

**Bylaw 2017-02**  
**Village of Linden**  
**BEING A BYLAW OF THE VILLAGE OF LINDEN**  
**TO PROTECT PUBLIC TREES**

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**WHEREAS** it is desirable to protect, preserve and retain trees in public spaces owned or controlled by the Village of Linden;

**AND WHEREAS** Linden's Urban Forest provides many environmental, health, and economic benefits to the community including:

- Improvement of air quality by removal of gaseous pollutants and dust particulates;
- Absorption of carbon dioxide;
- Climate moderation and energy conservation;
- Storm water retention;
- Wildlife habitat;
- Aesthetics; and
- General improvement of quality of life;

**AND WHEREAS** public trees share limited space with services such as utilities and transportation infrastructure, the repair and replacement of which causes loss of valuable trees;

**AND WHEREAS** the Municipal Government Act, R.S.A. 2000, c. M-26 provides that Council may pass bylaws for regulating people, activities and things in public places or places that are open to the public;

**NOW, THEREFORE, THE COUNCIL OF THE VILLAGE OF LINDEN ENACTS AS FOLLOWS:**

1. This Bylaw may be referred to as the "Tree Protection Bylaw".

**DEFINITIONS**

2. In this Bylaw:

- (a) "*Boulevard*" means:
  - (i) The strip of land between the curb and the sidewalk and between the sidewalk and the property line, or
  - (ii) Where there is no sidewalk, the strip of land between the curb and the property line, or
  - (iii) Where there is no curb, the strip of land between the near edge of the road and the property line;
- (b) "*CAO*" means the person appointed by the Council of the Village of Linden as its Chief Administrative Officer;
- (c) "*Emergency Personnel*" includes fire rescue personnel, emergency medical providers, law enforcement officers, local, provincial and federal authorities; and workers engaged in emergency repair to a Public Utility;
- (d) "*Enforcement Officer*" means a Bylaw Enforcement Officer of the Village;
- (e) "*Move*" means uprooting and transferring a tree from one location to another;
- (f) "*Pruning*" includes the cutting of tree branches, twigs or roots;
- (g) "*Public Tree*" includes any tree which has any part of its trunk located on Village Lands;
- (h) "*Public Utility*" means a system or works used to provide one or more of the following for public consumption, benefit, convenience or use:
  - (i) water or steam;
  - (ii) sewage disposal;
  - (iii) irrigation;
  - (v) drainage;
  - (vi) fuel;
  - (vii) electric power;
  - (viii) heating and cooling;
  - (ix) roads, sidewalks, or pathways;
  - (x) waste management; and
  - (xi) telecommunications and cable television;

and includes the thing that is provided for public consumption, benefit, convenience or use;

- (m) “*Regulation*” includes Village Bylaws;
- (n) “*Tree*” means any perennial woody plant that normally has one or few upright stems and is maintained as a tree and includes plants designated as trees by the CAO; and
- (o) “*Tree Protection Barrier*” means a fence or other protective cordon surrounding a tree to restrict access.
- (p) “*Village*” means the Village of Linden or, where the context requires, the area comprised within the boundaries of the Village as it may exist from time to time while this Bylaw is in force;
- (q) “*Village Lands*” means property owned, controlled or maintained by the Village including parks, greenspaces, walkways, medians, Boulevards and road rights-of-way;

#### AUTHORITY

- 3.0 (a) No person shall plant trees or shrubbery on Village Lands or cause trees or shrubbery to be planted on Village Lands without prior written authorization from the CAO.
- (b) Written authorization to plant trees or shrubbery on Village Lands from the CAO does not relieve a person from obtaining any other approvals which may be required under any other Regulation.
- 3.1. No person shall remove, Move, cut, or Prune a Public Tree or cause a Public Tree to be removed, Moved, cut or Pruned without prior written authorization from the CAO.
- 3.2. No person shall remove the bark of any Public Tree or cause the bark of a Public Tree to be removed without the prior written authorization from the CAO
- 3.3. No person shall use or caused to be used an object of any kind to penetrate the bark of a Public Tree without prior written authorization from the CAO.
- 3.4. Notwithstanding section 3.1:
  - (1) In accordance with Regulations governing Public Utilities, a Public Utility may perform such Pruning as necessary to comply with safety Regulations and to maintain safe operation of their facilities provided that:
    - a) at least three business days prior to commencing any Pruning, the Public Utility provides the CAO written notice of its intention to Prune;
    - b) the Pruning is carried out in accordance with accepted arboricultural standards and practices; and
    - c) the Public Utility follows any specific directions of the CAO as to how the work shall be carried out.
  - (2) The CAO may order the Public Utility to stop any Pruning performed by a Public Utility if appropriate arboricultural practices are not being followed.
- 3.5. Where removal or Pruning of a Public Tree is determined to be necessary by Emergency Personnel responding to an emergency, such tree or part of it may be cut or removed without first obtaining written authorization to do so.
- 3.6. Emergency Personnel shall notify the CAO of the emergency and work done on the Public Tree as soon as possible but no later than three days after the removal or pruning of the tree.
- 3.7. No person shall remove or caused to be removed any part of a Tree Protection Barrier or enter into or cause another person to enter into the area enclosed by a Tree Protection Barrier.
- 3.8. No person shall, by any means, attach a sign or poster to any Public Tree.
- 3.9. Notwithstanding section 3.8, a person may attach a notice to a Public Tree where required or allowed to do so by written direction of the CAO.

- 3.10 On a prosecution or other proceeding pursuant to section 3.8, any person who may benefit from a sign or poster attached to a Public Tree will be deemed to have attached the sign or poster to the Public Tree unless that person brings forward evidence to the contrary.
- 3.11 No Person shall attach electrical cord to a Public Tree.
- 3.12 No person shall use a Public Tree to secure any object.
- 3.13 Without restricting the generality of section 3.12, no person shall secure newspaper vending boxes, bicycle racks, dog chains, clothes lines, guy wires, swings, or tree house to a Public Tree.
- 3.14 No person shall put any thing in the branches of a Public Tree or cause anything to be put in the branches of a Public Tree.
- 3.15 Notwithstanding section 3.14, a person may place strings of lights in a Public Tree during the months of October, November, December, January and February so long as doing so does not offend any Regulation respecting the location of electrical cords or create safety hazard.
- 3.15.1. An application may be submitted to the CAO for the presence of lights in a Public Tree year round.
- 3.16. Notwithstanding section 3.15, The Village is exempt from section 3.15 and has the authority to have lights strung in Public Trees on a year round basis.
- 3.17 No person shall place, apply or spray or cause to be placed, applied or sprayed any substance other than water on or near any Public Tree without the prior written authorization of the CAO.

#### CAPTIAL CONSTRUCTION

- 4.0 In the event that a tree interferes with a capital project, such as construction of roads or utilities, the process for tree trimming, removal and replacement is as follows:
- 4.1 Trimming:
- 4.1.1 The CAO will inspect the tree and determine the necessary action.
- 4.2 Removal:
- 4.2.1 For each tree requested for removal, a Village Tree Removal application shall be submitted.
- 4.2.2 An inspection of the tree and its surrounding shall be completed.
- 4.2.3 The CAO shall strive to report all tree removals to Council prior to removal.
- 4.3 Replacement
- 4.3.1 When a tree must be removed, the Village will make reasonable effort to re-landscape the area to suite the scope of the capital project.

#### DEATH, DISEASE OR DAMAGE

- 5.0 When a tree is dead or in declining health, harbours an uncontrollable declared pest or has a non-repairable defect, the tree will be removed.
- 5.1 Removal
- 5.1.1. For each tree requested for removal, a Village Tree Removal application shall be submitted.
- 5.1.2. An inspection of the tree and its surroundings shall be completed.
- 5.1.3. The CAO shall review and provide direction on all tree removal applications
- 5.1.4. The CAO shall strive to report all tree removals to Council prior to removal.
- 5.2. Replacement
- 5.2.1. In the event a tree is removed, the Village will make reasonable effort to plant a tree either at the same location or at another location within the town to replace the removed tree. The replacement will be of an approved variety and minimum of four (4) feet in height.

## INTERFERENCE WITH INFRASTRUCTURE

6.1. In the event that a tree interferes with infrastructure such as roads, sidewalks, underground utilities or overhead utilities, maintenance or removal may be required.

6.1.1. Trimming:

6.1.1.1. The CAO will inspect the tree and determine the necessary action.

6.1.2. Removal

6.1.2.1. For each tree requested for removal, a Village Tree Removal application shall be submitted.

6.1.2.2. An inspection of the tree and its surroundings shall be completed.

6.1.2.3. The CAO shall review and provide direction on all tree removal applications.

6.1.2.4. The CAO shall strive to report all tree removals to Council prior to removal.

6.1.3. Replacement

6.1.3.1. In the event that a tree must be removed, the Village will make reasonable effort to plant a tree either at the same location or at another location within the town to replace the removed tree. The replacement will be of an approved variety and minimum of four (4) feet in height.

## NUISANCE

7.1 The Village of Linden defines a nuisance tree as a tree that unduly interferes with the amenities of the property owner or materially interferes with the property owner's rights by being dangerous, obstructive or unhealthful.

7.2 The interference must be unreasonable and substantial to qualify as a nuisance.

7.3 Any care, maintenance or removal of trees located on Village property that is not scheduled or deemed necessary by the Village, shall be at the expense of the individual or business making the request.

7.4 The required action will be completed by the Village and billed accordingly.

7.5 The following will not be considered as `nuisance` complaints:

7.5.1. Tree `too tall`: Trees grow naturally to substantial heights and if healthy, possess adequate mechanical properties to support themselves. Structural collapse may only occur if the tree possess a physiological weakness or in extreme gale conditions. The practice of `topping` or height reduction provides a desired visible result but is extremely harmful and damaging to tree health.

7.5.1 Shade or Loss of Light: Tolerance of shade and requirements for light is a personal and subjective matter and whilst some people prefer and enjoy shade, others desire direct sunlight. There is no legal right to light and a tree owner is not obligated to prune a tree to provide light to a neighbouring property.

7.5.2 Leaf litter, fruit and other debris: With the exception of **Black Cottonwood – populus basamifera ssp. Trichocarpa** or **Balsam Poplar – populus balsamifera ssp. Balsamifera** and ornamental fruit trees, trees that shed leaves and other debris as a natural process are not considered a nuisance. Trees shed leaves and debris as a natural process at various times of the year. Very little can be done to effectively reduce this as most forms of pruning stimulate re-growth and issue very quickly returns.

7.5.3 Satellite/TV reception: The purchase of a TV license, satellite dish or other form of receiver does not give an individual the legal right to TV reception. Pruning or tree removal to improve TV reception would have a significant detrimental impact on the environment.

7.5.4 Pollen and Allergies: Many hay fever and allergy sufferers are affected by grass pollen which is prevalent throughout the summer months. Tree pollen can affect some sufferers but this is produced throughout a much shorter period. The production of pollen is a natural process and there is no legal obligation for a tree owner to prevent the production and spread of pollen.

7.5.5 Roosting Birds and Droppings: Trees provide a valuable habitat for birds particularly for nesting and roosting. There are not tree management techniques available to effectively reduce roosting activities apart from the removal of a tree.

7.6 Remedies:

- 7.6.1 Trimming:
  - 7.6.1.1 The CAO will inspect the tree and determine the necessary action.
- 7.6.2 Removal:
  - 7.6.2.1. For each tree requested for removal, a Village of Linden Tree Removal application shall be submitted.
  - 7.6.2.1 An inspection of the tree and its surroundings shall be completed.
  - 7.6.2.2 Council shall review and provide direction to the CAO on all tree removal applications pertaining to nuisance trees.
- 7.6.3 Replacement
  - 7.6.3.1. When a nuisance tree is removed, the applicant will work with the Village to ensure a tree will be planted either at the same location or at another location within the Village to replace the removed tree. The replacement will be of an approved variety and minimum of four (4) feet in height.

ENFORCEMENT

8.1 Where a Bylaw Enforcement Officer who is also a designated officer, believes a person has contravened any provision of this Bylaw, he may:

- (a) in accordance with the Municipal Government Act, R.S.A. 2000, c. M-26 issue to the person an order to remedy the infraction;
- (b) issue to the person, a violation ticket in accordance with the Provincial Offenses Procedures Act, R.S.A. 2000, c. P-24; or
- (c) do both (a) and (b).

8.2 Where a Bylaw Enforcement Officer who is also a designated officer observes a contravention of this Bylaw with respect to a Public Tree, he may in accordance with the Municipal Government Act, R.S.A. 2000, c. M-26, issue to the owner of the property adjacent to the Public Tree an Order to remedy the contravention.

- 8.3 (1) If the person to whom an order has been issued pursuant to section 8.1 or section 8.2 fails to comply with the order within the time specified in the order:
- (a) That person commits an offence under this section and a Bylaw Enforcement Officer may issue a violation ticket pursuant to the Provincial Offenses Procedures Act, R.S.A. 2000, c. P-24; and
  - (b) The Village may take whatever steps are necessary to remedy the breach of the Bylaw and the cost of doing so becomes a debt owing to the Village by the person to whom the order was issued in accordance with the Municipal Government Act, R.S.A. 2000, c. M-26.
- (2) Any items removed pursuant to this section, if deemed of value, will be removed to a place of safe keeping and will:
- (a) be assessed a daily fee for storage costs and as may be determined from time to time by the CAO; and
  - (b) if unclaimed within 90 days, be sold at public auction.

PENALTY

9.0. Any person who contravenes a provision of this bylaw is guilty of an offence and is liable:

- (a) for a first offence to a fine of not less than **\$75.00**; and
- (b) for a second offence of the same provision within a twenty-four month period to a fine of not less than **\$300.00**.

9.1. The specified penalty for a first offence, is the amount shown in Schedule "A" in respect of that offence.

9.2. All violations of this Bylaw which are of a continuing nature shall constitute a separate offence for each day the offence continues.

9.3. Nothing in this Bylaw relieves a person from complying with any federal or provincial law or regulation, other bylaw or any requirements of any lawful permit, order, consent or other direction.

OTHER

- 10.0. Where this Bylaw refers to another Act, Regulation or agency, it includes reference to any Act, Regulation or agency that may be substituted therefore.
- 10.1. Every provision of this Bylaw is independent of all other provisions, if any provision of this Bylaw is declared invalid for any reason by a Court of competent jurisdiction, all other provisions of this Bylaw shall remain valid and enforceable.
- 10.2. Policy numbers 2014-01, 2011-02, 2006-05 and 2004-01 are hereby repealed.
- 10.3. This Bylaw comes into force on the date it is passed.

READ A FIRST TIME THIS 13<sup>th</sup> DAY OF FEBRUARY, 2017.

READ A SECOND TIME THIS 13<sup>th</sup> DAY OF FEBRUARY, 2017.

GIVEN UNANIMOUS CONSENT FOR A THIRD READING THIS 13<sup>th</sup> DAY OF FEBRUARY,  
2017

READ A THIRD AND FINAL TIME THIS 13<sup>th</sup> DAY OF FEBRUARY, 2017.

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MAYOR

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CHIEF ADMINISTRATIVE OFFICER

**SCHEDULE "A"**

**SPECIFIED PENALTIES**

<b>SECTION</b>		<b>SPECIFIED PENALTY</b>
3.0	Planting tree without authorization	\$250.00
3.1	Removing, pruning or trimming a public tree without a permit	\$500.00
3.2	Remove bark of Public Tree	\$150.00
3.3	Penetrate bark of Public Tree	\$150.00
3.7	Remove or Enter Tree Protection Barrier	\$150.00
3.8	Attach sign to a Public Tree	\$150.00
3.11	Attach electrical cords to a Public Tree	\$150.00
3.12	Securing object to a Public Tree	\$150.00
3.14	Put things in or on Public Trees	\$150.00
3.16	Apply or spray harmful substance to a Public Tree	\$750.00
8.3	Fail to comply with Enforcement Order	\$1,000.00