

BY-LAW NO. 133-2021

A BY-LAW OF THE CORPORATION OF THE TOWN OF CARLETON PLACE TO PROHIBIT OR REGULATE THE INJURING OR DESTRUCTION OF TREES ON PRIVATE PROPERTY

WHEREAS 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; and

WHEREAS Part XIV (Enforcement) of the *Municipal Act* provides methods for a municipality to enforce its by-law;

WHEREAS Section 436 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended provides that Council may, by by-law, provide that the municipality may enter on land at any reasonable time for the purpose of carrying out inspections to determine compliance with certain specified matters, including by-laws passed under the *Municipal Act, 2001*, directions or orders made under the *Municipal Act, 2001* or under a by-law passed under its authority, conditions of a licence issued under the *Municipal Act, 2001* or orders made under Section 431 of the *Municipal Act, 2001*; and

WHEREAS Sections 446 (1), 446 (3) and 446 (4) of the *Municipal Act, 2001*, S.O. 2001, c.25, authorize the Town of Carleton Place, if it has authority by by-law or otherwise, to direct or require that a matter or thing be done, to direct in the same by-law that, in default of it being done by the person directed or required to do it, such matter or thing be done at the person's expense and to recover that expense by action or by adding it to the tax roll and collecting it in the same manner as taxes; and

WHEREAS Section 446 (2) of the *Municipal Act, 2001*, S.O. 2001, c.25, establishes that following failure to comply with an order directing or requiring the person that a matter or thing be done, the municipality may enter upon the land at any reasonable time to perform the directed or required matter or thing be done at the person's expense; and

WHEREAS Section 425 of the *Municipal Act, 2001*, S.O. 2001, c.25, establishes that any person who contravenes any by-law of the Town of Carleton Place is guilty of an offence; and

WHEREAS Section 429 of the *Municipal Act, 2001*, S.O. 2001, c.25, establishes that a municipality may establish a system of fines for offences under a by-law of the municipality; and

WHEREAS the *Municipal Act, 2001*, S.O. 2001 further authorizes the municipality, amongst other things, to delegate its authority, to impose fees or charges, to provide for inspections, and to make orders to discontinue activity or to do work; and

WHEREAS 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; and

WHEREAS Council may require that a permit be obtained 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;

NOW THEREFORE the Council of the Corporation for the Town of Carleton Place hereby enacts as follows:

1. INTERPRETATION

- 1.1 Unless specified otherwise below, this by-law applies to all lands within the Town of Carleton Place where the parcel measures 0.405 hectare (1 acre) in area or greater.
- 1.2 Unless otherwise described in Section 3, no person shall remove a tree without first obtaining a permit.

2. DEFINITIONS

- 2.1 **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;
- 2.2 **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;
- 2.3 **Council** means the Council of The Corporation of the Town of Carleton Place;
- 2.4 **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;
- 2.5 **Director** means the Director of Development Services or his/her designate;
- 2.6 **Ecological Integrity** means the condition of an ecosystem in which
 - a. the structure, composition and function are unimpaired by stresses from human activity;
 - b. natural ecological processes are intact and self-sustaining; and
 - c. ecosystem evolution is occurring naturally.

- 2.7 **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;
- 2.8 **Forester** means a Registered Professional Forester recognized by the Professional Foresters Act, 2000 and member of the Ontario Professional Forestry Association or Associate.
- 2.9 **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;
- 2.10 **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.
- 2.11 **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;
- 2.12 **Municipal Law Enforcement Officer** means a Municipal Law Enforcement Officer appointed by the Town and assigned the responsibility of administering and enforcing this by-law;
- 2.13 **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;
- 2.14 **Permit** means permission or authorization given in writing by the Director to perform work regulated by this By-law or part thereof;
- 2.15 **Person** means an individual, association or corporation and their successors and assigns;
- 2.16 **Planning Act** means the Planning Act, R.S.O. 1990, c.13, as amended;
- 2.17 **Qualified Professional** shall mean one of the following: in the case of woodlands, the professional shall be a "Forester"; in the case of individual trees, the professional shall be an "Arborist"
- 2.18 **Significant** means identified as significant by the Ministry of Natural Resources and Forestry, using evaluation procedures established by that Ministry, as amended from time to time;

- 2.19 **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;
- 2.20 **Town** means The Corporation of the Town of Carleton Place;
- 2.21 **Tree Information 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;
- 2.22 **Woodland(s)** means land, on one or more properties with at least:
- a. 1000 trees of any size, per hectare; or
 - b. 750 trees, measuring over five (5) centimetres in diameter, per hectare; or
 - c. 500 trees, measuring over twelve (12) centimeters in diameter, per hectare; or
 - d. 250 trees, measuring over twenty (20) centimeters in diameter, per hectare, but does not include a cultivated fruit or nut orchard or a plantation established for the purpose of producing Christmas trees.

3. EXEMPTIONS AND EXCEPTIONS

- 3.1 This By-Law does not apply to:
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;
 2. Activities or matters undertaken by the provincial government or federal government or their agents;
 3. Activities or matters undertaken by the Town or a local board acting on behalf of the Town;
 4. Trees located within waste disposal sites as defined In Part V of the Environmental Protection Act. R.S.O. 1990, c.E.19, as amended;
 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;
 6. Activities or matters authorized under the Crown Forest Sustainability Act. R.S.O. 1994;

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;
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;
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.;
10. Trees that are part of plantations for the purposes of an active Orchard, Nursery, or Christmas tree farm;
11. Trees which have become infected with a known disease or destroyed by a pest.

4. APPLICATION FOR PERMIT TO INJURE OR DESTROY TREES

- 4.1 Where a permit is required under this By-Law;
 1. The owner shall submit an application to the Director in such form as may be approved by the Town from time to time;
 2. Each application shall be accompanied by the prescribed fee as set out in the Town's Fees and Charges By-law;
 3. Where in the opinion of the Director, additional information is necessary, the Director may require the applicant to submit a Tree Information Report, prepared by a Qualified Professional, providing such information as may be specified 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:
 1. The injury or destruction of the tree(s) is in accordance with good forestry practice; or

2. The injury or destruction of tree(s) is required to permit the establishment or extension of a use permitted by the Development Permit By-law or a Building Permit 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:

1. An application required under this By-law has not been submitted in full or the required fee has not been paid.
2. A Tree Information Report, as required by the Director, has not been submitted or, in the opinion of the Director is not satisfactory;
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;
4. The permit would result in the destruction of a tree that is designated as a heritage tree by Town Council;
5. Flood or erosion control, or the ecological integrity of a natural area, will be negatively affected;
6. The permit is not in keeping with the general purpose and intent of this By-law;
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:

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.
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:
 - a. Notice that the work will occur in accordance with this By-law;
 - b. The name of the land owner and authorized agent;

- c. The name of the person or company retained to work on the trees on the land; and
- d. Name of the Town Department or 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 Every permit shall be issued to the owner and shall expire twelve (12) months after issuance.
- 6.4 All permits for the injury or destruction of trees within woodlands shall be deemed not to be in effect during the period 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 woodlands or designated area during the spring break up period.
- 6.5 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 shall require the submission of a new application.
- 6.6 An extension to the expiration date of the Permit may be granted for a maximum period of one year.

7. DESIGNATION OF OFFICERS

- 7.1 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

- 8.1 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.
- 8.2 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.
- 8.3 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

- 9.1 The municipality may appoint officers and other staff to carry out the administration and enforcement of this by-law.
- 9.2 Every person enforcing this by-law shall have the right of entry on any property for the purpose of carrying out an inspection to determine whether this by-law is being complied with and for the enforcement of this by-law pursuant to Section 436 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended from time to time.
- 9.3 Interpretation and application of the terms and definitions of this by-law shall be determined at the discretion of the enforcing officer
- 9.4 An Officer, in carrying out an inspection, may be accompanied by an assisting person or persons.

10. ORDERS

- 10.1 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.
- 10.2 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.

- 10.3 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 Any person who contravenes or causes or permits any contraventions of any of the provisions of this by-law is guilty of an offence and upon conviction, is liable to a fine as provided for in the Provincial Offences Act or any successor legislation. 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.
- 11.2 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.
- 11.3 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 Where a provision of this by-law conflicts with the provisions of another by-law in force in the municipality, the provisions that establish the higher standards to protect the health, safety and welfare of the general public prevails.
- 13.2 Should any section, subsection, clause or provision of this by-law be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this by-law as a whole or any part thereof, other than the part so declared to be invalid.

14. EFFECT

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

15. SHORT TITLE

15.1 This By-law is short titled the "Tree Clearing By-law".

READ A FIRST TIME, SECOND TIME, THIRD TIME AND FINALLY PASSED THIS 23RD
DAY OF NOVEMBER, 2021.

Doug Black, Mayor

Stacey Blair, Clerk