

**BY-LAW NUMBER 100 – 2012
OF THE
CORPORATION OF THE MUNICIPALITY OF MEAFORD**

**BEING A BY-LAW TO PROHIBIT AND REGULATE THE DESTRUCTION
OR INJURING OF CERTAIN TREES IN THE MUNICIPALITY OF
MEAFORD.**

WHEREAS Section 135 of the *Municipal Act*, R.S.O. 2001, c. 25, provides Council with the authority to pass by-laws for prohibiting the destruction or injury of trees specified in the By-law and prescribing fees for the permit, and prescribing conditions under which a permit may be issued;

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

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.

NOW THEREFORE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF MEAFORD HERE BY ENACTS AS FOLLOWS:

1. DEFINITIONS

“*applicant*” means an Owner of a tree or an Owner’s authorized representative who, pursuant to this by-law, applies for a Permit;

“*application*” means an application pursuant to this By-law for a Permit as set out in Schedule ‘A’ which constitutes as part of this by-law;

“*application fee*” means the fee, in effect from time to time, require in connection with submission of an Application;

“*certified arborist*” means an arborist certified by the Certification Board of the International Society of Arboriculture;

“*DBH*” means “Diameter at breast height” which means and refers to the diameter of a tree, outside the bark, at a point of 1.2 metres (4.0 feet) above the highest point on the tree where the ground meets the stump.

“*destroy*” means directly or indirectly, including through construction activities, remove, ruin, uproot or kill a tree, whether by accident or by design, and whether by cutting, burning, girdling, interfering with its water supply, applying chemicals, puncturing, or compacting, regarding or resurfacing within its drop line, but does not include Maintenance Pruning, and “Destruction” has the corresponding meaning;

“*Director*” means the Director of Planning & Building Services for the Municipality or his or her designate;

“*Director of Operations*” means a person appointment by Council for the Municipality of Meaford;

“*emergency work*” means any work required to be carried out immediately in order to prevent imminent danger to life, health or property, and includes the Destruction or Injuring of trees required because of the state of the trees resulting from natural events (including lighting, wind, hail or extreme snow event) or unforeseen causes (including automobile accident), or to permit repairs to building structures or drains;

“*farm operation*” means an agricultural or horticultural operation that is carried on in expectation of gain or reward, and includes the cultivation of land, the raising of livestock and poultry, the production of agricultural crops and maple syrup production;

“*forest technician*” means a graduate of a post-secondary school forestry and/or ecology based program;

- “forestry consultant”* means a forest technician, a forest technologist, a forest/wildlife ecologist, a managed forest plan approver, or a professional forester;
- “good arboriculture practice”* means the proper implementation of maintenance, renewal and removal activities known to be appropriate for individual trees in and around urban areas to minimize detrimental impacts on the urban forest values, and includes maintenance pruning;
- “good forestry practice”* means the proper implementation of harvest, renewal and maintenance activities known to be appropriate for the woodlands and the environmental conditions under which it is being applied and which minimize detriments to woodland values, including: significant ecosystems, important fish and wildlife habitat, soil and water quality and quantity, woodlands productivity and health, and the aesthetic and recreational values of the landscape and includes the clearing and thinning of trees for the purposes of stimulating tree growth and improving the quality of the woodlands without permanently breaking the canopy; the cutting or removal of hazardous, severely damaged, diseased and insect-infested trees in order to prevent injury, damage, contamination or infestation of other trees; and the cutting or removal of trees which no longer contribute to the achievement of woodlands values;
- “harvesting”* means the destruction of trees and may be either a single cut or a series of cuts, and shall include logging;
- “hazardous tree”* means destabilized or structurally compromised to an extent that an imminent danger of death, injury or structural damage exists, which includes a dead or severely damaged tree that may pose a danger to persons or property;
- “infestation”* means infestation as defined in The Forestry Act, R.S.O. 1990, cF26, as amended;
- “injure”* means to do harm, damage, or impair;
- “landscape architect”* means a graduate of a post secondary school landscape architect program and who is a member of The Ontario Association of Landscape Architects;
- “lot”* which has the same corresponding meaning as *“land”* which is a contiguous parcel of land which is owned by one person, or by more persons than one as tenants in common as to the whole parcel, or as joint tenants as to the whole parcel, and which parcel of land is also;
- a) A whole of a *lot* or block on a registered Plan of Subdivision;
 - b) A whole of a unit on a Vacant Land Condominium Plan;
 - c) The whole of a contiguous parcel of common elements within a Vacant Land Condominium Plan or within a Common Elements Condominium Plan;
 - d) The whole of the lands within a Standard Condominium Plan; or
 - e) A parcel which may otherwise be conveyed separately without contravening the Planning Act, provided that the sub-paragraph (e) shall not apply to a unit within a Standard Condominium Plan;
- “maintenance pruning”* means the pruning or removal of tree branches in accordance with Good Arboriculture Practice, as specified by the International Society of Arboriculture, including for purposes of removing dead limbs, maintaining structural stability and balance and encouraging natural form, but not limited to the appropriate removal of no more than one-third of the live branches that make up the leaf-bearing crown of the tree within a three-year pruning cycle, or as appropriate for the specific tree species, in order to maintain the health of the tree;
- “Municipality”* means The Corporation of The Municipality of Meaford;
- “Officer”* has the same meaning as a *“Municipal Law Enforcement Officer”* who is a person appointed under the authority of the *Police Service Act* for the purpose of enforcing the Municipality’s by-laws;
- “owner”* means the person having the right, title, interest or equity in land; where a tree is located; a boundary tree, may have multiple Owners;
- “person”* means an individual, a corporation and the heirs, executors, administrators, or other legal representatives of a person to whom the context can apply according to law;

“*permit*” means a permit to destroy or injure a tree, issued pursuant to this by-law as set out in Schedule ‘B’ which constitutes part of this by-law;

“*public park*” means all lands owned by or belonging to the Municipality as otherwise may be designated for use as a public park in accordance to our Zoning By-law;

“*public tree*” means any tree which as 50 percent or more of its main stem situated on a public park, highway or any lands owned by the Municipality of Meaford;

“*professional forester*” means a professional forester as defined in the Crown Forest Sustainability Act, S.O. 1994;

“*tree*” has the same corresponding meaning as a “regulated tree” which means a specimen of any species of deciduous or coniferous growing woody perennial plant, supported by a single root system, which has reached, could have reached a height of at least 4 meters from the ground at physiological maturity, is located on a lot larger than 1.0 hectares (2.5 acres) in size with a DBH of at least 10cm;

“*tree farm*” means land where trees are grown and maintained for sale;

“*tree preservation plan*” means a plan prepared by an arborist, a landscape architect, a forest technician, a forest technologist, a forest/wildlife ecologist, a managed forest plan approver, or a professional forester which determines trees to be preserved through an assessment process which identifies trees, shrubs and other specific areas of natural habitat and their ecological function or importance and such plan shall determine mitigation measures and measures to protect and manage trees to be preserved and proper practices to remove trees to be destroyed;

“*woodlands or forest management plan*” means a plan for a woodlands prepared according to guidelines set by the Ministry of Natural Resources or other recognized guidelines, which set out objectives and management practices to ensure the sustainability of the woodlands, and approved by a forestry consultant; and

“*Zoning By-law*” means a comprehensive by-law passed by the Council of the Municipality of Meaford in accordance with Section 34 of the *Planning Act*, S.O. 1990.

2. AREA OF APPLICATION OF BY-LAW

- 2.1 No person, shall, within the boundaries of the Municipality, destroy or permit or cause to be destroyed any *tree* without a *permit* and in accordance the following:
- (a) that is identified as a *tree* for preservation on a *tree preservation plan* or an area of tree preservation forming part of, or referenced, in an agreement entered into with the *Municipality*;
 - (b) as defined as a *public tree* except with the prior written approval of the Director, and/or mark , cut, break, peel or deface a public tree or any part of a *public tree*;
 - (c) that would negatively affect the flood or erosion control, or the ecological integrity of an Environmentally Protected Area within and as defined under the *Zoning By-law*;
 - (d) within an area subject to an application or approval under the *Planning Act* for the development of the lands in advance of any agreement that addresses tree preservation or removal; and
 - (e) on land owned, controlled or managed by the County of Grey or any local board thereof.

3. EXEMPTIONS

- 3.1 Section 2 of this By-law does not apply and exempt from the requirement of *permit*, such as;
- (a) activities or matters undertaken by the *Municipality* or the County of Grey or any local board thereof;

- (b) lands which are greater than 1ha. (2.4 acres), in which the County of Grey will take precedence with their applicable law;
- (c) activities or matters undertaken by a conservation authority as defined by the *Conservation Authorities Act*;
- (d) activities or matters undertaken under a license issued under the *Crown Forest Sustainability Act, 1994*;
- (e) the injuring or *destruction* of trees by a person licensed under the *Surveyors Act* to engage in the practice of cadastral surveying of his or her agent, while making a survey;
- (f) the injuring or *destruction* of trees imposed as a condition to the approval of a site plan, a plan of subdivision or a 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;
- (g) 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;
- (h) The maintenance of a tree in accordance with *good arboriculture practice*;
- (i) the removal of a dead, diseased or *hazardous tree* when certified as such by an individual designated or approved by the *Director*;
- (j) the removal of a damaged or destroyed tree, when certified as such by an individual designated or approved by the *Director*, and where *emergency work* is required in the interest of public safety, health or general welfare following any man-made or natural disasters, storms, high winds, floods, fires, snowfall or freezes;
- (k) a tree certified by the *Director* causing structural damage to a drain, load bearing structure or roof structure;
- (l) a tree injured or destroyed in compliance with a *tree preservation plan* approved by the *Director*;
- (m) a tree on land covered by a *woodlands management plan* approved by a forestry consultant, a copy of which has been submitted to the *Director*, provided such work is under taken in accordance with good forestry practice and the *woodlands management plan*; and
- (n) the *destruction of trees* occurring as an integral component of an active farm operation.

4. ADMINISTRATION

- 4.1 The *Director* is responsible for the administration of this By-law and is hereby delegated the authority to receive *applications* as per Schedule 'A' and the *application fees*, if applicable, and to issue *permits* as per Schedule 'B' and/or approvals and to attach conditions thereto in accordance with this by-law.
- 4.2 No person shall plant any *public tree* without the approval of the *Director* and such tree shall be planted. The Director will include the planting location, species, size and condition in conjunction with the *Director of Operations* and/or their designate.

5. ISSUANCE OF PERMIT

- 5.1 In deciding whether or not to issue a *permit* in respect of a *regulated tree*, the *Director* and the *Director of Operations* or their designate shall consider the following criteria:
 - (a) The condition of the tree;
 - (b) The location of the tree;
 - (c) The reason or reasons for the proposed destruction or injuring of

- the tree;
- (d) the protection and preservation of ecological systems and their functions, including the protection and preservation of native flora and fauna;
- (e) erosion, flood control and sedimentation of watercourses;
- (f) the submission of such persons or agencies as the *Director* may consider necessary to confer with the proper review of the *application*; and
- (g) any other legislation that may apply or approvals that may be required.

5.2 In issuing the *permit*, the *Director* shall issue the permit to the *applicant* and provide copies of the permit to any other owners.

5.3 The *permit* shall identify the tree or *trees* to be destroyed or injured and the reason or reasons for the destruction or injuring.

5.4 Following issuance of a *permit*, the *applicant* shall immediately post a copy of it in a conspicuous place on the land where the *regulated tree* is located so that it is visible and legible to passers-by, at least five (5) day prior to the destruction or injuring, and shall ensure that it remains so posted until the destruction, injuring or other related activities are complete.

5.5 A *permit* is and remains the property of the *Municipality* and may not be transferred except with the approval of the *Director*.

5.6 A *Director* shall revoke a *permit* if it was issued based on false or misleading information or if the *applicant* fails to comply with any condition attached to the *permit* or any provision of this by-law.

5.7 A *permit* shall expire ninety (90) days after its issuance, unless at least thirty (30) days before that expiry, the *applicant* applies to the *Director* and before that expiry the *Director* grants a onetime extension of ninety (90) days.

6. REFUSAL OF PERMIT

6.1 If the *Director* refuses to issue a *permit*, or if an *applicant* objects to a condition attached to a *permit* by the *Director*, the applicant may appeal to *Council*. Such appeal shall be made by written *notice* received by the *Director* within seven (7) days after the date of the refusal or the issuance of the conditional *permit*, as the case may be.

6.2 Upon considering the appeal, *Council* may recommend that the *Director* refuse the *permit*, issue the *permit* or issue the *permit* upon such conditions as *Council* considers appropriate.

6.3 *Council's* decision shall be final on the appeal of the permit *application*.

7. ORDERS AND REMEDIAL ACTIONS

7.1 If an *Officer* confirms, after making an inspection, that there has been a contravention for this by-law (including an order or a condition of a *permit* made pursuant to this by-law) then he or she may make an order requiring the person who contravened it (including the *owner*, an *applicant* or, if applicable, a contractor of the *owner* or *applicant*) to discontinue the activity and/or to do work to correct the contravention at the owner's expense.

7.2 If a *person* is required, under an order pursuant to this by-law to do a matter or thing, then in default of it being done by the *person* so required to do it, the matter or thing may be done at the person's expense under the direction of an *Officer*.

- 7.3 Wherever this by-law directs or requires any matter or thing to be done by a person, in default of its being done by the person directed or required to do it, the matter or thing may be done under the direction of the Director, and the Municipality may recover the costs incurred by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes (Part XII of *the Municipal Act*, S.O. 2001, C.25).
- 7.4 An order shall be served upon the owner and upon, if known, any other person or persons responsible for the destruction or injury of the regulated tree or trees.
- 7.5 An order under this by-law may be served:
- (a) personally, in which case it shall be deemed to have been served on the date of the personal service;
 - (b) by email, in which case it shall be deemed to have been served on the date of the email;
 - (c) by facsimile transmission, in which case it shall be deemed to have been served on the date of the facsimile transmission; or
 - (d) by sending it by prepaid ordinary mail to the last known address of the person being served, in which case it shall be deemed to have been served on the fifth day after the date it was mailed.

8. ENFORCEMENT

- 8.1 An *Officer* may, during daylight hours and upon producing a certificate of designation enter and inspect any land to which this by-law applies. An *Officer* may, in carrying out an inspection, be accompanied by an assisting person.
- 8.3 No person shall obstruct, hinder, or otherwise interfere with an *Officer* in the lawful carrying out of their duties and responsibilities under the provisions of this bylaw.

9. PENALTIES FOR NON-COMPLIANCE WITH BY-LAW

- 9.1 Any *person* who directly or indirectly contravenes or causes or permits a contravention of any provision of this by-law or an *order* issued under this by-law or a condition of a permit, is guilty of an offence.
- 9.2 Any Director or Officer of a corporation who concurs in the contravention of this by-law by the corporation is guilty of an offence.
- 9.3 If a contravention of any provision of this by-law, an order issued under this by-law or a condition of a *permit* occurs, the contravention may be presumed to have been committed by the *owner* of the land on which the contravention occurred.
- 9.5. A *person* convicted of an offence under this by-law is liable:
- (a) On a first conviction, to a fine of not more than \$10,000.00 or \$1,000.00 per tree, whichever is greater; and
 - (b) On any subsequent conviction, to a fine of not more than \$20,000.00 or \$2,500.00 per tree, whichever is greater.
- 9.6 Where the *person* convicted of an offence under this by-law is a corporation;
- (a) The maximum fine of 9.5(a) is \$50,000 or \$5,000 per tree to a maximum of \$100,000 whichever is greater; and
 - (b) The maximum fine in clause 9.5(b) is \$100,000 or \$10,000 per tree to a maximum of \$100,000, whichever is greater.

9.7 Where a *person* is convicted of an offence under this By-law, in addition to any other remedy or any penalty imposed by the By-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repletion of the offence by the person convicted or any other person.

9.8 Where a *person* is convicted of an offence under this By-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may order the person to replant or have replanted such trees in such manner and within such a period of time as the court considers appropriate, including any silvicultural treatment necessary to re-establish the tree or have the tree re-established.

10. SHORT TITLE

10.1 This By-law may be referred to as “The Tree Preservation By-law”.

11. VALIDITY OF THE BY-LAW

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

12. GENERAL

12.1 This by-law, words importing the singular number shall include the plural, words importing the plural shall include the singular number, words importing the masculine gender shall include the feminine, and words importing the feminine gender shall include the masculine, unless the context requires otherwise.

12.2 This by-law shall not be interpreted as exempting any person from the requirement to comply with any other *Municipal* by-law. In the event of conflict between the provisions of this by-law and any other *Municipal* by-law, the provisions which are more protective of *trees* shall apply.

13. EFFECTIVE DATE OF BY-LAW

13.1 This By-law shall come into force and take effect on the day of the passing thereof.

READ a FIRST, SECOND and THIRD time and finally passed this ____ day of _____, _____.

Francis Richardson, Mayor

Pamela Fettes, Clerk