

By-law Number 72-2021

Of The Corporation of the Municipality of Chatham-Kent

A By-Law to temporarily prohibit the Clear Cutting of Woodlots, Woodlands and parts of Woodlots or Woodlands in the Municipality of Chatham-Kent.

Short Title: "The Temporary Clear Cutting By-law"

Finally passed this 26<sup>th</sup> day of April, 2021.

Whereas the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended provides in section 135 that the municipality may prohibit or regulate the destruction or injuring of trees;

And Whereas the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended provides in section 436 that a municipality may, at any reasonable time, enter on land for the purpose of carrying out an inspection to determine compliance with the by-law, direction or order, a condition to a permit, or a court order;

And Whereas the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended provides in section 435 that the power to enter shall be exercised by an employee, officer or agent of the municipality or a member of the police force of the municipality;

And Whereas the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended provides in section 444 that the municipality 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, and any person who contravenes such an order is guilty of an offence;

And Whereas the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended provides in section 445 that the municipality 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 do work to correct the contravention, and any person who contravenes such an order is guilty of an offence;

And Whereas Council has determined it is desirable to enact such a By-law;

Now Therefore the Council of the Corporation of the Municipality of Chatham-Kent hereby enacts as follows:

**Definitions**

1.1 In this By-law:

- a. "Building Permit" means a building permit issued by the Municipality under the Building Code Act, 1992, S.O. 1992, c.23, as amended;
- b. "Clear Cut" means the removal of all, or substantially all, of the Trees within any portion of a Woodland or Woodlot, where the area of the Woodland or Woodlot from which the Trees are removed is in excess of 0.1 hectare;
- c. "DBH" (Diameter at Breast Height) means the diameter of the stem of a Tree measured at a point that is 1.37 metres above the ground.
- d. "Fence Row" means a narrow linear strip of Trees that defines a laneway or boundary between fields or properties;
- e. " Municipality" means the Corporation of the Municipality of Chatham-Kent;
- f. "Officer" means a Bylaw Enforcement Officer appointed by the Municipality;
- g. "Owner" means the Person who is the registered owner on title to the land;

- h. "Person" means an individual or a corporation and their respective heirs, executors, administrators or other duly appointed representatives;
- i. "Tree" or "Trees" means any living species of woody perennial plant, including its root system, which has reached or can reach a height of at least 4.5 meters at physiological maturity;
- j. "Woodland" or "Woodlands" means land on one or more properties being at least 1 hectare in area with a density of at least:
  - i. 1,000 Trees, of any size, per hectare;
  - ii. 750 Trees, measuring over five (5) centimetres at DBH, per hectare;
  - iii. 500 Trees, measuring over twelve (12) centimetres, at BH, per hectare; or
  - iv. 250 Trees, measuring over twenty (20) centimetres, at DBH, per hectare.

but does not include:

- i. a cultivated fruit or nut orchard;
  - ii. a plantation established for the purpose of producing Christmas Trees and which is being actively managed and harvested for the purposes for which it was planted, except that this does not refer to plantations that have ceased being managed or harvested for their intended purpose for a period of 15 years or more;
  - iii. a bona fide tree nursery that is being actively managed and harvested for the purposes for which it was planted; or
  - iv. a fence row;
- k. "Woodlots" or "Woodlot" means land on one or more properties being at least 0.2 hectares in area and no greater than one hectare in area, with a density of at least:
    - i. 200 trees, of any size, per 0.2 hectare;
    - ii. 150 trees, measuring over five (5) centimeters (2 inches) DBH, per 0.2 hectare;
    - iii. 100 trees, measuring over twelve (12) centimetres (5 inches) DBH, per 0.2 hectare; or
    - iv. 50 trees, measuring over twenty (20) centimetres (8 inches) DBH, per 0.2 hectare;

but does not include:

- i. a cultivated fruit or nut orchard;
- ii. a plantation established for the purpose of producing Christmas Trees and which is being actively managed and harvested for the purposes for which it was planted, except that this does not refer to plantations that have ceased being managed or harvested for their intended purpose for a period of 15 years or more;
- iii. a bona fide tree nursery that is being actively managed and harvested for the purposes for which it was planted; or
- iv. a fence row;

## Application of the By-law

- 2.1 This By-law shall apply to all Woodlands and Woodlots in the geographic limits of the Municipality.

## General Prohibitions

- 3.1 No Person through their own actions or through any other Person shall Clear Cut unless exempted by Section 4;
- 3.2 No Person through their own actions or through any other Person shall:
- a. Fail to comply with an Order issued under Section 5 of this By-law; or
  - b. Remove or deface any Order that has been posted pursuant to Section 5 of this By-law.

## Exemptions

- 4.1 Despite Section 3 of this By-law, this By-law does not apply to:
- a. activities or matters undertaken by a municipality or a local board of a municipality;
  - b. activities undertaken by Conservation Authorities on lands owned by the Conservation Authorities; or
  - c. activities or matters undertaken under a licence issued under the *Crown Forest Sustainability Act*, 1994, S.O. 1994, c.25, as amended.
- 4.2 Despite Section 3 of this By-law, this By-law does not apply to the injury or destruction of Trees by a person licensed under the *Surveyors Act*, R.S.O. 1990, c. s.29, as amended, to engage in the practice of cadastral surveying or his or her agent, while making a survey.
- 4.3 Despite Section 3 of this By-law, this By-law does not apply to the injury or destruction of Trees imposed after December 31, 2002:
- a. as part of a Tree Preservation Plan required as a condition of approval in a plan of subdivision that has received draft approval under Section 51 of the *Planning Act*;
  - b. as part of a Tree Preservation Plan required as a condition on a consent approved under Section 53 of the *Planning Act*;
  - c. as a requirement in a Tree Preservation Plan approved and included in a site plan control agreement or a subdivision agreement entered into under Sections 41 and 51 respectively of the *Planning Act*;
  - d. in a development agreement between an Owner and the Municipality; or
  - e. 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.
- 4.4 Despite Section 3 of this By-law, this By-law does not apply to the injury or destruction of Trees by a transmitter or distributor, as those terms are defined in Section 2 of the *Electricity Act*, 1998 S.O. 1998, c.15, Sched. A, as amended, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section.

- 4.5 Despite Section 3 of this By-law, this By-law does not apply to the injury or destruction of Trees undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*; R.S.O 1990, c. A.8, as amended.
- 4.6 Despite Section 3 of this By-law, this By-law does not apply to the injury or destruction of Trees that is required in order to erect any building, structure or thing, including yard areas, in respect of which a Building Permit has been issued, provided that no Tree is removed that is located more than 15 metres from the outer edge of the building, structure or things and that only those Trees necessary to accommodate the building, structure or thing, including yard areas, are removed.
- 4.7 Despite Section 3 of this By-law, this By-law does not apply to the injury or destruction of Trees that is required in order to install and provide utilities to the construction or use of the building, structure or thing, including the installation of a primary septic bed, in respect of which a Building Permit has been issued.
- 4.8 Despite Section 3 of this By-law, this By-law does not apply to the injury or destruction of Trees that is required in order to install, provide or maintain a single lane driveway for vehicular access to the building, structure or thing in respect of which a Building Permit has been issued.
- 4.9 Despite Section 3 of this By-law, this By-law does not apply to the injury or destruction of Trees on lands, including buffer lands, used for the purpose of a licensed waste disposal site that has been approved, where applicable, under the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended; the *Ontario Water Resources Act*, R.S.O. 1990, c. 0.40, as amended; the *Environmental Assessment Act*, R.S.O. 1990, c. E.18, as amended; and the *Planning Act*.
- 4.10 Despite Section 3 of this By-law, this By-law does not apply to the injury or destruction of Trees for the construction of drainage works under the *Drainage Act*, R.S.O. 1990, c. D.17, as amended.
- 4.11 Despite Section 3 of this By-law, this By-law does not apply to the injury or destruction of Trees approved by By-law of the Municipality's Municipal Council, which By-law shall be considered where the injury or destruction of Trees is necessary for Good Forestry Practices as defined under the *Forestry Act*, R.S.O. 1990, c. F.26.

## **Enforcement**

- 5.1 An Officer, or any person authorized by an Officer, may at all reasonable times enter upon and inspect any land and any Woodland or Woodlot for the purposes of enforcing this By-law, determining compliance with this By-law, or laying charges under this By-law.
- 5.2 Where an Officer has determined that a contravention of this By-law has occurred, the Officer may make an Order requiring the Person who contravened this By-law to stop the contravention. The Order shall set out:
- a. the municipal address or the legal description of the property;
  - b. reasonable particulars of the contravention; and
  - c. the period within which there must be compliance with the Order.
- 5.3 No person shall hinder or obstruct or attempt to hinder or obstruct any person who is exercising a power or performing a duty under this By-law.

**Penalty**

- 6.1 Any person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine of not more than \$100,000.
- 6.2 If a Person is convicted of an offence for contravening this By-law the Court in which the conviction has been entered, and any Court of competent jurisdiction thereafter, may order the person to rehabilitate the land or to plant or replant Trees in such a manner and within such period as the Court considers appropriate.

**Administration**

- 7.1 If any section or part of this By-law is found by any court of competent jurisdiction to be illegal or beyond the power of the Municipality to enact, such section or part shall be deemed to be severable and all other sections or parts of this By-law shall be deemed to be separate and independent therefrom and to be enacted as such.
- 7.2 The short title of this By-law is the "The Temporary Clear Cutting By-law".
- 7.3 The By-law shall automatically expire 120 days after passing.

Read a First, Second and Third time this 26<sup>th</sup> day of April, 2021

Original signed by:

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Mayor – Darrin Canniff

Original signed by:

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Clerk – Judy Smith