

[HISTORY: Adopted by the Common Council of City of North Tonawanda 11-16-2010.<sup>[1]</sup> Amendments noted where applicable.]

[1] *Editor's Note: This ordinance also supersedes former Ch. 91, Trees, adopted 6-5-2001.*

## § 91-1 Findings; intent.

- A. The City of North Tonawanda hereby finds that there is a direct relationship between the planting of trees in sufficient number in populated areas and the health, safety and welfare of communities, and as related to the natural, scenic and aesthetic values of trees and the physical and visual qualities of the environment which municipalities are authorized to protect. Trees abate noise, provide welcome shade to people, preserve the balance of oxygen in the air by removing carbon dioxide and fostering air quality, and add color and verdure to human construction. They also stabilize the soil and control microclimatic effects, and provide a natural habitat for wildlife. The destructive and indiscriminate removal of trees causes increased municipal costs for proper drainage control, impairs the benefits of occupancy of existing and unimproved real property in the area of destruction, and adversely affects the health, safety and general welfare of the inhabitants of the City.
- B. It is the purpose and intent of this law to regulate the removal of trees from public property within the City in order to preserve, protect and enhance a most valuable natural resource. It is also the intent of this law to establish standards limiting the removal and insuring the replacement of trees sufficient to safeguard the ecological and aesthetic environment necessary for a healthy community.

## § 91-2 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

### **CALIPER**

The diameter of a tree trunk as measured at a person's breast height.

### **CANOPY**

The uppermost spreading branchy layer of a group of trees.

### **CITY**

The City of North Tonawanda.

### **CITY AGENCY**

Any department, board, commission, or committee of the North Tonawanda government or individual duly appointed to represent such entity.

### **CROWN**

The mass of branches, twigs and leaves at the top of the tree, with particular reference to its shape.

### **PARK TREE**

A tree located within one of the City's municipal parks or recreation areas.

### **PERSON**

Any corporation, firm, partnership, association, trust, estate, one or more individuals and any unit of government or agency or subdivision thereof except for a City agency.

### **PRIVATE PROPERTY**

Lands privately owned or controlled by persons.

**PUBLIC PROPERTY**

Lands owned by the City, dedicated as rights-of-way within the City or otherwise prescribed for public use within the City.

**STREET TREE**

A tree located within the right-of-way bounds of a street within the City of North Tonawanda.

**TOP or TOPPING**

Cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

**TREE and SHRUBS**

Any woody plants that have self-supporting, above-ground parts, which are viable year round.

**§ 91-3 Tree welfare.**

- A. No person shall cut, mar or otherwise injure any street tree planted or growing in or along the streets of the City; provided, however, that the Department of Public Works, the Department of Public Works at the direction of the Mayor, or a person authorized by the Mayor, may cut or trim street trees where such cutting or trimming is required to preserve the public health, safety and/or welfare. This subsection shall not be interpreted to restrict a property owner from performing minor trimming (branches less than one inch in diameter) from the ground on street trees in front of his/her property where his/her intent is to maintain the tree and not to damage, mar or injure it. Tree pruning standards shall comply with ANSI A300, "Trees, Shrubs, and Other Woody Plant Maintenance – Standard Practices," unless more stringent requirements are indicated.
- B. It shall be unlawful for any person, firm or other entity to top any street or park tree. Trees severely damaged by storms or other causes, or trees under utility wires or other obstructions where other pruning practices are impractical shall be exempted from this section at the determination of the Department of Public Works or the Mayor.
- C. No stones, cement, blacktop or other substances which will impede the passage of water and air to the roots of a tree in or on any street, park or public property shall be placed or maintained unless an open space of at least 12 square feet is left outside and around the trunk of the tree, except with the written permission of the Department of Public Works.
- D. Excavation within the street right-of-way for the purpose of compliance with this section shall not be undertaken without a permit from the City Engineer.
- E. The Department of Public Works shall have the right to prune any street tree for the following reasons:
  - (1) Tree branches are obstructing light from a street lamp or obstruct the view of street intersections, traffic control devices or signs.
  - (2) To provide a clear space of eight feet above the surface of a sidewalk.
  - (3) To provide a clear space of 13 feet above the surface of a street.
- F. It is the responsibility of the Department of Public Works and the Mayor, with input from a committee designated by the Mayor, to determine if trees or shrubs on City-owned property are hazardous and to remove dead or hazardous trees or shrubs from City-owned property. If replacement is recommended by the Department of Public Works or the Mayor, the City shall replace the tree or shrub within one year of removal. Property owners shall have the right to replace removed trees at their own cost and upon prior approval of the Department of Public Works or the Mayor.
- G. Wherever it is necessary to remove a tree or shrub from a public right-of-way in connection with the paving of a sidewalk or the paving or widening of a street, the City or responsible agency or person shall replant such tree or shrub

or replace it. If conditions prevent planting in the right-of-way, this requirement may be satisfied by planting on the adjoining property if the property owner agrees.

- H. No person or City agency shall plant, prune, remove, replace or otherwise disturb any tree or shrub on any public street, park or other City-owned property without first submitting a written request therefor and obtaining written permission from the Department of Public Works or the Mayor. Requests for written permission shall be acted on within five business days of filing the written request with the Department of Public Works. All copies of requests for written permission shall also be filed with the Mayor and Common Council. All work for which such permission is given shall be done in accordance with the Department of Public Works' rules and regulations as duly adopted.
- I. Private utility companies or City agencies conducting regular maintenance work on trees or shrubs may be granted general permits to cover their work on a yearly basis. Tree pruning standards referenced in Subsection A shall be complied with.
- J. Except as provided in Subsection F, whenever a person or City agency obtains written permission pursuant to Subsection H of this section to remove a tree or shrub from any City-owned land for the purpose of construction or for any other reason, such person or agency shall make payment to the City in the amount of the purchase cost of replacement tree(s) or shrub(s) prior to the issuance of such tree removal permit. The City shall install such replacement tree(s) or shrub(s) within one year of the permitted removal in a location(s) to be determined by the Department of Public Works somewhere in the City. Such replacement shall meet the standards of size, species and placement as provided for in the tree removal permit issued by the Department of Public Works. Unless the Department of Public Works, for good cause, determines otherwise, trees shall be replaced by the caliper inch, such that for every inch of diameter removed, an equal number of caliper inches shall be replaced (e.g., the removal of one twelve-inch caliper tree shall necessitate the planting of six two-inch caliper trees or four three-inch caliper trees, etc.).
- K. Requests from private citizens that new street trees be planted near their property shall be accommodated in accordance with planting priorities set by the Department of Public Works.
- L. Specifications governing tree species, size, spacing and method and location of planting shall be approved by the Department of Public Works. Inspection of the trees by the Department of Public Works shall be carried out, whenever possible, prior to planting in order to ensure tree health and quality. Whenever any person is required to replace a tree pursuant to this chapter, a one-year guaranty of the tree's health shall be provided for such replacement trees.

### **§ 91-4 Issuance or denial of permit; appeals.**

- A. The decision of the Department of Public Works or the Mayor to grant or deny an application for tree removal shall be based on the following criteria:
  - (1) The physical condition of and the apparent health of the tree.
  - (2) The proximity of the tree to existing or proposed structures and utility appurtenances and the amount of damage or obstruction the tree is causing.
  - (3) The desirability of preserving any tree by reason of its size, age or some other outstanding quality, such as uniqueness, rarity or status as a landmark or species specimen.
  - (4) The tree's potential for hazard to the traveling public or the general public's safety and health.
  - (5) The environmental effect of the removal of the tree(s).
  - (6) The intention of the applicant to replant trees at the site.
  - (7) Any unreasonable hardship to the applicant, which will result from modification or denial of the requested permit.

- B.** Any applicant aggrieved by a decision of the Department of Public Works or the Mayor may, within 30 days of the date on which the decision was mailed to the applicant, appeal such decision to the Common Council. The appeal shall be in writing and include a copy of all papers filed with the Department of Public Works along with a copy of the decision of the Department of Public Works or the Mayor. The appeal shall be deemed filed when it is received by the City Clerk. The Common Council shall vote on the appeal at the next regularly scheduled Common Council meeting after a complete appeal is filed with the City Clerk. A simple majority vote of the North Tonawanda Common Council shall be necessary to overturn the Department of Public Works' or Mayor's decision.

### **§ 91-5 Emergency work.**

- A.** This chapter shall not govern any emergency activity immediately necessary to protect life, safety or property or to maintain access to any property. Any such activity shall incorporate reasonable efforts to protect trees and shrubs on City property from unnecessary damage.
- B.** Any person or City agency engaged in any action covered by Subsection A shall make a reasonable effort to notify the Department of Public Works prior to commencing that action and shall, in any event, provide written notice of the emergency and work done to the Department of Public Works.

### **§ 91-6 Penalties for offenses.**

- A.** Any person violating any of the provisions of this chapter shall be punished, upon conviction, by a fine of not more than \$250 and/or 15 days in jail for each violation. Each day that a violation of or failure to comply with any provision of this enactment or any regulation promulgated hereunder by the Common Council occurs shall constitute a separate and distinct violation.
- B.** A civil penalty shall be assessed in addition for the removal or destruction of any tree on public property without authorization in the amount of the appraised value of the tree, not to exceed \$2,500 per tree.