

COMMITTEE OF THE WHOLE APRIL 16, 2007

TREE PRESERVATION BY-LAW

Recommendation

Councillor Peter Meffe recommends:

1. That staff bring forward a by-law to be enacted to regulate and/or prohibit the destruction or injury of trees on private property within the City of Vaughan; and
2. That the draft by-law be brought forward to the next Committee of the Whole meeting being held on April 30, 2007.

Economic Impact

None.

Communications Plan

Upon the by-law being enacted it should be communicated to the residents and businesses using, as a minimum, the following methods: (i) posted on the City Website; (ii) the City Page; and (iii) included in the next Greening Vaughan Issue.

Purpose

The purpose of this report is to enact a by-law that would regulate and/or prohibit the destruction or injury of trees on private property within the City of Vaughan.

Background - Analysis and Options

With the increasing growth occurring in the City of Vaughan it is important to consider the value and contribution that is provided by our trees. They are critical to sustainable growth. They assist in cleaning the air by taking in carbon dioxide and producing much needed oxygen for people to breathe, they improve water quality, prevent erosion, save energy by providing shade, improve real estate values and create places of warmth and beauty and places for birds and wildlife to live. We would be remiss if we stood back and continue to watch the unwanted destruction of our urban forests. Enacting such a by-law would ensure that we can manage and protect our natural environment.

Relationship to Vaughan Vision 2007

This report is consistent with the priorities previously set by Council and the necessary resources have been allocated and approved.

Regional Implications

N/A.

Conclusion

The preservation of trees is important to the ecological and aesthetic value of the City of Vaughan and I feel it is imperative that we minimize the injury and destruction of trees within our Municipality.

Attachments

1. City of Toronto By-Law No. 780-2004
2. Town of Richmond Hill By-law No. 41.07; and
3. Town of Aurora By-Law No. 4474-03.D

Report prepared by:

Peter Meffe

Respectfully submitted,

Peter Meffe,
Councillor, Ward 1

Authority: Policy and Finance Committee Report No. 7, Clause No. 2,
adopted as amended, by City of Toronto Council on September 28, 29, 30 and
October 1, 2004
Enacted by Council: September 30, 2004

CITY OF TORONTO

BY-LAW No. 780-2004

**To amend City of Toronto Municipal Code Chapter 813, Trees, by adding a new article as
Article III, Tree Protection and to make consequential amendments to Municipal Code
Chapter 441, Fees.**

WHEREAS Council has authority to pass this by-law under sections 135, 391 and 427 of the
Municipal Act, 2001;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. Chapter 813, Trees, of the City of Toronto Municipal Code is amended by adding the
following article as Article III, Tree Protection:

§ 813-9. Definitions.

As used in this article, the following terms shall have the meanings indicated:

APPLICATION – a permit application to injure or destroy trees.

ARBORIST – an expert in the care and maintenance of trees and includes an arborist
qualified by the Ontario Training and Adjustment Board Apprenticeship and Client
Services Branch, 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 Commissioner.

ARBORIST REPORT – a technical report that identifies the species, size and condition
of trees and describes tree protection measures to be implemented.

COMMISSIONER – the Commissioner of Economic Development, Culture and Tourism
or his or her delegate.

DESTROY – to remove, cut down or injure a tree to such an extent that it is deemed
necessary to remove or cut down the tree.

EMERGENCY WORK – work required to be done immediately in order to prevent
imminent damage, including soil erosion, drain repairs, utility repairs and structural
repairs to a building.

ENVIRONMENTALLY SENSITIVE AREA – includes an environmentally significant
area, natural area or ravine as defined and designated in the City of Toronto official plan.

GRADE – a defined elevation of land established as a result of natural processes or by human alteration.

HAZARDOUS TREE – a destabilized or structurally compromised tree that is in imminent danger of causing damage or injury to life or property.

HERITAGE TREE – a tree designated under Part IV of the *Ontario Heritage Act*.

INJURE – any act that will harm a tree including failure to protect in accordance with the City of Toronto’s Tree Protection Policy and Specifications for Construction Near Trees or other standards set out by the Commissioner.

LANDSCAPING and REPLANTING PLAN – a plan which identifies the location, species and size of existing trees, trees to be planted and other landscape elements on a property and provides details regarding planting methodology.

OFFICER – those persons holding the positions of: City Forester, Urban Forestry Supervisor, Urban Forestry Co-ordinator, Urban Forestry Planner, Urban Forestry Planning Assistant, Urban Forestry Manager, Arborist Inspector and Arborist Foreperson.

OWNER – for purposes of making an application under this article, shall include the owner of either property where the base of a tree straddles a property line or whose property is physically impacted by the roots or crown of a tree on adjacent property.

ROOFTOP GARDEN – does not include the rooftops of parking garages or other structures at grade.

TREE PROTECTION PLAN – a plan that identifies the location, species and size of trees on a property and provides tree protection measures including but not limited to protective barriers and hoarding.

TREE PROTECTION POLICY AND SPECIFICATIONS FOR CONSTRUCTION NEAR TREES – The most recent version of the City of Toronto’s Tree Protection Policy and Specifications for Construction Near Trees as established by the Commissioner.

§ 813-10. Permit Required.

No person shall, within the City’s boundaries, injure or destroy any tree having a diameter of thirty (30) centimetres or more measured at one and four-tenths (1.4) metres above ground level unless authorized by permit to do so.

§ 813-11. Exceptions.

Despite § 813-10, a permit is not required under this article for the following activities:

- A. Removal of a diseased, dead or hazardous tree certified as such by the Commissioner.
- B. Pruning of a tree in accordance with good arboricultural practice to maintain tree health.

- C. Pruning of tree branches that interfere with utility conductors.
- D. Emergency work.
- E. Injury or destruction of trees on rooftop gardens, in interior courtyards having a soil depth of less than 1.5 m above a built substructure, in solariums or on elevated podiums.
- F. Injury or destruction of trees in ravine protection areas designated under Municipal Code, Chapter 658, Ravine Protection.

§ 813-12. Applications; form and content.

- A. An owner who wishes to injure or destroy a tree shall submit to the Commissioner an application on the prescribed form and shall provide the following:
 - (1) The name, address and telephone number of the applicant.
 - (2) The non-refundable application fee set out in § 441-19.
 - (3) The purpose for which the permit is required.
 - (4) A tree survey showing the location of trees on the property.
 - (5) An arborist report identifying the location, species, size and condition of trees on the property and describing protection measures to be implemented.
 - (6) A tree protection plan identifying the location, species and size of trees on the property and illustrating details of protection measures including protective barriers and hoarding to be implemented to protect trees that are to be retained.
 - (7) Landscaping and replanting plans.

§ 813-13. Powers and duties of Commissioner.

The Commissioner is authorized to:

- A. Issue permits for the destruction of trees in accordance with the criteria and subject to the conditions set out in this article.
- B. Issue permits for the injury of trees in accordance with the criteria and subject to the conditions set out in this article.
- C. Refuse to issue permits for the injury or destruction of trees and refer the matter to the appropriate Community Council.

- D. Stop any work causing injury or destruction to trees having a diameter of thirty(30) centimetres or more measured at one and four-tenths (1.4) metres above ground level that is taking place without a permit or contrary to the conditions of a permit or other standards established by the Commissioner.
- E. To waive the requirement for an arborist report in non-commercial applications.

§ 813-14. Review of Applications; criteria;

The Commissioner shall consider the following criteria:

- (1) The application form is complete.
- (2) The applicant has paid all required fees.
- (3) The condition of the tree.
- (4) The location of the tree
- (5) The protection of environmentally sensitive areas.
- (6) The protection of natural landforms or contours.
- (7) The protection of ecological systems.
- (8) Erosion and flood control.
- (9) The protection of significant vistas.
- (10) Whether or not a tree is a heritage tree or should be protected as a heritage tree.

§ 813-15. Permit Refusal.

The Commissioner shall not issue a permit for the injury or destruction of trees where:

- (1) The application form is not complete.
- (2) The information required by § 813-12A has not been provided to the satisfaction of the Commissioner.
- (3) Trees are healthy.
- (4) Environmentally sensitive areas, ecological systems, natural landforms or contours will not be adequately protected and preserved.
- (5) Erosion or flood control will be negatively impacted.
- (6) Significant vistas will not be adequately protected and preserved.

- (7) The tree is a heritage tree, or should in the opinion of the Commissioner be recommended for designation as a heritage tree.

§ 813-16. Issuance of permits.

The Commissioner is authorized to issue permits where:

- (1) Trees are causing or are likely to cause structural damage to load-bearing structures or roof structures.
- (2) Trees are in poor condition and cannot be maintained in a healthy and safe condition.
- (3) Trees are growing in inappropriate locations, as certified by the Commissioner, and cannot be maintained on a routine basis due to restrictive site conditions.
- (3) Trees are located on property where site plan, subdivision, consent or committee of adjustment approval has been obtained, provided that the trees must be injured or destroyed to facilitate construction in accordance with plans approved by the City.
- (4) Trees are located on property where a building permit, front yard or boulevard parking permit or permission for driveway widening has been obtained provided that the trees must be injured or destroyed to facilitate construction in accordance with plans approved by the City.
- (5) Despite § 813-15(3) the Commissioner may issue permits to injure or destroy healthy trees where:
 - (a) The trees are causing or are likely to cause structural damage to load bearing structures or roof structures.
 - (b) The trees are growing in inappropriate locations as certified by the Commissioner, and cannot be maintained on a routine basis due to restrictive site conditions.
 - (c) Injury or destruction is required in order to remediate contaminated soil.
 - (d) The trees are appropriately sited, and not causing or likely to cause structural damage to load bearing structures or roof structures provided that:
 - (i) notice has been posted in accordance with § 813-17; and
 - (ii) the Commissioner and the ward councillor are satisfied that the applicant has undertaken to implement a satisfactory landscaping and replanting plan.

§ 813-17. Notice.

Notice of an application to injure or destroy healthy trees in accordance with § 813-16(6)(d) shall be posted on the property:

- A. In a manner and form satisfactory to the Commissioner.
- B. For a period of not less than fourteen days.

§ 813-18. Permits to destroy; conditions.

A permit to destroy trees shall be subject to the following terms and conditions:

- (1) Replacement trees shall be planted and maintained to the satisfaction of the Commissioner in accordance with landscaping and replanting plans submitted by the applicant and approved by the Commissioner.
- (2) Where replacement planting is not physically possible on site, the Commissioner may:
 - (a) require replacement planting at another suitable location; or
 - (b) accept a cash in lieu payment in an amount equal to one hundred and twenty percent of the cost of replanting and maintaining the trees for a period of two years.
- (3) Where a property is not subject to site plan approval, the applicant shall provide a written undertaking and release to ensure that replacement planting is carried out and maintained in accordance with landscaping and replanting plans approved by the Commissioner.
- (4) The destruction shall only be carried out by or under the supervision of an Arborist.

§ 813-19. Permits to Injure; conditions.

A permit to injure trees shall be subject to the following terms and conditions;

- (1) Trees shall be protected in accordance with good arboricultural practices.
- (2) Where a property is not subject to site plan approval, the applicant shall provide a written undertaking and release to ensure that tree protection is carried out and maintained in accordance with landscaping and replanting plans submitted by the applicant and approved by the Commissioner.
- (3) The injury shall be carried out by or under the supervision of an Arborist.

§ 813-20. Appeals.

- A. Where the Commissioner refuses to issue a permit, an applicant may within 14 days of the date of refusal appeal to the appropriate Community Council by submitting a written request to the Commissioner that the permit application be heard by the appropriate Community Council.
- B. Where an applicant has filed an appeal, the Commissioner shall prepare and forward a report on the application to the next appropriate Community Council meeting, setting out the grounds for refusal of the application.
- C. Prior to the Commissioner reporting to Community Council, the City Clerk shall notify the ward Councillor, abutting property owners and any other persons who have expressed written interest in the application of the date the application will be considered by Community Council.
- D. Upon consideration of the application, the appropriate Community Council shall make a recommendation to Council.
- E. Upon consideration of the application, Council may direct the Commissioner to issue a permit, subject to conditions satisfactory to Council.

§ 813-21. Order to correct violation.

If an officer is satisfied that there is a contravention of this article or a permit issued under this article, the officer may make an order setting out particulars of the contravention and requiring the person to stop the injuring or destruction of trees.

§ 813-22. Remedial action.

Wherever this article or a permit issued under this article directs or requires any matter or thing to be done by an applicant, in default of its being done by the person directed or required to do it, the matter or thing may be done under the direction of the Commissioner 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.

§ 813-23. Offences; additional remedies.

- A. Any person who contravenes any provision of this by-law is guilty of an offence.
- B. A person convicted of an offence under this bylaw is liable:
 - (1) On a first conviction, to a fine of not more than ten thousand dollars (\$10,000.00) or \$1,000.00 per tree, which ever is greater; and
 - (2) On any subsequent conviction, to a fine of not more than twenty thousand dollars (\$20,000.00) or \$2,500.00 per tree, whichever is greater.

- C. Where a corporation is convicted of an offence under this bylaw, the corporation is liable:
- (1) On a first conviction, to a maximum fine of fifty thousand dollars (\$50,000.00) or \$5,000.00 per tree, whichever is greater; and
 - (2) On any subsequent conviction, to a maximum fine of one hundred thousand dollars (\$100,000) or \$10,000 per tree, whichever is greater.
- D. In addition to any other remedy or any penalty provided by law, the court in which the conviction has been entered, or any other court of competent jurisdiction, may make an order prohibiting the continuation or repetition of the offence by any person.
- E. The court in which the conviction has been entered, and any other court of competent jurisdiction, may order the person to replant or have replanted such trees in such manner and within such time period as the court considers appropriate, including any silvicultural treatment necessary to re-establish the trees.

§ 813-24. Repeal.

The following are repealed:

- A. Article III, Chapter 331, Trees of the former City of Toronto Municipal Code.
- B. By-law No. 25150 of the former City of Scarborough.

§ 813-25. Conflict.

In the event of any conflict between this by-law and any other by-law of a former municipality respecting trees on private property this by-law shall prevail.

§ 813-26. Fees.

Despite § 813-12 A(2) seniors age 65 and over shall not be required to pay the permit fee.

2. Chapter 441, Fees of the Municipal Code is amended as follows:

A. By adding a new section § 441-19, Tree Permit Fees, as follows:

§ 441-19. Tree permit fees.

A. By permit application fees payable under § 813-12A(2) for permits to injure or destroy trees shall be as follows:

<u>Column 1</u>	<u>Column 2</u>
Non-development related applications	\$100 per tree to a maximum of \$300
Development related applications	\$200 per tree

ENACTED AND PASSED this 30th day of September, A.D. 2004.

DAVID R. MILLER,
Mayor

ULLI S. WATKISS
City Clerk

(Corporate Seal)

THE CORPORATION OF THE TOWN OF RICHMOND HILL

BY-LAW NO. 41-07

A By-law to Prohibit or Regulate the Injuring or
Destruction of Trees on Private Property in the Town of Richmond Hill

WHEREAS Sections 135, 391 and 446 of the *Municipal Act, 2001* S.O. 2001, c.25, as amended ("Municipal Act"), authorize the Council of the Town of Richmond Hill to pass by-laws to prohibit or regulate the injuring or destruction of trees within the municipality;

AND WHEREAS Council at its meeting of March 19, 2007 adopted the recommendation of the Committee of the Whole at its meeting of March 5, 2007 in SRPRC.07.09 to enact a Tree Preservation By-law;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF RICHMOND HILL ENACTS AS FOLLOWS:

ARTICLE 1 DEFINITIONS

- 1.1 Applicant – defined**
"applicant" means the owner who submits an application for a permit under this by-law.
- 1.2 Application – defined**
"application" means an application for a permit to injure or destroy a tree as set out in Article 6 of this by-law.
- 1.3 Arborist – defined**
"arborist" means an expert in the care and maintenance of trees and includes an arborist qualified by the Ministry of Training, Colleges and Universities, a Forest Technician or Forestry Technologist with an applicable college diploma and a minimum of two (2) years urban forestry experience, a certified arborist qualified by the Certification Board of the International Society of Arboriculture, a consulting arborist registered with the American Society of Consulting Arborists, a Registered Professional Forester designated pursuant to the *Professional Foresters Act, 2000* S.O. 2000, c.18, as amended, ("Forestry Act") or a person with other similar qualifications as approved by the Commissioner.
- 1.4 Arborist's report – defined**
"arborist's report" means a technical report prepared by an Arborist or Professional Forester which identifies the surveyed location, species, size and condition of the tree, provides the reasons for any proposed injuring or destruction of the tree, and describes tree protection measures or other mitigating activities to be implemented.
- 1.5 Commissioner – defined**
"Commissioner" means the Commissioner of Parks, Recreation and Culture for the Municipality or his or her designate.
- 1.6 Council – defined**
"Council" means the Council of the Corporation of the Town of Richmond Hill.
- 1.7 Cultivated orchard – defined**
"cultivated orchard" means land where fruit trees are grown and maintained for the harvesting of their fruit.
- 1.8 DBH – defined**
"DBH" means the diameter of the trunk of a tree at a point of measurement 1.4 metres above the ground. DBH of multi-trunk trees shall be measured as indicated in Schedule "A" to this Chapter. Where a tree has been cut down and the remaining stump is less than 1.4 metres in height, the DBH shall be the extrapolated diameter at 1.4 metres above the ground as set out in Schedule "B" to this Chapter.

- 1.9 Destroy – defined**
“destroy” means to kill by cutting, burning, uprooting, chemical application or other means.
- 1.10 Emergency work – defined**
“emergency work” means work required to be done immediately in order to prevent imminent danger including tree maintenance work necessary due to natural events (i.e. ice storm, high winds, lightening), as well as tree maintenance work associated with emergency drain, utility and building repairs.
- 1.11 Hazardous – defined**
“hazardous” means destabilized or structurally compromised to an extent that it presents an imminent danger of causing property damage or injury to life.
- 1.12 Injure/Injury defined**
“injure/injury” means to harm, damage, impair or not protect a Tree in accordance with Parks, Recreation and Culture Details and Specifications, entirely or in part, and/or any acts which will harm a Tree’s health or damage a Tree in any manner.
- 1.13 Municipality – defined**
“Municipality” means the Corporation of the Town of Richmond Hill.
- 1.14 Owner – defined**
“owner” means the person having the right, title, interest or equity in the land, or his or her agent authorized in writing, and includes the owner of either property where the base of a tree straddles a property line and the owner of a property that is physically impacted by the roots or crown of a tree.
- 1.15 Permit – defined**
“permit” means a Permit to Injure or Destroy a Tree issued by the Commissioner.
- 1.16 Permit application fee – defined**
“permit application fee” means the prescribed fee as set out in Chapter 684 of the Town of Richmond Hill Municipal Code.
- 1.17 Person – defined**
“Person” includes a company, a corporation, a partnership, an individual, a Public Utility and a person as defined in subsection 29(1) of the *Interpretation Act*, R.S.O. 1990, c. I. 11, as amended.
- 1.18 Pruning – defined**
“pruning” means the removal of a tree branch or branches from a living tree by cutting at a point outside the branch collar, but does not include the removal of more than one quarter of a tree’s leaf-bearing crown. Pruning may be undertaken for the purposes of thinning the crown of a tree to increase light penetration and air movement, providing clearance for utility lines, buildings, pedestrians or vehicles or eliminating dead, hazardous or diseased wood.
- 1.19 Registered Professional Forester – defined**
“Registered Professional Forester” means a member of The Ontario Professional Foresters Association entitled to use the designation “Registered Professional Forester” under the.
- 1.20 Regional Municipality - defined**
“Regional Municipality” means the Regional Municipality of York.
- 1.21 Tree – defined**
“Tree” means any perennial woody plant, which has reached or can reach a height of at least 4.5 meters at physiological maturity.

- 1.22 Tree farm – defined**
“tree farm” means land where trees are grown and maintained for sale.
- 1.23 Tree Inventory and Preservation Plan – defined**
“Tree Inventory and Preservation Plan” means a plan imposed as a condition of development or redevelopment approval pursuant to Sections 41, 51, or 53 of the *Planning Act, 1990* R.S.O. 1990, c.P.13, as amended, (“Planning Act”), which determines trees to be preserved through an assessment process which identifies trees, shrubs and other specific areas of natural habitat and their ecological function or importance and determines the impacts of any proposed development on the trees, shrubs, and other specific areas of natural habitat and their ecological function or importance and such plan shall determine mitigation measures and measures to protect and manage trees to be preserved (such measures not limited to protective barriers and/or hoarding) and proper practices to remove trees to be destroyed.
- 1.24 Tree Preservation By-law Officer – defined**
“Tree Preservation By-law Officer” means an individual appointed by the Commissioner for the administration and enforcement of this by-law and includes a by-law enforcement officer of the Town and such individual is hereby designated to be an officer pursuant to subsection 135(11) of the Municipal Act.
- 1.25 Woodland – defined**
“Woodland” means a treed area as defined by the Forestry Act that is 1.0 hectare in area or more.
- 1.26 Woodlot – defined**
“Woodlot” means a woodland of at least 0.2 hectares and no greater than 1.0 hectare in area.
- 1.27 York Region Forest Conservation By-law – defined**
“York Region Forest Conservation By-law” means By-law No. TR-0004-2005-036 of The Regional Municipality of York, as amended.

ARTICLE 2 PERMIT REQUIRED

- 2.1 Permit – required**
Unless otherwise exempted by this by-law, no person shall injure, destroy, or permit or cause to be injured or destroyed, a tree in the Municipality having a trunk diameter of more than 20 centimetres DBH without a permit.
- 2.2 Permit issued – compliance with conditions**
Where a permit has been issued under this by-law, no person shall injure, destroy, or permit or cause to be injured or destroyed, a tree in the Municipality unless they do so in accordance with the conditions of the permit and any other supporting documentation relevant to the issuance of the permit.

ARTICLE 3 EXEMPTIONS

- 3.1 Permit not required – trees within woodlots**
Notwithstanding Article 2 of this by-law, a permit is not required for the injury or destruction of trees within woodlands that are governed by the York Region Forest Conservation By-law.

- 3.2 Permit not required – trees within buildings or structures**
Notwithstanding Article 2 of this by-law, a permit is not required for the injury or destruction of a tree within a building or structure, a solarium, rooftop garden, an interior courtyard having a soil depth of less than 1.5 metres above a built substructure, nursery and a fruit tree that provides fruit for human consumption.
- 3.3 Permit not required – tree in a tree farm**
Notwithstanding Article 2 of this by-law, a permit is not required for the injury or destruction of a tree in a tree farm that is being actively managed and harvested for the purposes for which they were planted.
- 3.4 Permit not required – tree in cultivated orchard**
Notwithstanding Article 2 of this by-law a permit is not required for the injury or destruction of a tree in a cultivated orchard.
- 3.5 Permit not required – dead, diseased, hazardous tree**
Notwithstanding Article 2 of this by-law, a permit is not required for the removal of a dead, diseased or hazardous tree, or a portion of such a tree, where a certificate confirming the need for removal has been issued by an Arborist and submitted to the Commissioner.
- 3.6 Permit not required – emergency work**
Notwithstanding Article 2 of this by-law, a permit is not required for the injury or destruction of trees for emergency work.
- 3.7 Permit not required – pruning**
Notwithstanding Article 2 of this by-law, a permit is not required for pruning.
- 3.8 Permit not required – work by permitted authority**
Notwithstanding Article 2 of this by-law, a permit is not required for activities or matters undertaken by a municipality or a local board thereof.
- 3.9 Permit not required – license issued under the *Crown Forest Sustainability Act***
Notwithstanding Article 2 of this by-law, a permit is not required for activities or matters authorized under a license issued under the *Crown Forest Sustainability Act, 1994*.
- 3.10 Permit not required – surveying**
Notwithstanding Article 2 of this by-law, a permit is not required for the injuring or destruction of trees by a person licensed under the *Surveyors Act* R.S.O. 1990, c. S.29, as amended to engage in the practice of cadastral surveying or his or her agent, while making a survey.
- 3.11 Permit not required – matters under Planning Act**
Notwithstanding Article 2 of this by-law, a permit is not required for the injuring or destruction of trees imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under section 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 (including the injury or destruction of a tree in compliance with a tree preservation plan).
- 3.12 Permit not required – condition of development permit**
Notwithstanding Article 2 of this by-law, a permit is not required for the injuring or destruction 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.
- 3.13 Permit not required – transmitter or distributor of electricity**
Notwithstanding Article 2 of this by-law, a permit is not required for the injuring or destruction 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.

- 3.14 Permit not required – pit or quarry license**
Notwithstanding Article 2 of this by-law, a permit is not required for the injuring or destruction of trees undertaken on land described in a license for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*.
- 3.15 Permit not required – pit or quarry land**
Notwithstanding Article 2 of this by-law, a permit is not required for the injuring or destruction of trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land,
- a) that has not been designated under the *Aggregate Resources Act* or a predecessor of that *Act*, and
 - b) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the Planning Act.
- 3.16 Permit not required – trees on Town streets**
This By-law shall not apply to trees to which Chapter 821 of the Town of Richmond Hill Municipal Code applies.

ARTICLE 4 ADMINISTRATION

- 4.1 Administration authority – delegated to Commissioner**
The Commissioner is responsible for the administration of this by-law and is hereby delegated the authority to receive certificates, applications and required fees, and to issue or refuse to issue permits, including conditions thereto, in accordance with this by-law.
- 4.2 Plant Protection Act – Commissioner's Power of Entry**
The Commissioner or Tree By-law Preservation Officer, once designated as an inspector by the President of the Canadian Food Inspection Agency, for the purposes of the *Plant Protection Act, S. C. 1990, c.22*, has the authority to inspect for the presence of pests and to take action including the removal of trees on all public and private property, in accordance with that Act.
- 4.3 Tree Preservation By-law Officer – delegation – authority**
A Tree Preservation By-law Officer as defined in section 1.24 of this By-law is hereby delegated the authority to enforce this By-law, administer, review and refuse or issue permits, including conditions thereto, in accordance with this By-law and conduct inspections of property pursuant to the exercise of their delegated authority under this By-law.

ARTICLE 5 CERTIFICATE REQUIREMENTS

- 5.1 Certificate of arborist – required**
Notwithstanding section 3.5, and subject to sections 3.6 and 5.2, no person shall injure or remove a dead, diseased or hazardous tree within the Municipality without first submitting to the Commissioner for approval, a certificate prepared by an Arborist or Professional Forester confirming that the tree is dead, diseased or hazardous.
- 5.2 Certificate of arborist provided – time limit after work completed**
Notwithstanding section 3.6, the owner shall within seventy-two hours of the completion of any emergency work submit to the Commissioner, a certificate prepared by an Arborist or Professional Forester confirming the need, nature and extent of the emergency work performed together with photographs depicting the condition of the tree removed immediately prior to its removal.

**ARTICLE 6
APPLICATION REQUIREMENTS**

6.1 Application – for permit

An owner who wishes to injure or destroy a tree shall submit to the Commissioner an application on the prescribed form and shall provide the following:

- a) The name, address and telephone number of the applicant;
- b) The non-refundable permit application fee;
- c) The purpose for which the permit is required; and,
- d) An Arborist's Report.

6.2 Offence – false or misleading information

It is an offence under this by-law to submit false or misleading information in support of a permit application.

6.3 Application fee – Commissioner authorized to waive

The Commissioner is authorized to waive the permit application fee for owners living below the low-income cut-off as determined by Statistics Canada.

**ARTICLE 7
ISSUE OF PERMIT**

7.1 Permit approval – process

Following receipt of an application, the Commissioner shall:

- a) Make decisions as to whether or not a permit will be issued, and whether any conditions will be imposed on a permit, by considering criteria, including but not limited to, the following:
 - i) The species of the tree;
 - ii) The condition of the tree;
 - iii) The location of the tree;
 - iv) The protection of ecological systems and their functions, including the protection of native flora and fauna;
 - v) Erosion, sedimentation of watercourses, and flood control;
 - vi) Impacts to surrounding properties, including loss of shade, vistas or privacy; and
 - vii) The cultural heritage value of the tree.
- b) Confer with such persons and agencies as he considers necessary for the proper review of the application to determine whether or not a permit should be issued and any conditions thereto.
- c) Enter and inspect the lands upon which the tree is located as he considers necessary and the submission of the application shall be deemed permission to enter.

7.2 Permit not approved – application requirements not fulfilled

The issuance of a permit shall not be approved where the application requirements of this by-law have not been fulfilled.

7.3 Permit not approved – subdivision not yet draft approved

The issuance of a permit shall not be approved where an application for subdivision approval or consent related to lands on which the tree is located has been submitted to the Municipality and has not received draft approval or provisional consent.

- 7.4 Permit not approved – planning application not approved**
The issuance of a permit shall not be approved where a rezoning application, an application for site plan approval, or an application to amend the official plan related to the lands on which the tree is located has been submitted to the Municipality and has not received final approval.
- 7.5 Permit not approved – tree is endangered species**
The issuance of a permit shall not be approved where the tree is an endangered species as defined in the *Endangered Species Act, R.S.O., 1990*, or the *Species at Risk Act, 2002*.
- 7.6 Permit not approved – contravention of *Migratory Birds Act***
The issuance of a permit shall not be approved where approval would be in contravention of the *Migratory Birds Act, 1994*.
- 7.7 Permit not approved – permit required by York Region Forest Conservation by-law**
The issuance of a permit shall not be approved where Issuance of a permit pursuant to the York Region Forest Conservation By-law, or its successor, is required;
- 7.8 Permit not approved – inconsistent with approved tree preservation plan**
The issuance of a permit shall not be approved where approval is inconsistent with an approved tree preservation plan.
- 7.9 Permit approved – subject to conditions**
A permit to injure or destroy a tree may be subject to conditions imposed by the Commissioner, which may include requirements for:
- a) The submission of landscaping or restoration plans and associated maintenance plans;
 - b) Replacement plantings at another suitable location, or a cash in lieu payment (in an amount equal to 120 percent of the cost of replanting and maintaining the trees for a period of two years), where restoration planting is not physically possible on the site for which the permit is being issued;
 - c) The submission of a written undertaking and release to ensure that replacement plantings are carried out and maintained in accordance with landscaping and restoration plans approved by the Commissioner;
 - d) Undertaking the tree cutting work only under the supervision of an Arborist.
- 7.10 Permit issued – expiry date**
Every permit issued shall expire twelve (12) months after issuance.
- 7.11 Permit issued – expiry date – extended**
Notwithstanding section 7.10, the Commissioner may extend the expiration date of a permit. In considering whether or not to grant a request to extend a permit, the Commissioner shall take into account to what extent the work authorized by the permit has occurred, and to what extent the conditions of the permit have been adhered to and in no case shall the Commissioner extend a permit so that the permit remains in effect for more than two (2) years from the original date of its issuance.
- 7.12 Permit issued – posted conspicuously**
Following issuance of a permit, the permit shall be immediately posted by the owner in a conspicuous place on the subject property and the permit shall remain posted until the work is complete.
- 7.13 Permit revoked – by Commissioner**
The Commissioner may revoke a permit issued pursuant to this by-law if it was issued based on false or misleading information.

ARTICLE 8 SEVERABILITY

8.1 Severability

If a court of competent jurisdiction declares any provision, or any part of a provision of this by-law to be invalid or to be of no force and effect, it is the intention of the Council in enacting this by-law, that each and every other provision of this by-law authorized by law, be applied and enforced in accordance with its terms, to the extent possible, according to law.

ARTICLE 9 ENFORCEMENT

9.1 Enforcement – Inspection by officer

Pursuant to subsection 436(1) of the Municipal Act, a Tree Preservation By-law Officer may, at any reasonable time, enter and inspect any land to determine whether this by-law, a direction or order under this by-law, or an order made pursuant to subsections 431 of the of the Municipal Act is being complied with. Pursuant to section 438 of the Municipal Act a Tree By-law Preservation Officer may undertake inspections pursuant to orders issued pursuant to section 438 of the Municipal Act.

9.2 Inspection – powers

For the purpose of an inspection carried out pursuant to section 9.1 of this By-law a Tree Preservation By-law Officer may: require the production for inspection of documents or things relevant to the inspection; inspect and remove documents or things relevant to the inspection for the purpose of making copies and extracts; require information from any person concerning a matter related to the inspection; and alone or in conjunction with a person possessing special expert knowledge make examinations or take tests, samples or photographs necessary for the purposes of the inspection.

9.3 Contravention of By-law – order issued

If a Tree By-law Preservation Officer is satisfied that a contravention of this by-law has occurred, he or she may make an order: requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity; and/or do work to correct the contravention.

9.4 Contravention – offences

Any person who contravenes any provision of this by-law or an order issued pursuant to subsection 9.3 of this By-law is guilty of an offence. Pursuant to subsection 429(2)(a) of the Municipal Act all contraventions of this By-law or orders issued under subsection 9.3 of 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 certainty when multiple trees are injured or destroyed the injury or destruction of each tree is a separate offence.

9.5 Fines – for contravention

On conviction of an offence under this By-law a person is liable to a fine in accordance with subsection 429 of the Municipal Act and the following rules made pursuant to subsection 429 of the Municipal Act:

- (a) The minimum fine for any offence is \$300.00;
- (b) The maximum fine for offence as set out in subsection (c) and (d) below does not apply to special fines as provided for in section 9.6 of this By-law;
- (c) 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. The total of all daily fines for the offence is not limited to \$100,000.00; and
- (d) 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. The total of all fines for each included offence is not limited to \$100,000.00

9.6 Special Fines – No Maximum

On conviction of an offence under this By-law a person is liable to a special fine in accordance with Subsection 429(2)(d) of the Municipal Act. The amount of the special fine will be the minimum fine as provided for in Section 9.5 of the By-law to which may be added the amount of economic advantage or gain that the person has obtained or can obtain from the contravention of the By-law and/or order issued pursuant to Section 9.3 of this By-law. Pursuant to Subsection 429(3)(1) of the Municipal Act a special fine may exceed \$100,000.00.

9.7 Conviction of an offence – additional remedy

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 order the person to plant or replant trees in such manner and within such a period of time as the court considers appropriate, including any arboricultural treatment necessary to re-establish the tree or have the tree re-established.

9.8 Presumption – Owner

If a contravention of this By-law or an order issued pursuant to Section 9.3 of this By-law occurs the contravention is presumed to have been committed by the owner of the property on which the contravention has occurred unless otherwise proven by the owner.

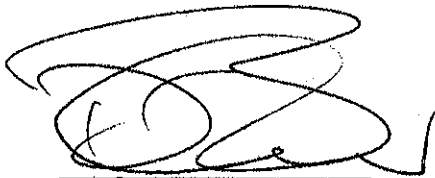
**ARTICLE 10
EFFECTIVE DATE**

10.1 Effective date

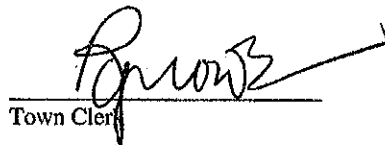
This by-law shall come into force and take effect on the day of the final passing thereof.

READ A FIRST AND SECOND TIME THIS 19TH DAY OF MARCH, 2007.

READ A THIRD TIME AND PASSED THIS 19TH DAY OF MARCH, 2007.



Mayor **Dave Barrow**



Town Clerk

/gc

THE CORPORATION OF THE TOWN OF AURORA

By-law Number 4474-03.D

BEING A BY-LAW to Authorize the Injury or Destruction of Trees (Tree Permit By-law)

WHEREAS the Council of The Corporation of the Town of Aurora recognizes the ecological and aesthetic value of trees and is desirous of managing the injury and destruction of trees;

AND WHEREAS Section 135 (7) of the *Municipal Act, 2001*, R.S.O. 2001, c. 25 provides that a by-law passed may require a permit be obtained to injure or destroy trees and to impose conditions to a permit, including conditions relating to the manner in which destruction occurs and the qualifications of persons authorized to injure or destroys trees;

AND WHEREAS section 135(1) of the *Municipal Act, 2001* authorizes a local municipality to prohibit or regulate the injuring or destruction of trees;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF AURORA ENACTS AS FOLLOWS:

DEFINITIONS

1. In this By-law,

"application" means a tree permit application form provided by the Town;

"arborist" means a person with a diploma or degree involving arboriculture from an accredited college or university, a Registered Professional Forester, an accredited Certified Arborist under the International Society of Arboriculture or with a demonstrated history of tree preservation experience;

"arborist report" means a report prepared by an arborist which provides details on the species, size and health of a tree to be destroyed, injured or removed;

"base diameter" means the measurement of the diameter of the trunk of a tree from outside the bark at the existing grade of the ground adjoining its base or where there are multiple stems on a tree, means the total of the diameters of the three (3) largest stems measured at existing grade;

"Clerk" means the Clerk of The Corporation of the Town of Aurora or his duly appointed designate;

"Council" means the Council of The Corporation of the Town of Aurora;

"dead" means a tree that has no living tissue;

"dying" means a tree that is infected by a lethal pathogen or where 70% or more of its crown is dead;

"emergency work" means the work necessary to terminate an immediate threat to life or property;

"golf course" means an area of land laid out and operated as a golf course and includes putting greens and driving ranges;

"hazard" means a tree that is a potential hazard to property or life but not an immediate threat;

"injure or destroy a tree" means the injury or destruction of a tree by removal, cutting, girdling of the tree or roots, interfering with the water supply, application of chemicals, compaction and regrading within the drip line of the tree, or by other means including irreversible injury which may result from neglect, accident or design but does not include pruning;

"lands" means a lot only and does not include a building;

"lot" means a parcel of land having specific boundaries which is capable of legal transfer;

"Manager" means the Park Manager of the Leisure Services Department for the Town or his/her designate;

"nursery" is a lot on which the principal business of selling plants, shrubs and trees occurs;

"owner" means the registered owner of a lot, his respective successors and assigns or his authorized agent;

"officer" means a person authorized to perform inspections pursuant to this By-law;

"permit" means a permit required by this By-law to injure or destroy a tree on private property within the Town .

"person" means an individual, his heirs, executors and administrators and his respective successors and assignees and includes a corporation and its directors and officers;

"pruning" means the appropriate removal in accordance with good arboricultural practices of not more than one-third of the live branches or limbs of a tree or more than one third of the live branches or limbs on a tree as part of a consistent annual pruning program;

"Town" means The Corporation of the Town of Aurora;

"tree" means a self-supporting woody plant which has reached or will reach a height of at least 4.5 m at maturity;

"tree diameter" means the measurement of the diameter of the trunk of a tree from outside the bark 1.4 m above existing grade of the ground adjoining its base or where there are multiple stems on a tree, means the total of the diameters of the three (3) largest stems measured approximately 140 cm above existing grade;

SCOPE

2. This By-law shall apply to all private property in the Town.

PERMIT REQUIREMENTS AND EXCEPTIONS

3. (1) No person shall injure or destroy five (5) or more trees each with either a tree diameter greater than 20 cm or a base diameter greater than 40 cm on a lot within any one year period without first obtaining a permit pursuant to this By-law.

- (2) Despite subsection (1), a permit is not required:
 - (a) for emergency work;
 - (b) for the pruning of a tree;
 - (c) for the removal of dead branches;
 - (d) to injure or destroy trees located on rooftop gardens, interior courtyards, or solariums; or
 - (e) to injure or destroy trees on a nursery or golf course.

FILING FOR A PERMIT

4. An Owner who applies for a permit shall submit to the Manager the following:
 - (1) a completed application;
 - (2) a plan or drawing of the lot to the satisfaction of the Manager illustrating which trees are to be injured or destroyed;
 - (3) payment of the required fees prescribed by the Fees and Services By-law;
 - (4) an arborist report, if required by the Manager;
 - (5) where the base of a tree straddles a property line the written consent to the permit issuance from the affected adjacent property owner; and
 - (6) where the person is not the owner the written authorization of the owner consenting to the application.

REVIEW OF A PERMIT APPLICATION

5. (1) The Manager shall review all completed applications based on the following criteria:
 - (a) the trees are dead or dying;
 - (b) the trees are a hazard;
 - (c) the tree location conflicts with any of the following:
 - (i) proposed building permit plans that comply with the zoning of the land;
 - (ii) a proposed pool enclosure; or
 - (iii) the expansion of parking areas that complies with the zoning of the land;
 - (d) there will be no negative impact on flood or erosion control, or slope stability; or
 - (e) the lot is designated under the *Heritage Act* R.S.O. 1990, c. 0.18, as amended, and the Town of Aurora's Heritage Advisory Committee has approved the injury or destruction of the tree.

CONDITIONS OF THE ISSUANCE OF A TREE PERMIT

6. Town Council may issue a permit and impose conditions.

COUNCIL'S CONSIDERATION OF AN APPLICATION

7. Where the Manager receives an application for a permit, the Manager shall prepare a report forthwith to be heard by Council.
8. The Owner may appear before Council to make representation regarding the application by notifying the Clerk.
9. The Owner shall post on the property where the trees that are the subject of the application are located a sign supplied by the Town advising of the date of the Council meeting in which the application for a permit will be considered, the intent of the permit and the name of the Town official to contact for further information. The sign shall be posted on the property in a location visible from the street edge for minimum period of two weeks before the Council meeting.

REVOCAION OF PERMIT

10. Council may revoke a permit issued pursuant to this By-law if it was issued because of mistaken, false or incorrect information received from the owner.

APPEAL TO THE ONTARIO MUNICIPAL BOARD

11. An Owner may appeal to the Ontario Municipal Board under the following circumstances:
- (a) If the municipality refuses to issue a permit, within 30 days after the refusal;
 - (b) If the municipality fails to make a decision on the application, within 45 days after the application is received by the clerk or
 - (c) If the Owner objects to a condition in the permit, within 30 days after the issuance of the permit.

PERMIT APPROVALS

12. The approval of a permit shall be valid for only one (1) year from the date of issuance.

POSTING OF PERMIT

13. The approved tree permit shall be posted on the lot from which the trees are to be injured or destroyed in a location visible from the street edge for the period during which the trees are being injured or destroyed.

INSPECTION

14. The Council may from time to time designate officers to carry out the administrative functions of this By-law including the enforcement thereof.
15. An officer may at any reasonable time enter and inspect any lands to which this By-law applies to determine whether the By-law, an order or a condition to a permit is being complied with.
16. An officer, in carrying out an inspection, can be accompanied by assisting personnel.

17. Where an officer is satisfied that a contravention of this By-law has occurred, the officer may make an order requiring the person who contravened the by-law or who caused or permitted the injuring or destruction of trees in contravention of the by-law to stop the injuring or destruction of trees.
18. A order issued pursuant to section 17 shall set out the municipal address or legal description of the land, reasonable particulars of the contravention and the period within which there must be compliance with the order.
19. A person shall comply forthwith with an order as issued by the officer.

EXEMPTIONS

20. A By-law passed under this section does not apply to,
 - (a) any activities or matters undertaken by the Town, the Region, the School Boards for the development of a school or any other government authority, conservation authority or utility corporation;
 - (b) activities or matters undertaken under a license issued under the *Crown Forest Sustainability Act, 1994*;
 - (c) the injuring or destruction of trees by a person licensed under the *Surveyors Act* to engage in the practice of cadastral surveying or his or her agent, while making a survey;
 - (d) the injuring or destruction of trees imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under section 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;
 - (e) the injuring or destruction 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;
 - (f) the injuring or destruction of trees by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998*, for the purpose of construction and maintaining a transmission system or distribution system, as those terms are defined in that section;
 - (g) the injuring or destruction of trees undertaken on land described in a license for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*;
 - (h) the injuring or destruction of trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land
 - (i) that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act, and
 - (ii) on which a pit or quarry is a permitted land use under a By-law passed under section 34 of the *Planning Act*.

OFFENCES

21. (1) Any person who contravenes any provision of this By-law is guilty of an offence is liable:
 - (a) on a first conviction, to a fine of not more than \$10,000 or \$1,000

per tree, whichever is greater; and

- (b) on any subsequent conviction, to a fine of not more than \$20,000 or \$2,500 per tree whichever is greater.
- (2) Any a corporation that contravenes any provision of this By-law and is guilty of an offence is liable:
- (a) on a first conviction, to a fine of not more than \$50,000 or \$5000 per tree, whichever is greater; and
 - (b) on a subsequent conviction, to a fine of not more than \$100,000 or \$10,000 per tree whichever is greater.

SHORT TITLE

22. This By-law may be referred to as the "Tree Permit By-law".

READ A FIRST, SECOND AND THIRD TIME AND ENACTED THIS 28TH DAY OF OCTOBER, 2003.

T. JONES, MAYOR

B. PANIZZA, TOWN CLERK