

Schedule "A" to By-Law Number 2205

The Corporation of the Town of Essex

By-Law Number 2205

**Being a Bylaw to authorize and regulate the planting,
maintenance and removal of public trees, including the
cleanup of debris falling from such within the municipal
boundaries of the Town of Essex**

Whereas Section 141 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides that a Municipality may provide trees to the owners of land adjacent to any highway and may plant the trees on the owners' land with their consent;

And Whereas Section 62 (1) of the Municipal Act, 2001, S.O. 2001, c. 25, 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 and safety of any person using the Highway;

And Whereas Section 62 (2) of the Municipal Act, 2001, c.25, s.62(2); 2006, c.32, Sched. A, s.26, authorizes an employee or agent of the municipality to remove a decayed, damaged, or dangerous tree or branch of a tree immediately and 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.

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 pursuant to Section 391 (1) of the Municipal Act, 2006, c. 32, Sched. A, s. 163 (1) Without limiting sections 9, 10 and 11, those sections authorize a municipality to impose fees or charges on persons for services or activities provided or done by or on behalf of it; for costs payable by it for services or activities provided or done by or on behalf of any other municipality or any local board; and for the use of its property including property under its control.

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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 clean-up of debris from such trees, within the Town of Essex.

And Whereas it is deemed expedient to pass a by-law for such purpose.

Now therefore the Council of the Corporation of the Town of Essex enacts as follows:

Part I – Interpretation

1.1 Short Title

This by-law may be cited as the *“Tree Management By-Law”*.

1.2 Definitions

In this by-law:

“Council” means the Council of The Corporation of the Town of Essex,

“Daylight triangle” means a triangular shaped area on a lot measured 9.5 metres (31 feet) along both rights-of-way from the point of intersection of the travelled portion of two roads or a road and a driveway to maintain horizontal lines of sight,

“Drip line” refers to the area (circle) located under the outermost circumferences of the tree branches of an existing tree,

“Landscape Technician” means the Landscape Technician of the Town of Essex,

“Manager, Operations” means the Manager, Operations of the municipality and includes all property located within the municipal boundaries of The Corporation of the Town of Essex.

“Manager, Parks and Facilities” means the Manager, Parks and Facilities of the municipality and includes all property located within the municipal boundaries of The Corporation of the Town of Essex.

“Owner” shall include any person who is an owner of land either solely, jointly or in common with any other person or persons and shall include any or all such person,

a) **“Occupant”** shall include any person(s) who resides or is present in a building on land,

- b) **"Park"** means an area of natural, semi-natural or planted space set aside for human enjoyment and recreation, protection of wildlife or natural habitats, and includes, but is not limited to, playgrounds, sports fields, and dog parks,
- c) **"Private Tree"** means a tree that was planted on private property and the trunk of the tree does not touch, or cross, a property line on a public right-of-way.
- d) **"Property Line"** means the line between the public right-of-way and abutting property,
- e) **"Public Land"** means, in singular or plural, land under the legal ownership or control of the Town, inclusive of public right-of-way,
- f) **"Public Tree"** means a tree trunk that touches and/or crosses the property line of a public right-of-way. A tree may be planted as private ownership and grow onto public ownership, which will then become a public tree.
- g) **"Public Right-of-way"** or **"PROW "** means the area on, below, or above property within the legal ownership or control of the Town, that has been designated as a highway or is used by the public for a sidewalk, trail, alley or similar purpose.
- h) **"Sidewalk"** means the surface in front of, alongside or at the rear of occupied or unoccupied premises, designed for pedestrian use.
- i) **"Site triangle"** refers to the measured area found at the intersection or corner of two streets where its location is measured back 9 metres (approximately 30 feet) from the intersection along each edge forming a triangle free of obstruction,
- j) **"Tree"** includes a tree, hedge, woody plant, or shrub, and
- k) **"Town"** or the **"Town of Essex"** means The Corporation of the Town of Essex.



Part II – Scope of By-Law

- 2.1** This by-law applies to any tree, or situation involving future trees, located on or near public land.

Part III – Planting of Trees

3.1 Permission to Plant

- 3.1.1** Trees of the species listed in Schedule "A" attached hereto and forming part of this by-law (and as such Schedule may be amended from time to time by the Manager, Parks, and Facilities) may be planted in the Town of Essex right-of-way upon permission from the Manager, Operations, Manager, Parks and Facilities or an approved designate.

3.2 Authority to Remove Trees, Shrubs and/or Flowers

- 3.2.1** The Town shall have the authority to remove trees, shrubs and/or flowers in the public right-of-way, or any Town of Essex owned property, if the Town pursues work in such area, or if there is an obstruction to visibility, or a health and safety risk, or if the plant is within a site triangle and causes a general obstruction to visibility within the public right-of-way, all to the sole discretion and satisfaction of the Town of Essex.

3.4 Supervise Planting

- 3.4.1** The Town shall supervise the planting, trimming or removal of trees planted in the public right-of-way or upon private property where the branches extend over the public right-of-way.

3.4 Prohibited Species

- 3.4.1** No person shall plant any species of tree identified in Schedule "B" attached hereto and forming part of this by-law, (and as such Schedule may be amended from time to time by the Manager, Parks and Facilities) within a public right-of-way within the Town of Essex.

Part IV – Duties of Owners/Occupants of Private Property

4.1 Pruning of Trees

- 4.1.1** Any person owning or occupying property abutting any public right-of-way, and upon which property there are trees, shall prune such trees using sound and correct horticultural practices, and in a manner such that there will not be an obstruction to or with the passage of the public, street lighting, traffic signs

or the view of any intersection within a site triangle, all to the Town's discretion.

4.2 Minimum Height of Vegetation

4.2.1 The minimum height over a public right-of-way shall be two- and three-quarter metres (2.75m) or approximately nine feet (9'). The minimum height over the travelled portion of a public right-of-way shall be four and one quarter metres (4.25m) or approximately fourteen feet (14').

4.3 Overhanging Vegetation

4.3.1 Where any tree or part thereof is growing upon private property but overhanging or interfering with the use of any public land, and in the opinion of the Town of Essex, endangers the life, health, safety or property of the public, shall be corrected, or removed.

Part V – Damage or Removal of Trees

5.1 Damages to Trees

5.1.1 No person shall, without prior written consent from the Manager, Operations, Manager, Parks and Facilities or an approved designate, carryout, cause or permit to carry out, any of the following on public lands, including a public right-of-way:

- Plant, remove or cut down a tree or any part of a tree,
- Mark, cut, break, deface, debark, damage, or in any other manner injure or destroy a tree, or any part of a tree,
- Spray, prune, trim remove or alter a tree or any part thereof,
- Tack, paste or attach a bill or note or any other thing to a tree or to the stake, post, guard, or any object supporting such tree,
- Any other work on any public right-of-way or lands which will affect any tree growing thereon,
- Allow any gaseous, liquid, or solid substance which is harmful or toxic to trees to come into contact with any tree,
- Interfere with fences, boxes or other protective devices placed around any tree,

- Alter or change the soil levels in the vicinity of any tree in a manner likely to cause injury to the tree,
- Excavate, disturb, or compact soil within the drip line of a tree, or
- Permit or cause any animal under their control or ownership to deface or injure any tree or plant material.

5.2 Removal of Trees

- 5.2.1 No person shall remove any tree growing on any public land for the purpose of construction or any other reason without having obtained written permission from the Manager, Operations, Manager, Parks and Facilities, or an approved designate. Every attempt shall be made to retain the tree in its existing location, or with the permission of the Town, relocated to an alternative location.
- 5.2.2 Any person removing a tree must have written permission, provide the replacement value of the tree being removed to the Town prior to removal, such value having been determined in accordance with the accepted formula for tree evaluation of the International Society of Arboriculture, such that the compensation payable for trees removed shall be the cost to replace same with suitable trees of a caliber between one hundred millimetres and three hundred millimetres (100mm and 300mm) as determined necessary by the Town.

Part VI – Reforestation

6.1 Reforestation

- 6.1.1 Subject to budget and/or available funding, the Town of Essex at its sole discretion will replace each tree that has been removed due to construction, storms, or poor health with a minimum of one tree. When possible, this will take place within one year of the tree being removed. Each site will be assessed to determine if there is room to replant; however, if there is not enough room the Town of Essex may work with a private property owner to place the tree on private property. The size of the tree to be planted will be based on the amount of available soil and presence of utilities, both above and below ground. Any assessment carried out by the Town of Essex is based on the Town's guidelines for planting trees. Homeowners may request the same or a different tree from the Town's list of Approved Tree Species (see Appendix "A").

Part VII – Maintenance of Trees on Public Land

7.1 Maintenance of Trees on Public Land

7.1.1 The planting, removal and maintenance of all trees located on public land shall be performed by the Community Services and/or Infrastructure Departments of the Town of Essex.

Town of Essex authority under this section includes but is not limited to the following:

- Plant, or cause to be planted, trees on all public land, including on public right-of-way,
- Water, spray, fertilize, trim or cause to be watered, sprayed, fertilized, or trimmed, any tree growing on all public land, including on public right-of-way,
- Trim trees located on private property where the branches of which extend over any public land, including a public right-of-way,
- Remove or cause to be removed any tree, or part of a tree, which in their opinion is decayed, diseased or hazardous to the public, on public land,
- Remove or cause to be removed, without compensation to any person, anything which in their opinion adversely affects a tree located on public land, including a fence, stake, post, or guard,
- Remove or cause to be removed any tree or part of a tree on public land that interferes with existing or proposed municipal services,
- Implement all necessary treatments for insect and disease problems associated with trees located on public land,
- Stop any work causing injury or destruction to a tree located on public land that is taking place without permission from the Town, and
- Take whatever other measures deemed necessary in their judgement to extend the useful life of a tree on public land without impacting public liability.

7.1.2 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 Manager, Operations, Manager, Parks and Facilities or

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an approved designate shall be notified at least forty-eight (48) hours in advance regarding the operations. Any trimming or other work completed on such trees shall be limited to the actual necessities of such utilities or municipal operations and shall be performed to the satisfaction of the Manager, Operations, Manager, Parks and Facilities or an approved designate.

Part VIII – Protection to and Damage of Trees

8.1 Protection When Trees Are Near Excavations

8.1.1 All trees on public land near any excavation or construction of any building, structure, or street work, shall be protected to the satisfaction of the Manager, Operations, Manager, Parks and Facilities or an approved designate, by means of snow fence or other barrier as necessary. The barrier shall be set within three metres (3m) or approximately ten feet (10') or at the tree's drip line, whichever is greater.

8.2 Damage to Root

8.2.1 No person shall deposit, place or store within three metres (3m) or approximately ten feet (10') or greater of any tree, any stone, brick, sand, concrete, other materials, machines or equipment which may impede the free passage of water, air or fertilizer to the roots of any tree growing thereon or compact the soil around an existing tree or add soil around an existing tree. This provision shall not apply to the operation of a public utility or service.

8.2.2 No person shall excavate or place a driveway within three metres (3m) or approximately ten feet (10') or within the drip line of a tree, whichever is greater, from any tree in a public land without the written permission for the Manager, Operations, Manager, Parks and Facilities or an approved designate, provided that this provision shall not apply to the operation of a public utility or municipal service. In the event of a discrepancy, a certified arborist report may be required which will address if this will be possible without causing undue harm to the tree and/or root base.

Part 9 – Offences and Penalties

9.1 Every person who contravenes any of the provisions of this By-Law is guilty of an offence and, upon conviction, is liable to fine as provided for under the *Provincial Offences Act, R.S.O. 1990, c. P.33*, as amended



- 9.2 Any person in contravention of this by-law will be served notice by the Town of Essex, or their representatives, to remedy the situation in accordance with this by-law. The property owner will be provided reasonable time to remedy the situation; however, should the property owner not meet the provided timeline, The Town of Essex, or their representatives, may remedy the situation at the cost of the property owner.
- 9.3 Each Person who contravenes any provision of this By-Law, including any provision denoted in the Schedules to this By-Law, may, upon issuance of a penalty notice be liable to pay to the Town an administrative penalty equal to the estimated value of tree(s), plus the related costs, in accordance with the accepted formula for tree evaluation by the International Society of Arboriculture.
- 9.4 The penalty notice (which shall be as prescribed from time to time by the Town) will be sent via registered mail and may be given to the Person to whom or to which it is addressed as soon as is reasonably practicable and shall include the following information:
- a) particulars of the contravention;
 - b) the amount of the administrative penalty;
 - c) information respecting the process by which the Person may exercise the Person's right to request an appeal of the administrative penalty; and
 - d) a statement advising that an administrative penalty will, unless cancelled or reduced pursuant to the appeal process, constitute a debt of the person to the Town.
- 9.5 A Person may appeal an administrative penalty to the appeals committee which Council has delegated the authority and responsibility to conduct hearings under this By-Law.
- 9.6 An administrative penalty shall constitute a debt to the Town of each Person to whom or to which the penalty notice was given.
- 9.7 An administrative penalty that is not paid by the date that it becomes due and payable may be collected in the same manner as municipal taxes.

Part 10 – Obstruction, Enforcement, Conflicts and Severability

10.1 Obstruction

10.1.1 It shall be an offence to obstruct or permit the obstruction of the entry upon land and the inspection of the Manager, Parks and Facilities, Manager, Operations, By-Law Enforcement Officer, or agent working on behalf of the Town of Essex.

10.2 Enforcement

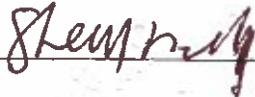
10.2.1 Town of Essex By-Law Enforcement Officer, or designates thereof, shall enforce the provisions of this by-law.

10.3 Severability

10.3.1 It is hereby declared that each and every of the foregoing provisions of this by-law is severable and that, if any provisions of this by-law should, for any reason, be declared invalid by any Court, it is the intention and desire of this Council that each and every of the then remaining provisions hereof shall remain in full force and effect.

This by-law shall come into force and take effect from and after the day of the final passing thereof.

Read a first and a second time and provisionally adopted on December 5, 2022.

Mayor 

Clerk 

Read a third time and finally adopted on December 19, 2022.

Mayor 

Clerk 

Schedule "A" – Approved Tree Species

Approved Tree species:

- Only deciduous trees shall be used for street planting
- Wherever several trees are planted, no more than five (5) trees of one species should be planted in a row
- When possible, native tree species should be planted
- The following trees are coded as to the most suitable and adaptable locations for planting and development
- A – Parks, B – Core areas of Town, C – Residential

The following is a listing of approved shade trees (shade trees shall be planted seven- and three-quarter metres (7.75m) or approximately twenty-five feet (25') apart).

Approved Coniferous Trees							
Use	Common Name	Tree Species	Native Range	Use	Comments	Size	Form
A	Fir	Abies Species	North America	Parks	Slow growing; Best in moist well drained soil; Can be used as screens	L	Pyramidal
A	Dawn Redwood	Metasequoia glyptostroboides	China	Parks	Best in well drained, moist soils; Best fall colour in full sun	L	Pyramidal
A	Spruce	Picea Species	North America	Parks	Tolerates light shade; Prefers rich moist soils; Some drought tolerance	M-L	Pyramidal
A	Eastern White Pine	Pinus Strobus	North America	Parks	Best in moist well drained soil; Intolerant of compacted clayey soils; Fast growing	M-L	Pyramidal
A	Canadian Hemlock	Tsuga canadensis	North America	Parks	Requires average moisture, well drained soils; Best in sheltered, part shaded sites; Intolerant of drought; Benefits thick winter mulch	M-L	Pyramidal

There are many suitable species and cultivars for Abies, Picea, Pinus and Tsuga. Consideration will be considered and checked, before permission to plant anything not on the list

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Approved Deciduous Trees and Shrubs						
Use	Common Name	Tree Species	Native Range	Comments	Size	Form
A, B, C	Red Maple	Acer rubrum	North America	Tolerates a wide range of soils, including wet soils; Very cold hardy; Good fall colour; Verticillium wilt can be fatal; Shallow root system	M-L	Rounded/Oval
A, C	Silver Maple	Acer saccharinum	North America	Fast growing, weak brittle branching; Shallow root system; No significant fall colour; Prefers damp to wet soil	L	Rounded/Oval
A, C	Sugar Maple	Acer saccharum	North America	Moist well drained soil; suffers in compacted, poorly drained soil; Intolerant of road salt; Great fall colour; excellent shade tree	L	Rounded
A, B, C	Downy Serviceberry	Amelanchier arborea	North America	Tolerant of most soil types; Good fall colour; Showy, fragrant flowers and fruit; Full sun to part shade	S	Rounded
A	Paper Birch	Betula papyrifera	North America	Best in medium to wet soils; Exfoliating bark; Multi stemmed and single stemmed; Get birch borer tolerant cultivars; high maintenance	M	Rounded/Oval
A	Bitternut Hickory	Carya cordiformis	North America	Prefers moist soils; Requires large area to grow; Difficult to transplant due to large taproot; Large trees can produce considerable litter, due to twig, leaf and nut drop	L	Rounded/Oval
A	Shagbark Hickory	Carya ovata	North America	Prefers moist soils; Requires large area to grow; Difficult to transplant due to large taproot; Large trees can produce considerable litter, due to twig, leaf and nut drop	L	Rounded/Oval
A, C	Katsura Tree	Cercidiphyllum japonicum	Japan/China	Dioecious tree; Best in moist well drained soil; Not drought tolerant; Grown for it's shape and attractive fall colour;	M	Rounded
A, B, C	Eastern Redbud	Cercis canadensis	North America	Best grown in part shade; Purple flowers before leaves; Difficult to transplant; Prefers rich fertile soils; Good in naturalized areas; Hardiness zone of 4-9	S-M	Vase/Rounded
A, C	Pagoda Dogwood	Cornus alternifolia	North America	Best in rich well drained soil; Specify single stem material; Has tiered horizontal branching	M	Rounded
A, C	Flowering Dogwood	Cornus florida	North America	Grows in average moist well drained soil; Best in part shade; Benefits from spring mulch to keep root cool during the heat; Susceptible to many diseases when stressed, Dogwood anthracnose	M	Broadly Pyramidal
A, C	American Beech	Fagus grandifolia	North America	Best in rich well drained soil; Intolerant to wet, poorly drained soil; Distinctive thin, smooth gray bark; Golden bronze fall colour.	L	Upright Oval

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A, C	European Beech	Fagus sylvatica	Europe	Tolerates wider range of soils than F. grandiflora; Difficult to transplant; Dislikes root zone activity; Many varieties and cultivars available;	L	Upright Oval
Use	Common Name	Tree Species	Native Range	Comments	Size	Form
A, B, C	Maidenhair Tree	Ginkgo biloba	China	Very slow growing; Plant only male trees (dioecious); Yellow fall colour; Fan shaped leaf; Excellent street tree, very tolerant	L	Pyramidal Spreading
A, B, C	Kentucky Coffeetree	Gymnocladus dioica	North America	Choose male for boulevards, females can be dirty; Tolerates poorer soils; Good street tree, very tolerant.	L	Oval/Ovate
A, B, C	Goldenrain Tree	Koelreuteria paniculata	China/Japan Korea	Adapts to a wide range of soil types; Tolerates drought and many city air pollutants;	M	Rounded
A, C	Tuliptree	Liriodendron tulipifera	North America	Fast growing, potentially weak wooded; Shallow rooted, limit root zone activity; Prefers moist organic soils; Not suitable for street tree	L	Pyramidal to Conical
A, B, C	Maackia	Maackia amurensis	Russia/ Asia	Prefers sun; Adapts to many soil types; Prune during summer; Slow to moderate growth rate; Copper bronze exfoliating bark;	S-M	Broad Rounded
A, C	Black Gum	Nyssa sylvatica	North America	Prefers moist acidic soils; Difficult to transplant due to large taproot; Slow growing; Dioecious; Spectacular fall colour;	M	Rounded/Oval
A, C	Ironwood	Ostrya virginiana	North America	Average to well-drained soil; Flowers closely resemble the fruit of hops;	S-M	Rounded
A, C	Shingle Oak	Quercus imbricaria	North America	Tolerates a wide range of soil types; Variable fall colour; leaves will last throughout the winter; Susceptible to oak wilt; Low maintenance tree	M	Rounded
A, C	Chinquapin Oak	Quercus muhlenbergii	North America	Prefers a sunny location; Tolerant to drought; Susceptible to oak wilt; Low maintenance tree	M-L	Open/Globular
A, C	Japanese Pagoda Tree	Styphnolobium japonicum 'Regent'	China/Korea	Best in rich, moist well drained sandy loams; Tolerant of city pollutant and conditions; No fall colour; 'Regent' is a faster growing cv.	L	Broad Rounded

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Schedule "B" – Prohibited Species

Prohibited Tree Species				
Tree Species	Native Range	Comments	Size	Form
Acer negundo	North America	Weak wood, easily damaged with wind and ice; Can be a host for nuisance insects	M	Rounded
Ailanthus altissima	China	Invasive and difficult to eradicate; Weak wood; Short lived; Messy; Listed as a noxious weed in many parts of North America	L	Open
Fraxinus sp.	North America	Host to emerald ash borer; Susceptible to large number of disease problems; Weak branching and dieback	M-L	Pyramidal
Gleditsia triacanthos	North America	Usually covered in numerous thorns; Susceptible to large number of disease problems; Fall litter of seed pods can be an issue	L	Rounded
Morus sp.	China	Listed as a noxious weed in many parts of North America; Weak wood; Fruiting	S-M	Rounded
Populus sp.	North America	Intolerant of city pollutants; Stems come from grouping of underground clones; Susceptible to large number of disease problems; Weak branching and dieback	L	Upright/Pyramidal
Robinia sp.	North America	High insect and disease susceptibility; Usually covered in paired spines; Suckering roots; Can have litter	M-L	Columnar/Oblong
Salix sp.	Europe/Asia	Weak wood; High insect/disease susceptibility; Moisture-seeking roots and litter; Shallow roots	S-L	Varies

* Morus rubra is native to North America. Although considered endangered it should be only planted in a naturalized setting and closely monitored. Fruiting females are extremely messy and tend to self-seed somewhat prolifically. *