

The Corporation of the Township of Centre Wellington

By-law 2022-57

A By-law to authorize and regulate the planting, care, maintenance and removal of trees on Township property

Whereas section 11 of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, hereinafter referred to as the *Municipal Act*, permits a municipality to pass by-laws respecting the environmental well-being of the municipality; and

Whereas the Township of Centre Wellington deems it appropriate to pass a by-law to sustain and promote environmental and social benefits to the community through the preservation and planting of trees, regulating and prohibiting the injury or destruction of trees, and establishing a permit process for the removal and replacement of trees; and

Whereas section 135 of the *Municipal Act*, authorizes a municipality to prohibit or regulate the destruction or injuring of trees; and

Whereas section 62 of the *Municipal Act*, authorizes a municipality, at reasonable times, to enter upon land lying along any of its highways to inspect trees, and conduct tests on trees, and to remove decayed, damaged or dangerous trees or branches of trees if, in the opinion of the municipality, the trees or branches pose a danger to the health or safety of any person using the highway; and

Whereas Section 8(3) of the *Municipal Act* authorizes a municipality to provide for a system of licences and a licence includes a permit; and

Whereas section 431 of the *Municipal Act*, authorizes, in addition to any other remedy and to any penalty imposed by a by-law passed under section 135, the court in which a conviction has been entered to make an order requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate; and

Whereas the Council for the Corporation of the Township of Centre Wellington recognizes the importance of trees to the environment within the Township for the purposes of health and welfare, beauty, safety, history, and general well-being; and

Whereas the Council for the Corporation of the Township of Centre Wellington wishes to promote tree conservation, the increase, renewal and proliferation of trees and the tree canopy, and the protection of existing trees by providing reasonable minimum standards regarding the preservation, planting, protection and maintenance of Township trees;

Now Therefore the Council of the Corporation of the Township of Centre Wellington hereby enacts as follows:

1. Definitions

1.1 In this By-law:

- (a) **“Arborist”** means 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 expertise in the **care and maintenance of trees** with similar qualifications and approved by the **Director**;
- (b) **“Arborist Report”** means a technical report or letter prepared by an **Arborist** that identifies the location, species, size and condition of **trees** and describes maintenance strategies and protection measures to be implemented;
- (c) **“boundary tree”** where any part of the **trunk** of a **tree** is located both on **Township property** and on adjoining lands;
- (d) **“care and maintenance”** means care and maintenance in accordance with **good arboricultural practices** including inspection, pruning, bracing, treatments for insect and disease problems, watering and fertilization;

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Kerri O'Kane

Kerri O'Kane, Municipal Clerk

- (e) "**compensation value**" means the ratio of compensation trees identified in **Public Forest Policy** multiplied by the tree compensation rate identified in the **Township's Fees and Charges By-law**, or the amenity value of the tree calculated in accordance with the Guide for Plant Appraisal, 10th Edition as published by the International Society of Arboriculture, as amended or replaced, and as approved by the **Director**;
- (f) "**century tree**" means a **tree** located within the urban boundary that has a diameter at breast height of 60cm or greater;
- (g) "**Costs**" means all monetary expenses including labour incurred by the **Township** including interest and may include an administrative surcharge amount as established by the **Township's Fees and Charges By-law**;
- (h) "**dead**" means a **tree** that has no living tissue;
- (i) "**deface**" includes but is not limited to tack, paste, or attach any object or item to a tree or paint, carve words, figures, symbols or any other markings on the bark of a **tree**;
- (j) "**destroy**", "**destroying**", "**destruction** or "**destroyed**" means to change the structure or condition of a **tree** such that it cannot reasonably be returned to its original structure or condition and includes **topping** or **injury** to more than one-third of the branches, roots or trunk;
- (k) "**Director**" means the Managing Director of Community Services for the **Township**, or his/her designate;
- (l) "**good arboricultural practices**" means **tree** planting, maintenance and removal performed in accordance with the American National Standards, ANSI A300 and best management practices identified by the International Society of Arboriculture;
- (m) "**hazardous**" means a **tree** that is destabilized or structurally compromised such that it poses a potential safety concern to property or life;
- (n) "**injure**" or "**injury**" means any act that will harm a **tree's** health in any manner, which includes but is not limited to the cutting of a **tree**, , debarking, marking, defacing, cutting or breaking of **tree** roots, placing in the **tree protection zone** any, liquid that may be harmful to the tree or stone, brick, sand, soil, concrete, vehicle, equipment or other matter or material thereby impeding the free passage of water, air or nutrients to the roots of a **tree**, excavating, trenching, or soil compacting within the **tree protection zone**, or failure to protect a **tree** in accordance with the **Public Forest Policy**;
- (o) "**Officer**" means a Police Officer, a municipal law enforcement officer or any other **person** appointed by by-law to enforce the provisions of this By-law;
- (p) "**permit**" means a current valid permit issued pursuant to this By-law;
- (q) "**permit holder**" means a **person** issued a **permit**;
- (r) "**person**" includes an individual, sole proprietorship, partnership, limited partnership, trust, corporation, and an individual in his or her capacity as a trustee, executor, administrator, or other legal representative;
- (s) "**Public Forest Policy**" means the **Township's** Public Forest Policy, as amended or replaced;
- (t) "**topping**" means the inter-nodal cutting of **tree** branches to stubs or laterals that are not large enough to assume the terminal role of the **trunk** or branch and also includes such terms as tipping, heading back, hat racking and rounding over;
- (u) "**Township**" means the Corporation of the Township of Centre Wellington or the land within the geographic limits of the Corporation of the Township of Centre Wellington as the context requires;
- (v) "**Township property**" includes but is not limited to a **Township** park, trail, campground and **Township street**;
- (w) "**Township street**" includes a common public highway, street, avenue, parkway, lane, alley, roadway, square, place, bridge, viaduct or trestle, designed and intended for and used by the general public for the passage of vehicles and includes the lateral property lines thereof under the jurisdiction of the **Township**;
- (x) "**tree**" means any species of woody perennial plant including its root system reaching a minimum height of three (3) metres;

- (y) **"Tree Preservation and Enhancement Plan"** means 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;
- (z) **"tree protection zone"** means the minimum required setback distance and tree protection barrier needed to protect a **tree** during any activity in the construction process that may **injure** or **destroy** a **tree**, and is based on generally accepted good arboriculture principles;
- (aa) **"trunk"** means the stem of a **tree** from its point of growth from the roots to where it first branches out to limbs and foliage.

2. Authority for Planting, Care and Maintenance and Removal of Trees

2.1 The **Director** is hereby authorized to plan, regulate, supervise and carry out the planting, **care and maintenance**, protection, preservation, and removal of all **trees** and may delegate such action or work to **Township** staff or a contractor.

2.2 Without limiting the generality of 2.1, the **Director** is hereby authorized to take or cause the following action:

- (a) plant **trees** on **Township property**;
- (b) **care and maintenance** of **trees** located on **Township property** including transplanting and removal;
- (c) **care and maintenance** of **boundary trees** that are determined to be 50 percent or more on **Township property**;
- (d) identify the species of **trees** which are prohibited on **Township property**;
- (e) remove a **tree** located on **Township property** which is **dead** or **hazardous**;
- (f) remove without notice or compensation to any **person**, any object or thing that adversely affects a **tree** on **Township property**;
- (g) implement all necessary treatments for insect and disease problems associated with **trees** located on **Township property**;
- (h) stop any work causing **injury** or **destroying** a **tree** located on **Township property** without a **permit**;
- (i) remove a decayed, damaged or dangerous **tree** or branch of a **tree** immediately and without notice to the owner of the land upon which the **tree** is located if, in the opinion of the employee or agent, the **tree** or branch is **hazardous** or poses an immediate danger to the health or safety of any **person** using **Township property**.

3. General Provisions

3.1 No **person** shall,

- (a) **injure** or **destroy**, or cause to be **injured** or **destroyed**, a **tree** on **Township property** without a **permit**;
- (b) remove or cause to be removed a **tree** on **Township property** without a **permit**;
- (c) **deface**, a **tree** on **Township property**, or a stake, post, guard or other object supporting such **tree**;
- (d) undertake, cause or permit any work or activity in a **tree protection zone** without a **permit**;
- (e) plant or cause to be planted a **tree** on **Township property** without permission in writing from the **Director**;
- (f) undertake, cause or permit the applying, discharging or disposing of any substance or chemical including concrete sludge, gas, oil, paint, pool water or backwash water from a pool that may adversely impact the **tree**;
- (g) undertake, cause or permit any work or activity other than in accordance with the provisions of this By-law, the terms and conditions of a **permit**, a **permit**, the **Arborist Report**, **Tree Preservation and Enhancement Plan** and **good arboricultural practices** and the approved plans.

4. Application for a Permit

4.1 A **Person** making an application for a **Permit** shall submit:

- (a) a complete application in the form provided by the **Township**;
- (b) when applicable, the Business Name Registration and/or Articles of Incorporation obtained from the applicable provincial or federal Ministry;
- (c) a landscape plan;
- (d) when applicable, an **Arborist Report** and **Tree Preservation and Enhancement Plan** that identifies the **tree protection zone**;
- (e) a certificate of insurance in a form satisfactory to the **Township** naming the **Township** as an additional insured with a coverage limit not less than two (2) million dollars in Commercial General Liability;
- (f) payment of **compensation value** for each **tree** to be removed in the form of a money order, certified cheque or any other method of payment approved by the **Township**, or submission of compensation planting plan to the satisfaction of the **Township**;
- (g) securities in the form of a Letter of Credit or in any alternate form of financial security as approved by the **Township** in the amount of the **compensation value** of the **tree(s)**, removal and replacement costs;
- (h) any other documents as may be required by the **Township** to the satisfaction of the **Township**;
- (i) the required application fee, administrative, approval and inspection fees as provided for in the **Township's Fees and Charges By-law**.

5. Permit

5.1 The **Director** is hereby delegated authority to issue a **Permit** in accordance with the provisions of this By-law, to refuse to issue a **Permit**, and impose additional terms and conditions on a **Permit** that in the opinion of the **Director** are reasonable and taking into consideration:

- (a) the completeness and accuracy of the **permit** application;
- (b) whether the **tree** is an endangered species as defined in the *Endangered Species Act*, R.S.O 1990, c.E.15, as amended, or the **tree** is a nationally rare species as defined in the *Species at Risk Act*, 2002, S.O. 2002, c. 24, as amended;
- (c) whether an **Arborist Report** and **Tree Preservation and Enhancement Plan** in support of the application is required and has been provided;
- (d) the condition and viability of a **tree**;
- (e) the location of the **tree**;
- (f) impacts on the **tree protection zone**;
- (g) the protection of environmentally sensitive areas and significant vistas;
- (h) the protection of natural landforms or contours, and ecological systems;
- (i) erosion and flood control;
- (j) if the **tree** is a **century tree** or should be protected as a **century tree**;
- (k) in the case of a **boundary tree**, whether consent of all owner(s) of the **boundary tree** have been given;

- (l) **good arboricultural practices;**
 - (m) good forestry practices as defined in the *Forestry Act, R.S.O. 1990, c. F. 26*, as amended;
 - (n) comments from the **Township's Arborist or Consulting Arborist**, if applicable;
 - (o) whether the **injury or destruction** of the **tree** or the approval of the **Tree Preservation and Enhancement Plan** contravenes the general intent and purpose of this By-law.
- 5.2 The **Director** shall provide notice of an application for a **permit** for the removal of a **boundary tree** to all **boundary tree** owner(s), where the **boundary tree** owner(s) are not the applicant, requesting their consent to the removal of the **boundary tree**.
- 5.3 Notwithstanding, Section 5.2 the consent of the owner(s) of a **boundary tree** is not required where the **Director** is of the opinion the **boundary tree** or branches pose a danger to the health or safety of any **person** using the **Township property**;
- 5.4 A **Permit** issued by the **Township** is non-refundable and is not transferable.
- 5.5 A **Permit** issued pursuant to this By-law is valid for the period of ninety (90) calendar days after the date of issuance, unless a written request for extension has been received and approved by the **Director** prior to the **permit** expiration date. The **Director**, upon granting an extension may impose a fee as provided for in the **Township's Fees and Charges By-law**.
- 5.6 The **Township** shall one (1) year after the activity or works being completed and upon the **Director** being satisfied that the activity or works were completed in accordance with this By-law, the **permit**, approved plans, **Public Forest Policy**, the **Arborist Report**, **Tree Preservation and Enhancement Plan** and **good arboricultural practices** return or release the securities.

6. Terms and Conditions of a Permit

- 6.1 Every **Person** who has been issued a **Permit** shall:
- (a) post the **permit** on site in a location visible to the public;
 - (b) maintain the **tree protection zone** in a neat and tidy order;
 - (c) not park or move vehicles or equipment which may negatively impact a **tree**;
 - (d) not remediate soil or remove contaminated fill which may negatively impact a **tree**;
 - (e) not conduct any activity or work other than in accordance with this By-law, landscape plans, **Public Forest Policy**, the **Arborist Report**, **Tree Preservation and Enhancement Plans** and **good arboricultural practices**;
 - (f) when required by the **Township**, carry out the activity or work by or under the supervision of an **Arborist**;
 - (g) place any replacement **trees** in the location specified by the **Director**;
 - (h) on itself, its heirs, executors, administrators and assigns to defend, indemnify and save harmless the **Township**, and their elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever, including but not limited to bodily injury, sickness, disease or death or to damage to or destruction of tangible property including loss of revenue or incurred expense resulting from disruption of service, arising out of or allegedly attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of the **Permit Holder**, its directors, officers, employees, agents,

contractors and subcontractors, or any of them, in connection with or in any way related to the issued **Permit**. This indemnity shall be in addition to and not in lieu of any insurance provided by the **Permit Holder**.

7. Orders and Remedial Action

- 7.1 Where an **Officer** has reasonable grounds to believe that a contravention of this By-law has occurred, the **Officer** may make an Order requiring the **person** who contravened this By-law, or who has caused or permitted the contravention, or the **permit holder**, to discontinue the contravening activity, and repair, as necessary, at their expense the **tree and Township property** so that it is brought back to its former condition.
- 7.2 An Order under section 7.1 shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention;
 - (b) the location of the **Township property** on which the contravention occurred; and
 - (c) the date by which there must be compliance with the Order.
- 7.3 An Order to discontinue a contravening activity made under this section may be served personally, registered mail to the last known address or by email transmission to:
- (a) the **person** the **Officer** believes contravened this By-law; and
 - (b) such other **persons** affected by the Order as the **Officer** making the Order determines.
- 7.4 The Order shall be deemed to have been served on the seventh (7th) day after the date of mailing or on the date of personal delivery or email transmission.
- 7.5 A **person** who has been served with an Order and who is not satisfied with the terms and conditions of the Order may appeal to **Property Standards Committee** by sending a notice of appeal by registered mail, personal delivery or email to the Clerk of the **Township** within fourteen (14) days after being served with the Order.
- 7.6 The prescribed fee set out in the **Township's Fees and Charges By-law** shall be payable by the **person** upon filing a notice of appeal.
- 7.7 An appeal under section 7.5 shall be conducted pursuant to the *Statutory Powers and Procedures Act*.
- 7.8 An Order under this By-law that is not appealed within the time referred to in section 7.5 shall be deemed to be final.
- 7.9 Where the Order is not complied with in the time period stipulated, the **Township** may complete the work, as necessary, and all the **costs** incurred by the **Township** in undertaking this work shall be **costs** owed to the **Township** by the **person** who the Order was issued to.
- 7.10 The **Township** may recover the costs of doing anything or matter pursuant to this By-law by drawing on the securities posted, by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes.

8. Enforcement and Penalty Provisions

- 8.1 The enforcement of this By-law shall be conducted by an **Officer**.
- 8.2 An **Officer** may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the By-law or an Order issued pursuant to this By-law is complied with.
- 8.3 Every **person** who contravenes any provision of this By-law, including failing to comply with an order made under this By-law, is guilty of an offence and is liable to a fine, and such other penalties, as provided for in the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended, and the Municipal Act, 2001, as amended.

- 8.4 Any **person** who is charged with an offence under this By-law or an Order issued pursuant to this By-law or every director or officer of a corporation, who knowingly concurs in the contravention by the laying of information under Part III of the Provincial Offences Act, R.S.O. 1990, c. P. 33, as amended and is found guilty of the offence is liable pursuant to the Municipal Act, 2001, as amended to the following:
- (a) on a first offence, to a fine not more than \$50,000.00; and
 - (b) on a second offence and each subsequent offence, to a fine of not more than \$100,000.00.
- 8.5 **Injury or destruction** of each **tree** for which a **permit** is required is a separate offence under this By-law.
- 8.6 Every **person** who is issued a Part 1 offence notice or summons upon conviction is guilty of an offence under this By-law shall be subject to a fine, to a maximum as provided for in the *Provincial Offences Act, R.S.O. 1990, c. P. 33*, as amended.
- 8.7 No **person** shall hinder or obstruct, or attempt to hinder or obstruct, any **Officer** exercising a power or performing a duty under this By-law.
- 8.8 Every **person** who is alleged to have contravened any of the provisions of this By-law, shall identify themselves to an **Officer** upon request, failure to do so shall be deemed to have hindered or obstructed an **Officer** in the execution of his or her duties.
- 8.9 Upon conviction any penalty imposed under this By-law may be collected under the authority of the *Provincial Offences Act, R.S.O. 1990, c. P. 33*, as amended.
- 8.10 If 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 may, in addition to any other remedy and to any penalty imposed, make an order prohibiting the continuation or repetition of the offence by the **person** convicted.
- 8.11 If 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 may, in addition to any other remedy and to any penalty imposed, make an order requiring the **person** to correct the contravention, which may include but is not limited to: planting or replanting such **trees** in such a manner and within such time period as the Court considers appropriate.

9. Severability

- 9.1 If a court of competent jurisdiction declares any section or part of this By-law invalid, it is the intention of Council of the **Township** that the remainder of this By-law shall continue in force unless the court makes an order to the contrary.

10. Singular and Plural Use

- 10.1 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.

11. Short Title

- 11.1 This by-law may be cited as the "Trees on Public Property By-law."

12. This By-law shall come into force on and take effect upon its final passing.

Read a first, second and third time and finally passed this 18th day of July, 2022.


Mayor – Kelly Linton


Clerk – Kerri O'Kane