

## THE CORPORATION OF HALDIMAND COUNTY

By-law Number 2516/24

**Being a by-law to regulate the care, protection, planting, pruning, removal and stump removal of trees on Haldimand County property**

**WHEREAS** Section 10 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, (the Act) authorizes a single-tier municipality to pass by-laws necessary or desirable for the public;

**WHEREAS** Section 23.1 of the Act further authorizes a municipality to delegate its powers and duties to a person or body;

**WHEREAS** Section 135(1) of the Act authorizes a local municipality to prohibit or regulate the destruction or injuring of trees;

**WHEREAS** Section 135(7) of the Act provides that a municipality may, in a by-law, require that a permit be obtained to injure or destroy trees; and may impose conditions to a permit, including conditions relating to the manner in which destruction occurs and the qualifications of persons authorized to injure or destroy trees;

**WHEREAS** Section 425 of the Act authorizes a municipality to pass by-laws providing that a person who contravenes a by-law passed under the Act is guilty of an offence;

**WHEREAS** Section 435 of the Act provides power of entry exercised by an employee, officer or agent of the municipality;

**WHEREAS** Sections 436, 444, 445 and 446 of the Act further authorizes a municipality to provide for inspections and inspection orders, and to make orders to discontinue activity or to do work;

**AND WHEREAS** the Council of The Corporation of Haldimand County deems it necessary to regulate through a by-law that trees are an important component of Haldimand County's green infrastructure assets and deems it in the public interest to protect County-owned trees for the economic, environmental and social benefits they provide for our communities,

**NOW THEREFORE, the Council of The Corporation of Haldimand County enacts as follows:**

### 1. DEFINITIONS

In this by-law:

- 1.1. "Appeals Committee" means Council for the Corporation of Haldimand County or any Person or committee delegated the responsibility by Council.

- 1.2. "Arborist Report" means a written report including pictures, maps, diagrams and drawings prepared by a Certified Arborist which provides details on the species, size and health of Trees to be Destroyed, Injured, planted, pruned or stumps to be removed and describes tree protection measures to be implemented as outlined in the County's Arborist Report Guide as amended;
- 1.3. "Certified Arborist" means an individual who is currently certified by the International Society of Arboriculture, Skilled Trades Ontario Journeyperson Classification or the American Society of Consulting Arborists, unless a suspension, term, condition or limitation of certification applies which would restrict the individual from carrying out responsibilities under this by-law;
- 1.4. "Clerk" means the Clerk of The Corporation of Haldimand County or their designate;
- 1.5. "Commemorative Tree" means a Tree designated as a Commemorative Tree through the County's Commemorative Tree Program.
- 1.6. "Council" means the Council of The Corporation of Haldimand County;
- 1.7. "County" means The Corporation of Haldimand County;
- 1.8. "County Property" means any land or property owned by the County;
- 1.9. "County Tree" means any Tree where any part of the Trunk Flare or trunk is entirely or partially located on County Property and includes any Tree planted on County Property with or without the consent of the General Manager;
- 1.10. "Drip Line" means an imaginary line defined by the outermost branches of a Tree canopy from which water drips to the ground and is used to define the area located directly under the Tree's branches;
- 1.11. "Destruction", "Destroy" or "Damage" means the irreversible Injury or the death of a Tree including the removal of the Tree or Tree stump;
- 1.12. "General Manager" means the General Manager of Public Works Operations of The Corporation of Haldimand County or their designate;
- 1.13. "Injury" or "Injuring" means any action that causes physical, biological or chemical harm to a Tree which has the effect of inhibiting or terminating growth including but not limited to:
  - 1.13.1. cutting above or below ground, peeling, girdling, debarking, defacing, pruning, trimming, spraying, painting, fertilization, burning or altering the growth of the Tree in any way;
  - 1.13.2. fastening any sign, bill, notice, wire, light, rope, nail or other object to, around, on, or through any part of a Tree;
  - 1.13.3. installing a border, edging, casting or container surrounding the roots or trunk of a Tree;

- 1.13.4. depositing, placing, storing or maintaining any stone, wood chips, brick, sand, concrete or other material, equipment or vehicles that may impede the free passage of water, air or nutrients to the roots or trunk of a Tree;
- 1.13.5. excavating, ditching, tunnelling, trenching, disturbing, compacting, filling, soil or grade alteration, laying any walkway or driveway within the Drip Line of a Tree; or
- 1.13.6. the application of any gas, liquid, or solid substances which are harmful or toxic to come in contact with a Tree or be applied in an area used by the Tree's root system.
- 1.14. "Officer" means a Municipal Law Enforcement Officer appointed by the County;
- 1.15. "Owner" includes the Person or Persons shown as the registered property owners on the Land Registry Office or the municipal tax roll as having title to the land or responsibility for it, as well as any tenant or Person or Persons lawfully in possession of or exercising control over a property;
- 1.16. "Permit" means the written authorization for the Destruction, Injury or planting of Trees issued under this by-law by the County;
- 1.17. "Person" includes an Owner, individual or corporation, their respective heirs, executors, administrators or other duly appointed representatives;
- 1.18. "Private Property" means land other than lands owned by the County, Federal or Provincial governments;
- 1.19. "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, 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 measure 1.37 metres from the ground;
- 1.20. "Tree Protection Zone (T.P.Z.)" means a restricted area around a Tree that serves to protect the Tree and its roots;
- 1.21. "Trunk Flare" is the transition zone from the trunk to the roots, where the trunk expands and begins to form root structures that support the Tree and may be located above or below the ground.

## **2. ADMINISTRATION**

- 2.1. The short title of this by-law is the "County Tree By-law".
- 2.2. In this by-law, unless the context otherwise requires, words importing the singular shall include the plural and the use of the masculine shall include the feminine, where applicable.

## **3. APPLICATION OF THE BY-LAW**

- 3.1. This by-law applies to all County Trees.

**4. AUTHORITY**

The General Manager has the authority to allow, cause, perform, or permit in any way:

- 4.1. Trees to be planted on County Property.
- 4.2. Trees to be planted on Private Property with the written consent of the property Owner.
- 4.3. The removal, pruning, or stump grinding without notice or compensation to any Person any County Tree or part of a County Tree.
- 4.4. The removal without notice or compensation to any Person, anything which in the opinion of the General Manager adversely affects a County Tree or impedes the County's ability to maintain a County Tree.
- 4.5. The care and maintenance of any County Tree including but not limited to installing supplemental support systems, fertilization, soil amendments and treatment of any insects or diseases impacting a County Tree.
- 4.6. The designation of County Trees as Commemorative Trees.

**5. GENERAL PROHIBITION**

No Person shall allow, cause, perform, or permit in any way:

- 5.1. the Destruction or Injury of a County Tree;
- 5.2. the defacement, damage or removal of any commemorative plaque, sign, guard, grate, stakes, watering system, insect or pathogen treatment device, support system, lighting or protective devices installed in, on or around a County Tree; or
- 5.3. the planting of any Trees partially or wholly located on County Property.
- 5.4. Sections 5.1 to 5.3 shall not apply to Persons:
  - 5.2.1 exempted under the provisions of this by-law; or
  - 5.2.2 who are in possession of a valid Permit issued under the provisions of this by-law and in accordance with its terms or conditions.
- 5.6. No Person shall contravene any term or condition of a Permit issued under this by-law.
- 5.7. No Person shall remove or deface any order that has been posted under this by-law.
- 5.8. No Person shall fail to comply with an order issued under this by-law.

## 6. EXEMPTIONS

This by-law shall not apply to:

- 6.1. activities or matters undertaken by a municipality or a local board of a municipality;
- 6.2. the Destruction or Injuring of Trees by a Person licensed under the *Surveyors Act* to engage in the practice of cadastral surveying or their agent, while making a survey;
- 6.3. the Destruction, Injuring or planting of Trees imposed after December 31, 2002, as a condition to the approval of a site plan, a plan of subdivision or consent under sections 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;
- 6.4. the Destruction, Injuring or planting 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;
- 6.5. 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 constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section; or
- 6.6. the Destruction or Injuring of Trees for the construction of drainage works under the *Drainage Act*, R. S. O. 1990, c. D.17, as amended.

## 7. APPLICATION PROCESS

- 7.1. Every Person who intends to undertake any of the activities described in sections 5.1 to 5.3 shall complete and submit an application for a Permit to the General Manager.
- 7.2. An application for a Permit shall include:
  - 7.2.1. any fees as set out in the County's User Fee By-law;
  - 7.2.2. a completed application in the form prescribed by the General Manager;  
and
  - 7.2.3. any additional information such as an Arborist Report prepared and signed by a Certified Arborist as may be required by the General Manager.
- 7.3. An application for a Permit shall be deemed incomplete and no Permit shall be issued if:
  - 7.3.1. the application has not been completed in full; or
  - 7.3.2. the application fee has not been paid.

**8. ISSUANCE OF A PERMIT**

8.1. Council hereby delegates to the General Manager the power to issue Permits under this by-law and impose conditions on Permits that may include but are not limited to:

8.1.1. the number, location, size and type of County Trees that are to be Destroyed, Injured or planted;

8.1.2. the manner, equipment, and timing in which the Destruction, Injury or planting of County Trees is to be carried out;

8.1.3. the marking with paint or other material of the County Trees that are to be Destroyed, Injured or planted;

8.1.4. the qualifications of Persons authorized to carry out work on County Trees;

8.1.5. the insurance requirements of Persons authorized to carry out work on County Trees following the Corporate and Support Services Division standards;

8.1.6. the location, timing and methods for relocating County Trees;

8.1.7. the location, number, size and type of replacement Trees to be planted and/or payment for replacement Trees to be planted;

8.1.8. measures to be implemented to mitigate the direct and indirect effects of the Destruction or Injuring of Trees on the natural environment;

8.1.9. to collect securities to ensure that the performance of the work is in accordance with the conditions of the Permit;

8.1.10. the installation of Tree Protection Zones and protective barriers around County Trees;

8.1.11. the site of the work be restored to its original condition;

8.1.12. the period for which a Permit shall be in effect, the transferability of Permits and any renewal periods.

8.1.13. implementation of any conditions of Council, Appeals Committee and the General Manager.

8.2. The General Manager may refuse to issue a Permit if they determine that:

8.2.1. the proposal is for the Destruction or Injury of healthy and structurally sound County Trees;

8.2.2. the proposed methods or the likely results to be achieved are not in accordance with sound arboricultural, planning, recreation, traffic management or engineering practices;

- 8.2.3. the Trees are located immediately abutting Private Property for which a planning application has been submitted;
  - 8.2.4. a Person or property will be adversely affected;
  - 8.2.5. a nuisance, unsightly appearance or odour may occur; or
  - 8.2.6. the Destruction, Injury or planting of Trees is not in compliance with federal legislation, provincial legislation, County by-laws, policies or standards.
- 8.3. Where a Permit application has been denied, the General Manager will notify the applicant in writing, by regular mail or email of the decision and shall provide reasons if denied.
- 8.4. The General Manager may revoke a Permit that has been issued:
- 8.4.1. if the terms and conditions of the Permit are not complied with;
  - 8.4.2. if the specifications and recommendations in the Arborist Report are not followed;
  - 8.4.3. if any term of this by-law is violated by the work undertaken in connection with the Permit; or
  - 8.4.4. if the Permit was issued because of mistaken, false or incorrect information received by the General Manager.

## **9. APPEAL**

- 9.1. An applicant for a Permit may appeal to an Appeals Committee by filing a notice of appeal personally or by registered mail to the Clerk as follows:
- 9.1.1. Where the General Manager refuses to issue a Permit, an appeal must be made within fourteen (14) days after the refusal was issued; or
  - 9.1.2. Where the applicant objects to a term or condition of the Permit, the appeal must be made within fourteen (14) days after the issuance of the Permit;
- 9.2. Any Person who objects to an order made under this by-law may appeal the order to an Appeals Committee by filing a notice of appeal personally or by registered mail to the Clerk as follows:
- 9.2.1. Where the applicant objects to a term or condition of the order, the appeal must be made within fourteen (14) days after the issuance of the order;
- 9.3. An appeal made under this section of the by-law does not act as a stay of any order issued, and any order issued shall take effect on the day it was served or deemed served and shall continue to be effective until the Appeals Committee of Council renders a decision indicating otherwise.

## **10. ENFORCEMENT**

- 10.1. The provisions of this by-law may be enforced by an Officer.

- 10.2. For the purpose of ensuring compliance with this by-law, an Officer may at all reasonable times, enter upon and inspect the land or Private Property to determine whether or not the following are being complied with:
  - 10.2.1. this by-law;
  - 10.2.2. a direction or order made under this by-law; or
  - 10.2.3. a prohibition order made under Section 431 of the Municipal Act, 2001.
- 10.3. An Officer may for the purposes of an inspection:
  - 10.3.1. require information in writing or otherwise as required by the Officer from any Person concerning a matter related to the inspection; or
  - 10.3.2. alone or in conjunction with a Person possessing special or expert knowledge, undertake an inspection to determine compliance with this by-law.
- 10.4. An Officer may issue an order requiring the Persons in contravention of the by-law to:
  - 10.4.1. discontinue the contravening activity; and/or
  - 10.4.2. do work to correct the contravention.
- 10.5. An order may be served on a Person personally by handing it to the Person, but where the order cannot be given or served by reason of the Person's absence from the Person's property or by reason of evasion of service, the order may be given or served:
  - 10.5.1. by handing it to an apparently adult occupant on the Person's property;
  - 10.5.2. by posting it in a conspicuous place upon some part of the Owner's property and by sending a copy by prepaid regular mail; or
  - 10.5.3. by sending it by prepaid regular mail to the Owner at the address where the Owner resides.
- 10.6. An order under Section 10 shall set out:
  - 10.6.1. reasonable particulars of the contravention adequate to identify the contravention and the location of property abutting the Tree where the contravention occurred;
  - 10.6.2. the work to be completed; and
  - 10.6.3. the date(s) by which the work must be completed.
- 10.7. If an order under Section 10 is served by prepaid, regular mail, the service shall be deemed to have been made on the third (3rd) day after the day of mailing.



- 10.8. Where the Owner or occupant fails to comply with an Order issued under Section 10 of this by-law within the time specified for compliance, the General Manager or an Officer, with such assistance by others as may be required, may undertake work as identified in an order to bring the Tree and property into compliance.
- 10.9. Where the County, its employees, authorized agents or contractors have performed the work pursuant to an order issued under Section 10 required to bring the Tree and property into compliance with this by-law, all expenses incurred by the County in doing the work as well as any related fees, shall be deemed to be a debt to the County and may be collected by action or the costs may be added to the tax roll for the Owner and collected in the same manner as municipal taxes.

## **11. OBSTRUCTION**

- 11.1. No Person shall attempt to hinder or obstruct an Officer from carrying out his or her duties as described under this by-law.
- 11.2. No Person shall obstruct any employee or agent authorized to carry out work for the County required to bring the Tree and property into compliance with this by-law.

## **12. PENALTY**

- 12.1. Any Person who contravenes any provision of this by-law or an order issued under Section 10 is guilty of an offence, is liable for each occurrence of the contravention and upon conviction is liable to a fine, and such other penalties, as provided for pursuant to Part 1 of the Provincial Offences Act and this by-law.
- 12.2. A Person convicted of an offence under section 12.1 is also liable to:
- 12.2.1. on a first conviction, to a maximum fine of \$10,000 or \$1,000 per Tree, whichever is greater; and
- 12.2.2. on any subsequent convictions, to a maximum fine of \$25,000 or \$2,500 per Tree, whichever is greater.
- 12.3. Any corporation who contravenes any provision of this by-law or an order issued under Section 10 is guilty of an offence, is liable for each occurrence of the contravention and upon conviction is liable to a fine, and such other penalties, as provided for pursuant to Part 1 of the Provincial Offences Act and this by-law.
- 12.4. A corporation convicted of an offence under section 12.3 is also liable to:
- 12.4.1. on a first conviction, to a maximum fine of \$50,000 or \$5,000 per Tree, whichever is greater; and
- 12.4.2. on any subsequent convictions, to a maximum fine of \$100,000 or \$10,000 per Tree, whichever is greater.
- 12.5. The County designates that the Destruction, Injury or planting of each Tree is one offence in a series of multiple offences.

12.6. If a Person or corporation is convicted of an offence for contravening this by-law or an order issued under Section 10, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may order the Person or corporation to rehabilitate the land, to plant or replant Trees in such a manner as within such a period as the court considers appropriate and to maintain the replanted Trees as appropriate, including any arboricultural treatments necessary to re-establish the Trees.

**13. SEVERABILITY**

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 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.

**14. ENACTMENT**

14.1. This by-law comes into force and takes full effect on the date of its passage.

ENACTED this 6<sup>th</sup> day of May, 2024.

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MAYOR

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DEPUTY CLERK