

# **THE CORPORATION OF THE TOWN OF COBOURG**

## **BY-LAW NUMBER 020-2006**

### **A BY-LAW TO AUTHORIZE THE ESTABLISHMENT OF A TREE PRESERVATION POLICY.**

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 WHEREAS Council deems it appropriate and necessary to establish a tree preservation policy respecting municipal property in areas of potential development;

AND WHEREAS Council deems it desirable to regulate and prohibit the injury or destruction of trees within the Town of Cobourg;

### **NOW THEREFORE THE COUNCIL FOR THE CORPORATION OF THE TOWN OF COBOURG HEREBY ENACTS AS FOLLOWS:**

#### **SHORT TITLE**

1. This By-law may be cited as the Tree Preservation By-law.

#### **2. DEFINITIONS**

(1) In this By-law:

- a) **"Act"** - means the Municipal Act 2001, S.O. 2001, c.25 as amended;
- b) **"Arborist"** - means an individual possessing the technical competence through education, experience and related training to provide for or supervise the care and management of trees or other woody plants in a landscape setting;
- c) **"Approved 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 Development Agreement pursuant to Section 53 of the Planning Act;
- d) **"Council"**- shall mean the Council for the Corporation of the Town of Cobourg;
- e) **"Designated Area"** - shall mean:

- (i) those lands that are located within 6 feet (1.8 metres) of the boundary line of any municipal road allowance in the Town of Cobourg; or
  - (ii) any lot in the Town of Cobourg that has an area of 2 acre (0.8 hectares) or more; or
  - (iii) lands that are owned by the Town which are subject to a moratorium on tree removal.
- f) **"Destroy"** - means any action which causes or results in the irreversible injury of or death to a tree;
- g) **"Emergency Work"** - means drain, utility or structural repairs of an emergency nature to a building or structure;
- h) **"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;
- i) **"Injury"** - means any action which causes physical, biological or chemical damage to a tree;
- j) **"Lot"** - shall mean any parcel of land shown as a lot or block on a registered plan of subdivision or the total horizontal area of a parcel of land described within a registered Transfer or other document legally capable of conveying a parcel of land in accordance with the subdivision control provisions of the Planning Act;
- k) **"Municipal Lands"** - shall mean lands owned by the Town;
- l) **"Officer"** - shall mean a person duly authorized by Council by By-law to enforce the provisions of this By-law;
- m) **"Ornamental Plantings"** - means plants cultivated for their beauty and intended to be managed or clipped on an annual or bi-annual basis rather than for their natural use including but not limited to foundation shrubbery, clipped hedges and fruit trees that produce fruit for human consumption;

- n) **"Owner"** - shall mean a person having any right, title, interest or equity in land;
- o) **"Permit"** - shall mean the written authorization from an Officer to injure or destroy a tree in accordance with the provisions of this By-law;
- p) **"Person"** - shall mean an individual, association, partnership, corporation, a municipal, provincial or federal agency or an agent or employee thereof;
- q) **"Planning Act"** - shall mean the Planning Act, R.S.O., 1990, c.P-13 as it may be amended from time to time;
- r) **"Site"** - shall mean any area of land containing any trees proposed to be injured, destroyed or harvested;
- s) **"Town"** - shall mean the Corporation of the Town of Cobourg;
- t) **"Tree"** - shall mean any woody stemmed plant that has reached the height of 4.5 metres (15 feet) above the ground with a minimum diameter of 75 mm (3 inches) at a point that is 1.5 metres above the ground;
- u) **"Tree Planting Levy"** - shall mean the sum of money as established by the Municipality from time to time to be used for the planting of trees within the Municipality and payable to the Town by a person developing land.

### 3. GENERAL PROHIBITION

- 3.1 Subject to the provisions of Section 3.2 and 3.3 below, no person shall injure or destroy any tree in a Designated Area within the Town of Cobourg.
- 3.2 Despite the provisions of Section 3.1 above, any person who has entered into an Approved Development Agreement with the Town in accordance with the provisions of this By-law may injure or destroy trees in a Designated Area provided that the trees are injured or destroyed in accordance with the provisions of the Approved Development Agreement between the person and the Town.
- 3.3 Despite Section 3.1 and 3.2 above, a person who has received a permit from an Officer issued pursuant to the provisions of this By-law may destroy or injure the tree or trees for which the permit is issued in accordance with the terms and conditions of the permit.

#### 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 injury 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 injury or destruction of trees imposed after December 31, 2002 as a condition to the approval of a Site Plan, 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 injury 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 a way side quarry issued under the Aggregate Resources Act; or
- (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,
  - 1. that has not been designated under the Aggregate Resources Act or any predecessor of that Act, and
  - 2. on which a pit or quarry is a permitted land use under a By-law passed under Section 34 of the Planning Act.

## **5. DEVELOPMENT APPLICATIONS**

- 5.1 Any person who makes an application to the Town's Planning Department for an Approved Development Plan shall be required to submit a landscaping and street furniture plan for approval by the Planning Department and in approving an Approved Development Agreement, the Planning Department shall consider and have regard to the Tree Preservation Guidelines attached to and forming part of this By-law as Schedule "B".
- 5.2 Any person who applies to enter into an Approved Development Agreement with the Town shall be subject to a tree planting levy as set out in Schedule "A" attached to and forming part of this By-law and calculated and payable in accordance with the provisions of Schedule "A".
- 5.3 The Planning Department shall consult with the Town's arborist prior to recommending to Council the approval of any Approved Development Agreement which permits the injuring or destruction of trees within a Designated Area.

## **6. PERMIT REQUIRED**

- 6.1 Council hereby designates the Town's arborist as an Officer for the purposes of this By-law and hereby delegates to the Officer the power to issue permits and impose conditions to the permits pursuant to Section 135 (11) of the Act.
- 6.2 Any person who wishes or intends to injure or damage any tree within a Designated Area which is not subject to an Approved Development Agreement shall apply to the Town's Officer for a permit to alter or damage a tree.
- 6.3 Any person who wishes to injure or damage a tree or carry out any activity which may injure or destroy a tree or otherwise cause damage to a tree shall submit to the Town's Officer a completed application in the prescribed form and shall also provide the following:
  - (a) a tree survey and photograph showing the location, size and condition of the tree or trees intended to be injure or destroyed;
  - (b) an evaluation of the condition of the tree or trees prepared by an arborist; and
  - (c) where required by the Town's arborist, a landscaping and replanting plan.

## **7. EXCEPTIONS**

7.1 Despite the provisions of Section 3.1, 3.2 and 3.3 of this By-law, an Approved Development Agreement or permit is not required under this By-law for the following activities:

- (a) the removal of a diseased, dead or hazardous tree including trees causing structural problems certified as such by the Officer;
- (b) the pruning of a tree in accordance with good arboricultural practices in order to maintain the health of the tree;
- (c) the pruning of tree branches that interfere with utility conductors;
- (d) the pruning or removal of Ornamental Plantings; or
- (e) Emergency Work.

## **8. AUTHORITY TO ENTER AND INSPECT LANDS**

8.1 An Officer may, during daylight hours 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 By-law.

## **9. ORDER TO CORRECT VIOLATION**

9.1 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 stop the removal, injury, destruction of or damage to the tree or trees.

## **10. ENFORCEMENT**

10.1 Any person who contravenes or who causes or permits a contravention of any provision of this By-law is guilty of an offence.

10.2 Any person convicted of an offence under this By-law is liable to a fine as set out in Section 138 (1) and (1.1) of the Act.

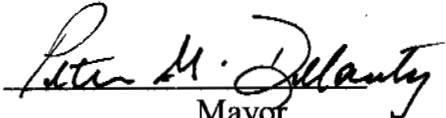
10.3 In addition to any other remedy or any penalty provided by law, the Court in which the conviction has been entered and any Court of competent jurisdiction thereafter may make an Order prohibiting the continuation or repetition of the offence by any person.

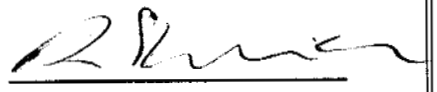
- 10.4 The Court in which the conviction has been entered and any Court of competent jurisdiction thereafter may order the person to replant or have replanted such tree or trees in such manner and within such a time period as the Court considers appropriate.

11. **VALIDITY**

- 11.1 Should any clause or provision of this By-law be declared by a Court of competent jurisdiction to be invalid, the same shall not affect the validity of this By-law as a whole or any part thereof other than the part so declared to be invalid.

READ a first, second and third time and finally passed this 6<sup>th</sup> day of March, 2006.

  
Mayor

  
Clerk

**SCHEDULE "A"****TREE PLANTING LEVY**

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**ARTICLE 1 - INTERPRETATION**

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**DEFINITIONS**

"Linear frontage" - Linear frontage on a highway shall be the same meaning as that in the Zoning By-law and Official Plan.

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**ARTICLE 2 - POLICY**

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Adoption The Corporation of the Town of Cobourg herein adopts and shall implement the tree planting policy as recited in this Chapter.

Compliance All Town staff, agencies, committees, local boards and commissions shall comply with the tree planting policy as outlined in the body of this by-law

Committee of Adjustment Responsibility

The Committee of Adjustment is requested to impose, as a condition of severance, the obligation to provide a tree levy as described herein. This request shall not apply to a severance which permits the creation of a parcel of land that will be subject to site plan control pursuant to Section 41 of the Planning Act, R.S. O. 1990, c. P13.

Plan of Subdivision Tree Levy Requirement

The Corporation of the Town of Cobourg imposes, as a condition incidental to the approval of any plan of subdivision under Section 50 of the Planning Act, 1983, or incidental to any consent under Section 52 of the Planning Act, 1983, the requirement of a tree planting levy to be collected, incidental to such subdivision of land.

Subdivision Severance - Trees on Road Allowance

The requirement to provide trees along streets and their road allowances will be imposed in the form of a levy as a condition of a subdivision agreement, site plan agreement or severance approval.



**SCHEDULE "A" CONT'D**

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**ARTICLE 3 - SUPPLY - INSTALLATION - MAINTENANCE**

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Levy Calculation

It is hereby decreed that the levy will be equivalent to the municipal costs for the supply, installation, and provision of maintenance for a period of one year of such "street trees" and the said levy shall be calculated as follows:

The levy charged will be calculated by multiplying the total number of required trees times the base charge per tree. The amount will be subject to annual review.

The base charge per tree shall be \$350.00 effective March 6<sup>th</sup>, 2006.

Road Allowance - New Subdivisions Provisions

It is hereby deemed that trees shall be provided along such road allowances incidental to new development and in-fill development in the manner set out in "Supervision - Parks Department".

Supervision - Parks Department

The supply, installation, maintenance and necessary replacement of trees will be supervised by the Parks Department using the levied funds to either contract the work or undertake the work by Parks staff.

Timing - Levy Collection from the Applicant

The levy shall be collected from the applicant incidental to the processing of the site plan / development agreement or subdivision agreement and the registration of the plan of subdivision.

Annual Review / Change of Requirements

The levy as expressed in Schedule "A" shall be reviewed annually, and the assessment and any modifications to the said levy shall be presented to Council no later than April 1 in each calendar year.

Severance Consents - Levy Collection - Before Issuance

The levy shall be collected for severance consents prior to the issuance of the certificate of consent by the Secretary of the Committee of Adjustment.

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## **ARTICLE FOUR - LEVY CHARGES**

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### Formula / Calculation per Street Frontage

The amount of the tree planting levy for all development and in-fill development shall be based upon a formula which recognizes that a "street tree" should be provided for every forty (40) feet ( 12.2 metres) of linear frontage along a municipal highway.

### Formula / Calculation - Residential Developments

Accordingly, the tree planting levy shall be established for all developments and in-fill developments in accordance with the following formula:

$$\begin{array}{r} \text{Actual linear Frontage of Developed Site} \\ 40 \text{ ft (12.2 metres)} \\ \times \\ \text{Multiplied by the applicable yearly levy} \end{array}$$

### Formula / Examples - Interpretation

The following examples shall assist in the interpretation of the said formula:

Site to be developed	= 80 feet of frontage
Tree levy applicable	= 80 / 40 X \$250 (present levy)
	= \$500.00 levy

#### Corner Lot Example

Site to be developed	= 120 feet on one side, 60 feet on the other side
Tree levy applicable	Linear frontage is applied to both flanks in accordance with the Zoning By-law:

$$(120 + 60) / 40 \times \$250.00 = \$1,125.00$$

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## **ARTICLE FIVE - GENERAL PROVISIONS**

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### Report by the Parks Department

Upon application, the Parks Department of the Town of Cobourg shall report to Council or to the approved Site Plan Review Committee (in cases of dedicated site plan approval), the requirement as it would pertain to the provision of trees incidental to such commercial, industrial or institutional development on the developed site.

### Severed Lots Formula

Town staff shall request, as a condition of consent for severance to the Committee of Adjustment that a levy be imposed on the basis of a tree or trees being required for every severed lot in accordance with the formula prescribed under "Levy Charges".

Severance - Lot Retained Exemption

The lot to be retained shall not be subject to the tree levy.

Assessment Levy Calculation - Upon Committee of Adjustment Decision

The assessment and appropriate levy calculation shall be made at the time of the decision of consent to sever, made by the Committee of Adjustment.

Size / Quality / Determination / Specifications

The size and quality of trees shall be determined by the Parks Department and the standards for tree size and quality will be in accordance with the current edition of the Canadian Nursery Association Specifications for Nursery Stock.

Species / Selection / Determination

Species of trees to be planted shall be selected by the Parks Department from a schedule of permitted species as determined by the Parks Department.

Location Within the Road Allowance / Conditions

The trees shall be located within the road allowance and planting shall be coordinated with respect to the location of all existing and proposed underground and above ground utilities.

Location / Other Factors / Conditions

Factors such as environmental conditions, likelihood of future root system disturbance, clearance for vehicular and pedestrian traffic, overhead utilities, and the character and ultimate size of the tree species shall be considered in determining the appropriate location of the tree.

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## **ARTICLE SIX - COMMERCIAL / INDUSTRIAL / INSTITUTIONAL DEVELOPMENT**

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Applications

Commercial, industrial or institutional development shall be addressed through applications for approval pursuant to ARTICLE 40 of the Planning Act, 1983.

Report by the Parks Department

Upon application, the Parks Department of the Town of Cobourg shall report to Council or to the approved Site Plan Review Committee (in cases of dedicated site plan approval), the requirement as it would pertain to the provision of trees incidental to such commercial, industrial or institutional development on the developed site.

**FINANCIAL**Reserve Fund - Established

A reserve fund shall be created by the treasurer in relation to the monies received for trees as prescribed in this Chapter.

**ENACTMENT**

**Effective Date**

This policy shall be deemed to be in effect as of March 6<sup>th</sup>, 2006.

**SCHEDULE "B"****SECTION ONE: TREE PRESERVATION GUIDELINES****Preservation requires the commitment of all parties.**

Each participant on a development project, from the owner, architect, engineer, and landscape architect to the demolition, grading, construction and landscape contractor and municipality must be committed to tree preservation.

**Tree preservation cannot wait until construction.**

Successful preservation begins when the project is conceived and continues through the planning, design, demolition, construction and maintenance phases. If efforts at preservation are delayed or ignored until construction begins, preservation efforts are largely doomed to failure.

**All trees cannot and should not be preserved.**

Stand, species and individual trees vary in their suitability for preservation, both on the basis of their innate character and potential construction impacts. Trees that are structurally unsound, in poor health or unable to survive construction impacts are a liability to a project rather than an asset. With permission of the municipality they may be removed.

**Tree preservation programs must respect patterns of tree growth and development.**

All development project members and municipal departments must be familiar with the rudimentary aspects of tree growth and development or use resources that are, if they are to understand the relationships between tree survival and construction practices.

**Construction impacts to trees are cumulative.**

The effect of the impact and injuries that result from construction, grading, etc. is additive. Small, apparently insignificant events, add up over the length of the project and may kill a tree if adequate protection measures are not used.

**Preservation focuses on preventing injury to trees.**

Arboricultural practices such as root fertilizing, cannot cure either construction damage to trees or degradation of their environment.

### **Tree preservation requires accurate site information.**

Successful preservation involves minimizing construction impacts to trees. In many cases, potential impacts cannot be assessed without thorough review of geotechnical reports or soils information and accurate locations of tree trunks and canopies in relation to construction activity.

### **Arborists must communicate with design and engineering professionals.**

Information regarding tree preservation must be conveyed in a form that visually-oriented professionals like architects and engineers can easily assimilate, such as maps, drawings, sections and other graphics.

### **Tree preservation requires space.**

Trees occupy large volumes of space, above- and below ground. Their preservation during development must allow for sufficient space to minimize injury in both directions. Adequate space must be allowed for future tree growth as well.

### **Forest fragments are not natural systems.**

Preservation of small remnant patches of the original forest is a valuable and important part of tree preservation efforts. However, these fragments are no longer natural systems; they require active and on-going management.

These guiding principles reflect three key elements. **First**, preservation must acknowledge and respond to tree biology. The tree itself defines the outer limit for preservation, quite apart from aspects of the project. **Second**, each member of the development team must understand and respond to the influence their participation has on tree preservation. **Third**, the ability of consultants to cure construction injury is very limited and the focus of preservation efforts must be prevention of damage.

## **SECTION TWO: TREE PRESERVATION PROCESS**

The sequence of events that results in successful tree preservation is intimately linked to the development process itself. As the development proceeds, more and more detailed information is required. From a strictly arboricultural standpoint, the preservation process consists of the following steps:

- Article 1**    **Evaluate the resource (Pre-Application)**  
 Tree stand delineation (general description of tree cover)  
 Tree survey (Individual trees - trunk and canopy)  
 Establish general guidelines for tree preservation
  
- Article 2**    **Identify trees suitable for preservation (Time of Application)**  
 Based upon species tolerance to impacts, tree condition and health, longevity, and future potential  
 Identify Tree Protection Zone (TPZ)

- Article 3**     **Assess potential impacts to trees** (Project Review)  
Review all plans for potential impact to trees (existing and proposed grades, services, buildings, and all revisions)
- Article 4**     **Suggest modifications to development plans.**  
Identify areas where impacts are too severe  
Modify plans
- Article 5**     **Identify tree work needed prior to clearing and grading**  
(Preparation of Plans)  
Arboricultural treatments (pruning, removals, etc.)
- Article 6**     **Prepare specifications for tree preservation** (Preparation of Plans).  
Locate trees on all plans  
Provide notes for fencing, pruning and excavation
- Article 7**     **Monitor trees during construction** (Construction Phase)  
Reconcile plans and field conditions  
Identify and treat damage
- Article 8**     **Prepare post-construction maintenance plan**  
(Preparation of Plans).  
Arboricultural treatments to preserved trees (root fertilizing, watering, etc.)  
Re-planting plan where and if necessary

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