

The Corporation of the Town of
New Tecumseth

By-law

Number 2022-063

"Tree By-law"

A By-law to regulate the removal and injury of protected trees

Whereas section 135 of the *Municipal Act, 2001*, S.O. 2001, c. 25 authorizes a municipality to prohibit or regulate the destruction or injuring of trees;

And Whereas section 62 of the *Municipal Act, 2001* authorizes a municipality, at reasonable times, to enter upon land lying along any of its highways to inspect trees, conduct tests on trees, and to remove or have removed decayed, damaged, or dangerous trees or branches of trees if, in the opinion of the municipality, the trees or branches pose a danger to the health or safety of any person using the highway;

And Whereas section 425 of the *Municipal Act, 2001*, S.O. 2001, c.25, provides for a municipality to pass By-laws providing that a person who contravenes a By-law of the municipality passed under the Act is guilty of an offence;

And Whereas section 426 of the *Municipal Act, S.O. 2001, c.25* provides that no person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this Act or under a By-law passed under this Act;

And Whereas section 429 of the *Municipal Act, S.O. 2001, c.25* provides for a municipality to establish a system of fines for offences under a By-law of the municipality passed under this Act;

And Whereas section 436 of the *Municipal Act, S.O. 2001, c.25* provides for a municipality to pass By-laws that authorize it to enter on land at any reasonable time for the purpose of carrying out an inspection to determine if a By-law of the municipality is being complied with, or to determine if an order or direction of the municipality made under the Act or made under the By-law is complied with, and may require information, inspect documents and take samples;

And Whereas section 431 of the *Municipal Act, 2001* authorizes, in addition to any other remedy and to any penalty imposed by a By-law passed under section 135, the court in which a conviction has been entered to make an order requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate;

And Whereas the Council for the Corporation of the Town of New Tecumseth recognizes the importance of trees to the environment within the Town for the purposes of health and welfare, beauty, safety, history, and general wellbeing;

And Whereas the Council for the Corporation of the Town of New Tecumseth wishes to promote tree conservation, the increase, renewal, and proliferation of trees and the tree canopy, and the protection of existing trees by providing reasonable minimum standards regarding the preservation, planting, protection, and maintenance of Town trees;

And Whereas section 4.5.8 of the New Tecumseth Official Plan of August 2019 states that the Town should consider establishing a Town Tree Cutting By-law.

Now Therefore the Council of The Corporation of the Town of New Tecumseth does hereby enact as follows:

1 Definitions

For this By-law, the following terms shall have the following meanings:

- 1.1 **dbh** means acronym for tree diameter at breast height (dbh) measured at 1.4 meters (4.6 feet) above ground (unless otherwise noted for justified reasons).
- 1.2 **Development** means the construction, erection, or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure requiring approvals under the Planning Act and/or subject to Agreement of, and at the sole discretion with, the **Town**. This includes, but is not limited to Site Plan Applications, Plan of Subdivision/Condominium, Property Access Permits, Road Occupancy Permits, Site Alternation and Fill Applications, including lands described in section 4.5.11 of the Official Plan, wooded areas not within the EP1 and EP2 designation.
- 1.3 **Director** means the Director of Public Works for the Town and includes the Director's alternate, designate, or successor.
- 1.4 **Heritage Tree** means a historical or culturally significant tree associated with a historic person or event or growing on historically significant land that is a tree designated under Part IV of the Ontario Heritage Act or trees recognized as heritage trees by the Ontario Heritage Tree Program of Trees Ontario. This includes trees currently nominated to be a Heritage Tree by the Town.
- 1.5 **Injury or Injure** means to harm, damage, or impair the above or below ground portions of a tree(s) and includes, but is not limited to, harm, damage, or impairment caused by changing grades around trees, compacting soil over critical root areas, severing roots, improper application of chemicals, improper or unapproved pruning, or the removal of branches and bark that would adversely affect the health or structure of a tree, and includes the failure to protect a tree.
- 1.6 **Municipal Law Enforcement Officers** means a provincial offences officer employed by the Town.
- 1.7 **Person** means an individual, a corporation, a partnership, or an association.
- 1.8 **Significant Tree** means a tree that is recognized by the Town because of its size, form, rarity of species, age, its association with a historical figure or event, and/or a tree that is distinctive in the community, or a combination of these criteria, but does not include a Heritage Tree.
- 1.9 **Protected Tree** means:
 - a Town tree; or
 - a Significant or Heritage tree; or
 - a tree 20cm **dbh** or greater that is part of a **development** in the Town.
- 1.10 **Technical Tree Guidelines** means the Town's document to detail processes, procedures, and technical requirements to maintain, protect, and enhance trees and the tree canopy (Tree Guidelines).
- 1.11 **Town** means the Corporation of the Town of New Tecumseth.
- 1.12 **Town Property** means lands within the Town's boundaries that are owned by the Town.
- 1.13 **Town Tree** means any tree, all, or part of which is located on **Town**

property.

1.14 **Tree Protection Zone (TPZ)** means the setback required to maintain overall physiological health of the tree and the structural integrity of the tree's roots, based on generally accepted arboricultural principles and as referenced in the Tree Guidelines.

2 Applicability and Scope

(1) This By-law applies to all properties within the boundaries of the Town.

(2) If there is a conflict between government authority By-laws relating to the regulation or prohibition of the destruction or injuring of trees, the By-law that is the most restrictive (most stringent) of the destruction or injuring of trees prevails. 2001, c. 25, s. 461. (Municipal Act)

(3) Despite any prohibitions or restrictions in this By-law, its provisions do not apply to the injuring or destruction of trees:

- 2.1 that are regulated under the county By-law(s), in which the provisions of the County By-law(s) conflict with this By-law;
- 2.2 undertaken under a license issued under the Crown Forest Sustainability Act, 1994, S.O. 1994, c25;
- 2.3 by a person licensed under the Surveyors Act, R.S.O. 1990, Chapter S.29, to engage in the practice of cadastral surveying or their agent, while making a survey;
- 2.4 as a condition to the approval of a **development** application, a plan of subdivision, or a consent under section 41, 51 or 53, respectively, of the Planning Act, R.S.O. 1990, c. P.13, or as a requirement of a site plan agreement or subdivision agreement entered into under those sections, or as otherwise addressed in an executed, written agreement with the Town subject to approval from the Town, payment for tree compensation as per Appendix 1 in the By-law, and the Town's Technical Tree Guidelines;
- 2.5 as a condition to a development permit authorized by regulation made under section 70.2 of the Planning Act, R.S.O. 1990, c. P.13, or as a requirement of an agreement entered into under the regulation;
- 2.6 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;
- 2.7 undertaken on land described in a license 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; or
- 2.8 undertaken on land to lawfully establish and operate or enlarge any pit or quarry on land: (i) that has not been designated under the Aggregate Resources Act, R.S.O. 1990, c. A.8 or a predecessor of that Act, and (ii) 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. 1990, c. P.13.
- 2.9 undertaken on authority of the Town including but not limited to highway maintenance and capital works.

3 General Provisions

3.1 Authority for planting, maintenance, and removal of trees.

3.2 The Director is hereby authorized to plan, regulate, supervise, and carry out the planting, maintenance, correction, protection, preservation, and removal of all trees located on any **Town property**.

3.3 Without limiting the generality of (3.2), the Director is hereby authorized to take or cause the following action:

3.3.1 plant trees on Town property;

3.3.2 care for and maintain trees located on Town property;

3.3.3 identify the species of trees which are permitted and prohibited in the Town;

3.3.4 remove a tree located on Town property;

3.3.5 remove without notice or compensation to any person, any object or material that adversely affects a tree or part of a tree located on Town property;

3.3.6 implement all necessary treatments for insect and disease problems associated with trees located on Town property;

3.3.7 stop any work causing injury or destruction to a **protected tree** that is taking place without permission from the Town;

3.3.8 enter upon land adjacent to Town property to inspect and conduct assessments or tests on protected trees, to prune trees where the branches may negatively impact Town infrastructure (e.g., highway, streetlight, etc.), and enter said property to perform a proper pruning cut on the tree where required;

3.3.9 remove a decayed, damaged, or dangerous tree or tree part immediately and without notice to the owner of the land upon which the tree is located if, in the opinion of the Director, the tree or tree part poses an unacceptable risk to people, property, accessibility, or disruption of events; or

3.3.10 have an order issued to the tree owner to remove a decayed, damaged, or dangerous tree or tree part immediately and without notice to the owner of the land upon which the tree is located if, in the opinion of the Director, the tree or tree part poses an unacceptable risk to people, property, accessibility, or disruption of events;

3.3.11 protect all trees that are considered **Significant** or **Heritage**;

3.3.12 have issued a permit to authorize work on a town tree or to plant a tree on Town property.

4 Prohibited Acts

No person shall:

4.1 **injure** or destroy, or cause to be injured or destroyed, a protected tree;

4.2 remove or cause to be removed a protected tree;

- 4.3 deface, tack, paste, or otherwise attach a bill, note, any other thing, or object to a Town tree;
- 4.4 hinder or obstruct or attempt to hinder or obstruct the Director in the exercise of the powers and performance of the duties under this By-law;
- 4.5 plant or cause to be planted a tree or any part of a tree on Town property without first having obtained the permission of the Director;
- 4.6 fail to comply with an order issued by the Director;
- 4.7 undertake or cause any unauthorized activities within the tree protection zone of a protected tree which are contrary to the Town's By-law, policy, or guidelines or any conditions imposed and set out by the Town pertaining to the protection of any protected tree;
- 4.8 remove or have removed protected trees within two years of a development/demolition application.

5 Enforcement Of By-Law

- 5.1 In addition to the Director, the administration and enforcement of this By-law will be performed by those persons designated by Council as **Municipal Law Enforcement Officers**.
- 5.2 Where a person has contravened this By-law, the Director may make an order directing the person to do any or all of the following:
 - 5.2.1 Comply with any conditions required to correct the contravention to the satisfaction of the Director; and/or
 - 5.2.2 Cease the activity which is the subject of the contravention.
- 5.3 The order issued by the Director pursuant to subsection 6.2 shall set out:
 - 5.3.1 the person who contravened the By-law or caused or permitted the contravention;
 - 5.3.2 reasonable particulars of the contravention and the period within which there must be compliance with the order; and
 - 5.3.3 if applicable, notice stating that if the work is not done in compliance with the order within the period it specifies, the municipality may have the work done at the expense of the person who contravened the By-law and collected in the same manner as property taxes.
- 5.4 Orders issued under subsection 6.2 shall be served by email, personally, or by registered mail to the last known address of the person to be served.
- 5.5 If the Town is unable to effect service on the person who contravened the By-law under subsection 5.4, a placard containing the terms of the order may be placed in a conspicuous place on the land where the contravention occurred, and the placing of the placard shall be deemed to be sufficient service of the order.
- 5.6 Where a person has failed to correct any contravention to the satisfaction of the Director within the time specified in an order issued pursuant to this By-law, the Town, in addition to all other remedies it may have, may take all necessary steps to bring the lands into compliance with the By-law.
- 5.7 The Town may recover all costs incurred by it under subsection 6, plus cost recovery of up charge of 50% or interest accrued to the date payment is made at the rate of fifteen percent (15%) per annum, from the person directed or required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as taxes.

6 Offence and Penalty

- 6.1 Every person who contravenes any provision of this By-law is guilty of an offence and, upon conviction, is liable to a fine as provided for by the Provincial Offences Act, R.S.O., 1990 c. P. 33, as amended.
- 6.2 All contraventions of this By-law or orders issued under section 6 are designated multiple offences and continuing offences pursuant to section 429(2) of the *Municipal Act, 2001*.
- 6.3 Upon conviction of an offence under this By-law, a person is liable to a fine as follows:
- 6.3.1 The minimum fine for an offence is \$500 and the maximum fine for an offence is \$100,000.
- 6.3.2 In the case of a continuing offence, in addition to the penalty mentioned in section 6.3.1 above, for each day or part of a day that the offence continues, the minimum fine shall be \$500 and the maximum fine shall be \$10,000, and the total of all daily fines for the offence is not limited to \$100,000.
- 6.3.3 In the case of a multiple offence, for each offence included in the multiple offence:
- the minimum fine shall be \$500 and,
 - the maximum fine shall be \$10,000 and,
 - the total of all fines for each included offence is not limited to \$100,000.
- 6.3.4 A special fine may be imposed, in addition to a fine under section 6.3 above, in circumstances where there is an economic advantage or gain from the contravention of this By-law or an order under section 5 of this By-law, and the maximum amount of the special fine may exceed \$100,000.
- 6.3.5 Failure to install and maintain required tree protection hoarding during demolition and/or development, \$500 per tree/per day.
- 6.3.6 If a person is convicted of an offence for contravening the provisions of this By-law, or an order issued pursuant to this By-law, the Court in which the conviction has been entered may order the person to correct the contravention, which may include but is not limited to: repair, planting, or replanting such tree(s) in such manner and within such time period as the Court considers appropriate, such as replacement of a comparable species and/or payment of the tree(s) amenity value as determined by the Director using the following criteria:
- 6.3.6.1 The payment shall be two (2) times the value of the compensation based on its estimated pre-casualty condition as determined using the Town's tree compensation formula found in Appendix 1.
- 6.3.7 Any costs payable or associated with an order of the Court in subsection (6.3.6) are in addition to, and not in substitution for, the payment of any penalty imposed by the Court for the commission of an offence under this By-law or any other applicable legislation.
- 6.3.8 The cost to repair as determined by the Director using the tree injury formula in Appendix 2 where causing injury to a protected tree including the tree's above and below ground portions.
- 6.3.9 Where a person removed or had removed a protected tree(s), as per subsection 4.8, an Arboricultural Consultant, approved under the sole discretion of the Director, shall be retained to prepare a report to determine the tree compensation required based on (but not limited to) stumps, historical "Google" photo interpretation, referencing Appendix 1 Tree Compensation Formula. All costs, including the report, shall be borne by that person.

7 Severability

In the event that any provision or part of this By-law is found to be invalid or unenforceable for any reason whatsoever, then the particular provision or part thereof shall be deemed to be severed from the remainder of the By-law and all other provisions or parts thereof shall remain in full force and shall be valid and enforceable to the fullest extent permitted by law.

8 Supporting Materials

8.1 Appendix 1 - Tree Compensation Formula

Protected trees that require compensation will use the following formula:

$$(A \times B) \div C = D$$

A. **dbh** of subject tree in cm

B. Condition of subject tree (pre-casualty), expressed as a percentage:

- **Excellent** (90% rating) - Nearly perfect or ideal for the species, free of defects.
- **Good** (75% rating) - Normal Vigour, well developed structure, minor asymmetries.
- **Fair** (50% rating) - Reduced vigour, multiple moderate defects, major asymmetries.
- **Poor** (25% rating) - Unhealthy and declining, multiple significant defects, largely asymmetric.
- **Very Poor** (15% rating) - Poor vigour, dying, multiple severe defects, visually unappealing.
- **Dead** (5% rating) – used in the health assessment, 90% declined, no chance of recovery within next year.
- High Risk Tree (0% rating)

C. A replacement tree will be based on 5cm (50mm) caliper with a value of \$500

D. Number of trees to replace through replanting on site, as cash in lieu, or a combination thereof

Tree Compensation Calculation Example:

2 x 120cm dbh maples (*Acer sp.*) Both trees - Health is Fair; Structure is Poor; Form is Fair

- a. $(dbh \times ((Health (\%) + Structure (\%) + Form (\%)) \div 3)) \div Replacement\ tree\ size = number\ of\ trees$
- b. $(240 \times ((50\% + 25\% + 50\%) \div 3)) \div 5$
- c. $(240 \times 0.42) \div 5$
- d. 20 trees (round only in the last stage and to the nearest whole number)

Solution:

3 x 50mm approved trees can be planted on the property, therefore 17 trees require compensation at \$500/tree, \$8,500 cash-in-lieu will be required as payment to the Town for the difference for trees not planted.

Note: As per section 6.3.6.1, if these trees were removed without authorization, 40 trees would have been required for compensation.

8.2 Appendix 2 – Tree Injury Formula

Protected trees that are injured without authorization shall be compensated based on the following formula, at the sole discretion of the Town:

$$((A \times B) \times C) \times D = injury\ amount$$

A. **dbh** of subject tree

B. Condition of subject tree (pre-casualty), expressed as a percentage:

- **Excellent** (90% rating) - Nearly perfect or ideal for the species, free of defects.
- **Good** (75% rating) - Normal Vigour, well developed structure, minor asymmetries.
- **Fair** (50% rating) - Reduced vigour, multiple moderate defects, major asymmetries.
- **Poor** (25% rating) - Unhealthy and declining, multiple significant defects, largely asymmetric.
- **Very Poor** (15% rating) - Poor vigour, dying, multiple severe defects, visually unappealing.
- **Dead** (5% rating) – used in the health assessment, 90% declined, no chance of recovery within next year.
- High Risk Tree (0% rating)

C. Severity of injury, assessed in the sole discretion of the Town, expressed as a percentage:

- i. Low Risk Factor (25% of Assessed Value):
 - Minimal work inside TPZ (including grading, excavation, servicing, etc.);
 - Tracked machine inside TPZ (root zone impact <25%).
 - Construction foot traffic inside TPZ (root zone impact <25%).
 - Materials stored inside TPZ (compaction <25%).
- ii. Moderate Risk Factor (50% of Assessed Value):
 - Minimal work inside TPZ (including grading, excavation, servicing, etc.).
 - Hoarding not installed as per Town Standard
 - Tracked machine inside TPZ (root zone impact 25-50%).
 - Construction foot traffic inside TPZ (root zone impact 25-50%).
 - Materials stored inside TPZ (compaction 25-50%).
- iii. High Risk Factor (75% of Assessed Value):
 - Significant work inside TPZ (including grading, excavation, servicing, etc.)
 - Hoarding not installed as per Town Standard
 - Wheeled machine inside TPZ (root zone impact <25%)
 - Tracked machine inside TPZ (root zone impact 50-75%).
 - Construction foot traffic inside TPZ (root zone impact 50-75%).
 - Materials stored inside TPZ (compaction 50-75%).
 - Trunk damages to <25% of circumference.
- iv. Severe Risk Factor (90% of Assessed Value):
 - Excessive work inside TPZ (including grading, excavation, servicing, etc.);
 - Hoarding shown on plan and not installed as per Town Standard
 - Wheeled machine inside TPZ (root zone impact >25%)
 - Construction foot traffic inside TPZ (root zone impact >75%)
 - Materials stored inside TPZ (compaction >75%)
 - Trunk damages to 25-50% of the circumference (>50% is considered an unauthorized removal)

D. \$50 - Where dollar value per centimetre equals new tree value (\$500) divided by new tree caliper size of 5cm divided in half to use a per centimetre cost of injured tree value. $(\$500 \div 5) \div 2 = \$50/\text{cm}$

Example:

75cm protected sugar maple in good overall condition has around 50% of its roots compacted by a tracked skid steer, with the hoarding removed in sections.

Solution:

$\text{dbh} \times \text{condition value} \times \text{Injury Factor} \times \text{dollar value/cm} = \text{injury amount}$
 $((75\text{cm} \times 75\%) \times 90\%) \times \$50 = \$2,531.25$

As the hoarding was removed without authorization, as per section 6.3.5, an additional set fine of \$500 is applied. A total fine of \$3,031.25.

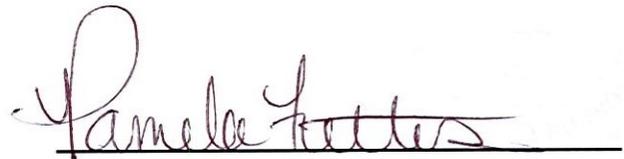
\$2,531.25 will be used towards mitigating the compaction on-site through a third-party contractor retained and approved by the Town. The mitigation was determined to be root invigoration using a supersonic air tool with a bio-char additive, and subsequently covered with woodchips.

- 9. That By-law 2019-086 is hereby repealed.
- 10. That this by-law shall be cited as "Tree By-law".
- 11. That this by-law shall come into force and take effect on the date of final passing thereof.

Read a first, second and third time and finally passed this 13th day of June, 2022.



Mayor



Clerk