

BY-LAW NUMBER 08-026

OF

THE REGIONAL MUNICIPALITY OF WATERLOO

A By-law Respecting the Conservation of Trees in Woodlands

WHEREAS section 135 of the *Municipal Act, 2001* gives The Regional Municipality of Waterloo the power to pass by-laws prohibiting or regulating the destruction or injuring of trees in a woodland;

AND WHEREAS the Council of The Regional Municipality of Waterloo has determined that it is desirable to enact such a by-law for the purpose of sustaining a healthy natural environment while also having regard to good forestry practices;

NOW THEREFORE, the Council of The Regional Municipality of Waterloo hereby enacts as follows:

Part I **Definitions**

1. In this By-law:

- (a) "basal area" means the horizontal cross-sectional area of the stem of a tree, including the bark, measured at breast height;
- (b) "basal area per hectare" means the sum of the basal areas of all trees on a hectare;
- (c) "business day" means any day falling on or between Monday and Friday of each week, but does not include New Year's Day, Family Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day and Boxing Day;
- (d) "Clerk" means the Clerk of the Region or his or her designate;
- (e) "Council" means the Council of the Region;
- (f) "diameter at breast height" or "dbh" means the diameter of the stem of a tree, including bark, determined at breast height which is a point of measurement located 1.37 metres above the highest point of ground at the base of the stem of a tree. If a tree consists of two or more stems forking below breast height, each stem is measured separately, at breast height, or if a tree forks at breast height, or slightly above, the diameter measurement is taken below the enlargement that is caused by the fork;
- (g) "good forestry practices" means the proper implementation of harvest, renewal and maintenance activities known to be appropriate for the forest and environmental conditions under which they are being applied and that minimize detriments to forest values including significant ecosystems, important fish and wildlife habitat, soil and water quality and quantity, forest productivity and health and the aesthetics and recreational opportunities of the landscape;
- (h) "officer" means a municipal law enforcement officer appointed by the Region or a Registered Professional Forester employed by the Region;
- (i) "owner" means the person or persons who are registered on title as the owner or owners of a property;
- (j) "Permit" means a permit to injure or destroy trees as issued under this By-law;
- (k) "person" includes, but is not limited to, an individual, sole proprietorship, partnership, association or corporation;
- (l) "point of measurement" means a point on the stem of a tree measured above

the highest point of undisturbed ground at the base of the tree;

- (m) "properly marked" means a paint dot at a minimum of three places at breast height on a tree and a vertical paint slash at the stump;
- (n) "protected species" means a species of tree listed in sections 1, 3 or 5 of Schedule "A" of this By-law;
- (o) "Region" means The Regional Municipality of Waterloo;
- (p) "Tree By-law Committee" means the Tree By-law Committee of the Region or any successor committee thereto; and
- (q) "woodland" means land that is located within the boundaries of The Regional Municipality of Waterloo that is at least one hectare or more in area with at least:
 - (i) 1,000 trees, of any size, per hectare;
 - (ii) 750 trees, measuring over five centimetres in diameter, per hectare;
 - (iii) 500 trees, measuring over 12 centimetres in diameter, per hectare; or
 - (iv) 250 trees, measuring over 20 centimetres in diameter, per hectare;

but does not include a cultivated fruit or nut orchard or a plantation established for the purpose of producing Christmas trees.

Part II Prohibition

- 2. Except as otherwise provided in this By-law, no person shall destroy or injure a tree, or cause another person to destroy or injure a tree, of a protected species that is located in a woodland.

Part III Exemptions

- 3. 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 by the Crown;
 - (c) activities or matters undertaken pursuant to federal legislation or regulations governing the operation of airports, telecommunication facilities, correctional institutions, railways and other facilities under federal jurisdiction;
 - (d) activities or matters undertaken under a licence issued under the *Crown Forestry Sustainability Act, 1994*;
 - (e) the injuring or destruction of a tree of a protected species 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;
 - (f) the injuring or destruction of a tree of a protected species imposed as a condition to the approval of a site plan, a plan of subdivision or a consent under sections 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;
 - (g) the injuring or destruction of a tree of a protected species 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;
 - (h) the injuring or destruction of a tree of a protected species by a transmitter or distributor, as those terms are defined under section 2 of the *Electricity Act, 1998*, for the purpose of construction and maintaining a transmission system or a distribution system, as those terms are defined in that section;
 - (i) the injuring or destruction of a tree of a protected species 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*;

- (j) the injuring or destruction of a tree of a protected species undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land:
 - (i) that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act; and
 - (ii) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act*;
- (k) the injuring or destruction of a tree of a protected species in order to:
 - (i) erect a building, structure or thing in respect of which a building permit has been issued by a municipality provided no tree of a protected species being injured or destroyed is located more than ten metres from the outer edge of the building, structure or thing;
 - (ii) install and provide utilities to the construction or use of the building, structure or thing in respect of which a building permit has been issued by a municipality; or
 - (iii) provide a single lane driveway for vehicular access to the building, structure or thing in respect of which a building permit has been issued by a municipality;
- (l) the injuring or destruction of a tree of a protected species for the owner of the woodland's own use provided that:
 - (i) no more than five trees of a protected species are injured or destroyed per hectare, to a maximum of 30 trees, within a one year period; and
 - (ii) the injury or destruction of the tree of a protected species does not reduce the number of trees, of all species, in the woodland below the minimum number of trees necessary to constitute a woodland;
- (m) the injuring or destruction of a tree of a protected species which is a hazard to any person, building, structure or utility service;
- (n) the injuring or destruction of a tree of a protected species which has been damaged by wind, ice, fire or lightning to the extent that the health of the tree is likely to further deteriorate; or
- (o) the injuring or destruction of a tree of a protected species pursuant to an approved management plan prepared under a provincial incentive program for forest management.

Part IV Good Forestry Practices Permit

- 4. The owner of a property where a woodland is located, in whole or in part, or any person authorized in writing by the owner, may apply for a Good Forestry Practices Permit and an officer may issue a Good Forestry Practices Permit for the owner's portion of the woodland if a tree or trees of a protected species are to be injured or destroyed pursuant to a Forest Management Plan or a silvicultural prescription, that includes verification that the tree or trees have been properly marked, as prepared or approved by a Registered Professional Forester or a member in good standing with the Ontario Professional Foresters Association whose scope of practice includes the preparation of silvicultural prescriptions.

Part V Diameter Limit/Basal Area Permit

- 5. The owner of a property where a woodland is located, in whole or in part, or any person authorized in writing by the owner, may apply for a Diameter Limit/Basal Area Permit and an officer may issue a Diameter Limit/Basal Area Permit to allow the injuring or destruction of a tree or trees of a protected species in the owner's portion of the woodland if the officer is satisfied that:
 - (a) the tree or trees have attained the diameter or circumference measurement applicable to the tree species as set out in Schedule "A" of this By-law measured at the prescribed point of measurement;
 - (b) all trees to be injured or destroyed have been properly marked;
 - (c) the injury or destruction of the tree or trees will not reduce the total basal area,

as determined by an accepted forest sampling method, of all protected species in the woodland,

- (i) which measure 10 centimetres or more in dbh, to below 20 square metres per hectare;
 - (ii) which measure 24 centimetres or more in dbh, to below 16 square metres per hectare; and
 - (iii) which measure 50 centimetres or more in dbh, to below 4 square metres per hectare;
- (d) the injury or destruction of the tree or trees will not reduce the number of trees, of all species, in the woodland below the minimum number of trees necessary to constitute a woodland; and
- (e) the injury or destruction of the tree or trees will not reduce the total area of the woodland.

Part VI **Woodland Removal Permit**

6. (a) The owner of a property where a woodland is located, in whole or in part, or any person authorized in writing by the owner, may apply for a Woodland Removal Permit and the Tree By-law Committee may issue a Woodland Removal Permit to allow the injuring or destruction of a tree or trees of a protected species in the owner's portion of the woodland, if in the opinion of the Tree By-law Committee, the injuring or destruction of the tree or trees is desirable for the appropriate development or use of the property and the general intent and purpose of this By-law is maintained.
- (b) Upon receipt of a completed application for a Woodland Removal Permit and any prescribed fee, the Clerk shall submit the application to the Tree By-law Committee and the Tree By-law Committee shall hear from the applicant, an officer and persons given notice in subsection (c) of this section, who are in attendance, and the Tree By-law Committee shall make the decision either to issue or not issue the Woodland Removal Permit.
- (c) At least ten business days prior to the date when the Tree By-law Committee considers the application for a Woodland Removal Permit under subsection (b) of this section, the Clerk shall send, by personal service or regular mail, written notice to the applicant in subsection (a) of this section and all assessed owners within 120 metres of the property on which the Woodland Removal Permit is sought and the notice shall include:
- (i) the location of the property on which the Woodland Removal Permit is sought;
 - (ii) the nature and purpose of the Woodland Removal Permit sought; and
 - (iii) the date, time and location of the Tree By-law Committee meeting where the application for the Woodland Removal Permit will be considered.

Part VII **Permits (General)**

7. (a) An application for a Permit shall be in the form prescribed by the Clerk and shall be submitted to the Clerk, in full, for consideration along with any fee as prescribed by by-law of Council.
- (b) Without limiting subsection (a) of this section, the Clerk may require that the applicant include property information, diagrams, maps and other necessary information as part of the application form for a Permit.
8. (a) When issuing a Permit, an officer or the Tree By-law Committee, as applicable, may impose conditions to the Permit that the officer or Tree By-law Committee believe are appropriate in order to achieve the general intent and purpose of this By-Law.
- (b) Without limiting subsection (a) of this section, an officer or the Tree By-law Committee may impose conditions to a Permit that relate to:

- (i) the manner and timing in which the injuring or destruction of the tree or trees is to be carried out;
 - (ii) the qualifications of the person or persons authorized to injure or destroy the tree or trees;
 - (iii) the species, size, number and location of any replacement trees to be planted;
 - (iii) measures to be implemented to mitigate the direct and indirect effects of the injuring or destruction of the tree or trees upon the woodland; and
 - (iv) the posting, contents and timing of a sign advising the public of the Permit.
- (c) Every person who is granted a Permit shall abide by the conditions imposed pursuant to this section.
9. (a) Any person who is denied a Good Forestry Practices Permit or a Diameter Limit/Basal Area Permit may apply to the Clerk within 15 days of the denial for a hearing before the Tree By-law Committee to review the denial.
- (b) Any person who is granted a Good Forestry Practices Permit or a Diameter Limit/Basal Area Permit that includes a condition or conditions may apply to the Clerk within 15 days of the issuance of the Permit for a hearing before the Tree By-law Committee to review the condition or conditions imposed.
- (c) Upon receipt of a completed application for a review pursuant to subsection (a) or (b) of this section, the Clerk shall submit the application to the Tree By-law Committee and the Tree By-law Committee shall hear from the applicant and an officer in regard to the denial or conditions imposed. The Tree By-law Committee shall then make the decision to either confirm or vary the denial or conditions imposed so as to achieve the general intent and purpose of this By-Law.
10. Every person who is granted a Permit shall post the Permit at an entrance to the property for which the Permit was granted, in a location that is visible to all persons, when the destruction or injury of the tree or trees commences and the Permit shall be removed at the conclusion of the destruction and removal of the tree or trees.
11. Unless otherwise specified by an officer or the Tree By-law Committee, as applicable, every Permit shall expire one year after it was issued.

Part VIII Order to Discontinue Contravention

12. (a) If an officer is satisfied that a contravention of this By-law has occurred, the officer may make an 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 discontinue the contravening activity.
- (b) An order under subsection (a) of this section shall set out:
- (i) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and
 - (ii) the date by which there must be compliance with the order.

Part IX Penalty

13. Every person who contravenes a provision of this By-law or an order under section 12 of this By-law is guilty of an offence and upon conviction is liable,
- (a) on a first conviction, to a fine of not more than \$10,000 or \$1,000 per tree where there are multiple offences in relation to the injuring or destruction of trees of a protected species, whichever is greater; and
 - (b) on any subsequent conviction, to a fine of not more than \$25,000 or \$2,500 per tree where there are multiple offences in relation to the injuring or destruction of trees of a protected species, whichever is greater.
14. Every director or officer of a corporation who knowingly concurs in the

contravention of this By-law by the corporation is guilty of an offence and upon conviction is liable,

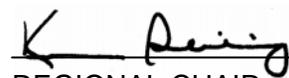
- (a) on a first conviction, to a fine of not more than \$10,000 or \$1,000 per tree where there are multiple offences in relation to the injuring or destruction of trees of a protected species, whichever is greater; and
 - (b) on any subsequent conviction, to a fine of not more than \$25,000 or \$2,500 per tree where there are multiple offences in relation to the injuring or destruction of trees of a protected species, whichever is greater.
15. If this By-law is contravened and a conviction is entered, in addition to any other remedy and to any penalty imposed, the court in which the conviction was entered and any court of competent jurisdiction thereafter may make an order,
- (a) prohibiting the continuation or repetition of the offence by the person convicted; and
 - (b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

Part X Administration

16. This By-law may be enforced by an officer or a police officer.
17. If any section or sections of this By-law or parts of it are found by any Court to be illegal or beyond the power of Council to enact, such section or sections or parts of it shall be deemed to be severable and all other sections or parts of this By-law shall be deemed to be separate and independent and shall continue in full force.
18. This By-law may be cited as the "Woodland Conservation By-law".
19. This By-law comes into force on the date of its final passage.
20. (a) By-law Number 05-078 of The Regional Municipality of Waterloo shall be repealed effective on the coming into force and effect of this By-law.
- (b) Despite subsection (a) of this section, By-law Number 05-078 of The Regional Municipality of Waterloo shall continue to apply to proceedings in respect of an offence or offences that occurred before its repeal.
 - (c) Despite subsection (a) of this section, By-law Number 05-078 of The Regional Municipality of Waterloo shall continue to apply to any permits that were issued under the By-law before its repeal.

By-law read a first, second and third time and finally passed in the Council Chamber in the Regional Municipality of Waterloo this 18th day of June, A.D., 2008.


REGIONAL CLERK


REGIONAL CHAIR

SCHEDULE "A"

PROTECTED TREE SPECIES

PART I

1. Protected species:

Ash	White (<i>Fraxinus americana</i>) Red (<i>Fraxinus pennsylvanica</i>) Green (<i>Fraxinus pennsylvanica</i> var. <i>subintegerrima</i>)
Elm	White, American (<i>Ulmus americana</i>) Slippery, Red (<i>Ulmus rubra</i>) Rock (<i>Ulmus thomasi</i>)
Oak	White (<i>Quercus alba</i>) Red (<i>Quercus rubra</i>) Bur (<i>Quercus macrocarpa</i>) Northern Pin (<i>Quercus ellipsoidalis</i>) Black (<i>Quercus velutina</i>) Swamp White (<i>Quercus bicolor</i>) Chinquapin (<i>Quercus muehlenbergii</i>)
Maple	Sugar (<i>Acer saccharum</i>) Black (<i>Acer nigrum</i>) Silver (<i>Acer saccharinum</i>) Red (<i>Acer rubrum</i>)
Pine	White (<i>Pinus strobus</i>) Red (<i>Pinus resinosa</i>)
Walnut	(<i>Juglans nigra</i>)
Cherry	Black (<i>Prunus serotina</i>)
Hickory	Shagbark (<i>Carya ovata</i>) Bitternut (<i>Carya cordiformis</i>) Pignut, Red (<i>Carya glabra</i>)
Basswood	(<i>Tilia americana</i>)
Beech	(<i>Fagus grandifolia</i>)
Sycamore	(<i>Platanus occidentalis</i>)

2. Prescribed circumference or diameter for the species listed in section 1 of this Schedule:

Column 1	Column 2	Column 3
Point of Measurement	Circumference	Diameter
46 cm. (18 in.)	160 cm. (63 in)	51 cm. (20 in.)
31 cm. (12 in.)	176 cm. (69 in)	56 cm. (22 in.)
20 cm. (8 in.)	200 cm. (79 in)	63 cm. (25 in.)
10 cm. (4 in.)	223 cm. (88 in)	71 cm. (28 in.)
2.5 cm. (1 in.)	249 cm. (98 in)	79cm. (31 in.)

PART II

3. Protected species:

Hemlock	(<i>Tsuga canadensis</i>)
Spruce	White (<i>Picea glauca</i>) Black (<i>Picea mariana</i>) Norway (<i>Picea abies</i>)
Pine	Scots (<i>Pinus sylvestris</i>)
Tamarack	Eastern larch (<i>Larix laricina</i>)
Ash	Black (<i>Fraxinus nigra</i>)
Birch	Yellow (<i>Betula alleghaniensis</i>)
Sassafras	(<i>Sassafras albidum</i>)
Hackberry	(<i>Celtis occidentalis</i>)
Willow	Black (<i>Salix nigra</i>)

4. Prescribed circumference or diameter for the species listed in section 3 of this Schedule:

Column 1	Column 2	Column 3
Point of Measurement	Circumference	Diameter
46 cm. (18 in.)	112 cm. (44 in)	36 cm. (14 in.)
31 cm. (12 in.)	127 cm. (50 in)	41 cm. (16 in.)
20 cm. (8 in.)	145 cm. (57 in)	46 cm. (18 in.)
10 cm. (4 in.)	175 cm. (69 in)	56 cm. (22 in.)
2.5 cm. (1 in.)	207 cm. (82 in)	66cm. (26 in.)

PART III

5. Protected species:

Poplar	Trembling Aspen (<i>Populus tremuloides</i>)
	Large-toothed (<i>Populus grandidentata</i>)
	Balsam (<i>Populus balsamifera</i>)
	Eastern Cottonwood (<i>Populus deltoides</i>)
Cedar	White (<i>Thuja occidentalis</i>)
	Red (<i>Juniperus virginiana</i>)
Birch	White (<i>Betula papyrifera</i>)
Beech	Blue (<i>Carpinus caroliniana</i>)
Ironwood	(<i>Ostrya virginiana</i>)
Fir	Balsam (<i>Abies balsamea</i>)
Cherry	Pin (<i>Prunus pensylvanica</i>)
	Choke (<i>Prunus virginiana</i>)
Mulberry	Red (<i>Morus rubra</i>)
Larch	European (<i>Larix decidua</i>)

6. Prescribed circumference or diameter for the species listed in section 5 of this Schedule:

Column 1	Column 2	Column 3
Point of Measurement	Circumference	Diameter
46 cm. (18 in.)	64 cm. (25 in)	20 cm. (8 in.)
31 cm. (12 in.)	79 cm. (31 in)	25 cm. (10 in.)
20 cm. (8 in.)	94 cm. (57 in)	31 cm. (12 in.)
10 cm. (4 in.)	127 cm. (50 in)	41 cm. (16 in.)
2.5 cm. (1 in.)	152 cm. (60 in)	49 cm. (19 in.)