moderately moist	Yes	N/A		Excellent city tree. Does not fruit until 20-50 years of age.
Gleditsia triacanthos Varieties inermis	Thornless Honeylocust (Shademaster, Skyline, Sunburst)	30-70 ft in height with similar spread	Thornless cultivars of native species	Spreading	Medium	Moist bottomland, limstone origin	Yes	N/A		Very salt tolerant, drought tolerant as well.
Gymnocladus dioicus	Kentucky coffeetree	18-25m, spread of15-22m.	Native to Canada	Oval	Large	Deep, rich, moist soils	Yes	N/A		First tree to lose leaves in fall, and last to leaf out in spring.
Liriodendron tulipifera	Tuliptree	22-30m in height, branch spread caries depending on open space or in wooded areas.	Native to Canada	Rounded	Large	Most, fertile, well drained loam. Slightly acidic and full sun	N/A	N/A		Ontarios tallest native tree species
Pyrus calleryana	Callery Pear (Chanticleer)	35 ft high and 16ft wide in maturity	No	Pyramidal	Medium	Loam Soil	Yes	N/A		Hardens early and susceptable to early freezes

Botanical Name	Common Name	Description	Native	Form	Size	Soil Type/ Conditions	Urban Tolerant	For Use Under Hydro	Picture	Additional Notes
Quercus macrocarpa	Bur Oak	22-30m in height, spread of20- 30 m. Grown in open space, trunk is short with stout, horizontal widespread branch	Native to Canada	Rounded	Large	Sandy, dry clay soils	Yes	N/A		Can live up to 300 years, and resist salt and pollution in urban areas for survival
Quercus alba	White Oak	50-80 ft height	Native to Canada	Rounded	Large	Best in deep, moist, well drained soils.	N/A	N/A		Beautiful tree year round
Quercus robur 'Fastigata'	Fastigate English Oak	50-60 ft in height, only 10-15 width	No	Columnar	Large	Sand, sandy-loam	Yes	N/A		N/A
Quercus robur	English Oak	75-100' height&spread	No	Rounded	Large	Sandy loam, in full sun	Yes	N/A		Good tree for parks and other large spaces. Seed requires no pretreatment.
Quercus rubra	Red Oak	20-27m tall, 15-22m spread. Often rounded when young and mature	Native to Canada	Rounded	Large	Sandy-loam	Yes	N/A		Acceptable street tree, saught after for furniture and floor manufacturing.
Tilia cordata	Littleleaf Linden (Glenleven, Greenspire, Greenglobe)	12-15 m height and 8-10m spread. Densley branched	No	Pyramidal	Medium	Moist, well drained, fertile soil.	Yes	N/A		Quite pollutant tolerant

Botanical Name	Common Name	Description	Native	Form	Size	Soil Type/ Conditions	Urban Tolerant	For Use Under Hydro	Picture	Additional Notes
Liquidambar styriciflua	Sweet Gum	60-70 ft with 45 ft spread	No, Carolinian	Spreading	Large	Loam	Yes	N/A		N/A
Nyssa sylvatica	a Black Gum	30-50 ft height, 20-30 ft spread	Yes	Pyramidal at young age	Medium	Prefer moist and deep solis, but also found in dry mountain ridges	N/A	N/A		Responds well to water and fertilization,
Zelkova serrata	Japanese zelkova	50-80 ft in height with lesser spread.	No	Vase Shaped	Large	Moist, deep soil	Yes	N/A		Reasonable pollution tolerance
Quercus ellipsoidalis	Northern Pin Oak (Hills Oak)	50-60 ft high	Yes	Rounded Crown	Large	Dry, Sandy, acid soils	N/A	N/A		N/A
Quercus bicolor	Swamp white oak	50-60 ft tallm with equal or greater spread	Yes	Open, round top	Large	Acid soil	N/A	N/A		Excellent drought resistence, numerious short branches from secondary branches.
Quercus palustris	Pin oak	60-70 ft in height, 25-40ft spread	Yes	Strongly pyramidal	Large	Clay (in wild). Moist, rich acid, & drained soils	Yes	N/A	THE REPORT OF THE PARTY OF THE	N/A

Botanical Name	Common Name	Description	Native	Form	Size	Soil Type/ Conditions	Urban Tolerant	For Use Under Hydro	Picture	Additional Notes
Tilia americana	Basswood	60-80ft in height, with spread of 30-40ft	Yes	Rounded Crown	Large	Drier heavier soils, rocky. Full sun, partial shade.	N/A	N/A		Limited to landscape due to size. Tough inner bark used to make some ropes.

References: Websites: City of Toronto: Urban Foresty, City of Hamilton Forestry, City of St. Catharines, Ontario Trees and Shrubs

Books: Manual of Woody Landscape Plants