



BY-LAW

NO. 2024 – 072

Being a By-law to Regulate Native Trees on Private Property By-law

Whereas pursuant to Sections 8, 9, 10 and 11 of the *Municipal Act, 2001* S. O. 2001 c.25 (the “**Municipal Act**”), as amended or replaced from time to time provides a Municipality with broad authority, including the authority to pass by-laws respecting the economic, social, and environmental well-being of the Municipality; and

Whereas subsection 135(1) of the *Municipal Act* authorizes the Council of a Municipality to enact a by-law to prohibit or regulate the destruction or injury of trees, without limiting the Municipality's authority under Sections 9, 10 and 11 of the *Municipal Act*; and

Whereas subsection 135(7) of the *Municipal Act* provides that a Municipality may, by the passing of a by-law, require that a Permit be obtained to injure or destroy trees, and impose conditions to the Permit, including but not limited to those relating to the manner in which destruction occurs and the qualification of persons authorized to destroy or injure trees; and

Whereas section 436 of the *Municipal Act* provides that a Municipality may pass by-laws permitting the Municipality to enter on land within the Municipality at any reasonable time for the purpose of carrying out an inspection to determine compliance with a by-law or an order made pursuant to the by-law; and

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

Whereas sections 429, 431, 444, and 445 of the *Municipal Act* provides that a Municipality may establish a system of fines for contraventions of a by-law passed under the *Municipal Act*; and

Whereas Part XIV(Enforcement) and section 444 of the *Municipal Act* provides methods for a Municipality to enforce its by-laws and allows a Municipality to make an order to require any Owner to discontinue contravening a by-law and to do the work required to correct the contravention; and

Whereas section 446 of the *Municipal Act* provides that a Municipality may proceed to do work at a person's expense which that person is otherwise required to do under a by-law but has failed to do and the costs incurred by a Municipality may be recovered by adding the costs to the tax roll and collecting them in the same manner as property taxes; and

Whereas section 391 of the *Municipal Act* provides that a Municipality may impose fees or charges on an Owner for service or activities provided or done by the Municipality and section 398) of the *Municipal Act* provides that such fees and charges may be added to the tax roll for any property in the Municipality owned by the same Owner and collected in the same manner as taxes; and

Whereas the Municipality of Kincardine Tree By-law No. 2021-140 regulates the planting, maintenance, and preservation of trees on or affecting municipal property;

Whereas trees within the Municipality are valued for the social and environmental benefits they provide including but not limited to contributions to physical and psychological well-being, maintenance and enhancement of water quality, prevention of soil erosion and water run-off, wildlife habitat, local climate moderation and improved air quality; and

Whereas the Council of The Corporation of the Municipality of Kincardine recognizes the ecological and aesthetic value of trees and is desirous of managing, regulating, and controlling the destruction or injuring of trees on private property throughout the Municipality of Kincardine; now therefore be it

Resolved that the Council of the Corporation of the Municipality of Kincardine enacts as follows:

1. Definitions

In this By-law the following terms shall have the meanings indicated:

“Applicant” means the person or authorized agent who submits an application to the Municipality of Kincardine for a Permit to Destroy or Injure Trees pursuant to the provisions of this By-law.

“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 contains the following:

- a. correct identification of the location, species, size, and condition of Trees;
- b. states the Arborist’s opinion why a Tree should be Injured or Destroyed , and whether it represents Good Arboricultural Practices or Good Forestry Practices;
- c. describes how the Tree is proposed to be Injured or Destroyed;
- d. 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;
- e. calculation of the number of Replacement Trees based on Schedule A, and suggest the species and location, and if in a Tree Protection Area, the Trees that may be planted or established through appropriate natural regeneration, the number of Replacement Trees that can be planted on the Site;
- f. if Trees are to be Injured but not Destroyed, description of maintenance strategies and protection measures to be implemented;
- g. if requested by the Municipal Engineer or their designate, further information such as Tree or Trees on adjacent properties that may be affected, and an aerial map representation showing the Critical Root Zone of those Trees; and
- h. the professional accreditation of the Arborist (e.g., International Society of Arboriculture (ISA) Certification Number);

“Building Permit” means a Building Permit issued pursuant to the Building Code Act, 1992, SO 1992, c.23.

“By-law Enforcement Officer” means a person appointed pursuant to the *Police Services Act*, or any successor legislation, as a Municipal Law Enforcement Officer to enforce the provisions of this by-law;

“Council” means the Council of The Corporation of the Municipality of Kincardine.

“Dead Tree” means a Tree that has no living tissue.

“Diameter at Breast Height” or “DBH” means the total diameter of the stem(s) of a tree measured at a point that is 1.3 m (4.5 feet) above ground; (“dbh”)

“Destroy” means the removal, to cut down, remove, uproot, unearth, topple, burn, bury, shatter, poison, girdling of the tree or its roots, interfering with roots or uprooting, interfering with water supply, chemical application, compaction or regrading within the drip line of a tree, or by other means including irreversible injury to a tree, which may result from accident or design, and “destroyed”, “destruction”, “destroying”, and similar words have the same meaning.

“Director” means the Director of Infrastructure and Development for the Municipality of Kincardine or their designate.

“Diseased Tree” means a sustained and progressive impairment of the structure or function of a Tree. Symptoms may include dieback, foliage discoloration, decay, galls, or wilting. A tree shall be designated a Deceased Tree by an Arborist’s Report acceptable to the Municipality, acting reasonably.

“Good Forestry Practice” means the proper implementation of harvest, renewal, and maintenance activities known to be appropriate for forest and environmental conditions under which they are being applied that minimize detriments to forest values, including significant ecosystems, important fish and wildlife habitat, soil and water quality and quantity, forest productivity and health.

“Injure” or “Injury” means any action that causes physical, biological, or chemical harm or damage to a Tree.

“Municipality” means The Corporation of the Municipality of Kincardine.

“Native Tree” or “Tree” means a tree that is indigenous or original to a particular geographical area and are more particularly listed in Schedule A of this By-law.

“Normal Farm Practice” means the same as the Farming and Food Production Protection Act, 1998, S.O. 1998, CHAPTER 1 and is a practice that,

- (a) 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
- (b) makes use of innovative technology in a manner consistent with proper advanced farm management practices.

“Officer” means a By-law officer appointed by By-law or assigned the responsibility of enforcing this By-law.

“Order” means any notice of non-compliance issued under this by-law.

“Permit” means the Permit to Destroy or Injure Trees which is a formal written approval from the Director to Destroy or Injure Trees, with or without conditions.

“Personal Use” means the utilization of a Tree, Trees or Tree sections Destroyed or Injured and collected solely for the Owner’s use as permitted and defined in this by-law.

“Private Property” means land other than public property.

“Public Property” means any land or property owned by the Municipality.

“Tree” for this by-law has the same meaning as Native Tree.

“Zoning By-law” means the Municipality of Kincardine Zoning By-law as may be amended and/or replaced from time to time.

2. Administration

The Director of Infrastructure and Development and/or their Designate shall be responsible for the administration and enforcement of this By-law.

3. Application of the By-law

This By-law shall apply to all native trees situated on all private lands located within the Municipality of Kincardine that have a DBH of ten (10) cm or greater and that are species as listed in "Schedule A" of this By-law.

4. Prohibitions

No person shall destroy or injure, cause, or Permit and/or arrange for the destruction or injury of any native tree on private lands with a DBH of ten (10) cm or greater in the Municipality of Kincardine:

- a. Unless specifically exempted under the provisions of this By-law; or
- b. Except in accordance and compliance with the terms and conditions of a valid Permit issued pursuant to the provisions of this By-law.

No person shall at any time:

- c. Fail to comply with an Order issued under this By-law; or
- d. Remove or deface an Order that has been posted pursuant to this By-law.
- e. No person shall contravene, or cause or permit the contravention of the terms and conditions of a Permit issued under this By-law.

5. Exemptions

A native tree may be injured or destroyed, without applying for a Permit from the Municipality where it is permitted to be injured or destroyed by a Municipal, County, Provincial, Federal statute, by-law, regulation and meets at least one of the following criteria:

- a. The tree is located on a lot zoned for residential use "R" under the Municipality of Kincardine Zoning By-law, with an area of less than or equal to 0.5 ha, possessing an existing dwelling unit as defined in the Zoning By-law, provided that the tree has a DBH of less than 20 cm.
- b. The tree is located in land zoned for agricultural use "A" under the Zoning By-law, and the injury or destruction is not necessary to clear land in accordance with Normal Farm Practice conducted by an agricultural operation for its own agricultural activity, provided that the tree has a DBH of less than 20 cm and the tree is not located on lands designated Environmental Protection in the Zoning By-law.
- c. The tree is located in land zoned for agricultural use "A" under the Zoning By-law, and the injury or destruction is necessary to clear land in accordance with a Normal Farm Practice conducted by an agricultural operation for its own agricultural activity, provided that the trees are not located on lands designated Environmental Protection in the Zoning By-law.
- d. The tree is dead, dying, diseased, or severely injured.
- e. The tree is an immediate hazard to people/property as confirmed by the Director or their designate if required.
- f. The tree has a DBH of less than 10 cm.
- g. The tree is confirmed to be a non-native species and the species is not listed in Schedule A;

- h. The tree is being cut to utilize the wood for personal use (i.e. firewood, furniture etc.)
- i. It is for the maintenance of a tree in accordance with good arboriculture practices (i.e., pruning);
- j. A building Permit has been issued where the tree is required to be removed.
- k. The tree is removed to provide access to an Additional Residential Unit (ARU) as described by the Zoning By-law.
- l. The tree is part of an existing cemetery.

This By-law shall not apply to the following activities:

- m. activities or matters undertaken by the Municipality or a local board of the Municipality;
- n. activities or matters undertaken under a licence issued under the Crown Forest Sustainability Act, 1994;
- o. 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;
- p. 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;
- q. 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;
- r. 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;
- s. 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; or
- t. 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*, R.S.O 1990, c.A.8 or a predecessor of the *Aggregate Resources 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*, R.S.O. 1990, c.P. 13.

6. Permit Application

The Municipality of Kincardine hereby delegates the Director or their designate the authority to issue a Permit under this By-law.

An application for a Permit shall be submitted not less than ten (10) business days prior to the planned commencement date of the destruction or injuring of the native tree to the Municipality of Kincardine and shall include but not limited to:

- a. A completed and signed application form provided to the Municipality of Kincardine including but not limited to identification of number of trees, location, and site plan;
- b. The application fee per the Rates and Fees By-law paid in full to the Municipality of Kincardine
- c. Where the Director feels it is applicable, the Director may request more information including a tree protection plan and/or a tree replanting plan prepared by an Arborist to be provided at the cost of the applicant.
- d. Where replacement planting is not physically possible on site, the Director may require planting at another suitable location or accept a cash in lieu payment in the amount equal to the cost of replanting and maintaining the trees for a period of two years.

7. Authority of the Director

The Director is authorized to:

- a. Issue Permits for the destruction, injury, or removal of trees and impose terms and conditions to the Permit.
- b. Refuse to issue Permits for the destruction, injury, or removal of a tree/trees.
- c. Stop any work causing harm or destruction to trees that is taking place without a Permit or is performing work contrary to the terms of the Permit conditions.
- d. Waive the requirement for tree protection plans or tree replanting plans for a single residential unit.
- e. Require the applicant to provide a deposit to ensure compliance with the conditions of the Permit.
- f. Require an Arborists Report or a tree protection plan and/or a tree replanting plan prepared by an Arborist to be provided at the cost of the applicant.
- g. Require the applicant to replant/replace a tree in the same or alternate location within the geographical limits of the Municipality and can impose specifications on the following:
 - i. Species, size, number, and location of the replacement tree(s).
 - ii. The deadline for replanting.
 - iii. The requirement of the applicant to maintain and water the tree for a minimum period of not less than 2 years.

Once the completed and signed application is received with the associated fees to the Municipality of Kincardine, the Director will assess the application and the tree(s) to determine its permissibility to be removed, injured, or destroyed and whether any conditions are to be imposed on the Permit.

8. Refuse to Issue a Permit

The Director may refuse the issuance of a Permit for the removal, injury, or destruction of trees where:

- a. The tree is healthy;

- b. The tree is in an Environmentally Sensitive Area as identified in Figure 3: Natural Heritage Resources and Designation Features, of document "Natural Heritage Study for the Municipality of Kincardine, Volume 1: Existing Conditions, Scientific Methodology & Preliminary Natural Heritage System (NHS)", dated January 2009.
- c. Removal of a tree will negatively impact erosion and/or flood control.
- d. An application for rezoning, minor variance, plan of subdivision, etc. has been submitted, but has not been finalized.
- e. The tree is an endangered or threatened species as defined in the Endangered Species Act, 2007, S.O. 2007, c.6.
- f. The proposed activities would be in contravention of the Migratory Birds Convention Act, 1994.

9. Issue a Permit

The Director is authorized to issue a Permit for the destruction, injury, or removal of a tree where:

- a. Destruction of the tree is consistent with Good Forestry Practices;
- b. The tree is growing in an inappropriate location and cannot be maintained on a routine basis due to restrictive site conditions;
- c. Destruction is required to remediate contaminated soil as confirmed by the Municipality or Ministry of Environment, Conservation and Parks;
- d. Trees are to be relocated and the new site is approved by the Director and in accordance with an Arborist's report.
- e. Trees are specifically identified for injury or destruction on plans approved by the Ontario Land Tribunal, Council, the County, or a Provincial or Federal Ministry or Agency.

10.Revoke a Permit

The Director is authorized to revoke a Permit in the following circumstances:

- a. The Permit was issued by mistake, misleading, or false information.
- b. The Permit was issued in error.
- c. An owner fails to comply with any condition of the Permit and/or By-law.

The term of a Permit shall be issued for a maximum period of 6 months from the date of issuance.

Revoked Permits require the applicant/owner to immediately cease all operations being conducted under the authority of the revoked Permit.

11.Administration and Enforcement

The Council of the Municipality shall appoint Officers to be responsible for the enforcement of this By-law.

Pursuant to section 435 and 436 of the *Municipal Act, 2001*, S.O. 2001, c.25 as amended, an Officer may enter upon property at any reasonable time for the purpose of carrying out inspections to determine whether the provisions of this By-law are being complied with.

11.1.Power to make Orders – Remedial Action

- a. Where a By-law Enforcement Officer is satisfied that a contravention of this By-law has occurred, the By-law Enforcement Officer may make an Order to Discontinue Activity requiring the person who contravened the By-law or a person that has caused or permitted the contravention of the By-law or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activities.
- b. The Order to Discontinue Activity shall set out reasonable particulars of the contravention adequate to identify the contravention, the location of the land on which the contravention occurred, and the date and time by which there must be compliance with the Order to Discontinue Activity.

11.2. Work Order

- a. Where a By-law Enforcement Officer is satisfied that a contravention of this By-law has occurred, the By-law Enforcement Officer may make a Work 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 do work to correct the contravention.
- b. A Work Order shall set out reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred, and the work to be done and the date by which the work must be done.

12. Service of Order to Discontinue Activity or Work Order

- a. An Order to Discontinue Activity or Work Order may be served personally by the By-law Enforcement Officer, may be sent by registered mail to the person contravening the By-law, or may be posted in a conspicuous place on the property where the contravention occurred.
- b. Where an Order to Discontinue Activity or Work Order under this By-law is served personally by the By-law Enforcement Officer, it shall be deemed to have been served on the date of delivery to the person or persons named.
- c. The posting of the Order to Discontinue Activity or Work Order at the Site shall be deemed to be sufficient service of the Order to Discontinue Activity on the person or corporation to whom the Order to Discontinue Activity is directed on the date it is posted.
- d. Where an Order to Discontinue Activity or Work Order issued under the By-law is sent by registered mail, it shall be sent to the last known address of one or more of the following, as applicable.
 - i. the Applicant,
 - ii. the Permit Holder;
 - iii. the Landowner;
 - iv. the person contravening the By-law;
 - v. the person or company undertaking the injury or Destruction and shall be deemed to have been served on the fifth (5th) day after the Order to Discontinue Activity or Order is sent by way of regular mail.

13. Remedial Action

If a person is required, under a Work Order under this By-law, to do a matter or thing, then in default of it being done by the person so required to do it, the matter or thing may be done at the person's expense under the direction of a By-law Enforcement Officer.

- a. The Municipality may recover the costs of doing a matter or thing under section 12.4 from the person required to do it, by adding the costs to the tax roll for the subject land and collecting them in the same manner as property taxes.

- b. The amount of the costs under section 12.4, including interest, constitutes a lien on the land upon the registration in the proper land registry office of a notice of lien.

Where the owner or occupant fails to comply with any final and binding Order issued under this By-law, the Municipality may have the matter done and the cost thereof, including an administration fee, shall be added to the property tax roll for the property and collected in the same manner of as municipal taxes.

The Municipality or its agent, is not liable to compensate the occupant, owner, or any other person by reason of anything done by or on behalf of the Municipality in the exercise of its powers carrying out compliance with this By-law.

Where an officer deems a violation of this By-law to constitute a hazard to the public, the officer may, without notice, cause the violation to be remedied at the expense of the owner. The Municipality shall not be responsible for any damages that may be sustained by the property of the owner.

14. Compliance

Every person shall comply with an Order issued under the authority of this By-law.

No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this By-law.

15. Offences

- a. Every person who contravenes any provision of this By-law or any Order issued under the provisions of this By-law is guilty of an offence.
- b. A director or officer of a corporation who knowingly concurs in the contravention of any provision of this By-law is guilty of an offence.

16. Penalties

A person convicted under this By-law is liable for a minimum fine of \$1,000.00 and a maximum fine of \$100,000.00, where the fine is not a set fine.

17. Penalties – Continuing Offence

Contravention of an Order to Discontinue Activity or a Work Order or any other Order issued under the provisions of this By-law is a continuing offence, and a person who is convicted of an offence under this By-law is liable, for each day or part of a day that the offence continues, to a minimum fine of \$1,000.00 and a maximum fine of \$10,000.00 and the total of all daily fines for the offence shall not be limited to \$100,000.00.

18. Penalties – Special Fines

A person convicted under this By-law is liable to a special fine of maximum \$200,000.00 that may be imposed in addition to the regular fine, to eliminate or reduce any economic advantage or gain from contravening the provisions of the By-law.

19. Court Order – Additional Order to Discontinue or Remedy – section 431 *Municipal Act, 2001*

Under section 431 of the *Municipal Act, 2001*, when this By-law is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the By-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an Order.

20. Prohibiting the continuation or repletion of the offence by the person convicted; and

In the case of a by-law described in section 135 of the *Municipal Act*, requiring the person convicted to correct the contravention in the manner and within the period that the court deems appropriate.

21. Permit Appeal Process

21.1. Notice of Appeal

An Applicant for a Permit, pursuant to this By-law, may, appeal, to an appeal body designated by Council by filing a notice of appeal in writing with the Clerk under the following circumstances only:

- a. If the Director makes a decision to refuse to issue a Permit, an appeal shall be submitted within thirty (30) days following the date of the refusal;
- b. If the municipality fails to make a decision on the Application, within forty-five (45) days after the fully completed application is received by the Municipality; or

If the Applicant objects to a condition in the Permit, an appeal shall be submitted within thirty (30) days after the issuance of the Permit.

21.2 Consideration of Notice of Appeal

After consideration of the notice of appeal, Council may:

- a. Confirm the refusal to issue the Permit;
- b. Issue a Permit, with or without conditions; or
- c. Affirm, vary, or add any conditions to the Permit.

22. General

That this By-law shall become effective on September 1, 2024.

This By-law may be cited as the “Native Trees on Private Property By-law”.

Read a First and Second Time this 8th day of May, 2024.

Read a Third Time and Finally Passed this 8th day of May, 2024.

Mayor

Clerk

Schedule A

Native Tree List

The Native Tree List is per “The Tree Atlas: Southwest Region” from the Ontario Ministry of Natural Resources and Forestry. <https://www.ontario.ca/page/tree-atlas/ontario-southwest>

Alternate-Leaf Dogwood	Eastern Cottonwood	Red Oak
American Beech	Eastern Flowering Dogwood	Red Pine
American Chestnut	Eastern Hemlock	Rock Elm
American Elm	Eastern Redcedar	Sassafras
American Mountain-Ash	Eastern White Cedar	Serviceberries
Balsam Bir	Eastern White Pine	Shagbark Hickory
Balsam Poplar	Gray Birch	Shellbark Hickory
Basswood	Green/Red Ash	Showy Mountain-Ash
Bitternut Hickory	Hawthorns	Shumard Oak
Black Ash	Honey Locust	Silver Maple
Black Cherry	Ironwood	Slippery Elm
Black Gum	Jack Pine	Striped Maple
Black Maple	Kentucky Coffeetree	Sugar Maple
Black Oak	Large-tooth Aspen	Swamp Cottonwood
Black Spruce	Manitoba Maple	Swamp White Oak
Black Walnut	Northern Hackberry	Sycamore
Black Willow	Northern Pin Oak	Tamarack
Blue Ash	Ohio Buckeye	Trembling Aspen
Blue Beech	Pawpaw	Tulip Tree
Bur Oak	Peachleaf Willow	White Ash
Butternut	Pignut Hickory	White Birch
Cherry Birch	Pin Cherry	White Oak
Chinquapin Oak	Pin Oak	White Spruce
Chokecherry	Pumpkin Ash	Wild Crabapple
Common Hoptree	Red Maple	Yellow Birch
Cucumber Tree	Red Mulberry	