



## CORPORATION OF THE TOWN OF NEWMARKET

### BY-LAW NUMBER 2017-59

#### **By-law to prohibit and regulate the injury, removal, or destruction of trees on lands owned by the Town of Newmarket**

**Whereas** the Council of The Corporation of the Town of Newmarket (hereinafter the "Town") is authorized by subsection 11(1), paragraph 11(2) 5, subsections 135(1) and (7), and sections 429, 431 and 444 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, to pass by-laws to sustain and promote environmental and social benefits to the community as a whole through the preservation and planting of trees throughout the municipality, to regulate or prohibit the injury or destruction of trees, to require a permit for the removal of trees, to impose conditions on permits and to provide for a system of fines and other enforcement orders;

**And whereas** Council has determined that it is desirable to enact a by-law to protect, prohibit and regulate the injury or destruction of trees and encourage the preservation and planting of trees on Town-owned lands;

**Now therefore** the Council of the Corporation of the Town of Newmarket enacts as follows:

#### **1.0 Definitions**

The following words shall have the following meanings in this By-law:

**Application** - A completed *permit application* form including supporting documentation as identified in the *application* package or requested by the *Director* for permission to *injure*, *destroy* or remove *trees*.

**Arborist** - An expert in the *care and maintenance* of *trees* including an arborist qualified by the Ontario College of Trades, a certified arborist qualified by the International Society of Arboriculture, a consulting arborist registered with the American Society of Consulting Arborists, a Registered Professional Forester or a *person* with other similar qualifications as approved by the *Director*.

**Arborist Report** - A technical report or letter that identifies the location, species, size and condition of *trees* and describes maintenance strategies and protection measures to be implemented and prepared by an arborist.

**Boundary Tree** - A *tree* whose *trunk* is growing on the boundary between adjoining lands.

**Care and Maintenance** - The *care and maintenance* of *trees* in accordance with good arboricultural practices including inspection, pruning, cabling and bracing, treatments for insect and disease problems, watering and fertilization.

**Destroy** - To remove, cut down, or in any way *injure* a *tree* to such an extent that it is deemed by the *Director* to be an *imminently hazardous tree*, or that the *tree's* vitality has been reduced to such an extent that in the opinion of the *Director*, the *tree* cannot recover to be maintained in a safe or healthy condition.

**Director** - The Director of Public Works for the Town of Newmarket or his or her designate.

**Emergency Work** - Work of an urgent nature, including but not limited to work associated with drain repairs, utility repairs, structural repairs to a building and work required to prevent soil erosion, slipping of soil or damage to *trees*.

**Fees and Charges By-law** - The General Fees and Charges By-law, as amended, for the Town of Newmarket.

**Forestry Act** — Ontario Forestry Act, RSO 1990, c. F. 26.

**Good Arboricultural Practice** - *Tree* planting, maintenance and removal performed in accordance with the American National Standards, ANSI A300 and best management practices identified by the International Society of Arboriculture, to the satisfaction of the *Director*.

**Heritage Tree** - *Trees* designated under Part IV of the Ontario Heritage Act or *trees* recognized as heritage *trees* by the Ontario Heritage *Tree* Program of Forest Ontario.

**Imminently Hazardous Tree** - A destabilized or structurally compromised *tree* that is in imminent danger of causing damage or *injury* to life or property as determined by the *Director*.

**Injure and Injury** - Any act that will harm a *tree's* health in any manner including the failure to protect a *tree* from harm as set out by the *Director*.

**Officer** – a Police Officer as defined under the Police Services Act, R.S.O. 1990, c. P15, as amended, an individual appointed by the *Town* as a Municipal Law Enforcement Officer pursuant to Section 15 of the Police Services Act, as amended, or any other individual designated by the *Town* to enforce this By-law

**Permit** - A permit required by this by-law.

**Person** - Includes a company, a corporation, a partnership or an individual person.

**Standards** - Minimum requirements established by the *Director* pertaining to the planting, protection and preservation of *trees*.

**Tree Protection Plan** - A plan prepared in conjunction with an *arborist report* that identifies the location, species and size of *trees*, identifies the extent of *injury*, where applicable, and illustrates details of protection measures including the location of protective barriers.

**Tree Protection Policy** - The most recent version of the *Town* of Newmarket's *Tree* Preservation, Protection, Replacement, and Enhancement Policy.

**Tree Protection Zone** – The area around a *tree* within which certain activities are prohibited or restricted to prevent or minimize potential injury especially during construction or development.

**Tree** - means any species of woody perennial plant including its root system, which is owned by the *Town* of Newmarket.

**Tree Value/Appraised Value** - The monetary value of a *tree* as determined through calculations using the Guide for Plant Appraisal, 9th Edition (or its more recent successor) as published by the International Society of Arboriculture.

**Trunk** – The stem of the *tree* from its point of growth from the roots to where it first branches out to limbs and foliage.

**Town** – means the Corporation of the *Town* of Newmarket

## 2.0 Authority for planting, care, maintenance, and removal of trees

2.1 The planting, *care and maintenance*, protection, preservation and removal of *trees* located on *Town* owned land shall be under the authority of the *Director*.

### 3.0 Permissions and Prohibited Activities

3.1 Every *person* carrying out work on *Town*-owned land or carrying out work that may impact *trees* on *Town*-owned land, shall carry out such work in accordance with:

- a) the provisions of this By-law;
- b) the *Town's tree* protection policies;
- c) the terms and conditions of any *permit*;
- d) the provisions of any approved *tree protection plan* and/or *arborist report*; and
- e) any other standards as defined in this by-law.

3.2 No *person* shall do any of the following, or cause or *permit* to be done any of the following, without a *permit*:

- a) *Injure, destroy, or remove a tree* located in whole or in part on lands owned by the *Town* of Newmarket.
- b) Place construction material on or near the root system of a *Town*-owned *tree*.
- c) Fail to abide by the requirements of an *Arborist report* approved as part of a request to *injure a tree*.
- d) Demolish, construct, replace or alter a permanent or a temporary building(s) or structures, parking pads, driveways, sidewalks, walkways, paths, trails, dog runs, pools, retaining walls, patios, decks, terraces, sheds or raised gardens which may negatively impact a *Town*-owned *tree*, as determined by the *Director*.
- e) Install large stones or boulders which may negatively impact a *Town*-owned *tree*.
- f) Alter grade by adding or removing soil or fill, excavating, trenching, topsoil or fill scraping, compacting soil or fill, dumping or disturbance of any kind which may negatively impact a *Town*-owned *tree*.
- g) Apply, discharge or dispose of any substance or chemical that may adversely affect the health of a *tree* or materially later the biological or chemical structure and/or function of the soil, e.g. concrete sluice, gas, oil, paint, pool water or backwash water from a swimming pool.
- h) Cause or allow water or discharge, to flow over slopes or through natural areas which may negatively impact a *Town*-owned *tree*.
- i) Park or move vehicles or equipment which may negatively impact a *Town*-owned *tree*
- j) Cut, break, tear, crush, expose or strip a *tree's* roots, *trunk* and/or branches.
- k) Remediate soil or remove contaminated fill which may negatively impact a *Town*-owned *tree*.

- l) Excavate for directional or micro-tunnelling and boring entering shafts which may negatively impact a *Town-owned tree*.
- 3.3 No *person* shall attach or *permit* to be attached any object or thing to a *tree* without the prior written approval of the *Director*.
- 3.4 The approval of the *Director* may be subject to conditions imposed by the *Director* including production of satisfactory evidence that all other requisite approvals have been obtained.

#### 4.0 Exemptions

4.1 This By-law does not apply to:

- a) An emergency situation, as determined by the *Director*,
- b) Situations where there is concern for health and safety, as determined by the *Director*,
- c) Activities or matters or the *injury* or destruction of any *tree* exempted pursuant to subsection 135 (12) of the *Municipal Act*.

#### 5.0 Powers and Duties of the Director

5.1. The *Director* is authorized to:

- a) Plant, or cause to be planted, *trees* on *Town-owned* lands.
- b) Care for and maintain, or cause to be cared for and maintained, any *tree* located on *Town-owned* lands.
- c) Transplant, remove or cause to be transplanted or removed any *tree* planted or located on *Town-owned* land where deemed necessary in the public interest.
- d) Remove or cause to be removed, without notice or compensation to any *person*, any object or thing that adversely affects a *tree* or part of a *tree* on *Town-owned* land.
- e) Implement or cause to be implemented necessary treatments for insects and/or diseases associated with *trees* located on *Town* owned land.
- f) Remove, or cause to be removed, *trees* which are dead, hazardous or no longer viable to maintain.
- g) Remove, *injure* or cause the removal or *injury* of *trees* as may be required to facilitate *emergency work*.
- h) Allow the pruning of *tree* roots in accordance with good arboricultural practices. Requests for *injury* by a resident may be subject to conditions which include the payment of *tree value*, removal and replacement costs, the posting of a letter of credit and/or the planting of a *tree* or *trees* by the applicant.
- i) Stop any work causing unauthorized *injury*, removal or destruction of a *tree*.

- j) Issue *permits* for *injury*, destruction and removal of *trees* in accordance with the criteria and subject to the conditions set out in this By-law.
- k) Refuse to issue *permits* for *injury*, destruction or removal of *trees*.
- l) Establish expiry dates for *permits* and *applications*.
- m) Approve or refuse requests to transfer a *permit* or *application*.
- n) Require the submission of a new *application* where:
  - i) A *permit* or *application* has expired;
  - ii) A request to transfer a *permit* or *application* has been refused;
  - iii) Additional *trees* are requested to be *injured*, *destroyed* or removed.
- o) Require that any *tree* planted on *Town*-owned lands be approved and planted in accordance with the appropriate *Town* of Newmarket standards which will include the planting location, species, size and condition.
- p) Require payment for every *tree* removed, unless otherwise determined by the *Director*.
- q) Require *tree* protection guarantees and securities where work may impact *trees*.
- r) Require *tree* protection zone(s) to be established to protect a *tree*'s root system and protect the *tree(s)* from adverse impacts.
- s) To impose such other fees as are provided for in the *Fees and Charges By-law*, as amended.
- t) Delegate the authority to carry out any section of this By-law to appropriate staff.

## 6.0 Application Form, Content, and Fees

6.1. Any person who wishes to *injure*, *destroy* or remove a *tree* on *Town* owned lands shall submit an *application* to the *Director* on the prescribed form and shall provide, to the satisfaction of the *Director*, items such as including but not limited to the following, unless exempted under Section 4 of this By-law:

- a) The name, *street* address, email address, and telephone number of the applicant;
- b) The non-refundable *application* fee set out in the *Fees and Charges By-law*, as amended. The *application* fee is charged per *tree*. As a trial program, the *application* fee will be waived for the first year, from November 13, 2017 to November 13, 2018.
- c) The purpose for which the *permit* is required;
- d) A landscape plan satisfactory to the *Director*;
- e) An *arborist* report, where required by the *Director*;
- f) A *tree* protection plan, where required by the *Director*;

g) Such additional information and documentation as the *Director* may require.

6.2. The *Director* may require the resubmission of any document listed in Section 6.1 to address their questions and concerns.

## 7.0 Application Review Criteria

7.1. The *Director* shall consider the following criteria prior to issuing or refusing to issue a *permit*:

- a) That all items submitted as part of the *application* are complete to the satisfaction of the *Director*;
- b) The condition and viability of the *tree*;
- c) The location of the *tree*;
- d) The protection of environmentally sensitive areas;
- e) The protection of natural landforms or contours;
- f) The protection of ecological systems;
- g) Erosion and flood control;
- h) The protection of significant vistas;
- i) Whether or not a *tree* is a *heritage tree* or should be protected as a *heritage tree*;
- j) The requirement for a security in the form of Letter of Credit or other form, as appropriate;
- k) The amount of compensation required;
- l) The comments from the *Town's Consulting Arborist*, if the *application* was subject to peer review.

## 8.0 Permit Refusal

8.1 The *Director* shall not issue a *permit* where:

- a) The *application* is incomplete.
- b) The information required (as set out in in this by-law) has not been provided to the satisfaction of the *Director*.
- c) Environmentally sensitive areas, ecological systems, natural landforms or contours will not be adequately protected and preserved.
- d) Erosion or flood control will be negatively impacted.
- e) The *tree* is a *boundary tree*, where one or more of the owners have not given consent to the proposed *injury* or removal.

- f) The applicant has failed to provide sufficient compensation to the satisfaction of the *Director*.
- g) The *tree* is a *heritage tree*, or in the opinion of the *Director*, should be recommended for designation as a *heritage tree*.

## 9.0 Permit conditions

9.1 A *permit* to *injure*, remove or *destroy* a *tree* may be subject to the following terms and conditions:

- a) The *injury*, destruction or removal of a *tree* shall be carried out by or under the supervision of an *arborist*;
- b) Compliance with good arboricultural practices;
- c) Compliance with the *Town's tree* protection policies and any other *standards* as required by the *Town*;
- d) Compliance with approved landscape and *tree protection plans* to the satisfaction of the *Director*.

9.2 The *Director* shall require a notice to be mailed out to residents within 60m of the property nearest the subject *tree*, once an *application* has been received. If a notice is sent, there will be a minimum of 14 calendar days for the public to comment.

9.3 The *Director* shall require compensation for the removal of a *Town-owned tree* in the form of payments of the following:

- a) 200% of the *appraised value* of each *tree* to be removed plus an administration fee;
- b) The cost of the *Town's* contractor to remove each *tree*, as set out in the *Fees and Charges By-law*; and
- c) The cost of the *Town's* contractor to remove the stump of each *tree*, as set out in the *Fees and Charges By-law*.

9.4 The *Director* shall require the provision of a *tree* protection security by submission of a letter of credit or alternative form of security to ensure compliance with the conditions of *permit* issuance, in an amount which represents the *appraised value* of the *tree* to be protected, the removal costs and *tree* replacement costs. The *tree* protection security will be released by the *Town* one year after all construction activities are complete and compliance with all *permit* terms and conditions have been verified to the satisfaction of the *Director*.

9.5 The location of any replacement *tree(s)* will be at the discretion of the *Director*.

## 10.0 Boundary trees

10.1 Upon receipt of an *application* to *injure* or *destroy* a *boundary tree*, the *Director* shall:

- a) Provide notice of the *application* in writing to all *boundary tree* co-owners.

- b) Require the applicant to provide to the *boundary tree* co-owners all *arborist reports, tree protection plans, landscaping and replanting plans, surveys and other supporting documentation* submitted as part of the *application*.

10.2 The *Director* shall not approve a *permit* without letters consenting to the works contemplated through the *permit* from all affected owners.

10.3 If it is determined that 50% or more of a *boundary tree* is on *Town-owned* property the *Director* will authorize the maintenance of the *boundary tree* by *Town* staff. A survey may be required to make the determination.

## 11.0 Appeals

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

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

11.3 An applicant wishing to appeal a refused *permit* shall submit a written request to the *Director* that the *application* be re-considered.

11.4 Where the *Director* has refused to issue a *permit* after an appeal to re-consider, an applicant may, within 14 calendar days from the date of refusal, appeal to the *Town* of *Newmarket's* Committee of Appeals.

11.5 An applicant wishing to appeal a refused *permit*, after re-consideration, shall submit a written request to the *Director* that the *application* be considered by the *Town* of *Newmarket's* Committee of Appeals.

11.6 The *Director* shall collect an appeal after re-consideration *application* fee, as set out in the *Fees and Charges By-law*.

11.7 Where an applicant has filed an appeal, after re-consideration, the *Director* shall prepare and forward a report on the *application* to the next appropriate *Town* of *Newmarket's* Committee of Appeals meeting, setting out the grounds for refusal of the *application*.

11.8 Upon consideration of the *application*, the *Town* of *Newmarket's* Committee of Appeals may approve a *permit*, subject to conditions as set out in this by-law, or to refuse the *permit*.

## 12.0 Power of Entry

12.1 The *Town* may enter onto any lands at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- a) This by-law;
- b) The conditions of any *permit* issued under this by-law;
- c) Direction or order of the *Town* made under this by-law; or
- d) An order made under Section 431 of the *Municipal Act, 2001*.



- 12.2 Where an inspection is conducted by the *Town*, the *person* conducting the inspection may:
- a) Require the production for inspection of documents or things relevant to the inspection;
  - b) Inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
  - c) Require information from any *person* concerning a matter related to the inspection; and
  - d) Alone or in conjunction with a *person* possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of the inspection.
- 12.3 The *Town* may undertake an inspection pursuant to an Order issued under Section 438 of the Municipal Act.
- 12.4 The *Town's* power of entry may be exercised by an employee, inspector or agent of the *Town* or by a member of a police force with jurisdiction, as well by any *person* under his or her direction.
- 12.5 No *person* shall hinder or obstruct, or attempt to hinder or obstruct, any *person* who is exercising a power of performing a duty of this By-law.

### **13.0 Order**

- 13.1. Where the *Town* is satisfied that a contravention of this By-law has occurred, the *Town* may make an order requiring the person who contravened this 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.
- 13.2. An order under this section 13.1 shall set out:
- a) the reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred or is occurring; and,
  - b) the work to be done and the date by which the work must be done.
- 13.3. An order under this Section 13.1 may require work to be done even though the facts which constitute the contravention of this By-law were present before this By-law making them a contravention came into force.
- 13.4. Any *person* who contravenes an order under Section 13.1 of this by-law is guilty of an offence.
- 13.5. The order may be served personally on the *person* to whom it is directed or by registered mail to the last known address of the *person*, in which case it shall be deemed to have been given on the 5th day after it is mailed.
- 13.6. If there is evidence that the occupant of the lands is not the registered property owner, the notice shall be served on both the registered property owner and the occupant of the property.
- 13.7. If the address of the owner is unknown or the *Town* is unable to effect service on the owner or occupant, a placard stating the terms of the order and placed in a conspicuous place upon or near the land shall be deemed to be sufficient service on the owner.

- 13.8. If the delay necessary to serve an order under the preceding subsections would result in an immediate danger to the health or safety of any *person*, the order may be served personally on the *person* to whom it is directed or by a placard stating the terms of the order and placed in a conspicuous place upon or near the property.

#### **14.0 Failure to Comply With an Order**

- 14.1. Where an Owner contravenes an Order issued under Section 13.1, the *Officer* may, without notice to any Owner, cause the work to correct the contravention to be done at each Owner's expense. Without limitation, the *Officer* may retain such *persons* to assist in completing the work as the *Officer* determines appropriate.
- 14.2. Upon completion of the work to correct the contravention by or on behalf of the *Town*, the municipality shall have a lien on the land for the amount spent on the work to correct the contravention, plus administration fee and the amount shall be deemed to be municipal property taxes and may be added to the tax roll and collected in the same manner and with the same priority as municipal property taxes as provided for by statute.
- 14.3. Each Owner is jointly and severally liable to the *Town* for all costs incurred in any way related to work done to correct the contravention for the purpose of section 15.2 including, without limitation, interest as per *Town* policy.

#### **15.0 Penalty Provisions**

- 15.1. Every *person* who contravenes a provision of this By-law, including an order issued under this By-law, is guilty of an offence.
- 15.2. Any *person* who is in contravention of any provision of this By-law, or who fails to comply with an order issued under this By-law shall be deemed to be committing a continuing offence for each day or part of a day that the contravention remains uncorrected.
- 15.3. If an Order has been issued under this By-law, and the order has not been complied with, the contravention of the order shall be deemed to be a continuing offence for each day or part of a day that the order is not complied with.
- 15.4. Any person who is guilty of an offence under this By-law shall be subject to the following penalties:
- a) Upon a first conviction, the minimum fine shall be \$400.00 and the maximum fine shall be \$100,000.00;
  - b) Upon a second or subsequent conviction for the same offence, a fine shall be a minimum of \$500.00 and the maximum fine shall be \$100,000.00;
  - c) Upon conviction for a continuing offence, the minimum fine shall be \$500.00 and the maximum fine shall be \$10,000.00 for each day or part of a day that the offence continues; and
  - e) Upon conviction 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.
- 15.5. For the purposes of this By-law, "multiple offences" means an offence in respect of two (2) or more acts or omissions each of which separately constitutes an offence and is a contravention of a provision of this By-law.

15.6. For the purposes of this By-law, an offence is a “second or subsequent offence” if the act giving rise to the offence occurred after a conviction had been entered at an earlier date for the same offence.

15.7. 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 make an order prohibiting the continuation or repetition of the offence by the *person* convicted.

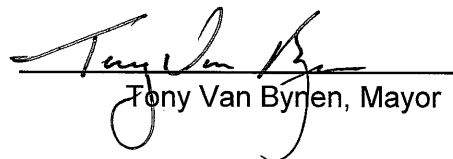
## 16.0 Severability

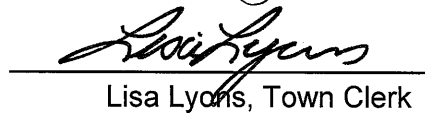
16.1 Where a Court of competent jurisdiction declares any section or part of a section of this By-law invalid, the remainder of this By-law shall continue in force unless the Court makes an order to the contrary.

## 17.0 Short Title

17.1 This By-law shall be referred to as the “Public Tree Protection By-law”;

Enacted this 13<sup>th</sup> day of November, 2017.

  
Tony Van Byren, Mayor

  
Lisa Lyons, Town Clerk