

Tree Conservation By-law Template

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Introduction:

This template has been prepared for use by municipalities interested in prohibiting or regulating the Destruction or Injuring of Trees **not in woodlands** as defined herein **on private property** under the *Municipal Act*. According to the *Municipal Act*, the power to pass a by-law respecting the destruction or injuring of trees within or outside woodlands may be delegated between upper and lower tier municipalities with mutual agreement (as has been done in the Regional Municipality of Peel for example). This template should be read in conjunction with the Tree By-law Information Package.

Separate templates have been prepared to assist in the development or updating of Forest Conservation By-laws for municipalities wishing to prohibit or regulate the destruction or injuring of trees in woodlands.

This template is focused on private trees. A separate by-law is recommended for public trees. Some jurisdictions are also developing separate Heritage Tree By-laws. The document "Heritage Trees Protection – Legislative Tools" can be downloaded from the Ontario Heritage Tree Alliance website: <http://www.oufc.org/ohtaresources.htm>. The Ontario Urban Forest Council has a "Heritage Tree Toolkit" available. This tool helps communities to identify, research, nominate, evaluate and designate trees with heritage value. It can be ordered through <http://www.oufc.org/resources.htm>

This template has been developed by an interim group of lower and single tier municipal staff with the help of the Forest Conservation By-law Committee and the Ministry of Natural Resources. It is provided with the intention to assist in the development and upgrading of tree by-laws and to encourage more consistent format between by-laws making it easier to adhere to tree by-laws when working in various municipalities.

The information is for discussion purposes only and has not been legally verified. Neither the Ministry of Natural Resources, nor the municipalities participating provide any representation, warranty, or guarantee of any kind as to the suitability, accuracy, or validity, legal or otherwise, of the document, the information contained therein or the use of either. Any by-laws or action based on the use of this document should be undertaken only after consultation with legal council.

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Sonya Bolton	City of Kingston
Brian Geerts	City of Brantford
Jalil Hashemi	Town of Oakville
Bohdan Kowalyk	OMNR Aurora
Doris Krahn	OMNR Peterborough
Jessica McEachren	City of Guelph
Carrie Musselman	City of Kitchener
Dana Rahkola	Town of Bracebridge
James Rogers	County of Haliburton
Linda Touzin	OMNR Kemptville
Martin Volhard	Town of Richmond Hill
Carol Walker Gayle	City of Toronto

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TREE BY-LAW NO. []

To prohibit or regulate the Destruction or Injuring of Trees on private property in the
[Name of Municipality/ City/ Town/Township]

WHEREAS s.135(1) of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, hereinafter referred to as the Act permits the enactment of a By-law by the Council of [Name of Municipality/City/Town/Township] to prohibit or regulate the Destruction or Injuring of Trees;

AND WHEREAS s.135(7) of the Act provides that the By-law may require that a Permit be obtained to Destroy or Injure Trees and impose conditions on a Permit, including conditions relating to the manner in which Destruction occurs and the qualification of persons authorized to Destroy or Injure Trees.

AND WHEREAS Council has determined that it is desirable to enact a Tree By-law for the purpose(s) of:

This section is optional but provides the Council an opportunity to state its purpose and intent of the by-law which may help to increase the public's understanding and support for the by-law. The following are examples which may be considered. Be thoughtful as you want to ensure that the by-law is within the jurisdiction of Council and consistent with proper municipal purposes.

- conserve Tree cover
- maintain the aesthetic value that trees contribute to the municipality/city/town/township
- reduce airborne pollution
- maintain and enhance water quality
- prevent soil erosion and water run-off
- provide cooler air temperatures in the summer
- slow wind
- achieve the objectives of the Official Plan by sustaining a healthy natural environment
- contribute to a Green Infrastructure Plan
- minimize the destruction or injuring of Trees
- protect ravines, riparian areas and source water areas
- regulate and control the removal, maintenance and protection of Trees
- contribute to human health and quality of life through the maintenance of Tree canopy cover
- protect, promote and enhance the value of land
- maintain and improve the ecosystem services provided by Trees
- improve our communities' resilience and adaptation to climate change
- protect vegetation in Shoreline Vegetative Buffers for the purpose of habitat protection, water quality, aesthetics, and implement the District Lake System Health Program.

Now, therefore, the Council of [Municipality/City/Town/Township] HEREBY ENACTS as follows:

1. DEFINITIONS

Where definitions appear in the *Municipal Act*, they do not need to be repeated in the by-law. However, they should be included for clarity. Terms from other legislation such as Good Forestry Practices from the *Forestry Act* should be defined in the by-law and their source could be referenced in footnotes for clarity.

The by-law must define the terms that will be used in the by-law, its forms and its schedules. This section should be carefully drafted to ensure that the by-law can be enforced. Use plain language whenever possible.

Technical terms that are defined should be capitalized throughout the by-law.

All measurements within the by-law should be in metric. A separate sheet of conversions could be prepared for information purposes or exact equivalents may be put in brackets because conversions have been challenged.

Not all of these definitions will be necessary in your by-law but they have been provided as samples for consideration. Consideration should also be made to review existing municipal / city / town / township by-laws to ensure definitions are consistent throughout.

In this By-law:

- (a) "Applicant" means the person who submits an application for a permit under this By-law;
- (b) "Arborist" means an expert in the care and maintenance of trees and includes an arborist certified by the Ontario Ministry of Training, Colleges and Universities or the International Society of Arboriculture, or a consulting arborist registered with the American Society of Consulting Arborists;

Some by-laws add "or a person with other similar qualifications as approved by the [Designated Official];" however this should be used with caution as Landscape Architects often do not have the qualifications to do the work of a Certified Arborist.

- (c) "Building Permit" means a Building Permit issued under the *Building Code Act*, 1992, S.O. 1992, c23, as amended;
- (d) "Council" means the Council of [Name of Municipality/City/Town/Township];
- (e) "Destroy" means any action which causes or results in the irreversible injury or death of a Tree;

"Destroy" and "Injure" are terms used in the *Municipal Act*.

"Destroy and Injure" has been defined in some by-laws, however defining these terms may limit enforceability of parts of the by-law. It is possible that other actions may destroy or Injure Trees that do not fall within the definition and then for an enforcement proceeding to fail. It is recommended not to define these terms and instead leave the definition to the discretion of the by-law enforcement Officer.

Other definitions which have been used include;

"Destroy" means the removal of trees or harm resulting in the death or ruin of trees by cutting, burning, uprooting, chemical application or other means including irreversible injury that may result from neglect, accident or design and the term "destruction" shall have a corresponding meaning.

"Injure" means to harm, damage or impair a tree and includes, but is not limited to, harm damage or impairment caused by changing grades around a tree, compacting soil over root areas, severing roots, improper application of chemicals, improper pruning or the removal of branches and bark and the term "Injury" shall have a corresponding meaning;

“Injury” means any action which causes physical, biological, or chemical damage to a Tree and does not include pruning or removing branches for maintenance purposes.

- (f) “Diameter” means the width measured outside the bark at a specified point of a Tree stem or trunk;
- (g) “DBH” means “Diameter at Breast Height” and is calculated as the Diameter of the stem or trunk of a Tree measured at a point that is 1.37 metres above the ground;
- (h) “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 quality and quantity, forest productivity and health and the aesthetics and recreational opportunities of the landscape;

The *Municipal Act* requires by-laws regarding trees in woodlands (one hectare or more in area) to have regard to Good Forestry Practices as defined in the *Forestry Act*. This definition is from the *Forestry Act*. Always use the plural term Good Forestry Practices, to be consistent with the *Forestry Act*.

Reference to Good Forestry Practices is recommended but not required if the lower-tier by-law does not regulate woodlands.

Understanding this term ‘good forestry practices’ has been somewhat challenging in the past. However several documents now exist to provide guidance, such as the Ontario Professional Foresters Association Bulletins # 1 and #10, and the applicable Provincial Silvicultural Guidelines that include: A Silvicultural Guide to Managing Southern Ontario Forests, Silvicultural Guide for the Tolerant Hardwood Forest in Ontario, Ontario Tree Marking Guide and, A Silvicultural Guide for the Great Lakes – St. Lawrence Conifer Forest in Ontario

- (i) “Good Arboriculture Practice” means the proper implementation of removal, renewal and maintenance activities known to be appropriate for individual trees in and around urban areas and includes pruning of trees to remove dead limbs, maintain structural stability and balance, or to encourage their natural form, provided that such pruning is limited to the appropriate removal of not more than one-third of the live branches or limbs of a tree, but does not include pruning to specifically increase light or space;
- (j) “Injure” means any action that causes physical, biological or chemical damage to a Tree and does not include pruning or removing branches for maintenance purposes (refer to grey box under (e) above);
- (k) “Normal Farm Practice” means a practice that is recognized by the Normal Farm Practices Board which is conducted in a manner consistent with proper and acceptable customs and standards, as established and followed by similar agricultural operations under similar circumstances, or makes

use of innovative technology in a manner consistent with proper advanced farm management practices.

Normal Farm Practices are recognized by the Normal Farm Practices Board under the authority of the Farming and Food Production Protection Act (FFPPA). For more information please refer to www.omafra.gov.on.ca/english/engineer/nfppb/nfppb.htm

In specific cases where the Normal Farm Practices Protection Board rules that a particular agricultural practice is a “Normal Farm Practice”, this practice is exempt from the Tree / Forest Conservation By-law for that property and practice.

The Normal Farm Practices Protection Board (NFPPB) is the adjudicative agency established by the *Farming and Food Protection Act, 1998* (FFPPA) to determine what is or is not a Normal Farm Practice. In arriving at a decision in each case, the Board takes several factors into consideration as it seeks to balance the needs of the agricultural community with provincial health, safety and environmental concerns. This is especially relevant in cases involving municipal by-laws. The Board is required to consider the purpose of the by-law, the effect of the farm practice on adjoining lands and neighbours, and whether the by-law reflects a provincial interest under any other piece of legislation or provincial policy statement. Consequently, there is no definitive list of Normal Farm Practice. **A practice may be ruled as a Normal Farm Practice at a particular location under a particular set of circumstances; the same practice could be ruled as not a Normal Farm Practice at a different location under a different set of circumstances.** A description of Normal Farm Practice can be found at the OMAFRA website at: <http://www.omafra.gov.on.ca/english/engineer/nfppb/guide.htm#1>.

In situations requiring clarity – where an exemption may be questioned by a municipality - the applicant or the municipality can request consideration by the Normal Farm Practices Protection Board (NFPPB), as the practice may be considered Normal Farm Practice in this specific instance.

Any of the parties in a hearing of the Normal Farm Practices Protection Board can appeal the board’s decision regarding “Normal Farm Practice”. The appeal must be made to Divisional Court within 30 days of the decision. The appeal must be based on a question of fact, law or jurisdiction.

Note also that an “agricultural operation” includes growing Trees, not only in the FFPPA but also in the *Nutrient Management Act, 2002*, (NMA) and its General Regulation (267/03). The NMA is referenced in subs. 2(1.1) of FFPPA, which states that “a practice that is inconsistent with a regulation made under the [NMA] is not a Normal Farm Practice.” In the NMA reg 267/03 “agricultural crops” includes Trees and there are various NMA requirements e.g.: for vegetated buffer zones (including Trees), or vegetated filter strip systems, as well as re anaerobic digesters.

- (l) "Officer" means a police officer, a Municipal Law Enforcement Officer or other person appointed by Council for the administration and enforcement of this By-law, qualified to carry out the specific responsibility;
- (m) “Qualified OPFA Member” means a Registered Professional Forester, Associate Member or Temporary Member of the Ontario Professional Foresters Association under the *Professional Foresters Act 2000*, c.18, as amended, certified to practice professional forestry, unless a suspension, term, condition or limitation of certification applies which would restrict the Member from carrying out responsibilities under this By-law.

Any suspension, terms and conditions and/or limitations of a member's certification are publicly available and can be obtained from the Ontario Professional Foresters Association. A Temporary Member is an RPF from another provincial jurisdiction who has been temporarily certified by OPFA. All Associate and Temporary Members have terms, conditions and/or limitation applied to their certification.

- (n) "Order" means a Work Order or an Order to Discontinue an Activity;
- (o) "Owner" means a person having any right, title, interest or equity in land or any such person's authorized representative and includes the person for the time being managing or receiving the rent of the land and includes a lessee or occupant of the land. Every tree whose trunk is growing on the boundary between adjoining lands is the common property of the owners of the adjoining lands;
- (p) "Own Use" means any use by the Owner that does not include a sale, exchange or other disposition of Trees Harvested;
- (q) "Permit" means a permit issued pursuant to this By-law by the (insert Municipality/City/Town/Township);
- (r) "Pruning" means the removal of a tree branch or branches from a tree by cutting at a point outside the branch collar, but does not include the removal of more than one third of a tree's leaf-bearing crown. Pruning may be undertaken for the purposes of thinning the crown of a tree to increase light penetration and air movement, providing clearance for utility lines, buildings, pedestrians or vehicles, or eliminating dead or diseased wood.
- (s) "Shoreline Vegetative Buffer" means the natural area maintained in its predevelopment state:
 - i. xx metres (xx feet) wide abutting and running parallel to the high water mark of a navigable waterway for those lands designated as [Waterfront / Open Space / Environmental Protection Area] in the Official Plan;
 - ii. xx metres (xx feet) wide abutting and running parallel to the high water mark of a navigable waterway for those lands designated as Urban Centres or Communities in the Official Plan;
- (t) "Silvicultural Prescription" means the site specific operational plan, signed and sealed by a qualified OPFA Member (unless otherwise exempted under the *Professional Foresters Act*), that describes the existing forest conditions and the forest management objectives for an area, and which prescribes the methods for harvesting the existing forest stand and a series of silvicultural treatments that will be carried out to establish a free-growing stand in a manner that accommodates other resource values as identified;

This definition is provided as an option for consideration by municipalities. It has recently been used in the Muskoka Lakes By-law to conserve, prohibit, restrict, and regulate the possible harvesting, removal, injuring of trees adjacent to lakes. The actual distances can be set by the Municipality.

- (u) "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;

Some by-laws have added "provided that where multiple stems grow from the same root system, the number of trees shall be the number of stems that can be counted at a point of measurement 1.37 metres from the ground;"

- (v) "Tree Protection Plan" means a plan prepared by an Arborist or a Registered Professional Forester that is consistent with the Municipal/City/Town/Township requirements;

Often these plans are prepared in accordance with tree protection policies or specifications prepared by a municipality."

- (w) "Woodlands" means land with at least:

- (i) 1000 Trees of any size, per hectare; or
- (ii) 750 Trees measuring over five (5) centimetres in Diameter, per hectare; or
- (iii) 500 Trees measuring over twelve (12) centimetres in Diameter, per hectare; or
- (iv) 250 Trees measuring over twenty (20) centimetres in Diameter, per hectare, but does not include a cultivated fruit or nut orchard or a plantation established for the purpose of producing Christmas trees.

The woodlands regulated by a municipality are identified in this definition. The municipal by-law regulating trees outside woodlands may also include the definition to clarify the areas to which the by-law would not apply. Each municipality needs to carefully consider the size of area or location of trees or wooded lands it wants to regulate and the delegated jurisdiction.

The definition of woodlands is defined in the *Municipal Act* as, "woodlands as defined in the *Forestry Act* that are one hectare or more in area." This definition from the *Forestry Act* must be used when the by-law addresses woodlands 1 hectare or more in size. However, some municipalities have elaborated on this definition. For example, through delegation the area has been reduced to 0.2 hectares in York Region.

Furthermore, some "Woodlands" definitions may specifically exclude:

- fencerows/hedgerows;
- plantations established for producing nursery stock unless the plantation has not been managed for its intended purpose for a period of 15 years or more; or
- re-growth of early successional trees less than 15 years old on temporarily fallow agricultural fields intended to be used again as part of an agricultural operation.

Another approach has been to identify the woodlands that are regulated only on a map.

Note that some by-laws have explicitly stated or been interpreted not to limit Woodlands by property boundaries which is especially important in urban settings. For instance, Halton Region has stated this as follows: "For the purpose of this By-law, the boundary of Woodland shall be defined by the ecological limit of the Woodland and not by property boundaries. Where a potential Woodland is dissected by a road or path not wider than 20m or by a natural feature such as a creek, the boundary of the Woodland shall be deemed to cross the road, path or natural feature, but the area of the Woodland shall be calculated exclusive of the area of the road, path or natural feature."

It should be noted that the Professional Foresters Act has no density or area limitation on its requirement that only OPFA members practice professional forestry. Its definition for "urban forest" reads: "means tree-dominated vegetation and related features found within an urban area and includes woodlots, plantations, shade trees, fields in various stages of succession, wetland and riparian areas

DEFINING WOODLAND AREAS LESS THAN 1 HECTARE

Some municipalities are developing a separate definition for areas smaller than the Municipal Act definition of “Woodlands” which would include “treed” areas less than 1.0 hectare.

FOR EXAMPLE: “*Woodlots*” for the purpose of this By-law, means land at least 0.2 hectares in area and no greater than 1 hectare in area, with at least:

- (i) 200 trees, of any size, per 0.2 hectare; or
- (ii) 150 trees, measuring over five (5) centimetres in diameter at DBH, per 0.2 hectare; or
- (iii) 100 trees, measuring over twelve (12) centimetres, in diameter at DBH, per 0.2 hectare; or,
- (iv) 50 trees, measuring over twenty (20) centimetres, in diameter at DBH, per 0.2 hectare;

but does not include a cultivated fruit or nut orchard or a plantation established for the purpose of producing Christmas Trees.

It should be noted that if such is adopted the “whereas” preambles and all appropriate sections which refer to “Woodlands” may need to be edited appropriately to recognize this definition.

WOODLANDS / MUNICIPAL AUTHORITY

According to the Municipal Act, the power to pass a by-law respecting the destruction or injuring of trees within or outside Woodlands may be delegated between upper and lower tier municipalities with mutual agreement.

2. APPLICATION

This By-law applies to Trees [of a certain size] on private property in the Municipality/City/Town/Township of ____ but does not apply to trees in woodlands covered by another tree by-law.

Note: this section needs to correspond with the definitions of woodland and/or woodlot.

If the Municipality/City/Town/Township wishes to regulate only a certain size of tree, examples from various jurisdictions include:

to trees that have a DBH of 30 centimetres or more (Toronto), OR
to trees that are 15 centimetres or greater in DBH (Kingston), OR
to trees with DBH greater than 76 centimetres or more (Oakville) AND
the fifth or more tree to be injured or removed within one year with a DBH between 20 cm and 76 cm (Oakville)

The Municipality/City/Town/Township may wish to limit the area within its planning jurisdiction where this by-law applies. A municipality may choose to apply the by-law on properties of a specific size i.e. City of Kitchener - the by-law only applies to properties greater than 1 acre. The City of Ottawa has limited the area to the “Urban Area” and defined this as per its Official Plan. Muskoka Lakes has stated “This By-law applies to the following lands within the Township: i. All lands within 200 feet of navigable waterway in the Waterfront designated in the Official Plan, ii. All lands within 25 feet of a navigable waterway in the Urban Centre or Community designation

in the Official Plan, iii. All lands zoned Environmental Protection (EP1) in the Township Comprehensive Zoning By-law, iv. All lands zoned Scenic Corridor in the Township Comprehensive Zoning By-law.

For trees in woodlands, refer to the Forest Conservation By-Law Templates

3. EXEMPTIONS

This section includes two types of exemptions: mandatory exemptions found in the *Municipal Act* and exemptions developed and granted by the municipality.

The following are the legislated exemptions that are set out in the *Municipal Act* and cannot be changed by by-law. Although **these do not have to be written into the by-law**, it is preferable to have them re-stated to ensure clarity.

This By-law does not apply to;

- (a) activities or matters undertaken by a municipality or a local board of a municipality; or
- (b) activities or matters undertaken under a licence issued under the *Crown Forestry Sustainability Act*, 1994; or

This would include Trees on private land that the Province has retained timber rights to.

- (c) the Destruction or Injuring of Trees by a person licensed under the *Surveyors Act* to engage in the practice of cadastral surveying or his or her agent, while making a survey; or
- (d) the Destruction or Injuring of Trees imposed after December 31, 2002 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; or
- (e) the Destruction or Injuring of Trees imposed after December 31, 2002 as a condition to a development Permit authorized by regulation made under section 70.2 of the *Planning Act* or as a requirement of an agreement entered into under the regulation; or

In reference to sections 3 d & e above, consider your own internal policies to ensure issues such as retention (Tree Preservation or Conservation) or compensation are addressed during pre-consultation of planning applications.

- (f) the Destruction or Injuring of Trees 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 as defined in that Section; or

- (g) the Destruction or Injuring of Trees undertaken on land described in a licence for a pit or quarry or a Permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*, or
- (h) the Destruction or Injuring of Trees 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* 2001, c. 25, s. 135 (12); 2002, c. 17, Sched. A, s. 27 (3, 4).

The following are examples of OPTIONAL EXEMPTIONS that can be included at the discretion of the Municipality and need to be reviewed for appropriateness within the Municipality,

While the *Municipal Act, 2001* requires an exemption for tree removal as a condition to the approval of a plan of subdivision, a municipality may also wish to consider an exemption as a condition of draft plan approval for a plan of subdivision. Careful consideration should be given to whether this would be appropriate, given the municipality's subdivision approval process, so that trees are not removed prematurely from a site.

These next three exemptions may be appropriate in municipalities/cities/towns/townships which have rural areas.

- (i) the Destruction or Injuring of Trees that is required in order to erect any building, structure or thing in respect of which a Building Permit has been issued and has taken into consideration the protection of Trees surrounding the structure or work within the building envelope, provided that no Tree is Destroyed or Injured that is located more than XX metres from the outer edge of the building, structure or thing; or

"Thing" could be a septic bed. 15 meters is suggested. There is a range used between 15 – 25m. Consult with your local building department.

Caution: – if in an urban area, this provision can be problematic when dealing with re-development or intensification.

- (j) the Destruction or Injuring of Trees that is reasonably required in order to install and provide utilities to the construction or use of the building, structure or thing in respect of which a Building Permit has been issued; or
- (k) the Destruction or Injuring of Trees that is reasonably required in order to install a single lane driveway for vehicular access to the building, structure or thing in respect of which a Building Permit has been issued and has taken into consideration the protection of Trees surrounding the driveway, provided that no Tree is Destroyed or Injured that is located more than XX metres from the outer edge of the driveway;

In Cities or Towns, such as the Town of Oakville, a distance of only 1.8 metres may be more appropriate. In more rural communities, exemptions for trail and road development may be a consideration.

- (l) the Destruction or Injury is required as part of the operation of an existing cemetery or golf course;
- (m) Pruning that is necessary to maintain the health and condition of the tree, provided the Pruning is in accordance with Good Arboriculture Practice;
- (n) the tree(s) are located within a building or structure, a solarium, a rooftop garden, or an interior courtyard;
- (o) the trees that are Destroyed are located within a cultivated orchard or plant nursery that are being actively managed and harvested for the purposes for which the trees were planted as demonstrated in a management plan or business plan.
- (p) The injuring or destruction of the following species of non-native, invasive trees: XX
- (q) the Harvesting of Trees by the Owner of Woodlands for the Owner's Own Use, provided the Harvesting does not reduce the density of Trees below that which is defined as Woodlands; and

Additional limitations such as the following **should** be considered,:

- i) is in accordance with Good Forestry Practices; and
- ii) the amount of wood Harvested does not exceed 24 cubic meters in volume in any year; or
- iii) no more than five Trees per hectare, to a maximum of 30 Trees, are removed within a one-year period.

This exemption is used by some municipalities, but applicability should be considered.

- (r) the Injuring or Destruction of Trees undertaken as Normal Farm Practices, as ruled by the Normal Farm Practices Protection Board for the subject land.

Be cautious about providing an exemption for Trees that are diseased, infected or in poor health. This has been abused in the past. These situations can be dealt with using a permit responsive to the condition of the tree (see section 5.8).

We do not recommend providing an exemption for the use of Certified Tree Markers. There have been some by-laws that provide an exemption for harvesting if marked by a Certified Tree Marker, with the false assumption that this would ensure Good Forestry Practices. Although Certified Tree Markers are trained to mark according to a prescription, a prescription may not have been prepared. Certified Tree Markers are not necessarily trained in the preparation of prescriptions.

Exemptions for trail and road development may be considered.

4. GENERAL PROHIBITION

Offences can be created in any section of the by-law but if you intend to write fines under this by-law it may be preferable to keep them in one area of the by-law.

- 4.1 No person shall destroy or injure, cause, or permit or arrange for the destruction or injury of any tree in an area described in Section 2:
- (a) unless exempted under the provisions of this By-law; or
 - (b) except in accordance with a valid permit issued pursuant to the provisions of this By-law.

The additional words “or arrange for” have been used in some by-laws to ensure clarity for the public reading the by-law, however it is not necessary for enforcement purposes as the wording already covers both the owner and the contractor.

- 4.2 No person shall:
- (a) fail to comply with an Order issued under this By-law; or
 - (b) remove or deface an Order that has been posted pursuant to this By-law.
- 4.3 No person shall contravene, or cause or permit the contravention of the terms or conditions of a Permit issued under this By-law.

Some municipalities have incorporated the Endangered Species Act into their by-law. However some legislation or information such as the Endangered Species information may rapidly become out of date and many landowners have not welcomed the Endangered Species Act. It may be in the municipality’s best interest to leave other legislation out of their by-law.

Another consideration is how Harvesting is to be done in **Sensitive Natural Areas**.

The requirement of Good Forestry Practices in this template should provide protection for all sensitive areas. This is something the Qualified OPFA Member should evaluate before deciding to write a prescription. This section is more important to consider in a by-law that permits circumference limit harvesting where professionals may not be involved.

Areas considered sensitive by the municipality could be listed or shown on a map. A term for such areas would need to be defined in the by-law.

Examples of areas for consideration could include:

- Natural Heritage Systems;
- Environmentally Sensitive Areas;
- Significant Woodlands;
- Provincially Significant Wetlands, or other wetlands;
- areas under the jurisdiction of the Niagara Escarpment Commission;
- any portion of Woodlands located within xx metres of the water’s edge of a provincially significant wetland (or other wetland), lake, river, or stream; or
- Provincial or Regional Life Science Areas of Natural and Scientific Interest identified by the Ministry of Natural Resources.

Trees Protected Under the provincial Endangered Species Act

Since there have been regulations and an administrative process already set out for certain endangered tree species, municipalities/cities/towns/townships may wish to consider incorporating this into their Permit review and approval process.

In the application of Good Forestry Practices, the Qualified OPFA Member should be aware of Trees protected under the Endangered Species Act – it maybe advisable that the Permit application be screened for such species e.g.,: Butternut, Eastern Flowering Dogwood, American Chestnut, Kentucky Coffee-tree, Common Hoptree, Red Mulberry, Cherry Birch or Cucumber-tree should they be included in the inventory tally of potential effects. There may be merit in producing as a resource to landowners, OPFA members and the forest industry in general, a locally developed extension note that lists these species and encourages documentation of their locations and health.

For example: For instance if a butternut tree has been determined to be non-retainable by a Designated Butternut Health Assessor, the Officer may consider this in his/her decision to grant the Permit.

However, note that all Butternut trees, retainable & non-retainable, as well as other provincially protected species must be reported to the OMNR before they are harmed.

5. APPLICATION PROCESS

- 5.1 The (Municipality/City/Town/Township) hereby delegates to the Officer the authority to issue a Permit under this By-law, and to impose terms and conditions in accordance with Good Arboriculture Practice and Good Forestry Practices.

The municipality needs to determine and define who has the authority to administer the by-law – this could be a Director (e.g., of Planning or Engineering Services, etc.).

- 5.2 An application for a Permit shall be submitted at least XX weeks prior to the commencement date of the destruction or injuring of the Tree to the (Municipality/City/Town/Township) and shall include the following:

- (a) a complete signed application form as provided by the (Municipality/City/Town/ Township);
- (b) the prescribed fee;

The *Municipal Act* allows fees to be charged on a full cost recovery basis so that the administrative costs of the application are entirely borne by the applicant. Some municipalities may wish to consider no fees for the greater good of the ratepayers of the municipality and to encourage compliance and Good Forestry Practices or Good Arboriculture Practice.

The fees may also be used as an incentive or disincentive. Consider charging less or nothing to encourage application submissions and compliance by individuals. Consider charging for commercial projects over a certain size.

- (c) Where, in the opinion of the Officer, additional information is necessary, the Officer may require the submission of;
 - i. a Tree Protection Plan prepared by or prepared under the direction of an Arborist or a Silvicultural Prescription sealed by a Qualified OPFA Member and/or

ii. a Tree Planting Plan for one or more individual trees acceptable to the Municipality.

There may be situations, for example, where there may be one or two trees, where the landowner may prepare these plans; otherwise, a qualified professional may prepare these plans. It should be left to the discretion of staff reviewing the application to ensure that the information contained in the plan is reasonable & acceptable.

5.3 The Officer is authorized to:

- (a) Issue permits for the Destruction or Injury of trees and impose terms and conditions to the permit;
- (b) Refuse to issue permits for the Destruction or Injury of trees;
- (c) Stop any work causing Destruction or Injury to trees that is taking place without a permit or contrary to the terms and conditions of a permit;
- (d) Waive the requirement for a Tree Protection Plan for an application involving a single residential unit;
- (e) Require an applicant to post a letter of credit or alternate form of security and content acceptable to the Officer to ensure compliance with conditions of permit issuance.

Typically, the deposit is calculated at 120% of the estimated cost.

5.4 Following the receipt of a complete application, the Officer shall consider the criteria as outlined in the “Guidelines for Reviewing an Application to Destroy or Injure a Tree”.

Municipalities are encouraged to develop such Guidelines. This approach is not required but it provides grounds to refuse a permit. These Guidelines should include:

- Condition of the tree (e.g. diameter, height, health and structural integrity);
- Location of the tree;
- Species of tree and associated vegetation;
- Crown coverage of the ground [or leaf area];
- The protection of ecological systems and their functions, including the protection of native flora and fauna;
- Erosion, sedimentation of watercourses, and flood control;
- Impacts on surrounding properties, including loss of shade, vistas or privacy; and
- The cultural heritage value of the tree.
- Since there have been regulations and an administrative process already set out for the endangered Butternut tree, municipalities may wish to consider incorporating this into their permit review and approval process. For instance if a Butternut tree has been determined to be in non-retainable condition in accordance with the approved Ministry of Natural Resources process by a designated Butternut Health Assessor (including MNR notification), the Officer may consider this in his/her decision to grant the permit.

5.5 The Officer may refuse to issue a permit for the Destruction or Injury of trees where:

- (a) Trees are healthy;
- (b) Environmentally sensitive areas, ecological systems, natural landforms or contours will not be adequately protected and preserved;

Review
Criteria

Refusal
Criteria

- (c) Erosion or flood control will be negatively impacted;
- (d) An application for rezoning, a consent, a minor variance, a plan of subdivision or a site plan to the land on which the tree is located has been submitted to the municipality/ city/ town/township, but has not received final approval;
- (e) The tree(s) is an endangered or threatened species as defined in Ontario's *Endangered Species Act, 2007, S.O. 2007, c.6,*

Some municipalities have incorporated the *Endangered Species Act* into their by-law. However some legislation or information such as the endangered species information may rapidly become out of date. It may be in the municipality's best interest to leave other legislation out of their by-law.

- (f) Issuance of a permit pursuant to the Region of ____ Forest Conservation By-law is required;
- (g) Approval is inconsistent with an approved Tree Protection Plan or an approved Silvicultural Prescription;
- (h) The proposed activities would be in contravention of the *Migratory Birds Act, 1994*;
- (i) The Destruction or Injury of the tree is otherwise unacceptable to the Officer.

5.6 The Officer is authorized to issue a permit for the Destruction or Injury of trees where:

- (a) Trees are in poor condition and cannot be maintained in a healthy and safe condition as prescribed in a Tree Protection Plan;
- (b) The trees are causing or are likely to cause structural damage to a load-bearing structure or roof structure or other physical damage;
- (c) The Officer is satisfied that the Destruction and Injury of Trees is consistent with Good Forestry Practices or Good Arboriculture Practice;

Reference to Good Forestry Practices should only be used where the by-law administrator is satisfied that the silviculture prescription submitted with the application has been prepared by or prepared under the direction of a member of the Ontario Professional Foresters Association (OPFA) or where the by-law administrator is a qualified member of the Ontario Professional Foresters Association (OPFA) and thereby can provide an opinion on Good Forestry Practices. Alternatively, it could be used if the by-law administrator has received sufficient advice from a qualified member of the OPFA.

- (d) The Officer is satisfied that the trees are growing in inappropriate locations and cannot be maintained on a routine basis due to restrictive site conditions;
- (e) Destruction or Injury is required in order to remediate contaminated soil
- (f) Trees are to be relocated and the Officer is satisfied that the trees will be sufficiently prepared for relocation;

(g) Destruction or Injury is required for trees specifically identified for injury or destruction on plans approved by the Ontario Municipal Board or Council.

5.7 A Permit issued under this By-law shall be subject to the following terms and conditions:

(a) Trees which are to be destroyed or injured are cut in accordance with Good Arboriculture Practice and/or Good Forestry Practices;

(b) Any other terms and conditions deemed appropriate and imposed by the Officer.

Other conditions may be considered either in the by-law or on the permit such as;

-
- cash in lieu payment / replacement trees, any conditions recommended by the Tree Protection Plan, an arborist or a member of the Ontario Professional Foresters Association;
- the measures to be implemented to protect the retained trees during construction, if applicable;
- the requirement to prepare a Tree Preservation and Protection Plan, which must be approved by the by-law administrator and implemented as a condition of a Tree Permit;
- The manner and timing of Destruction or Injury of trees(s);
- Undertaking the tree cutting work only under the supervision of a qualified Arborist;
- Trees will be planted and maintained according to the (Municipal/City/ Town/Township) Planting Plan Guide.
- Trees which are to be destroyed or injured must be cut in accordance with Good Forestry Practices and:
- Described in a Silvicultural Prescription approved by a qualified OPFA member; and
- Marking of Trees, if required, is carried out by a Qualified Tree Marker

5.8 Where a Permit requires the planting of replacement trees, the Officer may impose the following provisions related to the replacement trees;

(a) The species, size, number, and location of the replacement tree(s);

(b) The number of replacement trees to be planted;

(c) The date by which any replacement tree(s) is/are to be planted;

(d) The maintenance and care of any replacement tree(s) to the satisfaction of the Officer in accordance with the approved Tree Protection Plan or Tree Planting Plan;

(e) Where replacement planting is not physically possible on site, the Officer may require planting at another suitable location or accept a cash in lieu payment in an amount equal to the cost of replanting and maintaining the trees for a period of two years.

5.9 The term of a Permit shall be for a maximum of (x) year/days from the date of issuance

5.10 A Permit may be revoked by the Officer if:

(a) it was issued on mistaken, misleading, false or incorrect information;

(b) it was issued in error;

(c) the owner or applicant requests in writing that it be revoked;

(d) an owner fails to comply with any provision of the Permit or this By-law.

- 5.11 When a Permit is revoked, the owner and/or applicant shall immediately cease all operations being conducted under the authority of the revoked Permit.

6. APPEAL

There is no requirement under the *Municipal Act* to provide an appeal process. The public can always take issues to council, however a defined process for appeals is recommended. One acceptable process is outlined below. This section can be custom fit to your municipal process. It must however comply with the Statutory Powers Procedure Act 1990 as amended.

- 6.1 An applicant for a permit may appeal to Council by filing a notice of appeal personally or by registered mail to the municipality/city/town/township if;
- (a) an Officer refuses to issue a Permit; or
 - (b) an Officer fails to make a decision on an application, within XX days after receipt of a complete application;
 - (c) the applicant objects to a term or condition of the Permit; or
 - (d) a person objects to an order made under Section 7 or Section 8 of this By-law.

There is no authority in the *Municipal Act* for an appeal of an order however case law requires the right of appeal to an Order.

- 6.2 Where an appeal is filed under 6.1(a) or 6.1 (c) or 6.1 (d), the notice of appeal shall be filed within thirty (30) days of the date of the decision.
- 6.3 Where an appeal is filed under 6.1 (b), notice of appeal shall be filed within seventy-five (75) days after receipt of the complete application but not prior to forty-five (45) days after receipt of a complete application.
- 6.4 An appeal made under this section does not act as a stay of any orders issued, which shall take effect on the day it is served or deemed served, and shall continue to be effective until Council renders a decision indicating otherwise.
- 6.5 Circulation of Notice of Hearing
- (a) The Clerk shall circulate by regular mail XX days prior to the Council meeting notice of a hearing;
 - (b) Notice shall be circulated to the applicant and all assessed owners of land that directly abut the property subject to the hearing;

- (c) The Owner shall post XX days prior to the hearing a notice that is clearly visible and legible from a public highway or other place to which the public has access on the property that is subject to the hearing.
- (d) Notice shall contain the following information:
 - i) Name of the Owner
 - ii) The address of the lands subject to the hearing
 - iii) Purpose of the application/appeal
 - iv) The date or dates for which the application is sought
 - v) The date and time the matter will be heard by Council
 - vi) Contact information should an individual wish to address Council regarding the matter.

6.6 Decision

- (a) In hearing the matter, Council shall give the Owner and any person opposed to or in favour of the application an opportunity to be heard and may consider such other matters including the Officer's comments as it deems appropriate.
- (b) Council may:
 - i) issue a Permit; or
 - ii) issue a Permit with terms and conditions; or
 - iii) vary the terms or conditions on a permit; or
 - iv) refuse to issue a Permit.
- (c) The Clerk shall notify the Owner in writing of Council's decision.

6.7 The proceedings at the hearing held by the Council shall be in accordance with the provisions of the *Statutory Powers Procedures Act*, R.S.O. 1990, c.22. The decision of the Council under this section is final.

If a Municipality/City/Town/Township has an Appeal Committee that has been delegated the authority of hearing matters and making the final decision you may substitute the name of the Committee in place of Council.

7. ORDER TO DISCONTINUE ACTIVITY

This has been called a "Stop Work Order" in the past. There is no provision in the *Municipal Act* for a Stop Work Order but there is for an Order to Discontinue Activity.

7.1 Where an Officer believes that a contravention of this By-law has occurred, the Officer may issue an Order requiring the person who contravened the By-law or who caused or permitted

the Destruction or Injuring of Trees in contravention of the By-law to stop and discontinue the Destruction or Injuring of Trees.

7.2 The Order to Discontinue Activity shall set out:

- (a) the name of the owner and the municipal address or the legal description of the land;
- (b) reasonable particulars of the contravention; and
- (c) the date and time by which the order must be in compliance with the By-law; and
- (d) contact information of the Officer.

8. WORK ORDER

A Work Order is not as strong as a Court Order. Obtain a legal opinion regarding its authority before using a Work Order.

Also, note that the Officer has the power to issue the Work Order, but retention of qualified professionals (under the Professional Foresters Act) will likely be required to identify how rehabilitation or replanting should occur.

8.1 Where an Officer determines that a contravention of this By-law has occurred, the Officer may issue a Work Order requiring the person to rehabilitate the land as may be required and plant or re-plant Trees.

8.2 The order shall set out:

- (a) the name of the owner and the municipal address or the legal description of the land; and
- (b) reasonable particulars of the contravention; and
- (c) the work to be done; and
- (d) a statement that if the work is not done in compliance with the order within a specified time period, the Municipality/City/Town/Township may have the work done at the expense of the owner; and
- (e) the date and time by which the work must be done; and
- (f) contact information of the Officer.

9. SERVICE OF AN ORDER

This section is not necessary as it describes the legal process to serve an order, however some municipalities may wish to include it for the benefit of the users of the by-law.

9.1 An Order issued under this By-law shall be served on the Owner of the property and such other persons affected by it as the Officer determines and a copy of the Order may be posted on the property.

- 9.2 An Order issued under this By-law may be served personally or by registered mail sent to the last known address of the person to whom the Order is to be given or that person's agent for service.
- 9.3 If an Order is served by registered mail, the service shall be deemed to have been made on the seventh day after the day of mailing.
- 9.4 Where service cannot be served as per 9.1, 9.2 or 9.3 the Officer shall place a placard containing the terms of the order in a conspicuous place on the owners property, 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.

A copy of the by-law should be provided to the recipients of the Order. The Order should be served on all people who have been observed on site: the contractor, the site supervisor, the owner, and any other adult individual who appears to have control over the activities on site. In addition, a copy of the Order should be posted prominently on the site.

10. REMEDIAL ACTION

- 10.1 Where an Owner fails to comply with a Work Order issued under this By-law, the (Municipality/City/Town/Township) may do the work directed or required to be done at the person's expense.
- 10.2 The (Municipality/City/Town/Township) may recover the costs of doing a matter or thing under this section of the By-law 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 property taxes.
- 10.3 Where the (Municipality/City/Town/Township) chooses to do the work directed or required to be done in a Work Order it shall serve notice to the person personally or by registered mail sent to the last known address of the person to whom the notice is to be given or that person's agent for service.
- 10.4 The Notice shall set out:
- (a) the municipal address or the legal description of the land; and
 - (b) reasonable particulars of the contravention; and
 - (c) the date the (Municipality/City/Town/Township) will be entering the property to do the work directed or required to be done; and
 - (d) a statement that the work being completed will be at the Owner(s) expense.
- 10.5 If a Notice is served by registered mail, the service shall be deemed to have been made on the seventh day after the day of mailing.

- 10.6 The (Municipality/City/Town/Township) may enter upon land to complete the work three (3) days after service is affected.

If a Municipality/City/Town/Township wishes to utilize the Remedial Action section they should obtain a legal opinion regarding its authority to do so.

11. ENFORCEMENT

There is nothing in the legislation that prohibits a municipality/city/town/township from retaining a private firm to enforce the by-law provided the names of the relevant employees are properly appointed. The municipality/city/town/township is required to ensure that each Officer is properly trained to perform her or his duties, and if the Officer is not an employee of the municipality/city/town/township, is supervised by an employee of the municipality/city/town/township. This approach is being used very successfully in several jurisdictions.

- 11.1 An Officer may enforce the provisions of this By-law.

Individuals enforcing a by-law under the *Municipal Act* MUST be appointed as Provincial Offences Officers or peace officer under a separate by-law to legally enforce the enacted by-law. (See Tree By-Law Information Package for a sample Appointment By-Law.)

- 11.2 An Officer may at any reasonable time enter and inspect any land to determine whether this By-law, an Order, Court Order or a condition of a Permit is being complied with.

Section 435(1) does not restrict the number of times an administrative inspection is done. As long as the Officer is conducting an investigation, it is considered an administrative inspection. Once a decision is made to lay charges, then it is no longer an administrative inspection, but rather collection of evidence. Once the Officer has left the property after collecting evidence, he can't come back onto the property without the Owner's permission. Where permission is not given, the Officer may apply for an Order under Section 238 of the *Municipal Act* or obtain a search warrant under Section 239 of the *Municipal Act* to re-enter the property.

The power to inspect land does not extend to entering a building and does not extend the power of entry to a person acting under the Officer's instructions. However the Officer may bring experts with him/her when conducting administrative inspections. See section 137 (2) of the *Municipal Act*.

- 11.3 An Officer exercising a power may be accompanied by a person under his direction.
- 11.4 No person shall hinder or obstruct an Officer or attempt to hinder or obstruct an Officer who is performing a duty under this By-law.
- 11.5 Any person who provides false information to an Officer shall be deemed to have hindered or obstructed the Officer in the execution of their duties.

12. PENALTY

It is our understanding that the *Municipal Act* provides municipalities with the opportunity and flexibility to develop their own penalties, however we have not been able to secure a legal confirmation of this. Below is an example from the most recent version of the *Municipal Act*.

Example

- 12.1 Any person who contravenes any provision of this By-law, or an Order issued under this By-law is guilty of an offence and upon conviction is liable to:
- (a) A maximum fine of \$100,000;
 - (b) In the case of a continuing offence, for each day or part of a day that the offence continues, a maximum fine of \$10,000 for each day;
 - (c) Notwithstanding 14.1(a), in the case of a multiple offence, for each offence included in the multiple offence, a maximum fine of \$10,000 for each offence included in the multiple offence.

Note that an approach that is also used in some counties/municipalities is, as an example in (a) state “A fine of not less than \$500 and not more than \$100,000”. Similar wording would be replaced in (b) and (c). This provides an advantage in court for Part 3 (Provincial Offences Act); however, it creates an issue when applying for short form wording (Part 1). \$500 tickets are not well received by some local courts.

- (d) In accordance with Subsection 429(2)(d) of the *Municipal Act* a special fine may be imposed and may exceed \$100,000 in circumstances where there is an economic advantage or gain from the contravention of this By-Law or an Order under this By-Law.

- 12.2 The (County/Municipality) may designate that the Destruction or Injuring of each Tree is one offence in a series of multiple offences.
- 12.3 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 replant Trees in such a manner and within such period as the court considers appropriate, including any Silvicultural treatment necessary to re-establish the Trees.
- 12.4 If a court makes an Order under section X “Remedial Action” of this By-law, the (Municipality or County) relies on Section 446(3) and 446(4) of the *Municipal Act*, as amended, for the recovery of costs.

13. ADMINISTRATION

It is recommended that there be no Schedules be included in this by-law. The application forms, permits or orders should not be schedules to the by-law. Having them separate enables changes and updates to be made without undergoing by-law revisions and Council approval. If schedules are included, they must be referred to in this section. (e.g. “Schedules ‘x’, ‘y’, and ‘z’ shall form part of this by-law.”).

- 13.1 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 there from and continue in full force and effect unless and until similarly found illegal.

13.2 In this By-law, unless the context otherwise requires words importing the singular shall include the plural and use of the masculine shall include the feminine, where applicable.

13.3 The short title of this By-law is the (e.g., "Tree Conservation By-law").

13.4 By-law {insert previous By-law no.} of the (Municipality/City/Town/Township) shall be repealed effective on the coming into force and effect of this By-law.

13.5 Despite subsection x of this section, By-law {insert previous By-law no.} of the (County/Municipality) shall continue to apply to proceedings in respect of offences that occurred before its repeal.

READ A FIRST, SECOND AND THIRD TIME

AND PASSED this day of _____, 20XX .

Mayor

Clerk

Chair

Clerk