

THE CORPORATION OF THE TOWN OF PERTH

BY-LAW NO. 4892

A By-law to prohibit or regulate the injuring or destruction of trees on private property

Recitals:

1. The *Ontario Municipal Act* confers broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and further states that a lower tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public, subject to the rules set out in subsection 11 (4). 2006, c. 32, Sched. A, s. 8.
2. Section 135 of the *Municipal Act*, 2001, as amended, permits the enactment of a By-Law for prohibiting or regulating the injuring or destruction of trees;
3. Part XIV (Enforcement) of the *Municipal Act* provides methods for a municipality to enforce its by-law;
4. Trees within the Municipality are valued for the economic, social and environmental benefits they provide such as increased aesthetic and property values, shade, contributions to physical and psychological well-being, maintenance and enhancement of water quality, prevention of soil erosion and water run-off, wildlife habitat, local climate moderation and improved air quality;
5. A permit may be required for the injuring or destruction of trees or any class of tree or any woodlot specified in the By-Law and prescribe fees for the permit and the conditions under which a permit may be issued;
6. The Committee of the Whole reviewed Report 2020-CoW-13.3 and concurs with the staff recommendation;
7. Council for The Corporation of the Town of Perth deems it advisable to pass this By-law.

Accordingly, the Council of the Corporation of the Town of Perth enacts as follows:

1. DEFINITIONS

For the purpose of this By-law, the following definitions and interpretations shall govern:

- 1.1 **“Agricultural Lands”** includes all lands that are cultivated and/or used for the raising of livestock; **“Agricultural Uses”** means, (a) growing crops, including nursery and horticultural crops, (b) raising livestock and other animals, including poultry and fish, for food and fur, (c) aquaculture, and (d) agro-forestry and maple syrup production.
- 1.2 **“Applicant”** means the owner of the property, where such an owner is an individual, or means any person, authorized in writing by the owner, to apply for a permit on the owner’s behalf;
- 1.3 **“Arborist”** means an expert in the care and maintenance of trees and includes an arborist certified by the Ontario Ministry of Training, Colleges and Universities or the International Society of Arboriculture, or a consulting arborist registered with the American Society of Consulting Arborists.
- 1.4 **“Arborist’s Report”** means a technical report prepared by an Arborist or Qualified OPFA Member which identifies the surveyed location, species, size and condition

of a tree, provides the reasons for any proposed destruction or injuring of a tree, and describes tree protection measures or other mitigating activities to be implemented.

- 1.5 **“Authorized Agent”** means a person acting on behalf of the owner as designated on the application;
- 1.6 **“Council”** means the Council of The Corporation of the Town of Perth;
- 1.7 **“County”** means the Corporation of the County of Lanark;
- 1.8 **“DBH”** means 'diameter at breast height' and refers to the diameter of a stem of a tree measured at a point 1.37 metres (4.5 feet) above the ground in an undisturbed state at the base of the tree.
- 1.9 **“Destroy”** means the removal of trees or harm resulting in the irreversible injury or death or ruin of trees by cutting, burning, uprooting, chemical application or other means that may result from neglect, accident or design and the term "destruction" shall have a corresponding meaning.
- 1.10 **“Good Forestry Practice”** means the proper implementation of harvest, renewal and maintenance activities known to be appropriate for the forest and environmental conditions under which they are being applied and that minimize detriments to forest values including significant ecosystems, important fish and wildlife habitats, soil and water quality and quantity, forest productivity and health and the aesthetics and recreational opportunities of the landscape.
- 1.11 **“Development”** means the construction of buildings and above or underground services such as roads, parking lots, paved storage areas, watermains, storm and sanitary sewers, general grading works and similar facilities on any lands in the Town of Perth;
- 1.12 **“Director”** means the Director of Planning and Protective Services or his/her designate;
- 1.13 **“Ecological Functions”** means the natural processes, products or services that living and non-living environments provide or perform within or between species, ecosystems and landscapes, including biological, physical and socio-economic interactions;
- 1.14 **“Endangered Species”** means any native species, as listed in the regulations under the Endangered Species Act, that is at risk of extinction throughout all or part of its Ontario range if the limiting factors are not reversed;
- 1.15 **“Habitat of Endangered, Rare and Threatened Species”** means land that, (a) is an area where individuals of an endangered species, a rare species or a threatened species live or have the potential to live and find adequate amounts of food, water, shelter, and space needed to sustain their population, including an area where a species concentrates at a vulnerable point in its annual or life cycle and an area that is important to a migratory or non-migratory species; and (b) has been further identified, by the Ministry of Natural Resources or by any other person, as such according to evaluation procedures established by the Ministry of Natural Resources, as amended from time to time;
- 1.16 **“Hazard Lands”** as defined in Town of Perth Official Plan, as amended from time to time;
- 1.17 **“Injure”** means to harm damage or impair trees and includes harm, damage or impairment caused by changing grades around trees, compacting soil over root areas, severing roots, improper application of chemicals, improper pruning or the removal of branches and bark and the term "injury" shall have a corresponding meaning.
- 1.18 **“Inspector”** means a person designated by the Director to inspect on the basis of this By-law for compliance with a permit;

- 1.19 “Land Disturbance”** means any man-made change of the land surface including removing vegetative cover, and/or excavating and/or filling and/or grading;
- 1.20 “Lot”** means a parcel of land, described in a deed or other document legally capable of conveying land, or shown as a block on a registered plan of subdivision;
- 1.21 “Municipal Law Enforcement Officer”** means a person appointed by Council to enforce this By-law;
- 1.22 “Natural Heritage Feature”** means any component of the Town’s natural heritage system, identified in accordance with the policies in Section 8.6.4 of the Town of Perth’s Official Plan and the Provincial Policy Statement (MMAH, 2020), as amended from time to time;
- 1.23 “Negative Impact”** means degradation that threatens the health and integrity of the natural features or Ecological Functions for which an area is identified;
- 1.24 “Normal Farm Practice”** means a practice that, (a) is conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar Agricultural Operations under similar circumstances, or (b) makes use of innovative technology in a manner consistent with proper advanced farm management practices; and, (c) for the purposes of this By-law, specifically includes activities conducted by an Agricultural Operation in accordance with the requirements of the Nutrient Management Act, as amended, or a completed Environmental Farm Plan;
- 1.25 “Owner”** means the legal registered owner of the Lot as shown by the records of the Land Registry Office where the property register for the Lot is situated and for which a permit is sought or obtained;
- 1.26 “Permit”** means permission or authorization given in writing by the Director to perform work regulated by this By-law or part thereof;
- 1.27 “Permit Holder”** means the owner as defined in this By-law or the person in possession of the property and includes a lessee, a mortgagee in possession or a person in charge of the property;
- 1.28 “Person”** means an individual, association or corporation and their successors and assigns;
- 1.29 “Placing”** means the distribution of fill on lands to establish a finished grade higher or lower than the existing grade;
- 1.30 “Planning Act”** means the Planning Act, R.S.O. 1990, c.13, as amended;
- 1.31 “Rare Species”** means a native species that is not currently at risk of becoming threatened but, because of its limited distribution, small population or specialized habitat needs, could be put at risk of becoming threatened through all or part of its Ontario range by changes in land use or increases, in certain types of human activity;
- 1.32 “Registered Professional Forester”** or “RPF” is defined in the Ontario Professional Foresters Act, 2000, S.O. 2000, c.18, as amended.
- 1.33 “Significant”** means identified as significant by the Ministry of Natural Resources, using evaluation procedures established by that Ministry, as amended from time to time;
- 1.34 “Town”** means The Corporation of the Town of Perth;
- 1.35 “Threatened Species”** means any native species that is at risk of becoming endangered throughout all or part of its Ontario range if the limiting factors are not reversed;

2. INTERPRETATION

- 2.0 This by-law includes the Schedules annexed hereto and the Schedules are hereby declared to form part of this by-law.
- 2.1 Unless specified otherwise below, this by-law applies to all lands within the jurisdiction of the Town of Perth where the parcel measures 0.405 hectare (1 acre) in area or greater.

3. EXEMPTIONS AND EXCEPTIONS

- 3.1 This By-Law does not apply to:
- 3.1.1 The removal of damaged or destroyed trees as approved by the Director, where the removal is in the interests of public safety, health and general welfare following any man-made or natural disasters, storms, high winds, floods, fires, snowfall, freezes or as a result of disease;
 - 3.1.2 Activities or matters undertaken by the provincial government or federal government or their agents;
 - 3.1.3 Activities or matters undertaken by the Town or a local board acting on behalf of the Town;
 - 3.1.4 Trees located within waste disposal sites as defined in Part V of the Environmental Protection Act. R.S.O. 1990, c.E.19;
 - 3.1.5 The injuring or destruction of trees by a transmitter or distributor, as those terms are defined in Section 2 of the Electricity Act, 1998, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
 - 3.1.6 Activities or matters authorized under the Crown Forest Sustainability Act. R.S.O. 1994;
 - 3.1.7 The injuring or destruction of trees by a person licensed under the Surveyors Act, R.S.O. 1990, c.S.29 to engage in the practice of cadastral surveying or his or her agent, while making a survey;
 - 3.1.8 The injuring or destruction of trees undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the Aggregate Resources Act, R.S.O. 1990, c.A.8;
 - 3.1.9 The injuring or destruction of trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land that has not been designated under the Aggregate Resources Act or a predecessor of the Act, and, on which a pit or quarry is a permitted land use under a by-law passed under Section 34 of the Planning Act, R.S.O.;
 - 3.1.10 Trees that are part of plantations for the purposes of an Orchard, Nursery, or Christmas tree farm;
 - 3.1.11 The unavoidable injury or destruction of trees permitted as a condition to the approval of a site plan, a plan of subdivision or, a consent under the Planning Act, or, as a requirement of a site plan agreement or subdivision agreement;
 - 3.1.13 The injuring or destruction of trees that is required in order to erect any building, structure or thing in respect of which a building permit has been issued and has taken into consideration the protection of trees surrounding the structure or work within the building envelope;

- 3.1.14 The injuring or destruction of trees that is required in order to install and provide utilities to the construction or use of the building, structure or thing in respect of which a Building Permit has been issued;
- 3.1.15 The injuring or destruction of trees that is required in order to install and provide utilities to a single lane driveway for vehicular access to the building, structure or thing in respect of which a Building Permit has been issued;
- 3.1.16 Ash trees that have become infected with the Emerald Ash Borer.

4. APPLICATION FOR PERMIT TO INJURE OR DESTROY TREES

- 4.1 Where a permit is required under this By-Law;
 - 4.1.1 The owner shall submit an application to the Director containing the information set out in Schedule "A" to this By-Law, in such form as may be approved by the Town from time to time;
 - 4.1.2 Each application shall be accompanied by the prescribed fee as set out in the Towns Fees and Charges By-law;
 - 4.1.3 Where in the opinion of the Director, additional information is necessary, the Director may require the applicant to submit a report, prepared by a Registered Professional Forester, providing such information as may be specified in Schedule "A" and certifying that the proposed injury to or destruction of the tree(s) is in accordance with good forestry practices; and, No application shall be considered complete unless accompanied by the information and fee required in accordance with this By-Law.

5. PERMITS

- 5.1 The Director may issue a permit to injure or destroy tree(s) where the Director is satisfied that:
 - 5.1.1 The injury or destruction of the tree(s) is in accordance with good forestry practice; or
 - 5.1.2 The injury or destruction of tree(s) is required to permit the establishment or extension of a use permitted by the Zoning By-law and there is no reasonable alternative to the injury or the destruction of the tree(s).
- 5.2 A Permit shall not be issued where:
 - 5.2.1 An Application required under this By-law has not been submitted in full or the required fee has not been paid.
 - 5.2.2 A report, as required by the Director, has not been submitted or, in the opinion of the Director is not satisfactory;
 - 5.2.3 The permit would result in the destruction of a tree that is an endangered species as defined in the Endangered Species Act, R.S.O. 1990, c.E.15 or successor legislation;
 - 5.2.4 The permit would result in the destruction of a tree that is designated as a heritage tree by Town Council;
 - 5.2.5 Flood or erosion control, or the ecological integrity of a natural area, will be negatively affected;
 - 5.2.6 The permit is not in keeping with the general purpose and intent of this By-law;

- 5.2.7 The destruction or injuring of trees will reduce the number of trees per hectare below the minimum number of trees per hectare required to be considered woodland as defined by this By-law.
- 5.3 The following shall be deemed to be conditions to the issuance of every permit under this By-law:
- 5.3.1 Marking of Trees Unless otherwise exempted by permit, seven (7) days prior to injuring or destroying any tree the owner shall cause all trees which are to be removed or destroyed to be marked by a Registered Professional Forester with clearly visible marks of yellow paint at breast height and upon the stump to remain after cutting.
- 5.3.2 Notice of Intent For at least 7 days prior to injuring or destroying any trees, the owner shall post a sign, having dimensions of not less than 28 cm. (11in) x 43 cm (17 in) in a conspicuous place on the private land that is adjacent to a public road or at such other location designated by the Town and providing the following information:
- 5.3.2.1 Notice that the work will occur in accordance with this By-law;
- 5.3.2.2 The name of the land owner and agent;
- 5.3.2.3 The name of the person or company retained to work on the trees on the land; and
- 5.3.2.4 Name of the Department or Town Contact from whom further information can be obtained.

6. CONDITIONS

- 6.1 The Director may attach conditions to the Permit, which in the opinion of the Director are reasonable and related to the purposes of this By-Law or the safety and convenience of the public;
- 6.2 The Director may specify tree relocation or compensation costs for replacement to be applied to the reforestation on the property or for reforestation elsewhere in the Municipality.
- 6.3 Duration of Permit:
- 6.3.1 Every permit shall be issued to the owner and shall expire twelve (12) months after issuance.
- 6.3.2 All permits for the injury or destruction of trees within woodlots will be deemed not to be in effect during the period of April 1 through to August 15, due to bird nesting. This period may be extended to August 31 on a case by case basis subject to the nesting period being confirmed by a qualified environmental consultant at the time of application. The Town may grant exemptions to this requirement in writing having regard to the potential for rutting of soil and subsequent damage to the ecology of the woodlot or designated area during the spring break up period.
- 6.3.3 The Director may extend the expiration date of a Permit if a written request for an extension is received by the Director a minimum of three (3) working days before the date the Permit expires. Any request which is received after this time may require the submission of a new application.
- 6.3.4 An extension to the expiration date of the Permit may be granted for a maximum period of one year.

7. DESIGNATION OF OFFICERS

- 7.0 In addition to the Director and the Town's Municipal By-Law Enforcement Officers, who are hereby designated as Officers for the purposes of administering and enforcing this By-Law, the Town may from time to time, designate other individuals or persons as Officers pursuant to the provisions of this by-law and the Director is authorized to issue Certificates of Designation to these individuals, upon such designation by resolution of Council.

8. INSPECTIONS BY AN OFFICER OTHER THAN MUNICIPAL BY-LAW ENFORCEMENT OFFICERS

- 8.0 During daylight hours and upon producing a Certificate of Designation, an officer, other than a Municipal By-Law Enforcement Officer, may enter and inspect any land to which this By-Law applies. A Municipal By-Law Enforcement Officer may at any reasonable time, enter and inspect any land affected by this By-Law to determine whether the By-Law, an order or, a condition of issuance of a permit is, or are, being complied with.
- 8.1 Any person who hinders or obstructs, or attempts to hinder or obstruct, an Officer in carrying out an inspection under this By-Law is guilty of an offence.
- 8.2 Every person who is alleged to have contravened any of the provisions of this By-law shall identify themselves to an Officer upon request, failure to do so shall be deemed to have hindered or obstructed an Officer in the execution of his or her duties.

9. ENFORCEMENT

- 9.0 This By-Law may be enforced by any person designated as an Officer for the purposes of this By-Law;
- 9.1 An Officer may enter land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the By-law is complied with;
- 9.2 An Officer may, in carrying out an inspection be accompanied by an assisting person or persons.

10. ORDERS

- 10.0 Where an Officer is satisfied that a person has contravened any provision of this By-Law, the Officer may make an Order requiring the person to stop the injuring or destruction of trees and shall set out the municipal address or the legal description of the land, the particulars of the contravention and, the period within which there must be compliance with the Order.
- 10.1 A person to whom an order under this section has been directed may appeal the order to Council by filing a written notice of appeal with the Director within 30 days after the date of the order. Council may confirm, alter or revoke the order.
- 10.2 As soon as practicable after a notice of appeal is filed, Council shall hear the appeal and may confirm, alter or revoke the order and the decision of Council shall be final.

11. PENALTY

- 11.1 Every person who contravenes any provisions of this By-law, contravenes the terms and conditions of a permit or an Order issued pursuant to this By-law, or

every director or officer of a corporation, who knowingly concurs in the contravention by a corporation is guilty of an offence and upon conviction is liable to

- 11.1.1 a first offence, to a fine not more than \$10,000.00 or \$1,000 per tree, whichever is greater; and,
- 11.1.2 on a second offence and each subsequent offence, to a fine of not more than \$25,000.00 or \$2,500 per tree, whichever is greater.
- 11.2 Every person or corporation who contravenes the terms and conditions of a permit is guilty of an offence.
- 11.3 Every person who is issued a Part 1 offence notice or summons and is convicted of an offence under this By-law shall be subject to a fine, to a maximum as provided for in the Provincial Offences Act, R.S.O. 1990, C.P.33, as amended.
- 11.4 Upon conviction any penalty imposed under this By-law may be collected under the authority of the Provincial Offences Act, R.S.O. 1990, c.P.33, as amended.
- 11.5 If a person or corporation is convicted of an offence under this By-law, the court in which the conviction has been entered, and any court of competent jurisdiction may, order the person or corporation to rehabilitate the land or to plant or replant trees in such a manner and within such period as the court considers appropriate, including any silvicultural treatment necessary to re-establish the trees.

12. MUNICIPALITY POWER TO REMEDY

- 12.1 Where a person or corporation fails to do a matter or thing as directed or required by an Officer or a court of competent jurisdiction pursuant to this By-law or the Municipal Act, 2001 S.O. 2001, c. 25, as amended, the matter or thing may be done by the municipality at that person's expense which associated costs may be added to the tax roll or the person to be collected in the same manner as property taxes.
- 12.2 Where an officer is satisfied that a person or corporation has failed to comply with an Order issued pursuant to the By-Law, a Municipal Law Enforcement Officer(s) may enter the property at any reasonable time without a warrant in order to conduct the work as set out in the order.

13. CONFLICT WITH OTHER BY-LAWS

- 13.1 If there is a conflict between this by-law and a by-law passed under the Forestry Act, the provision that is most restrictive of the injuring or destruction of trees prevails;
- 13.2 Nothing in this By-Law shall exempt any person from complying with the requirements of any By-Law in force or from obtaining any license, permission, permit, authority or approval required under any By-Law or legislation.

14. SCHEDULES

- 14.0 Attached hereto and forming part of this By-law, is the Application for Tree Permit marked as Schedule "A".

15. SHORT NAME

- 15.0 This By-law shall be referred to as the "Tree Conservation By-law".

16. EFFECT

16.0 That this By-law shall come into force and effect upon passage thereof.

Read a first, second and third time and finally passed this the 22nd day of September, 2020.



John Fenik, Mayor



Patrick Silvestro, Clerk

(Seal)

SCHEDULE "A"

TREE PERMIT APPLICATION REQUIREMENTS

Information Required for Application:

1. Name, address and telephone number of all owners.
2. Signature or authorization of all owners.
3. Name, address, and telephone number and qualifications of Registered Professional Forester submitting report as part of application (if required).
4. Names, address and telephone number of person retained to perform work on trees under permit, and contact name if corporation or company.
5. Fax numbers and e-mail addresses for the owner(s), Registered Professional Forester and person performing work on trees where applicable.
6. Municipal address of property (if assigned).
7. Legal Description of property.
8. If deemed required by the Director, a statement/ report from an Environmental Consultant confirming nesting period on a site specific basis, subject to acceptance by the Town.