



The Municipal Corporation of the Town of Fort Erie

By-law XX-2023

Being a By-law to Regulate the Destruction or Injuring of Trees within Fort Erie

Whereas subsection 5(3) of the Municipal Act, 2001, S.O. 2001, c.25, as amended ("Municipal Act, 2001") provides that a municipal power shall be exercised by by-law; and

Whereas section 9 of the Municipal Act, 2001 provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Municipal Act, 2001 or any other Act; and

Whereas subsection 10(1) of the Municipal Act, 2001 provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public; and

Whereas subsection 10(2) of the Municipal Act, 2001 provides that a municipality may pass by-laws respecting: in paragraph 5, Economic, social and environmental well-being of the municipality, including respecting climate change; in paragraph 6, Health, safety and well-being of persons; in paragraph 7, Services and things that the municipality is authorized to provide under subsection (1); in paragraph 8, Protection of persons and property; in paragraph 9, Animals; and

Whereas pursuant to subsection 135(1) of the Municipal Act, 2001, without limiting sections 9 and 10, a municipality may prohibit or regulate the destruction or injuring of Trees; and

Whereas pursuant to subsection 135(7) of the Municipal Act, 2001, without limiting sections 9 and 10, a municipality may require that a permit be obtained to injure or destroy Trees, and impose conditions to a permit, including conditions relating to the manner in which destruction occurs and the qualifications of persons authorized to injure or destroy Trees; and

Whereas subsection 391(1) of the Municipal Act, 2001 provides that a municipality may impose fees and charges on persons; and

Whereas section 425 of the Municipal Act, 2001 provides that a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality passed under the statute is guilty of an offence; and

Whereas sections 429, 431, 444 and 445 of the Municipal Act, 2001 provide for a system of fines and other enforcement orders; and

Whereas section 434.1 of the Municipal Act, 2001 authorizes a municipality to establish a system of administrative monetary penalties to assist the municipality in promoting compliance with its by-laws; and

Whereas the Council of The Corporation of the Town of Fort Erie has determined that it is desirable to enact a By-law to generally prohibit the Injury and Destruction of Protected Trees, and to allow for the Injury and Destruction of such Trees in limited circumstances with a Permit, and to encourage preservation and planting of Trees throughout the Town of Fort Erie;

Now therefore the Municipal Council of The Corporation of the Town of Fort Erie enacts as follows:

1.0 SHORT TITLE

1.0 The short title of this By-law is the "Tree By-law".

2.0 DEFINITIONS

2.1 The following terms are defined for the purposes of this By-law:

"Administrative Penalty" means a monetary penalty administered pursuant to Town Bylaw No. 111-2019, as amended from time to time.

"Agricultural Operation" has the same meaning as in the Farming and Food Production Protection Act, 1998, S.O. 1998, c. 1.

"Agricultural Use" means the means farm-related commercial and farm-related industrial uses that are small in scale, directly related to agriculture and requiring proximity to farm operations and includes such uses as animal husbandry services, produce or grain storage facilities or farm machinery sales and service outlets.

"Applicant" means the owner or the owners authorized representative who, pursuant to this By-law, applies for a permit.

"Application" means an application for the purpose of obtaining a permit.

"Application Fee" means the fee in effect, amended from time to time, required in connection with the submission of an Application.

"Arborist" means an arborist qualified by the Ontario Ministry of Training, Colleges and Universities; a certified arborist with the International Society of Arboriculture; a consulting arborist registered with the American Society of Consulting Arborists; or a Registered Professional Forester.

"Arborist Report" means a written report by an Arborist that shall contain the following:

- (a) the location, species, size, Tree Protection Zone and condition of Trees that will be Injured or Destroyed Trees and those Trees located within one Tree length of the Tree to be Injured or Destroyed, included in tabular format and as shown on a map;
- (b) a drawing of the Site showing any proposed development, construction, works, excavation or site alteration that may require the Tree Injury or Destruction, and a schedule for this proposed activity, including start and end dates;
- (c) the Arborist's opinion why a Tree should be Injured or Destroyed, and whether it represents Good Arboricultural Practices or Good Forestry Practices;
- (d) description of how the Tree is proposed to be Injured or Destroyed;
- (e) an analysis and description of any reasonable alternatives to the Tree Injury or Destruction or an analysis and description as to why there are no reasonable alternatives to the Tree Injury or Destruction;
- (f) confirmation of any other matters (past or present Planning applications or otherwise affecting the land upon which the Tree or Trees are to be Injured or Destroyed);
- (g) calculation of the number of Replacement Trees that can be planted on the Site based on Schedule B, and suggest the species and location;
- (h) if Trees are to be Injured but not Destroyed, description of maintenance strategies and protection measures to be implemented;
- (i) the professional accreditation of the Arborist.

By-Law No. XX-2023

"Boundary Tree" means a Tree having any part of its trunk located on the property line between adjoining lands, and for the purpose of this definition a 'trunk' means that part of the Tree from its point of growth away from its roots up to where it branches out to limbs and foliage.

"Building Permit" means a building permit issued by the Town of Fort Erie under the Building Code Act, 1992, S.O. 1992, c.23, as amended.

"Coppice Growth" means clump growth where more than one Tree stem grows from a single Tree stump and the point of measurement for such growth means that point on each stem measured immediately above the point of fusion, provided such point of fusion is less than 1.37 metres above the highest point of undisturbed ground at the base of the coppice or clump growth.

"Conservation Authority" has the same meaning as defined in the Conservation Authorities Act, R.S.O. 1990 c.C.27.

"Construction" means erection, alteration, repair, dismantling, demolition, structural maintenance, land clearing, earth moving, grading, excavating, laying of pipe and conduit (whether below or above ground level), street and highway building, application of concrete, equipment installation and alteration, and structural installation of construction components and materials, in any form or for any purpose.

"Council" means the Council of The Corporation of the Town of Fort Erie.

"Critical Root Zone" means the distance from the trunk of the Tree that equals one centimeter for every centimeter of the tree's diameter.

"DBH" or "Diameter at Breast Height" means the diameter of the stem of a Tree measured at a point that is 1.37 metres above the ground.

"Dead Tree" means a Tree that as a result of any cause, is dead or, is in advanced and irreversible decline in health or condition.

"Destroy" means to cut down, remove, uproot, unearth, topple, burn, bury, shatter, poison, or in any way cause a Tree to die or be killed, or where the extent of Injury caused to a live Tree or disturbance of any part of its Critical Root Zone is such that it is likely to die or be killed, excepting where a Tree and/or its roots are killed by natural causes. The terms "Destroyed" and "Destruction" shall have a corresponding meaning.

"Diameter" means the diameter of the stem of a Tree measured at the Point of Measurement with such measurement including the bark of the stem.

"Director" means the Town's Director of Planning and Development Services or any person appointed or otherwise delegated the authority of administration of this by-law.

"Emergency Services" means the fire, police, ambulance or any Town services when responding to an emergency event.

"Exemption Letter" means a letter provided by the Town confirming that Tree Injury or Destruction is exempt from this By-law

"Farmer" means a person who has a current and valid farm registration number under the Farm Registration and Farm Organizations Funding Act, 1993, S.O. 1993, c. 21, as amended.

"Good Arboriculture Practices" means the proper implementation of maintenance renewal and removal activities known to be appropriate for individual trees to minimize detrimental impacts on urban forest value.

"Good Forestry Practices" means:

By-Law No. XX-2023

- a) the proper implementation of harvest, renewal and maintenance activities known to be appropriate for the forest and environmental conditions under which they are being applied and that minimize detriments to forest values, including: significant ecosystems; important fish and Wildlife Habitat; soil and water quality and quantity; forest productivity and health; and the aesthetic and recreational opportunities of the landscape;
- b) the cutting and removal of hazardous, severely damaged, diseased and insect-infested trees which must be removed in order to prevent contamination or infestation of other trees or because they no longer contribute to the achievement of forest values;
- c) in the case of hazardous, damaged, diseased or insect-infested trees, the maintenance of a Woodland after the cutting and removal is completed unless it is determined through a report prepared by Qualified OPFA Member that trees must be removed and a Woodland would not be maintained; and,
- d) the forestry management practices as set out in the Ministry of Natural Resources document "A Silvicultural Guide to Managing Southern Ontario Forests";

"Harvesting" means the Injury or Destruction of a Tree through cutting or other mechanized means. The term "Harvested" and "Harvest" shall have a corresponding meaning.

"Hazardous" means destabilized or structurally compromised to an extent that an imminent danger of death, injury or structural damage exists.

"Heritage Tree" means a Tree having historical or community significance and designated by Council under Part IV of the Ontario Heritage Act (R.S.O.1990, Chapter O.18).

"Injury" or **"Destruction"** means to cut down, remove, uproot, unearth, topple, burn, bury, shatter, poison, or in any way cause a Tree to die or be killed, or where the extent of Injury caused to a live Tree or disturbance of any part of its Critical Root Zone is such that it is likely to die or be killed, excepting where a Tree and/or its roots are killed by natural causes. The terms "Injury", "Injured", "Injuring", "Destroy", "Destroying" or "Destroyed" shall have a corresponding meaning.

"Inspector" means an inspector appointed by the Town for the purpose of enforcing the Building Code Act, 1992, S.O 1992, c. 23.

"Normal Farm Practice" means a practice that is recognized by the Normal Farm Practices Board which is conducted in a manner consistent with proper and acceptable customs and standards, as established and followed by similar Agricultural Operations under similar circumstances, or makes use of innovative technology in a manner consistent with proper advanced farm management practices.

"Officer" means a Municipal Law Enforcement Officer, a member of the Niagara Regional Police Service, a member of the Ontario Provincial Police and any other Provincial Offences Officer designated under the Provincial Offences Act, R.S.O. 1990, c. P.33 ("Provincial Offences Act") or any person appointed or otherwise delegated the authority of enforcement of this by-law.

"Official Plan" means the Official Plan of The Town of Fort Erie.

"Order" means an Order to Discontinue Activity or an Order to Comply.

"Owner" or "Property Owner" means the registered owner of a property.

"Permit" means a permit to Injure or Destroy Trees issued under this By-law.

"Permit Holder" means the property owner to whom a Permit has been issued.

"Person" or "Persons" means an individual, corporation, partnership or association and their respective heirs, executors, administrators or other duly appointed representatives.

"Personal Use" means use that does not include a commercial sale, exchange or other disposition of Trees Injured or Destroyed.

"Point of Measurement" means the point on a Tree trunk measured above the highest point at which the ground meets the Tree. For Coppice Growth the point of measurement shall be at the point on the Tree trunk where the Tree stems separate provided that such point of separation is less than 1.37 metres from where the ground meets the Tree.

"Pre-Consultation Meeting" means a meeting held between the Town and a Property Owner or their designate where information is provided regarding a proposed development and the Town has issued a formal agreement

"Property" means any land or premises within the Town.

"Pruning" means the removal of live or dead branches from a tree.

"Qualified Person" means a person who, in the opinion of the Director, has satisfactory qualification, experience, education or knowledge to be an expert in the matter.

"Region" means The Regional Municipality of Niagara.

"Replacement Tree" means a Tree of a size and type determined by the Town that is required to be planted to replace a Tree Destroyed or Injured pursuant to a Permit.

"Security" means a financial deposit in a form of a irrevocable letter of credit or other type(s) of financial security acceptable to the Town from a financial institution to specify and submit a sum of money to the Town as determined by the Director as a condition of a Permit.

"Site" means the Property where activities subject to this By-law are planned or executed, and in the case of a tract of land that extends over multiple landholdings, each separate landholding is a separate "Site."

"Town" means The Corporation of the Town of Fort Erie or the geographic area of the municipality, as the context requires.

"Tree" or **"Trees"** means any living species of woody perennial plant, including its root system, which has reached or can reach a height of at least 4.5 meters at physiological maturity.

"Tree Preservation Plan" means a plan, prepared by a Qualified OPFA Member or Certified Arborist, for the purpose of protecting and preserving Trees on properties where development or disturbance of Trees is to occur.

"Natural Heritage System" means any geographic area of the Town shown as shown on Schedule D of this By-law.

"Urban Boundary" means the Urban Growth Boundary as shown on Schedule A of the Town's Official Plan.

"Woodland" or **"Woodlands"** means land on one or more properties with a density of at least:

- (a) 1,000 Trees, of any size, per hectare; or
- (b) 750 Trees, measuring over five (5) centimetres in Diameter at DBH, per hectare; or
- (c) 500 Trees, measuring over twelve (12) centimetres, in Diameter at DBH, per hectare; or
- (d) 250 Trees, measuring over twenty (20) centimetres, in Diameter at DBH, per hectare;

but does not include:

- (a) cultivated fruit or nut orchard;
- (b) a plantation established for the purpose of producing Christmas Trees and which is being actively managed and Harvested for the purposes for which it was planted, except that this does not refer to plantations that have ceased being managed or Harvested for their intended purpose for a period of 15 years or more; or

By-Law No. XX-2023

- (c) a bona fide Tree nursery that is being actively managed and Harvested for the purposes for which it was planted;
- (d) a hedgerow or windrow less than 20 meters in width.

"Zoning By-law" means the Town's Zoning By-law.

3 SCOPE

3.1 This By-law applies to private Property in the Town:

- (a) To Trees of any size within the Natural Heritage System;
- (b) To Trees greater than or equal to 30cm DBH within the Urban Boundary;
- (c) To Trees designated as a Heritage Tree under Part IV or Part V of the Ontario Heritage Act;
- (d) To Trees of any size located on lands upon which there is pending an application for a plan of subdivision, a plan of condominium, a severance or consent, an Official Plan amendment, a Zoning Bylaw amendment, a minor variance, or a site plan approval;
- (e) To Trees of any size located on lands upon which there has been a Pre-Consultation meeting held with the Town for a plan of subdivision, a plan of condominium, a severance or consent, an Official Plan amendment, a Zoning Bylaw amendment, a minor variance, or a site plan approval and the Pre-consultation Meeting was held no more than one year prior;
- (f) To Trees of any size identified as a Tree in a Tree Preservation Plan submitted as part of a development application;
- (g) To Replacement Trees planted as a requirement of a permit issued under the By-law

3.2 This By-law applies to public Property in the Town:

- (a) To Trees of any size

4 EXEMPTIONS

4.1 This By-law does not apply to:

- (a) activities or matters undertaken by a municipality or a local board of a municipality;
- (b) activities or matters undertaken under a licence 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 constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
- (g) the injuring or destruction of Trees undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the Aggregate Resources Act;

By-Law No. XX-2023

- (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;
- (j) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the Planning Act. 2001, c. 25, s. 135 (12); 2002, c. 17, Sched. A, s. 27 (3, 4).
- (k) Injury or Destruction of a Tree that is located within a building, a solarium, a rooftop garden, interior courtyard, actively managed golf course, cemetery, actively managed cultivated orchard, Tree farm or plant nursery;
- (l) Woodlands 1 ha in size or larger as defined by the Niagara Region Woodland Conservation By-law, or any successor by-law regulating the injury or destruction of Trees in Woodlands in the Niagara Region;
- (m) the Injuring or Destruction of Trees undertaken by a Conservation Authority;
- (n) the Injuring or Destruction of Trees at the direction of Emergency Services;
- (o) Pruning that is necessary to maintain the health and condition of the Tree and is carried out in accordance with Good Arboricultural Practices;
- (p) A Tree on lands operated by a railway;
- (q) Where a Property Standards Order or Lot Maintenance Order has been issued by an Officer for the removal of a Hazardous Tree.
- (a) The Harvesting, Injuring or Destruction of Trees by a Farmer that involves the clearing of Trees for Agricultural Use on land that is owned by the Farmer doing the clearing and is part of a farm operation or farm corporation that has existed for at least three (3) years prior to such clearing;
 - i. The clearing shall be carried out in accordance with Normal Farm Practices as defined in the Farming and Food Production Protection Act, 1998, S.O. 1998, c. 1, as amended, provided that:
 - ii. the land that is cleared is put into Agricultural Use within three (3) years of the date on which such clearing commences;
 - iii. the land being cleared for Agricultural Use is outside the Urban Boundary, and is designated in the Official Plan and zoned for Agricultural Use in the Zoning By-law.

5 GENERAL PROHIBITIONS

5.1 Subject to section 4.0 and section 8.0, no person shall Injure or Destroy a Tree or cause or permit the Injury or Destruction of a Tree without a permit or exception letter.

5.2 No person shall Injure or Destroy a Tree or cause or permit the Injury or Destruction of a Tree that is not in accordance with a permit.

5.3 No person shall fail to protect a Tree in accordance with all conditions of a Permit.

5.4 No person shall fail to comply with all conditions of a Permit.

5.5 No person shall fail to protect a Tree marked for preservation on an approved Tree Protection Plan submitted as part of a plan of subdivision, a plan of condominium, a severance or consent, an Official Plan amendment, a Zoning Bylaw amendment, a minor variance, or a site plan approval;

5.6 No person shall fail to comply with an Order issued under this By-Law.

5.7 No person shall provide false or misleading information on an Application.

5.8 No person shall remove an Order that has been posted to the affected land(s) without approval from the issuing Officer.

5.9 No person shall fail to notify the Town within 48 hours of the change of registered Ownership of the property within 1 year of when a permit has been issued.

By-Law No. XX-2023

5.10 No person shall obstruct or hinder, or attempt to obstruct or hinder, an Officer in the exercise of a power or the performance of a duty under this By-law.

6.0 Exceptions

6.1 Despite Section 5.1, a permit is not required under this By-law for the following activities provided that a written Exception Letter is provided by the Town:

- (b) the Injuring or Destruction of the following Tree species:
 - i. *Morus alba* (White Mulberry)
 - ii. *Rhamnus cathartica* (Common Buckthorn)
 - iii. *Rhamnus frangula* (Glossy Buckthorn)
 - iv. Black Alder (*Alnus glutinosa*)
- (c) The Harvest of Trees by the Owner of a Property for the for the purpose of heating a dwelling or for personal use maintained on the property which the Trees are located (or part thereof) where the Owner has been the registered Owner of the Property on which the Trees are located for a minimum of 2 years prior to the date of Harvest and provided that:
 - i. such activity is conducted consistent with Good Forestry Practices;
 - ii. no more than 10 Trees per hectare are Harvested, injured or destroyed in a calendar year

7.0 APPLICATION FOR PERMITS

7.1 If an Owner wishes to Destroy or Injure one or more of the Owner's Trees or wishes to undertake an activity which may Destroy or Injure one or more of the Owner's Trees, and if none of the exemptions or exceptions set out in this By-law are applicable, the owner shall submit an Application approved by the Town.

7.2 Applications for Permits will only be processed if:

- (a) the application form has been completed in full, duly signed and submitted to the Director;
- (b) the requirements that must be submitted with the application have been included;

7.3 Where the Tree is a Boundary Tree, the Applicant must provide the written consent of the other Owner.

7.4 An Application that does not meet the requirements will not be processed or approved and will be returned to the Applicant within 30 days.

8 PERMIT ISSUANCE

8.2 A permit shall be issued when all of the following are satisfied:

- (a) the Application is complete;
- (b) the Town is satisfied that one or more of the following grounds for permit issuance apply:
 - i. the Tree is a Dead Tree or Hazardous Tree;
 - ii. based upon the opinion of an Arborist, it is necessary to remove unsafe Trees;
 - iii. based on the opinion of the Director, the Tree or Trees are causing or are likely to cause structural damage to load-bearing structures or roof structures;
 - iv. based upon the opinion of a 'qualified person' (as defined in the Environmental Protection Act), the Tree Injury or Destruction is required to remediate contaminated soil;

- v. the Tree Injury or Destruction is required pursuant to a Building Permit where there are no reasonable alternatives to locating those utilities or infrastructure;
 - vi. based on the opinion of an Arborist and/or a Registered Professional Forester, the Tree Injury or Destruction represents Good Arboricultural Practices and/or Good Forestry Practices;
- (c) The Application Fee has been paid to the Town.

9.0 PERMIT CONDITIONS

9.1 Every Permit that is issued is subject to the following conditions determined by the Director, all of which shall be performed and observed by the Permit Holder:

- (a) the requirement for planting of Replacement Tree(s) in accordance with Schedule "B" or as may otherwise be determined appropriate by the Town having regard for the existing canopy coverage on the subject site;
- (b) the Permit Holder shall ensure that the number of Replacement Trees, and the species, or choice of species, size and location of Replacement Trees, are planted on the same Site by the date specified on the Permit;
- (c) where there is insufficient space on the same Site to plant all the Replacement Trees, the Permit Holder shall plant as many Replacement Trees the Site will allow and the Permit Holder shall forthwith pay the fee in Schedule "C" with respect to the number of Replacement Trees that could not be planted due to insufficient space (Fee for Off-Site Tree Planting);
- (d) The minimum tree replacement size is a 50 mm caliper deciduous tree, or a one hundred and fifty (150) centimeter height coniferous tree in a 5-gallon container or balled and bur lapped or in a wire basket;
- (e) security be delivered to the Town to cover the costs of the replacement tree(s), and the maintenance of the tree(s) for a period of up to two (2) years as determined in Schedule "C".

9.2 Notwithstanding any other provision of this By-law, the Director may impose terms and conditions on any Permit at issuance or at any time during the term of the Permit, including special conditions which can include, but are not limited to:

- (a) the manner and timing in which Injuring or Destruction is to occur;
- (b) the species, size, number and location of Trees to be Injured or Destroyed or to be planted;
- (c) the marking of trees to be cut with paint;
- (d) the forthcoming submission of additional information required before the permit comes into effect;
- (e) measures to be implemented to mitigate the direct and indirect effects of the Tree Injury or Destruction;
- (f) where Trees are proposed to be retained, and where an Arborist Report is required, identifying the location, species and size of Trees on the property and a Tree Protection Plan, including but not limited to barriers and hoarding for the purpose of avoiding the Injuring or Destruction of the Trees that are to be retained;
- (g) where there is a discrepancy in the health assessment regarding the condition of the Tree to be Injured or Destroyed, and where the Town of Fort Erie so requires, a written evaluation by an Arborist of the condition of the Tree; and
- (h) a condition recommended by a Qualified Person that the Town of Fort Erie determines is appropriate.

9.3 A Permit issued under this By-law shall be valid only for the period of time for which it is issued and shall not be transferable. Unless expressly stated on the face of the Permit, all Permits issued under this By-law shall expire 6 months after issuance.

9.4 A Permit may be renewed by the Director for up to two (2) additional one (1) year terms contiguous with the expiry date of the original Permit and after a written request from the Owner for

By-Law No. XX-2023

renewal is made to the Director, who must be satisfied that there are reasonable grounds for the renewal.

9.5 A Permit issued under the By-law does not relieve the Owner of any other applicable municipal, provincial, or federal by-laws, regulations or requirements

10.0 RESPONSIBILITY OF THE PERMIT HOLDER

10.1 The Permit Holder shall:

- (a) pay all fees associated with this By-Law;
- (b) ensure the use of the property is permitted or conforms with the uses permitted under the applicable Zoning By-Law or is a legal non-conforming use;
- (c) meet all of the conditions of the Permit;
- (d) ensure that they remain in compliance with applicable law(s), including but not limited to the Migratory Birds Convention Act, 1994, and the Endangered Species Act, 2007;
- (e) ensure that the Permit is posted in a public location for a time period before, during and after the Tree Injury or Destruction;
- (f) ensure that measures are implemented to protect any retained Trees;
- (g) ensure that the Town of Fort Erie is notified within 48 hours of change registered Ownership of the property;
- (h) ensure the posting of Security, that the Town of Fort Erie may draw upon in full if the By-Law is contravened or if there is a failure in the proper, complete execution of a Permit and its conditions and the Town has to restore all or part of the property;
- (i) ensure they comply with any requirements to protect or relocate wildlife; and
- (j) ensure they implement any measures outlined within an Arborist Report submitted with the Application within a period of time specified by the Town of Fort Erie.

11.0 PERMIT REFUSAL

11.1 The Town may deny, revoke, suspend or impose a term and/or condition on a Permit on any one or more of the following grounds:

- (a) the Tree is an endangered species or threatened species as defined in the Endangered Species Act, 2007, S.O. 2007, c. 6, or the Species at Risk Act, S.C. 2002, c. 29;
- (b) the Tree is designated under Part IV of the Ontario Heritage Act, R.S.O. 1990, c. O.18;
- (c) migratory birds are making use of the Tree, or migratory bird nests are in the Tree, as contemplated in the Migratory Birds Convention Act, 1994, S.C. 1994, c. 22;
- (d) the protection and preservation of ecological systems and their functions, including the protection and preservation of native flora and fauna;
- (e) erosion, flood control and sedimentation of watercourses;
- (f) any information contained in the Application form or any other information provided to the Town is inaccurate;
- (g) the Applicant, Owner or any person working under the authority of the Owner fails to comply with any condition of the Permit or this By-law;
- (h) the Applicant, owner or any person acting under the authority of the Owner is carrying on activities that are in contravention of this By-law;

- (i) there are reasonable grounds to believe that an Application or other documents provided to the Town by or on behalf of the Property Owner contains a false statement;
- (j) An application for rezoning, a consent, a minor variance, a plan of subdivision or a site plan to the land on which the Tree(s) is located has been submitted to the Town, but has not received final approval;
- (k) Issuance of a permit pursuant to the Niagara Region Woodland Conservation By-Law is required; and
- (l) An Application is inconsistent with an approved Tree Protection Plan.
- (m) the Permit was issued in error;
- (n) the Owner requests, in writing, that it be revoked;
- (o) the Permit is still valid, but there has been a change in the Legal Ownership of the land; and
- (p) the Town is satisfied that there is a material change in circumstances in connection with or on the Site and the Town is satisfied that the Permit needs to be revoked to avoid further Injury or Destruction of a Tree or Trees.

11.2 When denying a Permit, the Director shall notify the Applicant in writing and provide reasons for their decision to the Applicant.

12.0 ORDER TO DISCONTINUE ACTIVITY

12.1 Where there is a contravention of this By-law, an Officer may issue an Order requiring the owner or person who contravened the By-law or who caused or permitted the Injuring or Destruction of Trees to stop the Injuring or Destruction of Trees. The Order shall set out:

- (a) the municipal address or the legal description of the land;
- (b) particulars of the contravention;
- (c) the period within which there must be compliance with the Order.

12.2 An Order issued under this By-law may be served personally by way of mail and/or by electronic mail to the last known address and/or electronic mail address of:

- (a) the Owner of the Property in which the Trees are located;
- (b) the person, personal business or corporation identified as Injuring or Destroying on the land.

12.3 The Officer shall post the Order containing the terms of the Order on the affected lands. The placing of the Order shall be deemed to be sufficient and immediate service of the Order on the Person to whom the Order is directed. The Order to Discontinue Activity shall not be removed without the approval of the Officer.

12.4 Where service of an Order is made by regular or registered mail, service shall be deemed to have been served on the fifth day after the date the Order is mailed.

13.0 ORDER TO COMPLY

13.1 Where a contravention of this By-law has occurred, the Officer may issue an Order to Comply requiring the property owner to rehabilitate the land to the lands state prior to work commencing, or to plant, replant or replace any Trees.

13.2 The Order to Comply shall include:

- (a) the name of the property Owner and the municipal address or the legal description of the land;
- (b) the particulars of the contravention;
- (c) the work to be done and the date by which the work must be done;
- (d) a statement that if the work is not done to bring the property into compliance within a specified time period, the Town may have the work done at the expense of the Owner; and

(e) contact information of the Officer.

13.3 The Order may be served in accordance with the service provisions contained in Section 12.2 and Section 12.3.

13.4 If a Person fails to comply with an Order issued pursuant to this section, the Town may enter onto the land(s) at any reasonable time for the purposes of carrying out an inspection or commencing rehabilitation of the land described in the Order, at the Owners expense.

13.5 If the Town enters onto the land(s) and completes the work, the Town may recover its costs by adding the costs to the Registered Owners tax roll and collecting them in the same manner as property taxes.

14.0 OFFENCES AND PENALTIES

14.1 Every person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to such penalties, as provided for in the Provincial Offences Act, R.S.O 1990, c. P.33 and the Municipal Act, 2001.

14.2 Where an Officer is satisfied that a person has failed to comply with any provision of this By-law, the Officer may issue a penalty notice imposing an Administrative Penalty in the amount as established in Schedule "A" to this By-law.

14.3 Administrative Penalty By-law No. 111-2019 as amended or replaced from time to time, applies to each Administrative Penalty issued pursuant to this by-law.

14.4 Every person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty By-law No. 111-2019, be liable to pay to the Town an Administrative Penalty in accordance with that By-law.

15.0 ADMINISTRATION AND ENFORCEMENT

15.1 This By-law shall be administered and enforced by the Town or any person or Officer appointed to administer or enforce this By-Law.

15.2 An Officer may, for the purpose of enforcing this By-law, exercise any power, authority or remedy granted to the Town pursuant to the Municipal Act, 2001.

15.3 An Officer may, at any reasonable time, enter upon and inspect any property to determine if this By-law is being complied with.

15.4 For the purposes of an inspection under section 15.3 of this By-Law, an Officer may require the production for inspection of documents or things relevant to the inspection, inspect and remove relevant documents or things for the purpose of making copies or extracts, require information from a person concerning a matter related to the inspection and/or take photographs, samples, measurements necessary for the purpose of the inspection and may also include being accompanied by a person possessing special or expert knowledge.

14.5 No person shall fail to comply with an Order made under section 12.0 or 13.0.

14.6 Where any person fails to comply with an Order made under section 12.0 or 13.0 by the prescribed date, the Town may do any matter or thing necessary to bring the property into compliance with this By-law at the expense of the person in default of the Order.

14.7 No person shall obstruct or hinder, or attempt to obstruct or hinder, an Officer in the exercise of a power or the performance of a duty under this By-law.

16.0 GENERAL

By-Law No. XX-2023

16.1 In the event of a conflict between this by-law and the provisions of another Town By-Law, the provisions in this By-Law shall prevail.

16.2 If any section or part of this By-law is found by any court of competent jurisdiction to be illegal or beyond the power of Council to enact, such section or part shall be deemed to be severable and all other sections or parts of this By-law shall be deemed to be separate and independent therefrom and to be enacted as such.

16.3 This By-Law shall be read with all changes in number or gender as are required by context.

16.4 Any reference to legislation or Municipal By-Laws includes the legislation or By-Law and any amendment, replacement, subsequent enactment or consolidation of such legislation or By-Law.

16.5 That the Clerk of the Town is authorized to affect any minor modifications, corrections or omissions, solely of an administration, numerical, grammatical, semantical or descriptive nature to this By-Law or its schedules after the passage of this By-Law.

16.6 By-law 60-04 of the Corporation of the Town of Fort Erie and all amendments thereto, are hereby repealed

16.7 Despite subsection 15.6, By-law 60-04, as amended, shall continue to apply to:

- (a) proceedings in respect of offences that occurred before its repeal;
- (b) permits in compliance with Bylaw 60-04, which were approved prior to its repeal.

Read a first, second and third time and finally passed this day of XX , 2024.

Mayor

Deputy Clerk

**SCHEDULE “A”
To Tree By-law No. 60-04**

Administrative Penalties

For the purposes of this By-law:

Column 1 (“Description of Offence”) in the table sets out the short form wording to be used in a Penalty Notice for a contravention of the designated provisions listed.

Column 2 (“Section”) in the table lists the specific section of the provision that has been contravened.

Column 3 (“Penalty Tier 1”) sets out the Administrative Penalty amounts that are payable for contraventions of the designated provisions listed in Columns 1 and Column 2.

Column 4 (“Penalty Tier 2”) sets out the Administrative Penalty amounts that are payable for a second (2nd) contravention of the designated provisions listed in Columns 1 and Column 2 by the same person within a one (1) year period since the previous offence conviction.

Column 5 (“Penalty Tier 3”) sets out the Administrative Penalty amounts that are payable for a third (3rd) contravention of the designated provisions listed in Columns 1 and Column 2 by the same person within a one (1) year period since the previous offence conviction.

Column 1	Column 2	Column 3	Column 4	Column 5
Offense	Section	Penalty Tier 1	Penalty Tier 2	Penalty Tier 3
Injure or Destroy a Tree or cause or permit the Injury or Destruction of a Tree – without permit	5.1	\$1,500.00	N/A	N/A
Injure or destroy Tree – not in accordance with permit conditions	5.2	\$800.00	\$900.00	\$1000.00
Fail to protect a Tree in accordance with permit conditions	5.3	\$550.00	\$650.00	\$750.00

By-Law No. XX-2023

Fail to comply with conditions of permit	5.4	\$400.00	\$500.00	\$600.00
Fail to protect a Tree in accordance with an approved Tree Preservation Plan	5.5	\$1,500.00	N/A	N/A
Fail to comply with Order to Discontinue Activity	5.6	\$500.00	\$600.00	\$700.00
Fail to comply with an Order to Comply	5.6	\$500.00	\$600.00	\$700.00
Provide false or misleading information on Application	5.7	\$450.00	\$550.00	\$650.00
Remove a posted Order without Officer approval	5.8	\$350.00	\$450.00	\$550.00
Fail to notify the Town within 48 hours of change of registered Ownership	5.9	\$500.00	N/A	N/A
Obstruct an Officer	5.10	\$500.00	N/A	N/A

**SCHEDULE “B”
To Tree By-law No. 60-04**

Replacement and Replanting

Table B.1 Tree Replacement as the Condition of a Tree Removal Permit

Diameter at Breast Height (DBH) in centimetres	Number of Replacement Trees
12.5 - 24	2
25 - 34	3
35 - 44	4
45 - 54	5
55 - 64	6
65- 74	7
75 - 84	8
84 - 95	9
95 - 104	10
105 - 114	11
>115	12

Table B.2 List of Preferred Trees for Replanting

American Beech	Butternut	Sassafras
American Chestnut	Chokecherry	Serviceberries
American Elm	Eastern Hemlock	Shagbark Hickory
American Mountain Ash	Eastern White Cedar	Silver Maple
Balsam Poplar	Eastern White Pine	Swamp White Oak
Basswood	Ironwood	Sycamore
Bitternut Hickory	Largetooth Aspen	Tamarack
Black Ash	Northern Hackberry	Trembling Aspen
Black Cherry	Pawpaw	Tulip Tree
Black Oak	Pin Cherry	White Birch
Black Walnut	Pin Oak	White Oak
Black Willow	Red Maple	Yellow Birch

By-Law No. XX-2023

Blue-Beech	Red Mulberry	
Bur Oak	Red Oak	

A security deposit is **required** per Replacement Tree.

- \$250 - A security deposit per tree (for owners who are individuals) required for each Replacement Tree to be planted. The security deposit will be refunded once a final inspection of the replacement plantings is complete.
- \$500 - A security deposit per tree (for owners who are corporations) is required for each Replacement Tree to be planted. The security deposit will be refunded once a final inspection of the replacement plantings is complete.

SCHEDULE "C"
To Tree By-law No. 60-04

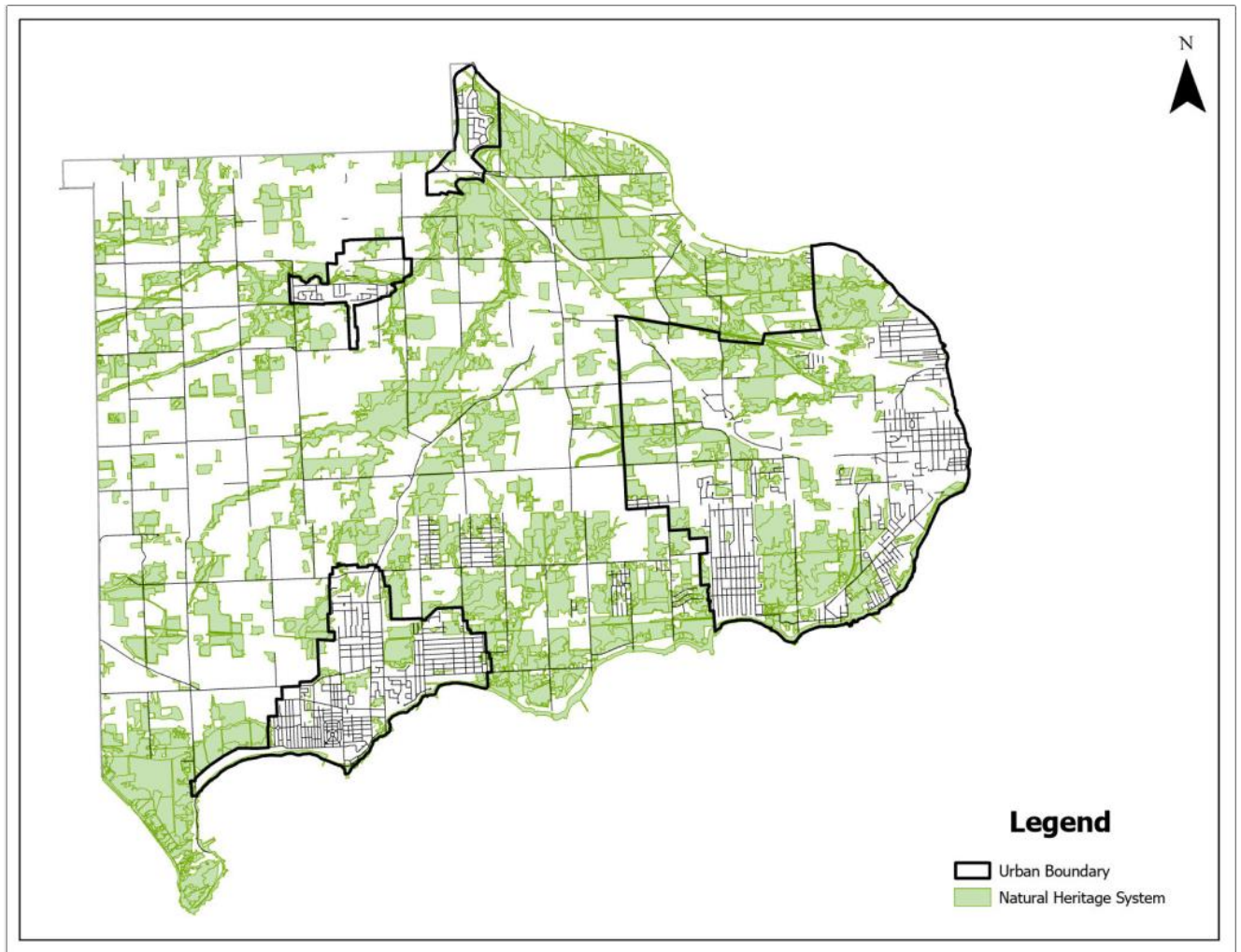
Fees for Off-site Planting

Where there is insufficient space on the same Site to plant all of the number of Replacement Trees as per Section 8.1 c) the Director shall calculate the amount of the fee by multiplying the number of Replacement Trees that could not be planted on site due to insufficient space by \$1000.00 CAD per tree.

SCHEDULE "D"
To Tree By-law No. 60-04

Natural Heritage System

Schedule D has been compiled as of February 1, 2024. Boundaries of the Natural Heritage System and the Urban boundary are subject to change periodically. Updated mapping can be found on the Town's Website: <https://www.forterie.ca/en/build-and-invest/trees.aspx>



SCHEDULE "E"
To Tree By-law No. 60-04

Fees

- | | |
|---|---|
| 1. Application Fee for Trees outside of the Natural Heritage System for Owners who are individuals | \$50.00 per tree for the first tree and \$25 per tree for subsequent trees under the same Permit |
| 2. Application Fee for Trees inside of the Natural Heritage System for Owners who are individuals | \$100.00 per tree for the first tree and \$50 per tree for subsequent trees under the same Permit |
| 3. Application Fee for Trees outside of the Natural Heritage System for Owners who are corporations | \$250.00 per Tree |
| 4. Application Fee for Trees inside of the Natural Heritage System for Owners who are corporations | \$400.00 per Tree |
| 5. Application Fee for Dead and/or Hazardous Trees | No Fee |