

DRAFT
Corporation of the Municipality of Strathroy-Caradoc

Bylaw No.

**To Regulate the Planting, Maintenance, Removal and preservation of
Trees on or Affecting Public Property**

Whereas Council deems it in the public interest to protect Strathroy-Caradoc's tree assets on Public Property to preserve the quality of life and environment for the present and future inhabitants, and to ensure that any necessary tree removal is considered in advance and carried out under conditions as may be imposed;

And Whereas the *Municipal Act S.O. 2001, Chapter 25* as amended, (*the Municipal Act*) Sections 2 and 8 through 11, allows that Council may provide necessary and desirable services, manage and preserve public assets, foster environmental well-being, and exercise specific and general powers to act, and to regulate and prohibit the acts of others;

And Whereas the Municipality, pursuant to Section 135 of the *Municipal Act* may by bylaw prohibit or regulate the injuring or destruction of trees;

And Whereas the Municipality, pursuant to Section 141 of the *Municipal Act* may provide trees to the owners of land adjacent to any highway;

And Whereas the Municipality, pursuant to Section 62(1) of the *Municipal Act* may, at any reasonable time, 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 the Municipality, pursuant to Section 62(2) of the *Municipal Act* may remove a decayed, damaged or dangerous tree or branch of a tree immediately without notice to the owner of the land upon which the tree is located, if in the opinion of the employee or agent, the tree or branch poses an immediate danger to the health or safety of any person using the highway;

Now Therefore the Council of the Municipality of Strathroy-Caradoc enacts as follows:

1. Definitions and Application

1.1 In this Bylaw:

- a. **“Contractor”** means a person engaged by the Municipality to perform a specific activity or service, on or at a particular land or premises;
- b. **“Council”** means the Council for the Corporation of the Municipality of Strathroy and includes its successor;
- c. **“Destroy”** in relation to a tree includes any action which causes or results in the death of a tree, not limited to but including the acts of cutting, burning, knocking over the tree.
- d. **“Director”** shall mean the Director of Community and Cultural Services or his designate in writing
- e. **“Drip Line”** means the area on the ground directly located under the outer circumference of the tree branches.
- f. **“Emergency Work”** means any work carried out by the Municipality, a public utility service, or other authority and its contractors, whether above and below ground level, which is work necessary in an emergency situation for maintenance, or to restore or ensure service is maintained.
- g. **“Employee”** means all employees, servants, and agents of the Municipality of Strathroy-Caradoc or contractors hired by the Municipality.
- h. **“Highway”** means a common and public highway under the jurisdiction of the Municipality of Strathroy-Caradoc; and includes any bridge, trestle, viaduct or other structure forming part of a highway and includes any portion of a highway to the full width thereof;
- i. **“Improper Pruning”** means trimming a tree so as to cause irreversible damage in a manner contrary to Good Arboricultural Practices;
- j. **“Injure”** includes any act or treatment which causes irreversible damage to a tree.
- k. **“Municipal Law Enforcement Officer”** means a person appointed as such under this or any bylaw of the Municipality.
- l. **“Municipality”** as the context requires, means the municipal Corporation of the Municipality of Strathroy-Caradoc or the geographical limits of the municipality;
- m. **“Naturalized Area”** means an area that has been set aside by the municipality for the undisturbed growth of any tree species where the desired effect is that of natural growth of any tree species where the desired effect is that of natural growth, and for the purposes of this bylaw the term will include municipal woodlots and woodlands;
- n. **“Pest”** means any organism including, but not limited to, such things as insects or diseases whether viral, fungal, or bacterial,

which directly or indirectly cause irreversible damage to the long-term health, vitality, and integrity of a tree;

- o. **"Private Tree"** means any tree which has greater than fifty (50) percent of its trunk diameter measured at ground level on private property;
- p. **"Public Property"** includes a highway, park, public unassumed alley, or any other public place or land owned by, or leased to, or controlled by, or vested in, the Municipality.
- q. **"Public Tree"** means any tree which has greater than or equal to fifty (50) percent of its trunk diameter measured at ground level on public property, and "public tree" shall be used interchangeably with "municipal tree", "municipally owned tree", or "Town owned tree".
- r. **"Removal"** means the elimination, in whole or in part, of a tree;
- s. **"Tree"** means a plant of any species of woody perennial including its root system, which has reached or can reach a height of at least 4.5 metres at physiological maturity.
- t. **"Tree Maintenance"** includes all operations of watering, trimming, pruning, spraying, injecting, fertilizing, treating, cabling and bracing and any other like activity.

1.2 This Bylaw applies to:

- u. Persons within the Municipality of Strathroy-Caradoc
- v. Public trees; and
- w. Private trees, which pose a threat or hazard to persons or property on public property.

1.3 This Bylaw does not apply to trees in private woodlands.

2. Administration

The Director of Community and Cultural Services of the Municipality of Strathroy-Caradoc is responsible for the day-to-day oversight and implementation of Strathroy-Caradoc's Tree Bylaw and Tree Program for the Municipality. The Director is hereby authorized to administer and enforce this bylaw and has delegated authority granted by Council to execute the provisions of this bylaw.

In addition to the authority otherwise provided in this bylaw, the Director or his designate is authorized to direct and oversee the performance of the following duties:

- 1. The planting, care, and maintenance of public trees;
- 2. The pruning or removal of trees
 - a) Upon public property;

- b) Upon private property where the branches extend over public property and the removal is performed by Municipal employees or contractors; or
- c) Upon a highway where the branches or any public or private tree extend over a highway and the removal is performed the municipality's employees or contractors.

3. Funding/Budget

A budget for new and replacement trees, required maintenance and tree removals, will be proposed annually for Council's consideration and approval, as part of the Community Development annual budget.

The Director of Community and Cultural Services will carry out active solicitation of other funds through provincial and federal grants and programs, or through business, organization and service clubs that support and promote tree planting and care.

4. Prohibitions Against Injury or Destruction

1. No person shall undertake to or cause or permit the undertaking of any of the following actions towards a public tree:
Injure, remove, disturb damage, destroy, cut above or below ground, spray, prune, or alter in any way, a public tree; without prior approval and of the Director;
2. Where a person reports having injured or damaged a public tree, or where a person is found to have injured or damaged a public tree, the Director or his designate shall issue an order requiring that the person arranges for payment of restitution.

5. Protective Measures for Trees During Construction

Any person undertaking to perform any work within the drip line of a public tree, requires the consent of the Director, and shall follow the regulations and conditions listed herein.

The following regulations shall apply to all contractors, engineers, architects and citizens working or affecting work in the vicinity of municipality owned trees.

Approvals

Written permission must be obtained from the Director prior to commencing any development, construction, or activity within the drip line of municipally owned trees.

Reporting and Notification

All trees within the development areas are to be identified as public or private; a tree management plan must be submitted for all trees on

public property, prior to grading. This plan should appear in chart form and list all species, diameters at breast height, proposed grade changes, property lines, proposed removals, relocations and trees to be preserved. The Director shall prepare a report to Council recommending which trees shall be preserved, removed, or relocated.

Notice of Affected Property Owners and Owners of Property Abutting Public Property

Where a tree has been designated for removal in accordance with this bylaw, a letter will be provided to the owner advising of the tree removal. The notice will also include plans for replacement of the tree. The letter shall be received two weeks prior to removal.

Protective Measures

All existing trees that are to remain on site, or on adjacent properties, shall be tagged and fully protected with fencing located beyond their drip line to the satisfaction of the Director or his designate. Tree protection zones may be expanded as required based on the species of the tree. These barriers are created to protect the roots, trunks and branches during development, as well as the understory and ground covers. Small lot by lot tree protection will require snow fencing with metal post enclosures. Long term development construction will require special page wire fencing or plywood to a minimum height of five feet. The type of fencing to be used is determined during the site inspection by the Director or his designate. Fences shall be located at a minimum of 0.5 times the crown radius of the tree from the drip line, 36- degrees around the perimeter of individual or clustered trees.

Equipment shall not compact soil over the root zone of existing trees. To avoid damage to trees that are to be protected, access routes must be established away from protected areas. All excess roads or pathways, regardless of how temporary, must be identified and approved by the Director or his designate.

Written permission must be obtained from the Director, prior to commencing any work such as tunneling, torpedoing, digging or trenching within the drip line of any tree to minimize root injury, and to avoid soil compaction.

At no time shall there be any placement, deposit, or storage of any stone, brick, sand concrete, soil or any other material or equipment which may impede the free passage of water, air, or nutrients to the tree.

No cables or ropes of any type shall be wrapped around or installed in or on any trees.

Under no circumstances, should any part of the tree that is to remain after construction is completed, have signs or fences nailed to it, or survey markings or paint applied to the tree.

The Director or his designate will make period site inspection of all trees with the construction zone until the project is complete

The Director must be notified immediately when any municipally owned tree is injured or destroyed during construction or development.

Any tree deemed by the Director, to have died or declined as a result of construction related injury within 24 months after construction, will be removed by the Municipality and a suitable replacement tree will be planted. The cost of removal and replacement will be borne by the developer or contractor.

6. Planting of Trees

6.1 Prohibited Species

No person shall plant or place, or cause or permit the planting or placing of a tree of type or species listed below upon public property;

- a. Acer negundo – Manitoba Maple;
- b. Acer saccharinum – Silver Maple;
- c. Populus spp. – Poplar Species;
- d. Salix spp. – Willow Species;
- e. Ulmus pumila – Siberian Elm; or
- f. Ginkgo biloba – female only
- g. (others as may be found to be diseased)
- h. **Coniferous Trees**: Unless authorized by the Director in writing, no person shall plant or place, or cause or permit the planting or placing of any coniferous trees upon public property.

6.2 New Subdivision Trees

In all newly built subdivisions, the developer is responsible for the planning and cost of tree planting. The Developer submits a plan to the Municipality for approval. Within one year of assumption, the Municipality of Strathroy-Caradoc will use that plan and tender a contract to have all the trees planted within that subdivision and invoice the developer for that amount. This allows the Municipality to retain control of the quality of planting and enable staff to accurately inventory

the trees and follow up on the 2 year warranty of the trees. The planting will be done in accordance with the Municipality's guidelines for tree planting.

Plans of Subdivision with multiple phases will be required to plant trees at the assumption of each phase of the Subdivision.

7. Planting of Infill Trees

Replacement

Subject to budget and/or available funding, the Municipality of Strathroy-Caradoc will try to replace all trees that have been removed due to construction, storms, or poor health. When possible, this will take place within one year of the tree being removed. Each site is assessed to determine if there is room to replant. The size of the tree to be planted is based on the amount of available soil and presence of utilities, both above and below ground. This assessment is based on the Municipality of Strathroy-Caradoc guidelines for planting trees. Homeowners will be notified in advance and it is possible for them to request a specific tree from our list of approved trees.

Request from the Public

Subject to the annually approved municipal budget, homeowners in the Municipality of Strathroy-Caradoc may request to have a tree planted on the boulevard in front of their house. The municipality will assess that site. All requests will be accommodated within one year, when possible.

Pro-Active Planting

The Municipality will engage in actively planting on the boulevard spaces. It is our commitment to reforest any boulevard space.

8. Downtown Projects

The municipality of Strathroy-Caradoc will actively bring trees to the core areas when possible by utilizing current technology to create planting spaces which will sustain trees.

9. Planting Trees on Public Property

No person shall, without prior written consent of the Director, plant or cause to be planted any tree on public property.

The Municipality reserves the right, at its sole discretion, to plant, or to have planted trees on any portion of the public property.

All trees planted by the Municipality, or by any contractor, developer, or person, on public property, are subject to this bylaw as well as:

- The Municipality of Strathroy-Caradoc Street Tree Planting Guidelines (including Schedule A approved tree listing)
- The Municipality of Strathroy-Caradoc Servicing Standards

10. Notwithstanding Section 8

- a. Any tree planted on public property with our without the consent of the Director, is the property of the Municipality, is deemed to be a public tree, and is subject to all terms and conditions as set out in this Bylaw;
- b. For greater certainty, a tree referred to in subsection (a) above may be treated as a public tree or removed as provided for in this Bylaw, and in particular, any tree removed by the Municipality maybe removed without compensation owing by the municipality, and if removed by someone other than the municipality without the required permission for removal by the Municipality, may result in enforcement, claims for compensation, and replanting costs and orders, and if such tree planted is a prohibited species, may be removed by the Municipality or its contractors at the expense of the person planting or causing such planting to occur.

11. Tree Planting on Private Property

1. Any tree planted on private property, whether planted by the Municipality or by any other person, is the property of the land owner and as such is the owner's sole responsibility.
2. The owner of property on which a private tree is standing shall not permit or leave the tree or branches thereof projecting over the highway in such manner as to obstruct the reasonable and safe us of the highway and sidewalk.

12. Removal of Trees

All authorized public tree removals and all private tree removals or pruning carried out by or on behalf of the municipality shall be performed or under the direction of a tree care professional.

13. Public Tree Removals

The Director is authorized to remove or cause to be removed a tree or part thereof on public property when it is considered "necessary for the public interest" as described in Section 21 of this bylaw.

14. Council Must Grant Approval

Where it has been determined that the removal of public trees is required for Planning and Development Projects, or for Municipal

Operations, Council must grant approval and will be provided with the following information:

- Identification of all municipal trees on the affected site;
- Identification and quantification of all municipal trees being considered for removal;
- Identification of the species for each tree being considered for removal;
- The diameter at breast height measurement for each tree being considered for removal.

15. Trees Replaced

When possible, trees which have been removed shall be replaced.

Where possible, the species of replacement trees shall be akin to the original tree that was removed. In those cases where this is neither practical nor feasible, the Director will choose from a list of appropriate species from which replacement trees shall be planted.

16. Notification Requirements

Where a tree has been designated for removal, the property owner or abutting property owner, in the case of a boulevard tree, shall be advised by way of a registered or land delivered letter. Said letter will advise when the tree will be removed and also, when possible, when the tree will be replaced.

17. Tree Removal - Necessary for the Public Interest

For the purpose of Section 16, "necessary for the public interest" means removal for one or more of the following reasons:

1. A tree is decayed in whole or in part; at the discretion of the Director or his designate;
2. A tree that has failed, or in its current physiological condition has the potential to fail, and by its failure, or potential failure, poses a direct and immediate threat to public property or to individuals using public property;
3. A tree that is a source, host, or infested with any pest which directly or indirectly causes irreversible damage to the long-term health, vitality, longevity, and integrity of a tree;
4. A tree whose structural value, or integrity, as determined by the Director, has been seriously compromised by construction, weather related events or by pruning;
5. A tree planted along a highway which obstructs or impedes the safe use of the same;

6. A tree whose root system has been proven to compromise the structural integrity of the foundation of any building; or
7. A tree of poor quality, or undesirable species whose removal is required to facilitate new street tree plantings.

18. Naturalized Areas

1. No person shall remove, or cause, or permit the removal of any public tree that has fallen in a naturalized area from such area.
2. Any public tree that has fallen in a naturalized area and impedes the use of the public property may be cut back by the Municipality so as to provide safe access and use of the public property, however, the tree may not be removed from the area.

19. Private Trees

1. Pursuant to section 62 of the Municipal Act, 2001, and in accordance with section 431 of that Act where required, a municipal employee or a contractor of the municipality, for the purpose of tree trimming in relation to highways or for the maintenance of highways, may where necessary, at any reasonable time enter on lands adjacent to any of its highways to:
 - Inspect or conduct tests on trees; or
 - Remove decayed, damaged or dangerous trees or their branches, where in the opinion of the employee or contractor, the tree or branch poses a danger to the health and safety of any person using the highway.
2. Pursuant to subsection 62(2) of the Municipal Act, 2001 a municipal employee or a contractor, where such person is of the opinion that a tree or branch of land adjacent to the highway poses an immediate danger to the health and safety of any person using the highway, where necessary, may enter the land without notice to remove the tree or branch.
3. The owner of private property shall ensure that all trees growing partially on public property are maintained in good condition and state of repair, free of decay or damage, such that the tree or branches thereof do not pose a danger to persons on Municipal properties or its highways.
4. The obligations in subsection 19.3 shall be deemed to include the requirement of the owner to cause or carry out such inspections

and testing as are reasonable necessary to determine the condition of the private tree and its branches.

20. Enforcement

Staff responsible for the Administration of this bylaw, a Municipal Bylaw Enforcement Officer or Police Officer may enforce the provisions of this bylaw.

21. Penalty and Remedies for Breach or Contravention

1. Any person contravenes this bylaw is, upon conviction, guilty of an offence and is liable to any penalty as provided in the Provincial Offences Act.
2. Where under this bylaw a person is required or directed that a matter or thing be done and the person defaults or otherwise fails to comply, the Director may, pursuant to section 427 of the *Municipal Act*, carry out the thing or cause the matter to be done at the person's expense, and recover the Municipality's costs as defined in that section by action or by adding the costs to the tax roll for the person and collecting them in the same manner as taxes.

22. Severance

Should a court of competent jurisdiction declare a part or whole of any provision of this bylaw to be invalid or of no force or effect, the provision or part is deemed severable from this bylaw, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its remaining terms to the extent possible under law.

23. Short Title

The Short Title of this Bylaw shall be "The Municipality of Strathroy-Caradoc Tree Bylaw".

24. Bylaw/Policies – previous

Any previous municipal polices and bylaws which are inconsistent with the content of this bylaw are hereby repealed.

25. Effective Date

This bylaw shall come into force and effect on the day of its final passage in Open Council.

Passed in Open Council on -----, 2013