

BY-LAW TO PROHIBIT AND REGULATE THE INJURY, REMOVAL, OR DESTRUCTION OF TREES ON LANDS OWNED BY THE TOWN OF NEWMARKET

WHEREAS the Council of The Corporation of the Town of Newmarket (hereinafter the “Town”) is authorized by subsection 11(1), paragraph 11(2) 5, subsections 135(1) and (7), and sections 429, 431 and 444 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, to pass by-laws to sustain and promote environmental and social benefits to the community as a whole through the preservation and planting of trees throughout the municipality, to regulate or prohibit the injury or destruction of trees, to require a permit for the removal of trees, to impose conditions on permits and to provide for a system of fines and other enforcement orders;

AND WHEREAS Council has determined that it is desirable to enact a by-law to protect, prohibit and regulate the injury or destruction of trees and encourage the preservation and planting of trees on town-owned lands;

AND WHEREAS the Council of the Town of Newmarket passed By-law 2013-14, Parks By-law protecting trees in parks, it is now advisable to pass a by-law to protect trees on all other Town-owned lands;

THEREFORE BE IT ENACTED by the Municipal Council of the *Town* as follows:

1.0 Definitions

The following words shall have the following meanings in this By-law:

Application - A completed permit application form including supporting documentation as identified in the application package or requested by the Director for permission to injure, destroy or remove trees.

Arborist - An expert in the care and maintenance of trees including an arborist qualified by the College of Trades, a certified arborist qualified by the International Society of Arboriculture, a consulting arborist registered with the American Society of Consulting Arborists, a registered professional forester or a person with other similar qualifications as approved by the Director of Public Works.

Arborist Report - A technical report or letter that identifies the location, species, size and condition of trees and describes maintenance strategies and protection measures to be implemented and prepared by an arborist.

Boundary Tree – A tree where the trunk is located on a boundary property line at any point along the entire trunk from its point of growth away from its roots up to its top where it branches out to limbs and foliage.

Care and Maintenance - The care and maintenance of trees in accordance with good arboricultural practices including inspection, pruning, cabling and bracing, treatments for insect and disease problems, watering and fertilization.

Destroy - To remove, cut down, or in any way injure a tree to such an extent that it is deemed by the Director to be an imminently hazardous tree, or that the tree's vitality has been reduced to such an extent that in the opinion of the Director, the tree cannot recover to be maintained in a safe or healthy condition, further maintenance is not warranted and the tree should be removed.

Director - The Director of Public Works for the Town of Newmarket or his or her designate.+

Emergency Work - Work of an urgent nature, including but not limited to work associated with drain repairs, utility repairs, structural repairs to a building and work required to prevent soil erosion, slipping of soil or damage to trees.

Fees and Charges By-law - The General Fees and Charges By-law, as amended, for the Town of Newmarket.

Forestry Act — Ontario Forestry Act, RSO 1990, c. F. 26.

Good Arboricultural Practice - Tree planting, maintenance and removal performed in accordance with the American National Standards, ANSI 3000 and best management practices identified by the International Society of Arboriculture, to the satisfaction of the Director of Public Works.

Heritage Tree - Trees designated under Part IV of the Ontario Heritage Act or trees recognized as heritage trees by the Ontario Heritage Tree Program of Trees Ontario.

Imminently Hazardous Tree - A destabilized or structurally compromised tree that is in imminent danger of causing damage or injury to life or property as determined by the Director.

Injure and Injury - Any act that will harm a tree's health in any manner including the failure to protect a tree from harm as set out by the Director.

Officer – a Police Officer as defined under the Police Services Act, R.S.O. 1990, c. P15, as amended, an individual appointed by the Town as a Municipal Law Enforcement Officer pursuant to Section 15 of the Police Services Act, as amended, or any other individual designated by the Town to enforce this By-law

Permit - A permit required by this by-law.

Person - Includes a company, a corporation, a partnership or an individual person.

Standards - Minimum requirements established by the Director of Public Works pertaining to the planting, protection and preservation of trees.

Tree Protection Plan - A plan prepared in conjunction with an arborist report that identifies the location, species and size of trees, identifies the extent of injury, where applicable, and illustrates details of protection measures including the location of protective barriers.

Tree Protection Policy - The most recent version of the Town of Newmarket's Tree Preservation, Protection, Replacement, and Enhancement Policy.

Tree Protection Zone – The area around a tree, generally the same size as the drip line of the canopy that should be kept clear and protected.

Tree - means any species of woody perennial plant including its root system, which is owned by the Town of Newmarket.

Tree Value/Appraised Value - The monetary value of a tree as determined through calculations using the Guide for Plant Appraisal, 9th Edition (or its more recent successor) as published by the International Society of Arboriculture.

Town – means the Corporation of the Town of Newmarket

2.0 Authority for planting, care, maintenance, and removal of trees

2.1 The planting, care and maintenance, protection, preservation and removal of trees located on town owned land shall be under the supervision of the Director.

3.0 Permissions, Prohibited Activities

3.1 Every person carrying out work on town-owned land or carrying out work that may impact trees on town owned land, shall carry out such work in accordance with:

- a) the provisions of this By-law;
- b) the Town's tree protection policies;
- c) the terms and conditions of any permit;
- d) the provisions of any approved tree protection plan or arborist report; and

e) any other standards as defined in this by-law.

3.2 No person shall do any of the following, or cause or permit to be done any of the following, without a permit:

- a) Injure, destroy, or remove a tree located in whole or in part on lands owned by the Town of Newmarket.
- b) Place construction material on or near the root system of a town-owned tree.
- c) Fail to abide by the requirements of an Arborist Report submitted as part of a request to injure a tree.
- d) Demolish, construct, replace or alter a permanent or a temporary building(s) or structures, parking pads, driveways, sidewalks, walkways, paths, trails, dog runs, pools, retaining walls, patios, decks, terraces, sheds or raised gardens which may negatively impact a town-owned tree.
- e) Install large stones or boulders which may negatively impact a town-owned tree.
- f) Alter grade by adding or removing soil or fill, excavating, trenching, topsoil or fill scraping, compacting soil or fill, dumping or disturbance of any kind which may negatively impact a town-owned tree.
- g) Apply, discharge or disposal of any substance or chemical that may adversely affect the health of a tree e.g. concrete sludge, gas, oil, paint, pool water or backwash water from a swimming pool.
- h) Cause or allow water or discharge, to flow over slopes or through natural areas which may negatively impact a town-owned tree.
- i) Access, parking or movement of vehicles, equipment or pedestrians which may negatively impact a town-owned tree
- j) Cut, break, tear, crush, expose or strip a tree's roots, trunk and branches.
- k) Nailing or stapling into a tree, including attachment of fences, electrical wires or signs.
- l) Stringing of cables or installing lights on trees.

- m) Soil remediation, removal of contaminated fill which may negatively impact a town-owned tree.
- n) Excavating for directional or micro-tunnelling and boring entering shafts which may negatively impact a town-owned tree.

3.3 No person shall attach or permit to be attached to a tree any object or thing without the prior written approval of the Director.

3.4 The approval of the Director may be subject to conditions imposed by the Director including production of satisfactory evidence that all other requisite approvals have been obtained.

4.0 Exemptions

4.1 This By-law does not apply to:

- a) An emergency situation, as determined by the Director;
- b) Where there is concern for health and safety, as determined by the Director;
- c) Activities or matters or the injury or destruction of any tree exempted pursuant to subsection 135 (12) of the Municipal Act.

5.0 Powers and Duties of the Director

5.1 The Director is authorized to:

- a) Plant, or cause to be planted, trees on town owned lands.
- b) Care for and maintain, or cause to be cared for and maintained, any tree located on town owned lands.
- c) Transplant, remove or cause to be transplanted or removed any tree planted or located on town owned land where deemed necessary in the public interest.
- d) Remove or cause to be removed, without notice or compensation to any person, any object or thing that adversely affects a tree or part of a tree on town owned land.
- e) Implement or cause to be implemented necessary treatments for insect and disease problems associated with trees located on town owned land.

- f) Remove, or cause to be removed, trees which are dead, hazardous or no longer viable to maintain.
- g) Remove, injure or cause the removal or injury of trees as may be required to facilitate emergency work.
- h) Allow the pruning of tree roots in accordance with good arboricultural practices causing minimal damage to the tree at the suggestion of a resident or as identified by Public Works Staff. Requests for injury by a resident may be subject to conditions which include the payment of tree value, removal and replacement costs, the posting of a letter of credit and/or the planting of a tree or trees by the applicant.
- i) Stop any work causing unauthorized injury, removal or destruction of a tree.
- j) Issue permits for injury, destruction and removal of trees in accordance with the criteria and subject to the conditions set out in this By-law.
- k) Refuse to issue permits for injury, destruction or removal of trees.
- l) Establish expiry dates for permits and applications.
- m) Approve or refuse requests to transfer a permit or application.
- n) Require the submission of a new application where:
 - i) A permit or application has expired;
 - ii) A request to transfer a permit or application has been refused;
 - iii) Additional trees are requested to be injured, destroyed or removed.
- o) Require that any tree planted on Town owned lands be approved and planted in accordance with the appropriate Town of Newmarket standards. Approval will include the planting location, species, size and condition.
- p) Require payment for every tree removed, unless otherwise determined by the Director of Public Works.
- q) Require tree protection guarantees and securities where work may impact trees.
- r) Require tree protection zone(s) to be established to protect a tree's root system and buffer trees from adverse impacts.

- s) Assume responsibility for maintenance of trees that have a portion of their main stem situated on Town-owned lands.
- t) To impose such other fees as are provided for in the Fees and Charges by-law, as amended.
- u) Delegate to such employees of the Town as the Director of Public Works sees fit the authority to carry out any section of this By-law.

6. Application Form, Content, and Fees

6.1. Any person who wishes to injure, destroy or remove a tree on town owned lands shall submit an application to the Director on the prescribed form and shall provide, to the satisfaction of the Director, some or all of the following:

- a) The name, street and email addresses, and telephone number of the applicant;
- b) The non-refundable application fee set out in the Fees and Charges By-law, as amended.
- c) The purpose for which the permit is required;
- d) A landscape plan satisfactory to the Director;
- e) An arborist report, where required by the Director;
- f) A tree protection plan, where required by the Director;
- g) Such additional information and documentation as the Director may require.

6.2. The Director may require the resubmission of any document listed in Section 6.1 to address their questions and concerns and may collect a Revision Fee, as set out in the Fees and Charges By-law, as amended, for each resubmission.

7. Application Review Criteria

The Director shall consider the following criteria prior to issuing or refusing to issue a permit:

- a) That all items submitted as part of the application are complete to the satisfaction of the Director

- b) The condition and viability of the tree;
- c) The location of the tree;
- d) The protection of environmentally sensitive areas;
- e) The protection of natural landforms or contours;
- f) The protection of ecological systems;
- g) Erosion and flood control;
- h) The protection of significant vistas;
- i) Whether or not a tree is a heritage tree or should be protected as a heritage tree;
- j) The requirement for a security in the form of Letter of Credit or other form, as appropriate;
- k) The amount of compensation required;
- l) The comments from the Town's Consulting Arborist, if the application was sent out to be peer reviewed.

8.0 Permit Refusal

8.1 The Director shall not issue a permit where:

- a) The application is incomplete.
- b) The information required (as set out in in this by-law) has not been provided to the satisfaction of the Director.
- c) Environmentally sensitive areas, ecological systems, natural landforms or contours will not be adequately protected and preserved.
- d) Erosion or flood control will be negatively impacted.
- e) The removal of the tree is to establish or protect a vista or view.
- f) The removal of the tree is for cosmetic or aesthetic purposes (e.g. to prevent the shedding of leaves, berries, or bark).

- g) The tree is the co-property of a party who has not given consent to the proposed injury or removal.
- h) The applicant has failed to provide sufficient compensation to the satisfaction of the Director.
- i) The tree is a heritage tree, or should in the opinion of the Director be recommended for designation as a heritage tree.

9.0 Permit conditions

9.1 A permit to injure, remove or destroy a tree may be subject to the following terms and conditions:

- a) The injury, destruction or removal of a tree shall be carried out by or under the supervision of an arborist;
- b) Compliance with good arboricultural practices;
- c) Compliance with the Town's tree protection policies and any other standards as required by the Town;
- d) Compliance with approved landscape and tree protection plans to the satisfaction of the Director.

9.2 The Director may require a notice to be mailed out to residents within 60m of the property nearest the subject tree, once an application has been received. If a notice is sent, there will be a minimum of 14 calendar days for the public to comment.

9.3 The Director shall require compensation for the removal of a town-owned tree in the form of payments of the following:

- a) 200% of the appraised value of each tree to be removed;
- b) The cost of the Town's contractor to remove each tree, as set out in the Fees and Charges By-law; and
- c) The cost of the Town's contractor to remove the stump of each tree, as set out in the Fees and Charges By-law.

9.4 The Director shall not require compensation should the Director deem the tree to be dead prior to removal.

9.5 The Director shall require the provision of a tree protection security by submission of a letter of credit or alternative form of security to ensure compliance with the conditions of permit issuance, in an amount which represents the appraised value of the tree to be protected, the removal costs and tree replacement costs. The tree protection security will be released by the Town one year after all construction activities are complete and compliance with all permit terms and conditions have been verified to the satisfaction of the Director.

9.6 The location of any replacement tree(s) will be at the discretion of the Director.

10.0 Boundary trees

10.1 Upon receipt of an application to injure or destroy a boundary tree, the Director shall:

- a) Provide notice of the application in writing to all boundary tree co-owners.
- b) Require the applicant to provide to the boundary tree co-owners all arborist reports, tree protection plans, landscaping and replanting plans, surveys and other supporting documentation submitted as part of the application .

10.2 The Director shall not approve a permit without letters consenting to the works contemplated through the permit from all affected owners.

11.0 Appeals

11.1 When a permit is refused, an applicant may, within 14 calendar days from the date of refusal, appeal to the Director.

11.2 The Director shall collect an appeal application fee, as set out in the Fees and Charges By-law.

11.3 An applicant wishing to appeal a refused permit shall submit a written request to the Director that the application be re-considered.

11.4 Where the Director has refused to issue a permit after an appeal to re-consider, an applicant may, within 14 calendar days from the date of refusal, appeal to the Town of Newmarket's Committee of Appeals.

11.5 An applicant wishing to appeal a refused permit, after re-consideration, shall submit a written request to the Director that the application be considered by the Town of Newmarket's Committee of Appeals.

- 11.6 The Director shall collect an appeal after re-consideration application fee, as set out in the Fees and Charges By-law.
- 11.7 Where an applicant has filed an appeal, after re-consideration, the Director shall prepare and forward a report on the application to the next appropriate Town of Newmarket's Committee of Appeals meeting, setting out the grounds for refusal of the application.
- 11.8 Upon consideration of the application, the Town of Newmarket's Committee of Appeals may approve a permit, subject to conditions set out in this by-law, or to refuse the permit.

12.0 Power of Entry

- 12.1 The Town may enter onto any lands at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
- a) This by-law;
 - b) The conditions of any permit issued under this by-law;
 - c) Direction or order of the Town made under this by-law; or
 - d) An order made under Section 431 of the Municipal Act, 2001.
- 12.2 Where an inspection is conducted by the Town, the person conducting the inspection may:
- a) Require the production for inspection of documents or things relevant to the inspection;
 - b) Inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - c) Require information from any person concerning a matter related to the inspection; and
 - d) Alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of the inspection.
- 12.3 The Town may undertake an inspection pursuant to an Order issued under Section 438 of the Municipal Act.

- 12.4 The Town's power of entry may be exercised by an employee, inspector or agent of the Town or by a member of a police force with jurisdiction, as well by any person under his or her direction.
- 12.5 No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power of performing a duty of this By-law.

13.0 Order

- 13.1 Where the Town is satisfied that a contravention of this By-law has occurred, the Town may make an order requiring the person who contravened this By-law, or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred, to do work to correct the contravention.
- 13.2 An order under this section 13.1 shall set out:
- a) the reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred or is occurring; and,
 - (b) the work to be done and the date by which the work must be done.
- 13.3 An order under this section 13.1 may require work to be done even though the facts which constitute the contravention of this By-law were present before this By-law making them a contravention came into force.
- 13.4 Any person who contravenes an order under Section 13.1 of this by-law is guilty of an offence.
- 13.5 The order may be served personally on the person to whom it is directed or by registered mail to the last known address of the person, in which case it shall be deemed to have been given on the 5th day after it is mailed.
- 13.6 If there is evidence that the occupant of the lands is not the registered property owner, the notice shall be served on both the registered property owner and the occupant of the property.
- 13.7 If the address of the owner is unknown or the Town is unable to effect service on the owner or occupant, a placard stating the terms of the order and placed in a conspicuous place upon or near the land shall be deemed to be sufficient service on the owner.
- 13.8 If the delay necessary to serve an order under the preceding subsections would result in an immediate danger to the health or safety of any person, the order may be served personally on the person to whom it is directed or by a placard stating the terms of the order and placed in a conspicuous place upon or near the property.

15.0 Failure to Comply With an Order

- 15.1 Where an *Owner* contravenes an Order issued under section 9.1, the *Officer* may, without notice to any *Owner*, cause the work to correct the contravention to be done at each *Owner's* expense. Without limitation, the *Officer* may retain such *persons* to assist in completing the work as the *Officer* determines appropriate.
- 15.2 Upon completion of the work to correct the contravention by or on behalf of the *Town*, the municipality shall have a lien on the land for the amount spent on the work to correct the contravention, plus administration fee and the amount shall be deemed to be municipal *property* taxes and may be added to the tax roll and collected in the same manner and with the same priority as municipal *property* taxes as provided for by statute.
- 15.3 Each *Owner* is jointly and severally liable to the *town* for all costs incurred in any way related to work done to correct the contravention for the purpose of section 15.2 including, without limitation, interest as per *Town* policy.

16.0 Penalty Provisions

- 16.1 Every person who contravenes a provision of this By-law, including an order issued under this By-law, is guilty of an offence.
- 16.2 Any person who is in contravention of any provision of this By-law, or who fails to comply with an order issued under this By-law shall be deemed to be committing a continuing offence for each day or part of a day that the contravention remains uncorrected.
- 16.3 If an Order has been issued under this By-law, and the order has not been complied with, the contravention of the order shall be deemed to be a continuing offence for each day or part of a day that the order is not complied with.
- 16.4 Any person who is guilty of an offence under this By-law shall be subject to the following penalties:
- a) Upon a first conviction, the minimum fine shall be \$400.00 and the maximum fine shall be \$100,000.00;
 - b) Upon a second or subsequent conviction for the same offence, a fine shall be a minimum of \$500.00 and the maximum fine shall be \$100,000.00;
 - c) Upon conviction for a continuing offence, the minimum fine shall be \$500.00 and the maximum fine shall be \$10,000.00 for each day or part of a day that the offence continues; and

e) Upon conviction 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.

16.5 For the purposes of this By-law, “multiple offences” means an offence in respect of two (2) or more acts or omissions each of which separately constitutes an offence and is a contravention of a provision of this By-law.

16.6 For the purposes of this By-law, an offence is a “second or subsequent offence” if the act giving rise to the offence occurred after a conviction had been entered at an earlier date for the same offence.

16.7 Where a person is convicted of an offence under this by-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted.

17.0 Severability

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

18.0 Short Title

18.1 This By-law shall be referred to as the “Public Tree Protection By-law”;

Enacted this day of , 2017.

Tony Van Bynen, Mayor

Lisa Lyons, Town Clerk