

**BY-LAW NO. 2005-289**

**TREE CONSERVATION BY-LAW**

**A By-Law To Prohibit And Regulate The Destruction Or Injuring Of Trees In The City Of Kingston**

**PASSED:** November 22, 2005

**WHEREAS** s. 135(1) of the *Municipal Act*, R.S.O. 2001, S.O. 2001, c. 25, as amended, permits the enactment of a By-law by the Council of the City of Kingston to prohibit and regulate the destruction or injuring of trees;

**AND WHEREAS** Council may require that a Permit be obtained to injure or destroy trees and may impose conditions on a Permit, including conditions relating to the manner in which destruction occurs and the qualification of persons authorized to injure or destroy trees;

**AND WHEREAS** Council has determined that it is desirable to enact such a By-law for the purposes of:

- (a) promoting Good Forestry Practices that sustain healthy woodlands and the urban forest;
- (b) regulating and controlling the removal, maintenance, and protection of trees;
- (c) protecting, promoting, and enhancing the aesthetic value of woodlands and trees;
- (d) contributing to human health and quality of life through the maintenance of tree cover;
- (e) providing habitat for wildlife;
- (f) maintaining and enhancing water quality and preventing erosion;
- (g) protecting significant and sensitive natural areas;
- (h) providing recreational opportunities; and
- (i) reducing airborne pollution.

**NOW THEREFORE** the Corporation of the City of Kingston hereby enacts as follows:

**DEFINITIONS**

1. In this By-law, the following definitions apply:

- (a) "Agricultural Operation" means an activity that is carried out for the purposes of the production of agricultural products or services for gain or reward.
- (b) "Applicant" means the person who submits an application for a permit under this By-law.
- (c) "DBH" (Diameter at Breast Height) means the diameter of the stem in centimetres of a tree measured outside the bark at a point that is 1.37 metres above the ground.
- (d) "Building Permit" means a building permit issued under the *Building Code Act*, 1992, S.O. 1992, c. 23, as amended.

- (e) "Certified Arbourist" means an arbourist certified by the Certification Board of the International Society of Arboriculture.
- (f) "Forestry Consultant" means a forest technician, a forest technologist, a forest/wildlife ecologist, a certified arbourist, or a registered professional forester.
- (g) "Forest Technician/Technologist" means a graduate of a post-secondary school of forestry and/or ecology based program.
- (h) "Good Arboricultural Practices" means the appropriate practice of the planting and care of trees as determined by the International Society of Arboriculture.
- (i) "Good Forestry Practices" 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 habitat, soil and water quantity and quality, forest productivity and health, and the aesthetics and recreational opportunities of the landscape;  
 And Good Forestry Practices permit the destruction or injuring of trees that:
  - (i) have been damaged by disease, insects, wind, ice, lightning, fire, or other natural causes to an extent that the health of such trees is likely to further deteriorate;
  - (ii) should be cut or removed to prevent disease or insects from spreading to other trees; or
  - (iii) are marked and cut as part of a woodlands management plan approved by a Registered Professional Forester.
- (j) "Normal Farm Practices" means any practice under the Farm Practices Act, that is part of an agricultural operation when conducted in accordance with an approved code of practice or in a manner consistent with proper and accepted customs and standards as established and followed by similar agricultural operations under similar circumstances, including the use of innovative technology used with advanced management practices.
- (k) "Officer" means an individual appointed by Council to enforce the provisions of the By-law.
- (l) "Owner" means the person having any right, title, interest, or equity in land.
- (m) "Own Use" means personal use that does not include sale, exchange, or other disposition of trees or tree sections destroyed or injured.
- (n) "Permit" means the written authorization from the Supervisor to destroy or injure trees.
- (o) "Registered Professional Forester" means a member of the Ontario Professional Foresters Association as defined in the *Professional Foresters Act*, 2000, S.O. 2000, c. 18.
- (p) "Sensitive Natural Areas" means:
  - (i) Provincially or regionally significant wetlands;
  - (ii) any portion of woodlands located within 30 metres of the water's edge of a locally, regionally, or Provincially significant wetland, lake, river, or stream, as defined by the Ontario Ministry of Natural Resources;

- (iii) Provincial or regional Areas of Natural and Scientific Interest (ANSI);
  - (iv) Environmentally Sensitive or Significant Areas as identified by the Cataraqui Region Conservation Authority;
  - (v) Habitat of Vulnerable, Threatened, or Endangered Species, as identified by the Cataraqui Region Conservation Authority and/or the Ontario Ministry of Natural Resources; and
  - (vi) lands receiving property tax reduction under the Conservation Land Tax Incentive Program.
- (g) "Silviculture" means the theory and practice of controlling forest establishment, composition, growth, and quality of forests to achieve the objectives of forest management.
  - (r) "Supervisor" means the Supervisor of the Forestry/Horticulture unit of Cultural Services for the City of Kingston or his or her designate.
  - (s) "Tree" means any species of woody perennial plant, including its root system, which has reached or can reach a height of at least 4.5 metres at physiological maturity.

### **GENERAL PROHIBITION**

2. Except as provided in Section 4 of this By-law, no person shall, through their own actions or through any other person, destroy or injure any living tree located in the City of Kingston unless:
  - (a) the person first obtains a permit to authorize the destruction or injury;
  - (b) the destruction or injury is done in accordance with good forestry or arboricultural practices as prescribed or certified in writing by a forestry consultant; and
  - (c) the person who is destroying or injuring the tree(s) has complied with the permit issued.
3. No person through their own actions or through any other person shall:
  - (a) fail to comply with an order issued under this By-law;
  - (b) remove or deface any order that has been posted pursuant to this By-law; or
  - (c) contravene the terms or conditions of a permit issued under this By-law.

### **GENERAL EXEMPTIONS**

4. This By-law does not apply to:
  - (a) the injuring or destruction of a tree(s) that is less than 15 cm (150 mm) DBH;
  - (b) the injuring or destruction of a tree(s) that is required in accordance with good forestry practices for a landowner's personal use;
  - (c) the pruning of tree branches in accordance with good arboricultural practices to maintain tree health;
  - (d) the injuring or destruction of a tree(s) located within the limits of any residential lot existing and developed as of the date of passage of this by-law;

- (e) the injuring or destruction of a tree(s) in a cultivated orchard, tree farm, or nursery that is being actively managed and harvested for the purposes for which the tree(s) was planted;
- (f) the injuring or destruction of a tree(s) occurring as a part of normal farm practices of an active agricultural operation;
- (g) activities or matters undertaken by a municipality, a local board of a municipality, or Conservation Authority;
- (h) activities undertaken with any rights or powers under Provincial or Federal legislation;
- (i) activities or matters undertaken under a license issued under the *Crown Forestry Sustainability Act, 1994*;
- (j) the injuring or destruction of a tree(s) by a person licensed under the *Surveyors Act* to engage in the practice of cadastral surveying or their agent, while making a survey;
- (k) the injuring or destruction of a tree(s) imposed as a condition to the approval of a site plan, plan of subdivision, or consent under Section 41, 51, or 53 respectively of the *Planning Act* or as a requirement of a site plan agreement or subdivision agreement entered into under those Sections;
- (l) the injuring or destruction of a tree(s) that provides fruit or nuts for human consumption;
- (m) the injuring or destruction of a tree(s) by a transmitter or distributor, as those terms are defined in Section 2 of the *Electricity Act, 1998*, for the purpose of construction and maintaining a transmission system or a distribution system, as those terms are defined in that Section;
- (n) the injury or destruction of a tree(s) 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*;
- (o) the injuring or destruction of a tree(s) undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land:
  - (i) that has not been designated under the *Aggregate Resources Act* 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*;
- (p) the injuring or destruction of a tree(s) that is required in order to erect any building, structure, or thing in respect of which a building permit has been issued provided that no tree is destroyed or injured that is located more than fifteen (15) metres from the outer edge of the building, structure or thing;
- (q) the injuring or destruction of a tree(s) that is required in order to install, provide, and maintain utilities and/or services to the construction or use of a building, structure or thing in respect of which a building permit has been issued, including the construction of a single or double lane driveway for vehicular access to the building, structure, or thing; and
- (r) the injuring or destruction of a tree(s) within a building or structure, a solarium, rooftop garden, interior courtyard.

## **APPLICATION**

5. Every person who intends to destroy or injure trees, personally or through another person, shall apply for a permit by submitting all of the information prescribed in Sections 7 to 10 of this By-law and paying the fee prescribed in Schedule "A".
6. Any person who is required to obtain a permit under Section 5 shall also erect and display a public notice sign at the entrance, at the adjoining roadway, to the land where the destruction or injury of the trees is to occur, in a position that is clear and visible to all persons, and such sign shall be in a format to the satisfaction of the Supervisor. Such a sign shall be at the owner's cost and comply with the following:
  - (a) the face of the sign shall be no less than twenty eight (28) centimeters (11 inches) by forty three (43) centimeters (17 inches) in size; and
  - (b) the letters on the face of the sign shall be no less than three (3) centimeters (1.2 inches) in height.

## **APPLICATION REQUIREMENTS**

7. Where a permit is required under this By-law the owner or applicant shall submit:
  - (a) a complete application in a form satisfactory to the Supervisor;
  - (b) where the applicant is not the owner, the written authorization of the owner consenting to the application;
  - (c) the prescribed fee as set out in Schedule "A";
  - (d) a plan, drawing, and/or photograph of the property to the satisfaction of the Supervisor clearly, illustrating in table and map form which trees are to be injured, destroyed, or retained; and
  - (e) where the base of a tree to be injured or destroyed straddles a property line, the written consent to the proposed injury or destruction from the affected adjacent property owner.
8. Following the receipt of an application, the Supervisor may confer with such persons, staff, qualified professionals, and agencies as he or she considers necessary for the proper review of the application, determination whether or not a permit should be issued, and identification of any conditions thereto.
9. Following the receipt of an application, the Supervisor and any person acting under the Supervisor's direction may enter and inspect the lands upon which the tree(s) is located and the submission of the application shall constitute irrevocable permission to the City or its agents to enter the property for the purpose of administering this By-law.
10. Where, in the opinion of the Supervisor, additional information is necessary to evaluate the application, the Supervisor may require the applicant to submit a professional report prepared by a forestry consultant respecting the reasons for the proposed injury or destruction of the tree(s) and/or certifying that the proposed injury or destruction of the tree(s) is in accordance with good forestry or arboricultural practices.

11. No permit shall be issued until all of the information prescribed in Sections 7 to 10 of this By-law, any additional information requested by the Supervisor, and the prescribed fee have been submitted. The time for an appeal of the failure of the City to make a decision on the application shall not commence until a complete application is received.

## **REQUIREMENTS FOR PERMIT ISSUANCE**

12. The Supervisor shall issue a permit, provided:

- (a) the applicant has submitted all required information, complied in all respects with the requirements of this By-law, and has paid the required fee;
- (b) the proposed injury or destruction is associated with an existing use of the property, including ongoing silvicultural practices and selective thinning or harvesting of plantations or woodlands and is in accordance with good forestry practices;
- (c) the applicant demonstrates that the proposed injury or destruction will not:
  - (i) interfere with natural drainage processes;
  - (ii) result in soil erosion, flooding, slope instability, or siltation in a watercourse or waterbody;
  - (iii) have a significant impact on any healthy vegetation community within and adjacent to the subject property;
  - (iv) have a significant impact on any fish or wildlife habitat within and adjacent to the subject property;
  - (v) adversely impact a tree of an endangered species as defined by the *Endangered Species Act*, 1990 as amended; and
  - (vi) adversely impact the ecological integrity of a sensitive natural area.
- (d) the applicant demonstrates that the proposed injury or destruction is:
  - (i) to a tree(s) that is or is likely to cause structural damage to load-bearing structures;
  - (ii) to a tree(s) that is in declining or poor condition and cannot be maintained in a healthy and safe condition; or
  - (iii) in accordance with good forestry or arboricultural practices as certified by a forestry consultant; and
- (e) the owner, if required, enters into an agreement which may be registered on title to the subject lands containing conditions to ensure that the proposed injury or destruction will be undertaken in accordance with the professional reports and information contained in the application. Such an agreement may contain a provision requiring the applicant to post with the City of Kingston a security in an amount determined by the Supervisor to ensure performance of the obligations under the agreement.

13. The Supervisor may impose conditions on a permit to ensure that the proposed injury or destruction is in accordance with Section 12, including but not limited to:
- (a) the preparation of a tree protection plan identifying the location, species, and size of trees on the property and describing the protection measures to be implemented;
  - (b) the preparation of a replanting/replacement program where:
    - (i) replacement tree size, species, and number are chosen and planted to the satisfaction of the Supervisor;
    - (ii) replacement trees are to be maintained and protected in accordance with good arboricultural practices;
    - (iii) an appropriate sum for cash-in-lieu of replacement, where no on site tree replacement is possible, is determined to the satisfaction of the Supervisor and based on the evaluation formula as set out by the Ontario Shade Tree Council; and
    - (iv) tree replacement or compensation costs for replacement shall be applied to the satisfaction of the Supervisor as follows:
      - (i) the first priority shall be to apply the tree replacement or compensation costs to the reforestation on the site of the development project;
      - (ii) where no on site tree replacement is possible, the second priority shall be to apply the tree replacement or compensation costs to other lands owned by the proponent in the immediate vicinity of the development site;
      - (iii) where the proponent does not own other lands in the immediate vicinity and no other appropriate site in the immediate vicinity is available, the tree replacement or compensation costs may be applied elsewhere in the Municipality;
  - (c) the imposition requiring monies or a letter of credit in a form satisfactory to the Supervisor to cover the costs of replacement trees and the maintenance of the trees for a period of up to two (2) years; and
  - (d) the manner and timing of the destruction or injury.
14. Every permit issued under Section 12 shall be deemed to include a condition permitting the Supervisor or his or her designate to access the lands referred to in the permit for the purpose of ensuring compliance with this By-law.
15. A permit issued pursuant to this By-law shall be valid for a period of one (1) year.
16. A permit may be extended by the Supervisor provided that in no case shall the permit be in effect for more than two (2) years from the original date of issuance.

17. When denying a permit, the Supervisor must notify the applicant within forty five (45) days of the submission of a completed application.

### **ORDERS TO DISCONTINUE ACTIVITY**

18. Where the Supervisor is satisfied that a contravention of this By-law has occurred, an officer may make an order requiring the person who contravened the By-law or who caused or permitted the contravention of the By-law to stop any injury or destruction of tree(s). The order shall set out information including but not limited to:
  - (a) the municipal address or the legal description of the land;
  - (b) reasonable particulars of the contravention; and
  - (c) the period within which there must be compliance with the order.
19. An Order issued under this By-law may be served personally or by sending it by first registered mail to the last known address of:
  - (a) the owner of the tree(s); or
  - (b) the person identified as contravening the By-law.
20. Where service of an order is made by mail, service shall be deemed to have been served on the fifth day after the order is mailed.
21. Where service cannot be reasonably carried out, it is deemed sufficient if an officer places a placard containing the terms of the order in a conspicuous place on the affected lands and the placing of the placard shall be deemed to be sufficient service of the order on the person to whom the order is directed, as of the date the placard is placed on the property.

### **PENALTY**

22. Any person who contravenes any provision of this By-law, or an order issued under this By-law is guilty of an offence and is liable:
  - (a) on first conviction, to a fine of not more than \$10,000 or \$1,000 per tree, whichever is greater; and
  - (b) on any subsequent conviction, to a fine of not more than \$25,000 or \$2,500 per tree, whichever is greater.
23. Any corporation that contravenes any provision of this By-law, or an order issued under this By-law is guilty of an offence and is liable:

- (a) on first conviction, to a fine of not more than \$50,000 or \$5,000 per tree, whichever is greater; and
  - (b) on any subsequent conviction, to a fine of not more than \$100,000 or \$10,000 per tree, whichever is greater.
24. If a person is convicted of an offence for contravening this By-law or an order issued 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 rehabilitate the land or to plant or to replant trees in such a manner and within such a period as the court considers appropriate, including any silvicultural treatment necessary to re-establish the trees.

### **APPEALS TO THE ONTARIO MUNICIPAL BOARD**

25. An applicant for a Permit under this By-law may appeal to the Ontario Municipal Board where:
- (a) the municipality refuses to issue a permit, within thirty (30) days after the refusal;
  - (b) the municipality fails to make a decision on the application, within forty five (45) days after the complete application is received by the Supervisor; or
  - (c) the applicant objects to a condition of the permit, in which case the appeal must be filed within thirty (30) days after issuance of the permit.

### **IMPLEMENTATION AND ENFORCEMENT**

26. This By-law shall be implemented by the Supervisor and enforced by officers appointed by the City of Kingston.
27. The Supervisor shall designate persons for the purpose of delegating the power to issue permits and impose conditions on the permits and to conduct inspections for the purpose of ensuring compliance with this By-law.
28. The Officer or their designate may, at any reasonable time, enter and inspect any land to determine whether this By-law, an order, or a condition of a permit is being complied with, provided that the power of entry does not allow the officer or his or her designate to enter any building.
29. Any person who obstructs or interferes with the Supervisor, officer or their designate in the discharge of their duties under this By-law shall be considered in violation of the By-law.

### **ADMINISTRATION**

30. Schedule "A" shall form part of this By-law.

31. If any Section or Sections of this By-law or parts thereof are found by any Court to be illegal or beyond the power of the Council to enact, such Section or Sections or parts thereof shall be deemed to be severable and all other Sections or parts of this By-law shall be deemed to be separate and independent therefrom and continue in full force and effect unless and until similarly found illegal.

32. The short title of this By-law is the "Tree Conservation By-law".

**GIVEN ALL THREE READINGS AND PASSED** November 22, 2005

**CITY CLERK**

**MAYOR**

**SCHEDULE "A"**

**PERMIT FEES**

Description	Fee	
Public Notice Sign	Cost borne by Applicant / Actual cost of sign	
Application/Permit to Destroy or Injure Trees	1 tree within 1 calendar year	\$50
	2-10 trees within 1 calendar year	\$100
	11-20 trees within 1 calendar year	\$150
	>20 trees within 1 calendar year	\$200
Permit Renewal or Extension (If applied for prior to expiry of the original Permit)	Half of the initial fee	
Cash in Lieu of Replacement	Determined as appropriate by the Supervisor as per the formula accepted by the Ontario Shade Tree Council	
Inspection by the City Arborist	Insert Fee (Hourly rate)- to be completed	

