

**Proposed Tree Cutting By-law**

**THE CORPORATION OF THE CITY OF BELLEVILLE**

**BY-LAW 2015 - \_\_\_\_\_**

**A BY-LAW TO REGULATE OR PROHIBIT THE INJURY OR DESTRUCTION OF TREES  
WITHIN THE CITY OF BELLEVILLE**

WHEREAS Section 135 of the Municipal Act, 2001, S.O. 2001, c.25, as amended authorizes the Municipal Council to adopt a by-law to prohibit or regulate the destruction or injuring of trees;

AND WHEREAS the Council of the Corporation of the City of Belleville wishes to establish a by-law to prohibit and regulate the destruction or injuring of trees of significance on certain lands in the City which will be subject to future development;

NOW THEREFORE, THE COUNCIL OF THE CORPORATION OF THE CITY OF BELLEVILLE  
HEREBY ENACTS AS FOLLOWS:

**SECTION 1.0            BY-LAW TITLE AND GENERAL PURPOSE AND INTENT**

1.1     This By-law may be cited as the “City of Belleville Tree By-law”.

1.2     The general purpose and intent of this By-law is to:

- i)     encourage the retention of trees of significance;
- ii)    prohibit the unnecessary injury or destruction of trees of significance;
- iii)   ensure there is valid justification when a tree of significance is to be injured or destroyed; and
- iv)    where appropriate provide for the planting of replacement trees where trees of significance are to be injured or destroyed.

**SECTION 2.0            DEFINITIONS**

2.1     For the purposes of this By-law, the following definitions shall apply:

- a)     “Administrator” means the Chief Building Official of the City of Belleville, or designate.
- b)     “City” means the Corporation of the City of Belleville.
- c)     “Council” means the Council of the Corporation of the City of Belleville.
- d)     “DBH” or “Diameter Breast Height” means the diameter, measured outside the bark, of the stem or trunk of a tree, and shall be measured at a point 1.37 metres above the existing grade of the ground adjoining the base of the tree, or where

there are multiple stems to a tree, means the total of the diameters of the three (3) largest stems measured at a point 1.37 metres above the existing grade of the ground adjoining the tree.

- e) “Dead”, “Dying” or “Diseased” in reference to a tree means a tree with no living tissue, a tree where seventy (70) percent or more of its crown is dead, or a tree infected by a lethal pathogen as certified by a Qualified Tree Expert.
- f) “Destruction” means the removal, ruin or harm of a tree by cutting, burning, girding of the tree or its roots, interfering with roots or uprooting, interfering with water supply, chemical application, compaction or regarding, within the drip line of a tree, or by other means including irreversible injury to a tree, which may result from accident or design, but does not include the pruning or removal of branches or maintenance purposes provided any such pruning is limited to the appropriate removal of more than one third of the live branches or limbs of a tree, and “destroy”, “destroyed”, “destroying”, and similar words have the same meaning.
- g) “Emergency work” means any work necessary to protect lives or property and includes utility repairs and structural repairs to a building.
- h) “Good Arboricultural Practice” means the proper implementation of removal, renewal, and maintenance activities known to be appropriate for individual trees in and around urban areas to minimize detrimental impacts on urban forest values, 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 (1/3) of the live branches or limbs of a tree, but does not include pruning to specifically increase light or space.
- i) “Hazard Tree” means a tree that is severely damaged to the extent that it is or poses an immediate safety threat to persons or property.
- j) “Injury” means lasting damage to a tree which has or is likely to have the effect of inhibiting or terminating its growth, but does not include pruning or removing branches for maintenance purposes, provided that any such pruning or branch removal is limited to the removal, as appropriate, of not more than one-third of the live branches or limbs of a tree, and “injure”, “injuring”, and similar words have the same meaning.
- k) “Maintenance” includes all work or operations related to trimming, pruning, spraying, injecting, fertilizing, treating, cabling and bracing a tree in accordance with Good Arboricultural Practice.
- l) “Lot” means a parcel of land, described as an individual parcel of land in a registered plan of subdivision or a parcel of land described by metes and bounds in a deed registered in the Registry Office of the County of Hastings which parcel complies with the provisions of the Ontario Planning Act.
- m) “Lot Area” means the total horizontal area within the lot lines of a lot.

- n) “Officer” means a person designated by the Corporation of the City of Belleville for the enforcement of this By-law and includes but is not limited to the Chief Building Official, the City’s By-law Enforcement Officer, any police officer or any other persons authorized to enforce or perform inspections pursuant to this By-law.
- o) “Owner” means a person having any right, title, interest or equity in land or property, or any such person’s authorized representative, and includes an occupant, tenant or lessee.
- p) “Permit” means permission or authorization given in writing pursuant to this By-law by the City to injure, destroy or remove a tree.
- q) “Permit Application” means an application prepared pursuant to this By-law requesting permission to injure or destroy one or more trees on a lot, submitted to the Administrator along with the prescribed fee.
- r) “Person” includes an individual, a sole proprietorship, a partnership, a corporation, a not for profit corporation, a registered charity and their respective heirs, executors, administrators, assigns or other duly appointed representatives.
- s) “Pruning” means the removal, as appropriate, of not more than one-third of the live branches or limbs of a tree in accordance with Good Arboricultural Practice.
- t) “Qualified Tree Expert” means a person who has graduated from an accredited college or university with a diploma or degree in Urban Forestry, Arboriculture or equivalent.
- 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 maturity, 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 of Significance” means a tree that:
  - i) has a DBH of 20 centimeters or greater;
  - ii) is an endangered species as defined in the Endangered Species Act, R.S.O. 1990, c.E. 15, as amended; or
  - iii) is a nationally rare species as defined in the Species at Risk Act, 2002, S.O. 2002, c. 24, or successor legislation.

### **SECTION 3.0 APPLICATION OF THE BY-LAW**

- 3.1 This By-law shall apply to any lot that has a lot area of 2 hectares or more (4.9 acres) located within the Urban Service Area as set out in the City of Belleville Official Plan, and.
- 3.2 This By-law shall apply to trees having a DBH of 20 centimetres or greater.

## **SECTION 4.0 EXEMPTIONS FROM THE BY-LAW**

4.1 The provisions of this By-law do not apply to the following:

- a) Activities or matters of the injury or destruction of any tree exempted pursuant to subsection 135(12) of the Municipal Act, 2001, S.O. 2001, c.25, as amended;
- b) The injury or destruction of any tree located within a waste disposal site as defined in Part V of the Environmental Protection Act, R.S.O. 1990, c.E.19, as amended;
- c) The injury or destruction of any tree that:
  - i) is dead, dying or diseased;
  - ii) is a hazard tree;
  - iii) is required as a result of emergency work;
  - iv) is required under an order pursuant to the City's Property Standards By-law;
  - v) requires pruning or maintenance where the branches or limbs interfere with existing utility conductors, buildings or structures;
  - vi) is a tree on a raised podium, in an indoor courtyard, in a solarium or on a rooftop garden;
  - vii) is in a tree nursery, tree farm, or cultivated orchard;
  - viii) is removed, injured or destroyed where the Owner has entered into a Development (Site Plan) Agreement, a Pre-Servicing Agreement, or a Subdivision Agreement with the City to develop the lot.

4.2 In all other circumstances, prior to the injury or destruction of any tree, a Permit shall first be obtained from the City in accordance with Sections 7.0 and 8.0 of this By-law.

## **SECTION 5.0 ADMINISTRATION AND ENFORCEMENT**

- 5.1 The Administrator is responsible for the administration of this By-law and is hereby delegated the authority to review Permit Applications, issue Permits, refuse Permits, and include conditions of Permits.
- 5.2 The Administrator may delegate any of his/her duties under this By-law to an Officer.
- 5.3 For purposes of conducting inspections or determining compliance with this By-law, the Administrator or Officer may, upon producing the appropriate identification, at any reasonable time, enter and inspect any lot.
- 5.4 No person shall obstruct the Administrator or an Officer who is carrying out an inspection pursuant to this By-law, and any person who obstructs the Administrator or Officer is guilty of an offence.

## **SECTION 6.0 GENERAL PROHIBITIONS**

- 6.1 Except as provided in Section 4 of this By-law, no person through his/her own actions or through the actions of another, shall:
  - i) injure or destroy any tree without first obtaining a Permit in respect of that tree;

- ii) injure or destroy any tree without complying with any conditions of a Permit issued in respect of that tree;
- iii) fail to comply with any condition or term of a Permit;
- iv) fail to comply with any Order issued pursuant to this By-law or remove or deface any Order issued pursuant to this By-law, without obtaining the prior consent of the Administrator;
- v) obstruct or attempt to obstruct the Administrator, any Officer or any person acting under the Administrator's instructions in the exercise of an authority under this By-law;
- vi) contravene any other provision of this By-law.

## **SECTION 7.0 PERMIT APPLICATION**

- 7.1 Where a Permit pursuant to this By-law is required, an Owner or other person who intends to injure or destroy a tree shall submit a Permit Application to the Administrator in the form provided by the City with payment of the prescribed fee.
- 7.2 Upon receipt of a Permit Application, where the Administrator determines that the application is exempt from the requirements for a Permit, the prescribed fee shall be refunded to the applicant.
- 7.3 The Administrator may require, as a component of a Permit Application, a report by a Qualified Tree Expert in support of the Permit Application, notwithstanding that such a report is not required as a component of the initial Permit Application.
- 7.4 Where any part of a tree subject of a Permit Application is located on an adjacent lot, the Permit Application shall include the written permission of the owner of the adjacent lot.

## **SECTION 8.0 ISSUANCE OF A PERMIT**

- 8.1 Upon receipt of a Permit Application, the Administrator or any person acting under the Administrator's instructions may inspect the lot and tree(s) to determine whether or not a Permit should be issued, and if so what conditions should be established.
- 8.2 The Administrator may issue a Permit to injure or destroy a tree where the Administrator is satisfied that:
  - i) the application satisfies the requirements of this By-law;
  - ii) the application is to permit the establishment or extension of a building or structure which requires the tree(s) to be removed;
  - iii) the tree is causing structural damage to load bearing structures, drains, or buildings; or
  - iv) removal of the tree(s) is necessary to support a permitted agricultural use or activity.
- 8.3 The Administrator may refuse to issue a Permit to injure or destroy a tree where the Administrator where any one or more of the following applies:
  - a) The Permit Application form has not been submitted in full, does not contain all required information, or is considered incomplete;

- b) The Administrator requires a report by a Qualified Tree Expert in support of the application and the report has not been provided;
  - c) An application for rezoning, consent, minor variance, plan of subdivision, or site plan approval for the lot on which the tree(s) is located has been submitted to the City but has not yet received approval;
  - d) The tree that is requested to be injured or destroyed is an endangered species as defined in the Endangered Species Act, R.S.O 1990, c.E. 15, as amended;
  - e) The tree is a nationally rare species as defined in the Species at Risk Act, 2002, S.O. 2002, c. 24, or successor legislation;
  - f) Where required and where the lot size and conditions would accommodate replacement, no adequate provision for replacement of the tree(s) has been included in the Permit Application;
  - g) The injury or destruction of the tree(s) contravenes the general intent and purpose of this By-law.
- 8.4 Any Permit issued pursuant to this By-law shall be issued in the name of the Owner and shall expire ninety (90) calendar days after the date of issuance, unless a written request for an extension is received by the Administrator prior to expiration of the Permit, in which case the Administrator may issue one extension for a maximum of ninety (90) calendar days.
- 8.5 The Administrator may impose conditions on any Permit including but not limited to:
- i) the manner and timing in which the injury or destruction of the tree(s) is to be carried out;
  - ii) the qualifications of the persons authorized to injure or destroy the tree(s);
  - iii) the requirement for replacement tree(s) or plantings, including the species, number, location and timing of replacement tree(s) or plantings;
  - iv) where replacement tree(s) or plantings are not physically possible on the lot, requiring replacement trees or plantings at another suitable location to which the Owner agrees or the payment of cash-in-lieu of the planting of replacement trees to the City, to be used by the City to plant trees on public lands;
  - v) measures to be implemented by the Owner to mitigate the direct and indirect effects of the destruction of the tree(s) on other nearby trees, properties, water bodies or natural areas.
- 8.6 Council may adopt policies to guide the Administrator in the use of conditions for Permits.

## **SECTION 9.0 ORDERS TO DISCONTINUE ACTIVITIES**

- 9.1 Where the Administrator or any Officer is satisfied a contravention of this By-law or a Permit has occurred, the Administrator or Officer may make an Order setting out the particulars of the contravention and requiring the Owner or such other person contravening this By-law to stop the injury or destruction of a tree, or requiring work to be done to correct the contravention.

9.2 An Order issued in accordance with this Section shall set out:

- i) the name of the Owner, the municipal address or other suitable description of the lot upon which the contravention has occurred;
- ii) reasonable particulars of the contravention;
- iii) what the Owner must do to rectify the contravention;
- iv) a statement that if the work is not done in compliance with the Order within a specified time period, the City may have the work done at the expense of the Owner;
- v) the date and time by which the Order must be complied with;
- vi) information regarding who to contact with the City for information relating to the Order.

9.3 An Order issued pursuant to this Section may be served personally or by sending it by prepaid registered mail to the last known address of the Owner.

9.4 Where an Order issued pursuant to this Section is made by mail, it shall be deemed to have been effected on the fifth day after the date the Order is mailed.

9.5 In the event that service cannot be carried out under Subsection 9.3 of this By-law, the Administrator or an Officer shall place a placard containing the terms of the Order in a conspicuous place on the lot where the contravention has occurred, and placement of the placard will be deemed sufficient service of the Order on the Owner.

9.6 Wherever this By-law or a Permit directs or requires any matter or thing be done, in default of its being done, the matter or thing may be done by the City under direction of the Administrator or an Officer at the Owner's expense, and the City may enter upon the lot upon which the matter or thing was to have been done at any reasonable time for this purpose, and the City may recover the costs incurred by action or by adding the costs to the tax roll and collecting them in the same manner as taxes.

## **SECTION 10.0 APPEALS**

10.1 Where the Administrator refuses to issue a Permit, or where the Administrator has imposed conditions on a Permit to which the Owner is not prepared to accept, the Owner may within fifteen (15) days of the date of refusal of the Permit Application or receipt of the Permit subject to conditions, appeal the matter to Council by filing a written request with the Administrator that the matter be considered by Council.

10.2 Where the Owner has filed an appeal with the Administrator, the Administrator shall prepare and forward a report on the appeal to Council within thirty (30) days of receipt of the appeal, setting out the grounds for his/her decision on the Permit Application.

10.3 Council shall consider the appeal and may:

- i) confirm the original decision of the Administrator; or
- ii) direct the Administrator to issue a Permit or to issue a Permit with revised conditions.

## **SECTION 11.0 PENALTIES**

- 11.1 Any person who contravenes any provision of this By-law or an Order issued pursuant to this By-law is guilty of an offence.
- 11.2 All contraventions of any provision of this By-law or an Order issued pursuant to this By-law are designated as multiple offences and continuing offences pursuant to subsection 429(2) of the Municipal Act, 2001, S.O. 2001, c.25, as amended. A multiple offence is an offence in respect of two or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of a by-law, and for greater certainty, when multiple trees are injured or destroyed, the injury or destruction of each tree is a separate offence.
- 11.3 Upon conviction of an offence under this By-law, a person is liable to a fine in accordance with Section 429 of the Municipal Act, 2001, S.O. 2001, c.25 as amended, as follows:
- a) The minimum fine for an offence is \$500.00 and the maximum fine for an offence is \$100,000.00;
  - b) In the case of a continuing offence, for each day or part of a day that the offence continues, the minimum fine shall be \$500.00 and the maximum fine shall be \$10,000.00, and the total of all daily fines for the offence is not limited to \$100,000.00;
  - c) In the case of a multiple offence, for each offence included in the multiple offence, the minimum fine shall be \$500.00 and the maximum fine shall be \$10,000.00, and the total of all fines for each included offence is not limited to \$100,000.00.
- 11.4 Upon conviction of an offence under this By-law, in addition to any other remedy or penalty, the City may further request the court in which the conviction is entered and any court of competent jurisdiction thereafter to make and order:
- i) prohibiting the continuation or repetition of the offence by the person convicted; and
  - ii) requiring the person convicted to correct the contravention in the manner and within the period the court may consider appropriate, which may include a request for an order for the planting or replanting of any tree or trees injured, removed or destroyed in a specified location and within a specified period of time, and the application of any silvicultural treatment that may be necessary to re-establish the tree or trees.

## **SECTION 12.0 PRESCRIBED FEES**

- 12.1 The prescribed fees payable to the City in respect of the submission of a Permit Application shall be as set out in Table 1 in this By-law.
- 12.2 Where a Permit is issued with a condition requiring the planting of replacement trees with a DBH of 6 centimetres minimum, upon completion of the planting of the required replacement trees and the meeting of all other conditions if applicable, the Owner may submit a request to the Administrator for reimbursement of all or a portion of the fee for the Permit Application, as set out in Table 1 of this By-law.



**Table 1**

<b>Number of Trees Subject of the Permit Application</b>	<b>Application Fee</b>	<b>Reimbursement</b>
1 to 5 trees	\$50 for each tree, minimum \$150	\$30 for each replacement tree, to a maximum of the permit application fee paid
6 to 15 trees	\$40 for each tree, minimum \$300	\$20 for each replacement tree, to a maximum of the permit application fee paid
More than 15 trees	\$750	\$15 for each replacement tree, to a maximum of the permit application fee paid

**SECTION 13.0 SEVERABILITY**

- 13.1 If a court or tribunal of competent jurisdiction declares any provision, provisions, or part of a provision of this By-law to be illegal or unenforceable for any reason, such provision, provisions, or part of a provision shall be severed and all other provisions of this By-law shall be deemed to be separate and independent therefrom and shall be valid and enforceable to the fullest extent permitted by law.

THIS BY-LAW SHALL COME INTO FORCE AND TAKE EFFECT IMMEDIATELY ON AND AFTER THE PASSING THEREOF.

Read a first time this \_\_\_\_ day of \_\_\_\_\_ **2015.**

Read a second time this \_\_\_\_ day of \_\_\_\_\_ **2015.**

Read a third time and finally passed this \_\_\_\_ day of \_\_\_\_\_ **2015.**

\_\_\_\_\_  
TASO CHRISTOPHER

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
MATT MACDONALD

\_\_\_\_\_  
CITY CLERK