

Corporation of the Town of Newmarket

By-law 2022-10

A By-law to regulate the Injury or Destruction of Trees on private property within the Town of Newmarket (Private Tree Protection By-law).

Whereas without limiting the broad municipal powers, sections 135, 139 to 141, 429, 431 and 444 of the Municipal Act, 2001 provides municipalities with further authority to regulate and prohibit the destruction or injuring of trees 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 trees and to prohibit and regulate the Injury or Destruction of trees and encourage the preservation and planting of trees within the Town of Newmarket.

Therefore be it enacted by the Council of the Corporation of the Town of Newmarket as follows:

1.0 Title

This By-law may be known and cited for all purposes as the “Private Tree Protection By-law 2022-XX”.

2.0 Definitions

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

“**Aggregate Inch Method**” means a method for calculating **Tree** replacement requirements whereby the aggregate **DBH** of **Trees** removed is equal to or less than the **DBH** of **Trees** planted in replacement, regardless of the number of individual **Trees** also known as the Aggregate Caliper Method;

“**Arborist**” a person who is a specialist or expert in the area of the care and maintenance of **Trees** and includes an **Arborist** qualified by the College of Trades or 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**;

“**Arborist Report**” means a detailed description of a **Tree** or **Trees** written by an **Arborist** that establishes the existing condition of a **Tree** with information such as species, location, size, condition, structural integrity, health (disease), infestations and vigour, and may consider compensation and/or security values and **tree** protection requirements;

“**Boundary Tree**” means a **Tree**, any part of whose trunk is growing across one or more property lines;

“**Cash-in-lieu payment**” means that for every replacement **Tree** not planted a **cash-in-lieu** amount will be collected. The amount will be set out in the **Town’s** Fees and Charges By-law;

“**Construction**” as defined under the Occupational Health and Safety Act, as amended;

“**Council**” means the **Council** for the **Town** and includes its successor;

“**Dead**” means a **Tree** to be not living, as determined by an **Arborist**;

“**Destroy/Destruction**” means to damage, by cutting, burning, girdling, uprooting, chemical application, or other means, a **tree** to such a degree that, in the opinion of an **Arborist**, the **tree** will not survive the damage;

“**Diameter at Breast Height or DBH**” means the measurement of the diameter of the trunk of a **Tree** at a height of 1.4 metres above the existing ground adjoining its base or where there are multiple stems, the total of the diameters of the stems at 1.4 metres;

“**Director**” means the **Director** of Public Works or their delegate, as amended from time to time;

“**Fees and Charges By-law**” means the Town of Newmarket Fees and Charges By-law 2019-52, as amended;

“**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 of the live branches or limbs of a **tree**, but does not include pruning to specifically increase light or space;

“**Guidelines**” means the **Town’s guidelines** for processing and reviewing **Private Tree Permits**;

“**Hazardous**” means a destabilized or structurally compromised **Tree** that is in danger of causing damage or **Injury** to life or property as verified or confirmed by an **Arborist** or by the **Director**;

“**Heritage Tree**” means a **Tree** designated under Part IV of the Ontario Heritage Act, 1990 or **Trees** recognized as **Heritage Trees** by the Ontario Heritage Tree Program of Trees Ontario;

“**Injure/Injury**” means to harm or **Destroy** a **Tree** by an action that causes physical, biological or chemical damage or death to a **Tree**, but does not include pruning or removing branches for maintenance purposes which is done in accordance with **Good Arboricultural Practice**;

“**Nuisance Tree**” means a **Tree** that causes significant displeasure to a property owner due to leaves, fruit, or other droppings; inappropriate shading; personal taste or other personal reasons;

“**Officer**” means a Property Standards Officer, Municipal Enforcement Officer, or other enforcement officer duly appointed by by-law to administer and enforce the provisions of this by-law;

“**Person**” includes a natural Person, corporation, partnership or party, and the personal or other legal representatives or a Person to whom the context can apply according to law;

“**Private Tree Permit**” means a permit issued under this By-law;

“**Property Damage**” applies to trees within 2m of an occupied building, where a **Tree** is causing or will in the near future cause structural damage that cannot be mitigated other than by cutting or removing the protected **Tree**, as certified by a Professional Engineer and/or Building Inspector and assessed by the **Director**.

“**Replacement Tree Planting Plan**” means a plan illustrating the location of **Trees** to be replanted;

“**Town**” as the context requires, means “The Corporation of the Town of Newmarket”;

“**Tree**” includes all woody vegetation, which at maturity, will reach a height of at least 4.5 m;

“**Tree Protection Plan**” means a report and/or drawing that details the steps that will be taken to preserve **Trees** to ensure their safety and long-term viability.

3.0 Application

- 3.1 This By-law applies to **Trees** equal to or greater than 20 centimetres in **diameter at breast height (DBH)** or grade on private property in the **Town**.
- 3.2 Notwithstanding Section 3.1, this By-law does not apply to **Trees** regulated by the **Town's Woodlot By-law 2007-71**, as amended, and the Regional Municipality of York **Forest Conservation By-law 2013-68**, as amended.
- 3.3 Any **Tree** removal (except as authorized by SPA/subdivision agreement/consent or permit obtained under the Private Tree Protection By-law) is unlawful and the property owner(s) and any person who participates in such removal is subject to the penalty provisions of the By-law.
- 3.4 The **Director** is authorized to:
- a. Require the undertaking of the work of an **Arborist Report** to determine:
 - i. The health and species of the subject **Tree**; and
 - ii. Which exemption of this By-law, if any, permits the removal of the **Tree**;
 - b. Determine value for replacement and/or any securities;
 - c. Issue permits for the **Destruction** or **Injury** of **Trees** and impose terms and conditions to the permit;
 - d. Refuse to issue a permit.
- 3.5 This By-law does not apply to trees that are subject to exemptions as provided by the Municipal Act, 2001.
- 3.6 This By-law does not apply to work or tree removal undertaken by a not for profit cemetery corporation.

4.0 General Prohibitions

- 4.1 No Person shall **Injure** or **Destroy** any **Tree** equal to or greater than 20 cm in **DBH** or at grade on private property without first obtaining a **Private Tree Permit** under this By-law.
- 4.2 **Trees** are measured at **DBH** unless the tree has been Injured or Destroyed and a **DBH** measurement is no longer possible, then the tree may be measured at grade. If it was 20cm at grade the provisions of this By-law apply.
- 4.3 **Trees** equal to or greater than 20 centimetres in **DBH** or grade on private property in the **Town** may be removed if:
1. The **Tree** is **dead**,
 2. The **Tree** is **hazardous**,
 3. The **Tree** is required to be removed through an order under the Property Standards By-law,
 4. The **Tree** is a **nuisance tree**,
 5. The **Tree** being removed facilitates a Building Permit, or
 6. The **Tree** being removed facilitates a Pool Permit
- 4.4 No **Person** shall cause or permit the **Injury** or **Destruction** of a **Heritage Tree**, unless they receive approval to do so under the requirements of the Ontario Heritage Act, 1990 and obtain a **Private Tree Permit**.

5.0 Permit Process

5.1 The **Town** hereby delegates to the **Director** the authority to issue a **Private Tree Permit** pursuant to this By-law, and to impose terms and conditions in accordance with **Good Arboriculture Practice**.

Application Requirements

5.2 At the discretion of the **Director**, all complete applications for a **Private Tree Permit** shall include:

- a. A complete signed application form as provided by the **Town**;
- b. The prescribed fees as set out in the Fees & Charges By-law;
- c. Written consent from the adjacent property owner(s) if the tree to be removed is considered a **Boundary Tree**;
- d. Any other document relating to the application to the satisfaction of the **Director**, including but not limited to:
 - i. An **Arborist Report** and/or;
 - ii. A **Tree Protection Plan** and/or;
 - iii. A **Replacement Tree Planting Plan** for one or more individual **Trees**

5.3 Every application shall be accompanied by a non-refundable application processing fee (Administration Fee), as identified in the **Town's Fees and Charges By-law**, in addition to a per tree Review Fee for each tree identified in the application.

5.4 Notwithstanding Section 5.3 above, no Administration Fee will be required where:

- a. a **Private Tree Permit** is issued to remove a tree that is dead or hazardous, as determined by the **Director**;
- b. a **Private Tree Permit** is issued to remove a Tree that is causing **Property Damage**; or
- c. a **Person** is directed or ordered to remove a Tree pursuant to any other Town by-laws enacted.

5.5 Notwithstanding Section 5.3 above, the **Director** may cap the number of "per tree fees" collected at 20, in circumstances where many trees are requested to be removed for agricultural or good forestry management purposes on private land.

Review Criteria

5.6 Following the receipt of a complete application, the **Director** shall consider the following criteria, in approving or refusing a **Private Tree Permit**:

- a. Condition of the **Tree** (such as, but not limited to, diameter, height, health as assessed by an **Arborist**, and structural integrity);
- b. Location of the **Tree**;
- c. Species of the **Tree**;
- d. Crown coverage of the ground;
- e. The protection of ecological systems and their functions, including the protection of native flora and fauna
- f. Erosion, sedimentation of watercourses and flood control;
- g. Impacts on surrounding properties, including loss of shade, vistas or privacy; and
- h. Any other criteria as identified in the **Guidelines**.

- 5.7 The **Director** may refuse to issue a **Private Tree Permit** where:
- a. The **Tree** is healthy, as determined by an **Arborist**;
 - b. Environmentally sensitive areas, ecological systems, natural landforms or contours will not be adequately protected and preserved;
 - c. Erosion or flood control will be negatively impacted;
 - d. An application for rezoning, consent to sever, a minor variance, a plan of subdivision or a site plan for the land on which the **Tree** is located has been submitted to the **Town**, but has not received final approval;
 - e. Approval is inconsistent with an approved Site Plan Agreement, **Tree Protection Plan** or an approved **Arborist Report**; or
 - f. Any other criteria as identified in the **Guidelines**.

- 5.8 The **Director** may issue a **Private Tree Permit** where;
- a. The **Tree** is in poor condition and cannot be maintained in a healthy and/or safe condition, as outlined in an **Arborist Report** or by a site inspection;
 - b. The **Tree** is causing, or is likely to cause, structural or physical damage to a load-bearing structure or roof;
 - c. The **Director** is satisfied that the **Destruction and Injury** of the **Tree** is consistent with **Good Arboriculture Practice**;
 - d. The **Director** is satisfied that the **Tree** is growing in an inappropriate location and cannot be maintained on a routine basis due to restrictive site conditions;
 - e. The **Destruction or Injury** is required in order to facilitate a building or pool permit;
 - f. **Destruction or Injury** is required in order to remediate contaminated soil;
 - g. The **Tree** is to be relocated and the **Director** is satisfied that the **Tree** will be sufficiently prepared for relocation; or
 - h. **Destruction or Injury** of a **Tree** is required subject to plans approved by the Ontario Land Tribunal or **Council**.

Conditions

5.9 The **Director** is authorized to impose conditions on a **Private Tree Permit**. Types and examples of conditions are listed in the **Guidelines**.

5.10 The **Director** has the authority to amend the conditions of the **Private Tree Permit** at their discretion, as needed.

5.11 Every **Person** who has obtained a **Private Tree Permit** shall ensure that all conditions are met.

Compensation

5.12 Where a **Private Tree Permit** requires the planting of a replacement **Tree**, the **Director** shall provide the following to the applicant, in writing;

- a. In the case of a permit to remove tree(s) for **Construction** related purposes, confirmation of the number of replacement **Trees** to be planted, as determined by the applicant, using the **Aggregate Inch Method**;
- b. Confirmation of the species, size and location of the replacement **Tree**;
- c. The date by which any replacement **Tree** is to be planted;

- d. The maintenance and care of any replacement **Tree** to the satisfaction of the **Director** in accordance with the approved **Arborist Report** and/or **Tree Protection Plan**;
- e. Where some or all of the replacement planting is not physically possible on site, the **Director** may allow planting at another suitable location or accept a **cash-in-lieu** payment.

- 5.13 In the case of a permit for **Tree(s)** to be removed for non-**Construction** related purposes, the **Director** shall:
- a. require the replanting of one tree for every tree that is approved for removal; and
 - b. accept a cash-in-lieu payment for the replacement **Tree** at an amount set out in the **Fees & Charges By-law**, as amended.

Permit Term and Revocation

5.14 The term of a **Private Tree Permit** shall be for a maximum of 1 year from the date of issuance, at the discretion of the **Director**.

- 5.15 A **Private Tree Permit** may be revoked by the **Director** if:
- a. It was issued on mistaken, misleading, false or incorrect information;
 - b. It was issued in error;
 - c. The owner or applicant requests in writing that it be revoked; or
 - d. An owner fails to comply with any provision and/or condition of the **Private Tree Permit** or this By-law.

5.16 When a **Private Tree Permit** is revoked, the owner and/or applicant shall immediately cease all operations being conducted under the authority of the revoked **Private Tree Permit**.

5.17 **Persons** convicted of an offense under this By-law are still required to obtain a **Private Tree Permit**.

6.0 Power of Entry

- 6.1 The Town's **Arborist** and **Officers** may, upon producing proper identification, enter upon any **Property**, at any reasonable time without a warrant for the purpose of inspecting the property to determine:
- a. whether the **Property** conforms with the standards prescribed in this by-law; or
 - b. whether an **Order** made pursuant to this by-law has been complied with.

7.0 Order to Comply

7.1 All Orders made pursuant to this by-law shall be served in accordance with the Town's Administrative Monetary Penalty System By-law 2019-62.

8.0 Appeals

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

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

8.3 Any applicant who appeals a refused permit shall submit a written request to the **Director** that the application be re-considered.

- 8.4 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.
- 8.5 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.
- 8.6 The Director shall collect an appeal after re-consideration application fee, as set out in the Fees and Charges By-law.
- 8.7 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.
- 8.8 Upon consideration of the application, the Town of Newmarket's Committee of Appeals may approve a permit, subject to conditions as set out in this by-law, or to refuse the permit.

9.0 Offences

- 9.1 Any **Person** who contravenes any provision of this By-law is liable to administrative penalties and administrative fees set out under the Administrative Monetary Penalty System By-law 2019-62, as amended.
- 9.2 Any **Person** who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine as provided by the Provincial Offences Act, 1990, as amended.
- 9.3 Any **Person** who contravenes any provision of this by-law or an order issued pursuant to this By-law is guilty of an offence. In accordance with Section 429(2)(a) of the Municipal Act, all contraventions of this By-law or any Orders issued pursuant to this By-law are designated as multiple offences and continuing offences. 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. For greater clarity, when multiple conditions of a permit are contravened, each condition is a new and separate offence. When multiple trees are injured or destroyed, the injury or destruction of each tree is a new and separate offence.
- 9.4 Where an Owner contravenes an **Order** issued pursuant to this by-law, 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.
- 9.5 Upon completion of the work to correct the contravention by or on behalf of the Town, the municipality shall have apply 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.

9.6 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 10.2 including, without limitation, interest as per Town policy.

10.0 Severability

10.1 Where a court of competent jurisdiction declares any section of this By-law to be invalid, or to be not in force, or without effect, it is the intention of **Council** in enacting this By-law that the remainder of this By-law shall continue in force, and applied, and enforced, in accordance with its terms to the fullest extent possible according to law.

Enacted this 7th day of February, 2022.

John Taylor, Mayor

Lisa Lyons, Town Clerk