

THE CORPORATION OF THE TOWN OF WHITBY

BY-LAW NO. 4640-00

**BEING A BY-LAW TO PROHIBIT AND REGULATE THE INJURING OR
DESTRUCTION OF CERTAIN TREES IN THE TOWN OF WHITBY**

WHEREAS, Section 223.2 of the Municipal Act, R.S.O. 1990, c. M.45, as amended, provides Council with the authority to pass by-laws for prohibiting or regulating the injury or destruction of trees or any class of trees specified in the by-law in any defined area or any class of land, and to require that a permit be obtained for the injuring or destruction of trees specified in the by-law and prescribing fees for the permit, and prescribing circumstances under which a permit may be issued;

NOW THEREFORE, the Council of the Corporation of the Town of Whitby enacts the following:

DEFINITIONS

1. In this by-law,
 - (a) "applicant" means the owner who submits an application under this by-law;
 - (b) "application" means the application form to destroy trees;
 - (c) "certified arborist" means an arborist certified by the Certification Board of the International Society of Arboriculture;
 - (d) "managed forest plan approver" means a person designated by the Ministry of Natural Resources to approve a forest or woodlot management plan;
 - (e) "Clerk" means the Clerk of the Municipality;
 - (f) "Council" means the Council of the Municipality;
 - (g) "DBH" means 'Diameter Breast Height' and refers to the diameter of the stem of a tree measured at a point 1.37 metres from the ground;
 - (h) "destroy" means the injuring or removal of trees by cutting, burning, uprooting, chemical application or other means;
 - (i) "Director" means the Director of Planning for the Municipality or his or her designate;

- (j) "farm operation" means an agricultural or horticultural operation that is carried on in expectation of gain or reward, and includes the cultivation of land, the raising of livestock and poultry, the production of agricultural crops and maple syrup production;
- (k) "forest technician/technologist" means a graduate of a post-secondary school forestry based program;
- (l) "forest/wildlife ecologist" means a graduate of a post-secondary school forestry and/or ecology based program;
- (m) "forestry consultant" means a forest technician, a forest technologist, a forest/wildlife ecologist, a managed forest plan approver, or a professional forester;
- (n) "good forestry practice" means the proper implementation of harvest, renewal and maintenance activities known to be appropriate for the woodlot and the environmental conditions under which it is being applied and which minimize detriments to woodlot values, including: significant ecosystems, important fish and wildlife habitat, soil and water quality and quantity, woodlot productivity and health, and the aesthetic and recreational values of the landscape and includes the clearing and thinning of trees for the purposes of stimulating tree growth and improving the quality of the woodlot without permanently breaking the canopy; the cutting and removal of hazardous, severely damaged, diseased and insect-infested trees in order to prevent injury, damage, contamination or infestation of other trees; and the cutting or removal of trees which no longer contribute to the achievement of woodlot values;
- (o) "harvesting" means the destruction of trees and may be either a single cut or a series of cuts, and shall include logging;
- (p) "hazardous tree" means a dead or severely damaged tree that may pose a danger to persons or property;
- (q) "infestation" means infestation as defined in the Forestry Act, R.S.O. 1990, c.F26, as amended;
- (r) "injure" means to do harm, damage, or impair;

- (s) "landscape architect" means a graduate of a post secondary school landscape architect program and who is a member of the Ontario Association of Landscape Architects;
- (t) "Municipality" means the Corporation of the Town of Whitby;
- (u) "officer" means an individual appointed by by-law for the administration and enforcement of this by-law;
- (v) "official plan" means the Official Plan of the Municipality, as amended from time to time;
- (w) "orchard" means an area of land of at least one-fifth hectare on which there are at least thirteen fruit trees and on which the number of fruit trees bears a proportion to the area of at least sixty-five fruit trees per hectare;
- (x) "owner" means the person having the right, title, interest or equity in land;
- (y) "permit" means the written authorization from the Director to destroy trees as provided in this by-law;
- (z) "person" means an individual, a corporation and the heirs, executors, administrators, or other legal representatives of a person to whom the context can apply according to law;
- (aa) "personal use" means the use of destroyed trees by the owner for such purposes as firewood or lumber, but shall not include the sale, exchange or other disposition of the trees that are destroyed for commercial purposes;
- (bb) "professional forester" means a professional forester as defined in the Crown Forest Sustainability Act, S.O. ,1994;
- (cc) "tree" means any species of single-stemmed perennial woody plant, which has reached or can reach a height of at least 6 metres at physiological maturity;
- (dd) "tree farm" means land where trees are grown and maintained for sale;
- (ee) "tree preservation plan" means a plan prepared by an arborist, a landscape architect, a forest technician, a forest technologist, a forest/wildlife ecologist, a managed forest

plan approver, or a professional forester which determines trees to be preserved through an assessment process which identifies trees, shrubs and other specific areas of natural habitat and their ecological function or importance, and determines the impacts of development on the trees, shrubs, and other specific areas of natural habitat and their ecological function or importance and such plan shall determine mitigation measures and measures to protect and manage trees to be preserved and proper practices to remove trees to be destroyed;

(ff) "woodlot" means an area 0.2 hectares or more, not necessarily prescribed by property boundaries having not fewer than,

- (i) 200 trees of any size in a 0.2 hectare area;
- (ii) 150 trees measuring more than 5 centimetres DBH in a 0.2 hectare area;
- (iii) 100 trees measuring more than 12 centimetres DBH in a 0.2 hectare area; or,
- (iv) 50 trees measuring more than 20 centimetres DBH in a 0.2 hectare area;

but shall not include a cultivated orchard or a tree farm that is being actively managed and harvested for the purposes for which it was planted; and,

(gg) "woodlot or forest management plan" means a plan for a woodlot prepared according to guidelines set by the Ministry of Natural Resources or other recognized guidelines, which set out objectives and management practices to ensure the sustainability of the woodlot, and approved by a forestry consultant.

AREA OF APPLICATION OF BY-LAW

2. No person shall, within the boundaries of the Municipality, destroy or permit or cause to be destroyed any tree that is,
- (a) located in a woodlot;
 - (b) located on lands designated "Major Open Space" or "Hazard Land" on Schedule A of the official plan;
 - (c) located on lands designated "Environmental Protection/Conservation Lands", "Major Open Space" or "Hazard Land" on Schedule P of the official plan;
 - (d) located within an area shown as "Mature Woodlands" or "Environmentally Sensitive Area" on Schedule C of the official plan;

- (e) identified as a tree for preservation in a tree preservation plan approved by the Director; or,
- (f) located on lands designated "Residential" on Schedule A of the Official Plan which are 2.02 ha or greater in size,

without first obtaining a permit in accordance with this by-law.

EXEMPTIONS

3. Section 2 of this by-law does not apply to,
- (a) a tree situated on land owned by or controlled by the Central Lake Ontario Conservation Authority or a local municipality including a regional municipality;
 - (b) a tree within a building or structure, a solarium, rooftop garden, interior courtyard, nursery and a fruit tree that provides fruit for human consumption;
 - (c) a tree in a cultivated orchard or tree farm that is being actively managed and harvested for the purposes for which they were planted;
 - (d) the maintenance of a tree in accordance with good arboriculture practice;
 - (e) the removal of a dead, diseased or hazardous tree when certified as such by an individual designated or approved by the Director;
 - (f) the removal of a damaged or destroyed tree, when certified as such by an individual designated or approved by the Director, where the removal is in the interest of public safety, health or general welfare following any man-made or natural disasters, storms, high winds, floods, fires, snowfall or freezes;
 - (g) a tree injured or destroyed in compliance with a tree preservation plan approved by the Director;
 - (h) a tree on land covered by a woodlot management plan approved by a forestry consultant, a copy of which has been submitted to the Director, provided such work is undertaken in accordance with good forestry practice and the woodlot management plan;

- (i) activities or matters undertaken by the Central Lake Ontario Conservation Authority or a local municipality, including a regional municipality;
- (j) activities or matters undertaken by the provincial or federal government or their agents or a transmitter of distribution as defined in the Electricity Act, S.O. ,1998;
- (k) activities or matters authorized under the Crown Forest Sustainability Act, 1994, as may be amended from time to time and any successor legislation in substitution therefore;
- (l) activities or matters prescribed by regulation by the Lieutenant Governor in Council;
- (m) activities carried out under the Aggregate Resources Act, R.S.O. 1990, c. A.8, as may be amended from time to time and any successor legislation in substitution therefore;
- (n) waste disposal sites approved pursuant to Part V of the Environmental Protection Act, R.S.O. 1990, c. E.18, as may be amended from time to time and any successor legislation in substitution therefore;
- (o) the destruction of trees occurring as an integral component of an active farm operation provided the trees are situated outside of areas designated Hazard Land on Schedule A of the official plan and outside of areas shown as "Mature Woodlands" or "Environmentally Sensitive Areas" on Schedule C of the official plan;
- (p) the destruction of a tree for personal use, provided that no more than twenty (20) trees are to be destroyed in any twelve (12) month period, and the destruction of a tree will not reduce the number of trees in a woodlot below the minimum number of trees necessary to constitute a woodlot as defined by this by-law; and,
- (q) the destruction of a tree necessary to construct a building or structure authorized by a municipal building permit.

ADMINISTRATION

4. The Director is responsible for the administration of this by-law and is hereby delegated the authority to receive applications and the required fees and to issue permits and to attach conditions thereto in accordance with this by-law.

APPLICATION

5. (1) Every owner who intends to destroy or permit or cause to be destroyed a tree where a permit to do so is required by this by-law shall submit an application in the form prescribed by the Municipality.
- (2) Every application shall be accompanied by the prescribed fee.
- (3) Where, in the opinion of the Director, additional information is necessary, the Director may require the applicant to submit a report to be prepared by a forestry consultant respecting the reasons for the proposed destruction of the tree.
- (4) In the event that a report is required, the application shall not be considered complete until such time as the requested report is submitted to the Director.
- (5) Following receipt of an application, the Director may confer with such persons and agencies as he or she considers necessary for the proper review of the application, whether or not a permit should be issued, and any conditions thereto.
- (6) Following receipt of an application, the Director and any person acting under the Director's instruction may enter and inspect the lands upon which the tree is located and the submission of the application shall be deemed permission to enter.

PERMITS

6. (1) The Director may issue a permit when the destruction of the tree is in accordance with good forestry practices as certified in writing by a forestry consultant.
- (2) Every permit issued shall be issued to the owner and shall expire twelve (12) months after issuance.
- (3) The Director may extend the expiration date of a permit.
- (4) In considering whether or not to grant a request to extend a permit, the Director shall take into account to what extent the work authorized by the permit has occurred, and to what extent the conditions of the permit have been adhered to and, in no case shall the Director extend a permit so that the permit remains in effect for more than two (2) years from the original date of its issuance.

- (5) The Director may impose such conditions to a permit as in the opinion of the Director are reasonable and may include the following considerations:
- (a) the species, size, number and location of replacement tree(s) to be planted by the applicant;
 - (b) the date by which any replacement tree(s) is to be planted;
 - (c) the maintenance and care of any replacement tree; and,
 - (d) tree relocation or compensation costs for replacement to be applied to the reforestation on the property or for reforestation elsewhere within the Municipality.
- (6) The issuance of a permit under this by-law shall not be authorized where,
- (a) an application required under this by-law has not been submitted in full or the required fee has not been paid;
 - (b) a report as required by the Director has not been submitted or, in the opinion of the Director, is not satisfactory;
 - (c) an application for subdivision approval or consent related to lands on which the tree is located has been submitted to the Regional Municipality of Durham and has not received draft approval;
 - (d) a rezoning application, an application for site plan approval, or an application to amend the official plan or the Durham Region Official Plan related to the lands on which the tree is located has been submitted to the Municipality or the Regional Municipality of Durham, and has not received final approval;
 - (e) the tree is an endangered species as defined in the Endangered Species Act, R.S.O. 1990, c. E.15, as may be amended from time to time and any successor legislation in substitution therefore;
 - (f) flood or erosion control will be negatively affected; or,
 - (g) the destruction of a tree will not be in accordance with good forestry practices as determined by the Director.

ENFORCEMENT

7. (1) An officer may, during daylight hours and upon producing a certificate of designation, enter and inspect any land to which this by-law applies.
- (2) An officer may, in carrying out an inspection, be accompanied by an assisting person.

ISSUANCE OF AN ORDER

8. (1) If an officer is satisfied that a contravention of this by-law has occurred, he or she may make an order requiring the person to stop the injuring or destruction of a tree and the order shall contain particulars of the contravention.
- (2) The officer may place a placard containing the terms of the order in a conspicuous place on the affected lands and where service cannot reasonably be affected, the placing of the placard on the affected lands shall be deemed to be sufficient service of the order on the person to whom the order is directed.

APPEAL OF AN ORDER

9. (1) Where the person to whom an order is directed has been served in accordance with this by-law is not satisfied with the terms of the order, the person may appeal to Council by filing notice of appeal by personal service or pre-paid registered mail with the Clerk within 30 days after the date of the order.
- (2) Where an appeal has been filed, Council shall hear the appeal as soon as is practicable.
- (3) Before conducting a hearing the Clerk shall give notice to the appellant .
- (4) After hearing an appeal the Council may confirm, modify or revoke the order and the decision of Council is final.
- (5) An order issued under this by-law shall be final,
 1. if upon the time expiring for appeal to Council there has been no appeal; or,
 2. in the event there is an appeal to Council, upon the issuance of the decision of Council.

PENALTIES FOR NON-COMPLIANCE WITH BY-LAW

10. (1) Any person who contravenes any provision of this by-law or an order is guilty of an offence and on conviction is liable,
- (a) on a first conviction, to a fine of not more than \$10,000.00; and,
- (b) on any subsequent conviction, to a fine of not more than \$20,000.00.
- (2) Where a person is convicted of an offence under this by-law, in addition to any other remedy or any penalty imposed by the by-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted or any other person.
- (3) Where a person is convicted of an offence under this by-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may order the person to replant or have replanted such trees in such manner and within such a period of time as the court considers appropriate, including any silvicultural treatment necessary to re-establish the tree or have the tree re-established.

SHORT TITLE

11. This by-law may be referred to as the Tree Protection By-law.

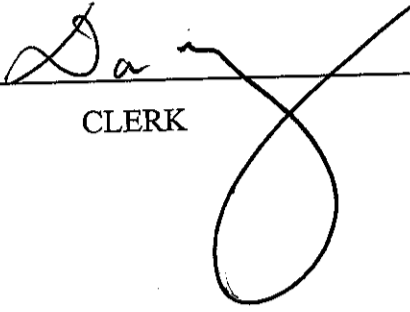
VALIDITY OF BY-LAW


12. Where a court of competent jurisdiction declares any section or part of a section of this by-law to be invalid, the remainder of this by-law shall continue in force unless the court makes an order to the contrary.

EFFECTIVE DATE OF BY-LAW

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

BY LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 26TH
DAY OF JUNE, A.D., 2000.


CLERK


MAYOR