

**THE CORPORATION
OF THE
TOWN OF NIAGARA-ON-THE-LAKE
BY-LAW NO. 5086-18**

**A BY-LAW TO REGULATE THE DESTRUCTION OR
INJURING OF TREES ON PRIVATE PROPERTY IN THE
URBAN AREAS OF THE MUNICIPALITY**

WHEREAS sections 9 and 10 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended or replaced from time to time, provide that a municipality has broad authority, including the authority to pass by-laws respecting the economic, social and environmental well-being of the municipality;

AND WHEREAS section 135 of the *Municipal Act* provides that a local municipality may prohibit or regulate the destruction or injuring of trees.

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

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 of the Town wishes to protect and enhance the tree canopy cover in the Town.

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN
OF NIAGARA-ON-THE-LAKE ENACTS AS FOLLOWS:**

Part I - Definitions

1. As used in this by-law, the following terms shall have the meanings indicated:

"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;

"Application Fee" means the fee, in effect from time to time, required in connection with the submission of an Application;

"Arborist" means an expert in the care and maintenance of trees and includes an arborist qualified by the Ontario Ministry of Training, Colleges and Universities, a Forest Technician, a Forestry Technologist with an applicable college diploma and a minimum of two years of urban forestry experience, a certified arborist qualified by the International Society of Arboriculture, a consulting arborist registered with the American Society of Consulting Arborists or a registered professional forester as defined in the *Professional Foresters Act, 2000*, S.O. 2000, c. 18, as amended or replaced from time to time;

"Committee" means the Town's Community Development Advisory

Committee, or such successor committee as Council may from time to time designate;

"Council" means the council of the Town;

"DBH" means diameter of a tree, outside the bark, at breast height, where breast height is measured from the existing grade of the ground adjoining the base of the trunk:

- (i) for a trunk rising straight and vertically from ground with a horizontal grade, 1.4 metres above that grade;
- (ii) for a trunk rising straight and non-vertically from ground with a horizontal grade, 1.4 metres along the centre axis of the trunk from that grade;
- (iii) for a trunk rising straight and vertically from ground with a non-horizontal grade, 1.4 metres along the centre axis of the trunk from that grade; and
- (iv) for a trunk rising unstraight, 1.4 metres along the centre axis of the trunk from that grade;

and where diameter is:

- (i) for a tree with a single trunk, the diameter of that single trunk;
- (ii) for a tree with two or three trunks, the total diameter of those two or three trunks; and
- (iii) for a tree with more than three trunks, the total diameter of the three trunks with the greatest diameters;

"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, regrading or resurfacing within its drip line, but does not include Maintenance Pruning, and "Destruction" has the corresponding meaning;

"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 lightning, wind, hail or extreme snow event) or unforeseen causes (including automobile accident), or to permit repairs to building structures or drains;

"Good Arboricultural 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 urban forest values, and includes Maintenance Pruning;

"Hazardous" means destabilized or structurally compromised to an extent that an imminent danger of death, injury or structural damage exists;

"Heritage Tree" means a tree designated under Part IV of the *Ontario Heritage Act*, 1990, c.0.18, as amended or replaced from time to time, or included in the Town's Municipal Register of Cultural Heritage Properties;

"Hoarding" means a fence or similar structure used to enclose land, trees and other vegetation in order to protect trees or other vegetation;

"Injure" means cause, directly or indirectly, whether by accident or by design, including through construction activities, lasting damage or harm to a tree, which has or is likely to have the effect of inhibiting or terminating its growth, whether

by cutting, burning, girdling, interfering with its water supply, applying chemicals, puncturing, or compacting, regrading or resurfacing within its drip line, but does not include Maintenance Pruning, and "Injuring" has the corresponding meaning.

"Inspector" means a person designated by the municipality to enforce this by-law;

"Institution" means an Owner of land used for educational, medical, religious, retirement or similar purposes.

"Landscaping, Replanting and Replacement Plan" means a plan which identifies the location, species and size of existing trees, trees to be planted or replaced and other landscaping elements on land and provides details regarding planting methodology and timing;

"Lot" means a parcel of land which:

- (i) is the whole of a lot or block on a registered plan of subdivision so long as such registered plan of subdivision is not deemed, pursuant to section 50 of the *Planning Act*, R.S.O. 1990, c.P.13, as amended or replaced from time to time, not to be a registered plan of subdivision for subdivision control purposes;
- (ii) is all land held or owned under distinct and separate ownership from the ownership of the fee or equity of redemption in abutting land;
- (iii) has the same description as in a deed which has been given consent pursuant to section 53 of the said *Planning Act*; or
- (iv) is the whole remnant remaining to an owner or owners after conveyance made with consent pursuant to section 53 of the said *Planning Act*;

"Maintenance Pruning" means the pruning or removal of tree branches in accordance with Good Arboricultural 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 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 Town of Niagara-on-the-Lake;

"Owner" means the person having any right, title, interest or equity in the land where a tree is located; a boundary tree may have multiple Owners;

"Permit" means a permit to destroy or injure a tree, issued pursuant to this by-law;

"Regulated Tree" means a specimen of any species of deciduous or coniferous growing woody perennial plant, supported by a single root system, which is 10 centimeters or greater in DBH and which has reached, could reach or could have reached a height of at least 4.5 meters from the ground at physiological maturity.

"Town" means the Corporation of the Town of Niagara-on-the-Lake;

"Tree Management Plan" means a plan prepared by an Arborist in accordance with Good Arboricultural Practice, which, at a minimum, itemizes the existing number, species, location and condition of all trees on the Lot and which includes a management schedule related to Destruction or Injuring intentions for a period of not less than two years.

Part II - Protection of Regulated Trees

2. (1) Except as provided in this by-law, no person shall, within the geographic limits of the urban boundaries of the Town, Destroy or Injure, or cause or permit the Destruction or Injuring of any Regulated Tree.
 - (2) Notwithstanding subsection (1) of this section 2, a person may Destroy or Injure, or cause or permit the Destruction or Injuring of a Regulated Tree in compliance with a Permit.
 - (3) If there is doubt as to whether a specific tree is a Regulated Tree or not, the Owner of the tree may request a determination from an Inspector. The Inspector may provide a written determination as to whether, on the date of the determination, the tree is a Regulated Tree or not.
 - (4) In a case where a tree has been Destroyed or Injured and part or all of the remaining stump or stumps is or are too short for the DBH to be measured, the relevant DBH shall be extrapolated from the remaining trunk or trunks.

Part III - Statutory Non-application of the By-law

3. This by-law does not apply where there is a conflict with Provincial or Federal legislation. Therefore this by-law does not apply:
 - (a) to the activities or matters or the Destruction or Injuring of trees described in subsection 135(12) of the *Municipal Act*;
 - (b) to restrict the Destruction and Injuring of trees which constitute a normal farm practice carried on as part of an agricultural operation, as so determined by the Normal Farm Practices Protection Board, pursuant to the *Farming and Food Production Protection Act, 1998*, S.O. 1998, c. 1, as amended or replaced from time to time; or
 - (c) to the Destruction or Injuring of trees pursuant to a forestry development agreement pursuant to, or deemed to be pursuant to, the *Forestry Act*, R.S.O. 1990, c.F.26, as amended or replaced from time to time, or measures to prevent, retard, suppress, eradicate or destroy an infestation by a forest tree pest, taken by an officer pursuant to the said *Forestry Act*.

Part IV - Permit Exemptions

4. The Destruction or Injury of a Regulated Tree is exempt from the requirement for a Permit if the Regulated Tree is:
 - (a) A tree having no living tissue, having 70% or more of its crown dead, or being infected by a lethal pathogen, fungus or insect (including the Emerald Ash Borer or the Asian Longhorned Beetle) and, where the Inspector requires, a certificate issued by an Arborist, confirming this justification for Destruction or Injuring.
 - (b) A tree which is Hazardous, and where required, a certificate issued by an Arborist, confirming this justification for Destruction or Injuring, has been submitted to an Inspector;
 - (c) A tree that is Destroyed or Injured as part of Emergency Work;
 - (d) A tree certified by a building inspector or engineer as causing

structural damage to a drain, load-bearing structure or roof structure;

- (e) A tree growing in contaminated soil and, by its presence, preventing remediation of the contaminated soil, provided that proof of remediation efforts in the form of an approved Ontario Ministry of the Environment, Conservation and Parks remediation plan;
- (f) Pruning that is necessary to maintain the health and condition of the tree and is carried out in accordance with good arboricultural practices;
- (g) A specimen of *Rhamnus cathartica* (Common buckthorn), *Rhamnus frangula* (European or Glossy buckthorn), *Alnus glutinosa* (Black alder), *Elaeagnus umbellata* (Autumn olive) or *Morus alba* (White mulberry);
- (h) A tree that is a weed and/or problematic;
- (i) A fruit tree that is capable of producing fruit for human consumption;

A tree which is part of:

- (i) a tree nursery business where trees are planted, cultivated and harvested for the purpose of live tree sales;
- (ii) a Christmas tree plantation business where coniferous trees are planted, cultivated, maintained and harvested for Christmas celebration purposes; or
- (iii) a cultivated orchard business where fruit or nut trees are grown and maintained specifically for the harvesting of their fruit or nuts;

Part V - Application for Permit

5. (1) If an Owner wishes to Destroy or Injure one or more of the Owner's Regulated Trees or wishes to undertake an activity which might Destroy or Injure one or more of the Owner's Regulated Trees, and if none of the exemptions set out in this by-law are applicable, then the Owner shall submit to an Inspector the Application Fee and an Application containing the following information in respect of each such Regulated Tree:
 - (a) the address of the land where the Regulated Tree to be Destroyed or Injured is located;
 - (b) the name and contact information of the Applicant;
 - (c) the names and contact information, and written permission, of all Owners;
 - (d) a plan (or plan of survey) and photograph, showing the location, species, size and condition of each Regulated Tree to be Destroyed or Injured;
 - (e) the purpose for which the Permit is sought and the nature of the proposed or possible Destruction or Injuring;
 - (f) where there is a discrepancy in the health assessment of the

Regulated Tree to be Destroyed or Injured, and where the Inspector so requires, a written evaluation by an Arborist of the condition of the Regulated Tree; where trees are proposed to be retained, and where the Inspector so requires, a tree protection plan identifying the location, species and size of trees on the land and tree protection measures, including barriers and Hoarding, to be implemented to avoid Destruction or Injuring of, and protect, the trees that are to be retained; and

- (g) where three or more trees are proposed for Destruction or Injuring, and where the Inspector so requires, a Landscaping, Replanting and Replacement Plan.

(2) No person shall provide false or misleading information on or in support of an Application.

(3) Submission of an Application shall constitute the granting of permission for the Town, or its designate(s), to enter on the Applicant's land for purposes of this by-law.

(4) Where the trunk of the tree straddles the boundary of one or more properties, in addition to the requirements listed above, the applicant must provide the written consent of the other owner or owners to the application.

Part VI - Issuance of Permits

6. In deciding whether or not to issue a Permit in respect of a Regulated Tree, an Inspector shall consider the following criteria:

- (a) the species of each Regulated Tree, and particularly whether it is native to the area, is considered regionally or locally significant or is an endangered species or threatened species as defined in the *Endangered Species Act, 2007*, S.O. 2007, c. 6, as amended or replaced from time to time, or in the *Species at Risk Act*, S.C. 2002, c. 29, as amended or replaced from time to time;
- (b) the condition of the Regulated Tree;
- (c) the location of the Regulated Tree;
- (d) the reason or reasons for the proposed Destruction or Injuring of the Regulated Tree;
- (e) whether the Regulated Tree is a Heritage Tree;
- (f) the presence, within the Regulated Tree, of breeding birds as contemplated in the *Migratory Birds Convention Act, 1994*, S.C. 1994, c. 22, as amended or replaced from time to time;
- (g) the protection and preservation of ecological systems and their functions, including the protection and preservation of native flora and fauna;
- (h) erosion, flood control and sedimentation of watercourses;
- (i) the submissions of such persons or agencies as the Inspector may consider necessary to confer with for the proper review of the Application; and

- (j) any other legislation that may apply or approvals that may be required.

7. In issuing a Permit, the Inspector may make the Permit subject to such conditions as the Inspector may consider necessary, including (but not restricted to) any one or more of the following requirements:

- (a) that the Destruction or Injuring occurs in a specified manner;
- (b) that each tree Destroyed or Injured be replaced with one or more replacement trees to be planted and maintained to the satisfaction of the Inspector in accordance with Landscaping, Replanting and Replacement Plans approved by the Inspector;
- (c) that if replacement planting is not achievable on the subject land, it be substituted by a payment of cash in lieu in the amount of \$500.00 per tree Destroyed or Injured;
- (d) that if the land is not subject to an application filed under the *Planning Act*, the Applicant provides a written undertaking, release and security to ensure that replacement planting is carried out and maintained in accordance with Landscaping, Replanting and Replacement Plans approved by the Inspector;
- (e) that the Destruction or Injuring only be carried out by or under the supervision of an Arborist;
- (f) that the tree or trees to be retained be protected in accordance with Good Arboricultural Practice during the Destruction or Injuring or other related activities; and
- (g) that specified measures be implemented to mitigate the direct and indirect effects of the Destruction or Injuring on other nearby trees, land, water bodies or natural areas.

8. (1) In issuing a Permit, the Inspector shall issue the Permit to the Applicant and provide copies of the Permit to any other Owners.

(2) The Permit shall identify the tree or trees to be Destroyed or Injured and the reason or reasons for the Destruction or Injuring.

(3) 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. The permit shall be posted at least five (5) days prior to the Destruction or Injuring, and shall ensure that it remains so posted until the Destruction, Injuring or other related activities are complete.

(4) A Permit is and remains the property of the Town and may not be transferred except with the approval of an Inspector.

(5) An Inspector 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.

(6) A Permit shall expire ninety (90) days after its issuance, unless, at least thirty (30) days before that expiry, the Applicant applies to the Inspector and before that expiry the Inspector grants a onetime extension of ninety (90) days.

9. (1) If an Inspector refuses to issue a Permit, or if an Applicant objects to a condition attached to a Permit by an Inspector, the Applicant may appeal to the Committee. Such appeal shall be made by written notice received

by the Inspector within seven (7) days after the date of the refusal or the issuance of the conditional Permit, as the case may be.

(2) Upon considering the appeal, the Committee may recommend that the Inspector refuse the Permit, issue the Permit or issue the Permit upon such conditions as the Committee considers appropriate. Council shall consider the Committee's recommendation and make the final decision on the appeal.

Part VIII - Orders and Remedial Actions

10. If an Inspector confirms, after making an inspection, that there has been a contravention of this by-law (including of an order or a condition of a Permit made pursuant to this by-law). The Inspector then he or she may make an order requiring the person who contravened the by-law (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.
11. (1) 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 Inspector.
(2) The Town may recover the costs of doing a matter or thing under subsection (1) of this section 11, from the person required to do it, by adding the costs to the tax roll for the subject land and collecting them in the same manner as property taxes.
(3) The amount of the costs mentioned in subsection (2) of this section 11, including interest, shall constitute a lien on the subject land upon the registration, in the proper Land Registry Office, of a notice of lien.
(4) The lien mentioned in subsection (3) of this section 11 shall be in respect of all costs that are payable at the time the notice is registered plus interest accrued to the date payment is made.
12. (1) 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 that personal service;
 - (b) by email, in which case it shall be deemed to have been served on the date of that email;
 - (c) by facsimile transmission, in which case it shall be deemed to have been served on the date of that 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.
(2) 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.

Part IX - Enforcement

13. (1) Any person who directly or indirectly contravenes or who causes or permits a contravention of any provision of this by-law, an order issued under this by-law or a condition of a Permit, is guilty of an offence.

(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.

(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.

14. (1) All contraventions of any provision of this by-law, any order issued under this by-law or any condition of a Permit are designated as multiple offences and continuing offences, pursuant to subsection 429(2) of the *Municipal Act*. A multiple offence is an offence in respect of two (2) or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of this by-law and, for greater certainty, when multiple trees are destroyed or injured, the destruction or injury of each tree is a separate offence.

(2) If an order or Permit issued under this by-law has not been complied with, the contravention of the order or Permit shall be deemed to be a continuing offence for each day or part of a day that the order or Permit is not complied with.

15. (1) A person convicted of an offence under this by-law is liable to a fine of not less than \$500.

(2) 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 or \$1,000 per tree to a maximum of \$100,000, whichever is greater; and

(b) on any subsequent conviction, to a fine of not more than \$25,000 or \$2,500 per tree to a maximum of \$100,000, whichever is greater.

(3) Where the person convicted of an offence under this by-law is a corporation:

(a) the maximum fine in clause (2)(a) of this section 15 is \$50,000 or \$5,000 per tree to a maximum of \$100,000, whichever is greater; and

(b) the maximum fine in clause (2)(b) of this section 15 is \$100,000 or \$10,000 per tree to a maximum of \$100,000, whichever is greater.

(4) In the case of a continuing offence, 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.

(5) In the case of a multiple offence, for each offence included in the multiple offences, 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) On conviction of an offence under this by-law, a person is liable to a special fine in accordance with paragraph 429(2)(d) of the *Municipal Act*. The amount of the special fine shall be the minimum fine as provided for in subsection (1) of this section 15, to which may be added the amount of economic advantage or gain that the person has obtained or can obtain from the contravention of any provision of this by-law, any order issued under this by-law or any condition of a Permit. Pursuant to paragraph 429(3)1 of the *Municipal Act* a special fine may exceed \$100,000.

16. Upon conviction for an offence under this by-law, in addition to any other remedy and to any penalty imposed by this by-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order:
 - (a) prohibiting the continuation or repetition of the offence by the person convicted and
 - (b) requiring the person convicted to correct the contravention within the period that the court considers appropriate include:
 - (i) the planting or replanting of any tree or trees Destroyed or Injured or the planting of any replacement tree or trees in a specified location and within a specified period of time;
 - (ii) the application of any silvicultural treatment that may be necessary to establish or re-establish the tree or trees or replacement tree or trees; and
 - (iii) in lieu of planting or replanting, payment to the municipality in accordance with this by-law.

Part X - General

17. (1) Council delegates to the Inspectors the authority to carry out their activities as set out in this by-law.
(2) Council delegates to the Committee the authority to carry out its activities as set out in this by-law.
18. This by-law shall not be interpreted as exempting any person from the requirement to comply with any other Town by-law. In the event of conflict between the provisions of this by-law and any other Town by-law, the provisions which are more protective of trees shall apply.
19. In 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.
20. If a court of competent jurisdiction declares any provision or provisions or part or parts of any provision or provisions of this by- law to be invalid, illegal, unenforceable or of no force and effect, it is the intention of Council in enacting this by-law that the remainder of the by-law shall continue in force and be applied and enforced in accordance with its terms to the fullest extent possible according to law.
21. The short title of this by-law is the "Private Tree Protection By-law".
22. This by-law shall come into force and take effect immediately upon the passing thereof.

READ A FIRST, SECOND AND THIRD TIME THIS 17TH DAY OF SEPTEMBER, 2018

LORD MAYOR PAT DARTE

TOWN CLERK PETER TODD