THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE

BY-LAW NO. 75/2021

Being a By-law to authorize Tree Protection in the Municipality of Port Hope

WHEREAS Section 135 of the Municipal Act, 2001, S.O. 2001, Chapter 25 as amended authorizes the Council of a local municipality to enact by-laws prohibiting or regulating the destruction or injuring of trees;

AND WHERAS the County of Northumberland Tree By-law 2015-27 regulates the destruction or injuring of trees in woodlands having an area of land 1ha and above;

AND WHEREAS Section 11 of the Municipal Act, 2001, S.O. 2001, Chapter 25 as amended authorizes the Council of a lower-tier municipality to enact by-laws respecting the economic, social and environmental wellbeing of the municipality, including respecting climate change;

AND WHEREAS Council has determined that it is desirable to enact a tree protection by-law for the purpose of achieving the objectives of the Municipal Forest Master Plan;

AND WHEREAS Council acknowledges that trees contribute to economic, social, psychological and environmental well-being, and to the maintenance and enhancement of water and air quality, mitigation of soil erosion and water runoff and combat climate change;

AND WHEREAS Council recognizes that the greatest potential impacts on trees on privately owned lands are caused by development;

AND WHEREAS Council deems it appropriate and necessary to establish a tree protection by-law to establish conditions and requirements to regulate the injury or destruction of trees to be only applied in considering applications subject to the Planning Act.

NOW THEREFORE THE COUNCIL FOR THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE HEREBY ENACTS AS FOLLOWS:

Section 1 - Definitions

The following words and phrases (whether such word or phrases are capitalized or not in this By-law) shall have the following meanings:

1.1 "Application” – shall mean an application for Development that has been signed by the applicant and submitted to the Municipality on or after the effective date of this By-Law.

1.2 “Arborist” – shall mean an expert in the care and maintenance of Trees and includes 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, a Registered Professional Forester or a Person with other similar qualifications as approved by the Director.

1.3 “Certificate of Compliance” – shall mean a certificate issued by the Director confirming that a Development Agreement which incorporates in the requirements of this By-Law to the satisfaction of the Director has been executed or that the provisions of this By-Law have otherwise been satisfied to the satisfaction of the Director.

1.4 “DBH”- shall mean the diameter at breast height measured outside the bark of the trunk of a tree and shall be measured at a point 1.37 meters above the existing grade.

1.5 “Development” shall mean:

(a) development as defined in the Municipality’s Site Plan Control By-Law 26/2008 as amended from time to time;

(b) an application for subdivision approval pursuant to section 51 of the *Planning Act,* R.S.O. 1990, c. P.13, as amended; and

(c) an application for a consent pursuant to Section 53 of the *Planning Act,* R.S.O. 1990, c. P.13, as amended.

1.6 “Development Agreement” - shall mean a Site Plan Agreement pursuant to Section 41 of the Planning Act, a Subdivision Agreement pursuant to Section 51 of the Planning Act, or a Severance Consent Agreement pursuant to Section 53 of the Planning Act

1.7 “Director" – shall mean the Director, Community Development, or other person designated in writing by the Municipality from time to time to administer the provisions of this By-Law.

1.8 “Destroy” – shall mean any action which causes or results in the irreversible injury of or death to a tree.

1.9 “Expert” shall mean an independent, bona fide, third-party individual (whether working for himself/herself or for a company) possessing the technical competence through education, experience, relevant and appropriate professional accreditation and related training to perform the work or to produce a Report as required by this By-law and may include the following:

a) an Arborist as defined in Section 1.2 of this By-law;

b) an ecologist, biologist, environmental planner, environmental scientist, landscape architect, naturalist, or any other professional who is capable and competent in undertaking the required reports or submissions pursuant to this By-Law as determined in the sole and absolute discretion of the Director.

1.10 “Good Forestry Practice”- shall mean the care and development of forests including selective thinning, harvesting, renewal and maintenance activities known to be appropriate for the forest and environmental conditions to which they are being applied and which minimize harm to all forest values including ecosystems, fish and wildlife habitat, soil and water supplies and forest productivity and health.

1.11 “Injury” – shall mean any action which causes physical, biological or chemical damage to or to the death of a Tree but does not include, trimming, pruning or removing branches in accordance with Good Forestry Practice.

1.12 “Lands” or “Property” – shall mean any legally conveyable parcel of land.

1.13 “Municipal” or “Municipality” shall mean the Municipality of Port Hope.

1.14 “Municipal Forest Master Plan” - shall mean the Forest Master Plan as adopted by the Municipality on December 3, 2013, as amended from time to time.

1.15 “Notice” – shall mean a notification from the Director setting out the requirements to comply with this By-Law.

1.16 “Officer” – shall mean the Chief Building Official, Municipal By-Law Enforcement Officers and such other persons designated by the Municipality from time to time to enforce the provisions of this By-Law.

1.17 “Person” – shall mean an individual, association, partnership, corporation, a municipal, provincial or federal agency or an agent or employee thereof and shall include a developer or applicant for approval of Development.

1.18 “Planning Act” – shall mean the Planning Act, R.S.O., 1990, c.P.13 as amended from time to time.

1.19 “Site” – shall mean any area of land containing any trees proposed to be injured, destroyed or harvested.

1.20 “Tree” – shall mean any species of woody perennial plant including its root system, that has reached or has the potential to reach, at least a height of 4.5 metres (15 feet) above the ground and which is located within the Municipality of Port Hope. A Tree does not include:

a) European Buckthorn;
b) Glossy Buckthorn;
c) An Ash Tree that is infested with the Emerald Ash Borer;
d) Any other Tree that, in the opinion of an Expert, is considered to be an invasive species.

Section 2 - General Application

2.1 No Person who has an Application for a property in the Municipality shall injure or destroy any Tree on that property unless they have a Certificate of Compliance which authorizes such injury or destruction.

2.2 The provisions of this By-Law do not apply to Municipally-owned properties.

2.3 Compliance with this By-law shall form an additional condition to the approval of Development.

Section 3 - Development Applications and Agreements

3.1 Any Person who has an Application may be required to submit, as part of the Application, any or all of the information set out in Schedule “A” to this by-law, as determined by the Director in his or her discretion, and to pay the fee in accordance with the Municipality’s Fees and Charges By-Law in effect at the time of the application.

3.2 In determining what information is required pursuant to section 3.1 of this By-Law, the Director may consult with an Expert or such other persons the Director, in his or her discretion, determines necessary at the expense of the Person applying for Development approval.

3.3 Upon reviewing the Application, the Director shall issue a Notice to the applicant.

3.4 A Development Agreement for an approved Development may include requirements to comply with the recommendations and conclusions of any reports or plans required pursuant to section 3.1 of this By-Law.

3.5 Any person causing or permitting Development on Property shall comply with the provisions of the Development Agreement.

3.6 No person shall cause or permit any work to be undertaken in a Tree Protection Zone identified in a Development Agreement.

3.7 Once the Applicant has fulfilled the requirements of the Notice to the satisfaction of the Director, the Director may issue a Certificate of Compliance.

Section 4 - Compensation

4.1 Any Person who has an Application may be required to pay financial compensation when replacement Trees cannot be accommodated on the property as a condition of a Certificate of Compliance under this By-Law.

4.2 Where financial compensation is required it must be provided in the form of cash or bank draft in Canadian currency and must be provided to the Municipality in advance of the issuance of a Certificate of Compliance.

4.3 When replacement Trees can be accommodated on the property, the quantity, species and size of replacement Trees shall be equivalent in value to the value of the Tree(s) Injured or Destroyed as a result of the issuance of an approval of Development. The Municipality may require financial securities when replacement Tree(s) are proposed.

4.4 The value of financial compensation or financial securities shall be calculated as follows:

(a) The value of any Tree that will be Injured or Destroyed as part of an approval of Development may be determined using the tree replacement formula identified in the Municipal Tree Planting and Protection policy and the compensation value as determined by the Director based on current tree replacement and installation values and applied as follows:

(i) Trees in poor condition will be exempted and will not be used to calculate compensation amounts;

(ii) Ash Trees (Fraxinus spp.) will be exempted and will not be used to calculate compensation amounts;

(iii) Trees located within a proposed road allowance or area required to accommodate public infrastructure (e.g., stormwater management facility, utility corridors, public servicing infrastructure - water, sewer and storm, etc.) as identified in an existing Secondary Plan or an approved Draft Plan of Subdivision may be exempted from the calculation of compensation amounts where it can be demonstrated that efforts have been made to avoid wooded areas in the design of the plan.

Section 5 - Enforcement and Penalties

5.1 An Officer is hereby authorized to carry out inspections in relation to this By-law and is delegated such powers as are within the jurisdiction of the Municipality in order to administer and enforce this By-law including, without limitation, the power to make orders requiring the discontinuance of activities and requiring work to be done to correct contraventions of this By-law.

5.2 If a Person fails to carry out any work required by an order issued under section 7.1 the work may be done by the Municipality at that Person’s expense.

5.3 No person shall hinder or obstruct, or attempt to hinder or obstruct, either directly or indirectly, an Officer, employee and/or agent of the Municipality in the lawful exercise of a power or duty under this By-Law.

5.4 Any person who contravenes any provision of this By-law or an order issued pursuant to this By-Law is guilty of an offence and on conviction is liable to a fine as provided for by the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended.

5.5 Pursuant to the authority established in section 429 of the *Municipal Act, 2001*. S.O. 2001, c. 25, as amended, any person who contravenes any provision of this By-Law or an order issued pursuant to this By-Law is guilty of an offence and upon conviction pursuant to Part III of the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended, shall be subject to the following penalties:

(a) on a first conviction, to a fine of not more than $10,000.00 or $1,000.00 per tree, whichever is greater;
(b) on any subsequent conviction, to a fine of not more than $20,000.00 or $2,500.00 per tree, whichever is greater.

5.6 Where a person is convicted of an offence under this By-law, in addition to any other remedy or any penalty imposed by the By-law, the court is which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repletion of the offence by the person convicted or any other person.

Section 6 - Authority to Enter and Inspect Lands

6.1 An Officer may, during daylight hours without prior notice and upon producing identification enter and inspect any land, but not buildings on the lands, in order to carry out his or her duties under this Bylaw.

6.2 In conducting an inspection under this By-Law, an Officer may be accompanied by a person or persons who has special or expert knowledge in relation to the inspection.

Section 7 - Order to Correct Violations

7.1 If the Officer is satisfied, after making an inspection, that there is a contravention of this By-law, the Officer may make an Order setting out the particulars of the contravention and requiring the person to discontinue the contravening activity or to do work to correct the contravention.

Section 8 – Severability

8.1 If any Section, Subsection or part of this Bylaw is declared by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall be deemed to be severable and the remainder of this Bylaw shall be declared to be separate and enforceable.

Section 9 – Effective Date

9.1 The provisions of this By-Law shall come into force and effect on the 1st day of April, 2022.

READ a first, second and third time and finally passed in Open Council this 21st day of December 2021.

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Bob Sanderson, Mayor

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Brian Gilmer, Clerk

SCHEDULE "A"

For the purposes of subsections 3.1 of the By-Law, the following information may be required as part of an Application, all subject to the written approval of the Director and subject to such further details, criteria and regulations as the Director may advise:

1. Pre-Development Tree Inventory and Site Assessment Report

   Such report shall be prepared by an Expert.

   Such report shall, at a minimum, contain the following information:

   a) An inventory in the form of a plan of all Trees on the Property which shall include, at a minimum, the species, DBH, height, vigour (ie overall health; whether the tree is in decline, struggling, pest infested, etc.); structural integrity; assessment of any hazardous risk; maturity; invasive species; risk to development activities; identification of species protected under the Species At Risk Act; an assessment as to whether the Tree(s) should be preserved and the rationale for such assessment;

   b) In the case of a group of Trees, the ecological function of the group such as stormwater control, visual barrier, noise barrier, significant wildlife habitat under the Migratory Species Act and/or Significant Woodland under the Provincial Policy Statement, an assessment as to whether the group of Trees, either all or a part, should be preserved and the rationale, etc.;

   c) Riparian environments, wetlands and ecological function thereof.

   d) Any features or environments of significance as identified in the Municipality's Official Plan.

   Based upon the conclusions and recommendations in the report, the applicant shall, to the greatest extent reasonably possible, demonstrate how the proposed Development incorporates and implements the conclusions and recommendations of the report and if not, the rationale for any significant deviations from the conclusions and recommendations of the Report.

2. Tree Protection Plan

   The Tree Protection Plan is in the form of a map which clearly identifies what Trees, groups of Trees and other site features will be protected and preserved as part of the Development, including detailed specifications of how the Trees, groups of Trees and other site features will be protected and preserved during construction.

3. Landscaping Plan

4. Landscaping, Replanting and Replacement Plan

5. Environmental Impact Assessment

   Such report shall be prepared by an Expert.

   Such report shall, at a minimum, contain the following information:

   (i) A description of the proposal and rationale for undertaking the Tree removal activity where proposed;
   (ii) A survey illustrating the legal boundaries of the property, any easements, rights-of-way or other encumbrances;
   (iii) An inventory and description of the key features present and their significance, including a reference to all Natural Heritage Features and Areas and their associated ecological functions;

(iv) A professional opinion by the Expert as to whether the proposal is acceptable considering potential impacts to Natural Heritage Features and Areas and their ecological functions taking into account the relevant policies of the Provincial Policy Statement and the Official Plan; and

(v) A description of any mitigation required to protect the Ecological Function of identified Natural Heritage Features and Areas.

6. Such further and other reports as the Director deems necessary to ensure conformity with the Municipal Forest Master Plan