

The Regional Municipality of Hamilton-Wentworth

Woodland Conservation By-Law No. R00-054



February, 2003

For More Information

The Woodland Conservation By-law (No. R00-054) is administered and enforced by the City of Hamilton. If you would like more information, or to obtain copies of the Notice of Intent and Minor Exception application forms, please contact:

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The Regional Municipality of Hamilton-Wentworth

By-Law No. R00-054

Respecting:

WOODLAND CONSERVATION

To restrict and regulate the destruction of trees in the
Regional Municipality of Hamilton-Wentworth.

WHEREAS the Council of the Regional Municipality of Hamilton-Wentworth deems it necessary to preserve and enhance the native biodiversity, forest, water, and soil resources of the region by promoting the sustainable use and wise management of woodlands in the region.

AND WHEREAS Section 11 of the *Forestry Act, R.S.O. 1990*, as amended, authorizes the Council of the Regional Municipality of Hamilton-Wentworth to pass by-laws consistent with good forestry practices;

- a) restricting and regulating the destruction of trees by cutting, burning, or other means in woodlands of the size specified in this by-law;
- b) providing for the appointment of officers to enforce any by-law passed under this section; and
- c) providing for a process to authorize minor exceptions from the by-law in respect of such trees as, in its opinion, are desirable for the appropriate development or use of the land on which the trees are situated, if the general intent and purpose of the by-law is maintained.

AND WHEREAS the former County of Wentworth had enacted a Tree Cutting By-law as By-law No 2159, as amended by By-law No. 2400, and it is deemed advisable to repeal such by-laws in the event they have not previously been repealed.

NOW THEREFORE the Council of the Regional Municipality of Hamilton-Wentworth enacts as follows:

DEFINITIONS

- 1. For the purposes of this by-law:
 - (a) “area municipality” means the municipality or corporation of The City of Stoney Creek, The City of Hamilton, The Town of Ancaster,

The Town of Dundas, The Town of Flamborough, and The Township of Glanbrook;

- (b) “building permit” means a building permit as issued under the *Building Code Act, S.O. 1992, c.23*, as amended;
- (c) “circumference” means the measurement of the perimeter of the trunk or stem of the tree with such measurement including the bark of the stem or trunk;
- (d) “Community Planning and Development Division” means the Community Planning and Development Division of the Regional Municipality of Hamilton-Wentworth;
- (e) “Council” means the Council of the Regional Municipality of Hamilton-Wentworth;
- (f) “destroy” means any action which causes or results in the death of a tree, which includes but is not limited to cutting, burning, or knocking over a tree;
- (g) “diameter” means the measurement of the width of the stem or trunk of a tree with such measurement including the bark;
- (h) “good forestry practice” 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 the 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.
- (i) “own use” in respect of Section 4(a) does not include the sale, exchange, or other disposition of the tree that is destroyed;
- (j) “plantation” means a woodland where trees of a prescribed species have been planted or seeded in a pre-determined pattern or arrangement for the purpose of cultivation and sale at a later time;
- (k) “point of measurement” means that point on the tree trunk measured above the highest point of the ground in an undisturbed state on the base of the tree;
- (l) “prescribed species” means the species of trees listed in Schedule A attached to and forming part of this by-law;

- (m) “Tree By-law Committee” means the Tree By-law Committee of the Regional Municipality of Hamilton-Wentworth, consisting of members of Regional Council;
- (n) “woodlands” means land with at least:
 - (i) 1000 trees per hectare (405 trees per acre) of any size;
 - (ii) 750 trees per hectare (303 trees per acre), measuring over 5 centimetres (2 inches) in diameter;
 - (iii) 500 trees per hectare (202 trees per acre), measuring over 12 centimetres (5 inches) in diameter;
 - (iv) 250 trees per hectare (101 trees per acre), measuring over 20 centimetres (8 inches) in diameter.

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

(2) For the purposes of the definition of “woodlands” in (1), all measurements of the trees are to be taken at 1.37 metres from the ground.

APPLICATION

- 2. (1) This by-law applies only to woodlands within the geographic boundaries of the Regional Municipality of Hamilton-Wentworth under the *Regional Municipality of Hamilton-Wentworth Act, R.S.O. 1990 c.R. 12*.
- (2) This by-law does not apply to woodlands less than 0.81 hectares (2 acres) in area.

TREE DESTRUCTION RESTRICTIONS

- 3. (1) Except as provided in Section 4, no person shall destroy by cutting, burning, or other means a tree:
 - (i) if the tree is of a prescribed species listed in Schedule A and does not equal or exceed the measurements required for that tree species as set out in Schedule A at the point of measurement specified; and

- (ii) if the destruction of the trees has the effect of reducing the number of trees in woodlands below the number of trees necessary to constitute woodlands.

(2) When cutting or removing trees in woodlands, no person shall unnecessarily damage or injure any tree of a prescribed species that remains standing in the woodland or conduct their operations in such a manner that results in excessive damage to the soil, water bodies, wetlands, or other portions of the woodlands.

EXCEPTIONS

- 4. (1) Pursuant to the *Forestry Act, R.S.O. 1990 c.F.26* as amended, this by-law shall not be construed to:
 - (a) interfere with the right of a person who has been the registered owner of land for at least two years to cut trees on the land for the person's own use;
 - (b) interfere with any rights or powers conferred upon a municipality by the *Municipal Act R.S.O. 1990 c.M.45*, as amended;
 - (c) interfere with any rights or powers of any agency, board, or commission that is performing its functions for or on behalf of the Crown;
 - (d) apply to trees growing on any highway or on any opened road allowance;
 - (e) apply to trees destroyed in order to erect a building, structure, or thing in respect of which a building permit is issued by an area municipality provided no tree of a prescribed species is destroyed more than 10 meters (33 feet) from the outer edge of the building, structure, or thing;
 - (f) apply to trees planted for the production of Christmas trees;
 - (g) apply to trees that are destroyed in accordance with an approved Tree Preservation Plan or landscape planting plan imposed as a condition of a consent, plan of subdivision, plan of condominium or site plan approved by an area municipality pursuant to the *Planning Act, R.S.O. 1990, c.P.13*, as amended, or any successor thereof;
 - (h) apply to trees 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*;

- (i) apply to trees cut 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 any person in his or her employ while making a survey;
- (j) apply to trees destroyed in order to lawfully establish and operate or enlarge any pit or quarry on land that has not been designated under the *Aggregate Resources Act, R.S.O. 1990, c.A.8* or a predecessor of that Act;
- (k) apply to trees that are cut in accordance with good forestry practice; or
- (l) apply to interfere with any rights or powers of a transmitter or distributor as defined in the *Electricity Act, 1998*.

MINOR EXCEPTIONS

- 5. (1) Any person who is the registered owner of the land where woodlands are located, or any person authorized in writing by such owner, may apply for a minor exception to Section 3 of this by-law.
 - (a) Applications for a minor exception shall be in the form as prescribed by Community Planning and Development Division and shall be submitted to the Community Planning and Development Division, completed in full, for consideration along with a fee of \$600. The applicant shall submit the following information with the application:
 - (i) the location of the land on which the minor exception is sought;
 - (ii) a description of the nature and extent of the trees on such land;and
 - (iii) the nature and purpose of the minor exception sought.
 - (b) The Director of Community Planning and Development Division will designate a staff person or persons to consider, issue, or refuse permits for minor exceptions, and to direct or conduct investigations into whether the exception applied for is minor, desirable for the appropriate development or use of the land on which the trees are situate, and if the general intent and purpose of the by-law is being maintained.
 - (c) Persons designated in (b) above will, upon receipt of a completed application and payment of the fee, make inquiries of the applicant, and arrange for an inspection or report dealing with the application, and consider whether the exception sought is:

- (i) minor in respect of the purpose and provisions of the by-law and the number of trees involved;
- (ii) desirable for the appropriate development or use of the land on which the trees are situate;
- (iii) the general intent and purpose of the by-law is being maintained, and
- (iv) in conformity with Regional Official Plan policies protecting natural areas (Section C(1)).

(d) Subject to (e), where the exception sought meets the tests in (c) and the fees required have been paid in full, the person designated in (b) may direct staff to issue a permit authorizing the minor exception to the by-law.

(e) Where the exception sought does not meet the tests in (c) and the fees required have been paid in full, but the person designated in (b) finds that the exception would meet the tests under reasonable terms or conditions, staff may issue the permit with the terms and conditions to be listed on or attached to the permit where the owner or applicant (if other than the owner), consent in writing to the terms and conditions on the permit.

(f) No owner or applicant to whom a permit is issued shall fail to comply with a term or condition imposed on the permit issued under this section.

(g) A decision to refuse an application for an exception under this section, shall be in writing, and be sent to the applicant by regular mail and shall be deemed received within seven (7) days of the date of mailing.

(h) Where the permit is refused by staff designated under this section, the applicant may, within fifteen (15) days of receipt of written notice under (g), request a hearing before a Tree By-law Committee appointed by Council, by writing to the Director of Community Planning and Development with the request and reasons for the appeal.

(i) Council may appoint up to five of its members as the "Tree By-law Committee", for the purpose of hearing applicants who are refused a permit for minor exception, and recommending whether the permit should be issued or denied under this section with or without terms and conditions.

(j) The parties to a hearing before the Tree Committee are the applicant for the minor exception and the Regional Municipality of Hamilton-Wentworth.

(k) Community Planning and Development Division shall schedule a meeting of the Tree By-law Committee and send notice of the date, time, and place of the appeal to the parties.

(l) Council may, upon receipt of the report of the Tree By-law Committee, without further hearing consider whether the exception sought is:

- (i) minor in respect of the purpose and provisions of the by-law and the number of trees involved;
- (ii) desirable for the appropriate development or use of the land on which the trees are situate;
- (iii) if the general intent and purpose of the by-law is being maintained, and
- (iv) in conformity with Regional Official Plan policies protecting natural areas (Section C(1)).

(m) If Council is of the opinion that the tests in (l) above are met by the application, or if the tests in (l) would be met if the permit were issued subject to terms and conditions, then Council may direct a permit be issued and impose terms or conditions on the permit. Otherwise, Council may reject the application for a minor exception.

(n) Where a permit with or without terms or conditions is issued under this section, subject to compliance with any terms or conditions imposed, the trees designated in the permit may be cut notwithstanding section 3 of this by-law.

NOTICE OF INTENT TO DESTROY TREES

6. (1) The landowner or any person acting on behalf of the landowner who is planning to cut, burn, or destroy by any other means trees from woodlands shall notify the Community Planning and Development Division in writing at least twenty (20) business days prior to the destruction, unless the destruction is under an exception provided for in Section 4 of this by-law or otherwise authorized as a minor exception under Section 5.

(2) Written notice in Section 6(1) is not effective unless addressed to and received by the Community Planning and Development Division at its offices at least twenty business days prior to the destruction of trees and the notice includes the information required by the Community Planning and Development Division on the form it provides for the purpose.

(3) Notwithstanding Section 6(1), the landowner or anyone acting on behalf of the landowner who is planning to cut, burn, or destroy trees under Section 4(1)(k) shall notify the Community Planning and Development Division in the form as prescribed by the Community Planning and Development Division at least twenty business days prior to any destruction.

ENFORCEMENT

7.

(1) (a) This by-law shall be enforced by a by-law enforcement officer duly appointed by the Council of the Regional Municipality of Hamilton-Wentworth.

(b) A by-law enforcement officer appointed under this by-law and any person acting under the by-law officer's instructions, may, at all reasonable times, enter upon the land of any person to:

(i) enforce this by-law;

(ii) determine compliance with an order made under subsection 8(2) of this by-law; or

(iii) examine the trees that might fall within a minor exception as provided for in Section 5 of this by-law.

PENALTY

8. Pursuant to the *Forestry Act, R.S.O. 1990, c.F.26* as amended:

(1) Every person who,

(a) alone or through any other person, contravenes any provision of this by-law;

(b) obstructs or interferes with an officer appointed under this by-law, or any person acting under the officer's instructions, in the discharge of the officer's duties; or

(c) fails, without just cause, to comply with an order made under subsection (2),

is guilty of an offence, and on conviction is liable to a fine of not more than \$20,000 or to imprisonment for a term of not more than three months, or to both.

(2) If a person is convicted of an offence referred to under Section 8 (1)(a) of this by-law, the Court shall consider all evidence given in respect of the necessity of replanting the area on which trees have been destroyed and may order the owner of the area to:

- (a) return the area on which trees have been destroyed to a suitable condition for replanting the trees in a manner the Court considers appropriate;
- (b) replant the trees, in the manner and within the time that the Court considers appropriate; and
- (c) adequately maintain the replanted trees in a manner the Court considers proper.

ADMINISTRATION

9. (1) If any section or sections of this by-law or parts thereof are found by any Court to be illegal or beyond the power of the Council to enact, such section or parts thereof 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 continue in full force and effect unless and until similarly found illegal.

(2) By-laws Number 2159 and 2400 of the Corporation of the County of Wentworth shall be repealed effective on the coming into force and effect of this by-law.

(3) Schedule "A" attached hereto shall form part of this by-law.

(4) This by-law shall come into force and take effect on the day it is approved by the Minister of Natural Resources and enacted by the Council of the Regional Municipality of Hamilton-Wentworth.

(5) The short title of this by-law is the "Woodland Conservation By-law".

Pursuant to the *Forestry Act, R.S.O. 1990* as amended, I hereby approve the above by-law for enactment by the Council of the Regional Municipality of Hamilton-Wentworth.

Original DATED at Toronto this 23 day of May , 2000.

Original signed by

Minister of Natural Resources

By-law read and enacted by Council of the Regional Municipality of Hamilton-Wentworth this 4th day of July, A.D., 2000.

Original signed by

Regional Clerk

Original signed by

Regional Chair

SCHEDULE 'A'

PROTECTED TREE SPECIES

Minimum Circumferences and Diameters
By Tree Species and Groups

Group 1 Tree Species

Ash	Red (<i>Fraxinus pennsylvanica</i>) Green (<i>Fraxinus pennsylvanica</i> var. <i>subintegerrima</i>) White (<i>Fraxinus americana</i>)
Basswood	(<i>Tilia americana</i>)
Beech	American (<i>Fagus grandifolia</i>)
Butternut	(<i>Juglans cinerea</i>)
Cherry	Black (<i>Prunus serotina</i>)
Chestnut	American (<i>Castanea dentata</i>)
Elm	Rock (<i>Ulmus thomasi</i>) Slippery, Red (<i>Ulmus rubra</i>) White, American (<i>Ulmus americana</i>)
Gum	Black (<i>Nyssa sylvatica</i>)
Hackberry	(<i>Celtis occidentalis</i>)
Hickory	Bitternut (<i>Carya cordiformis</i>) Pignut (<i>Carya glabra</i>) Shagbark (<i>Carya ovata</i>)
Kentucky Coffee	(<i>Gymnocladus dioicus</i>)
Maple	Black (<i>Acer nigrum</i>) Red (<i>Acer rubrum</i>) Silver (<i>Acer saccharinum</i>) Sugar (<i>Acer saccharum</i>)
Mulberry	Red (<i>Morus rubra</i>)
Oak	Black (<i>Quercus velutina</i>) Bur (<i>Quercus macrocarpa</i>) Chinquapin (<i>Quercus muehlenbergii</i>) Hill's (<i>Quercus ellipsoidalis</i>) Red (<i>Quercus rubra</i>) Swamp White (<i>Quercus bicolor</i>) White (<i>Quercus alba</i>)
Pine	Red (<i>Pinus resinosa</i>) White (<i>Pinus strobus</i>)
Sycamore	(<i>Platanus occidentalis</i>)
Tulip	(<i>Liriodendron tulipifera</i>)
Walnut	Black (<i>Juglans nigra</i>)

Group 1 Minimum Circumference and Diameter

Prescribed circumference or diameter for the species listed in Group 1 of this Schedule:

Column 1 Point of Measurement	Column 2 Circumference		Column 3 Diameter
46 cm (18 in.)	145 cm (57 in.)	or	46 cm (18 in.)
31 cm (12 in.)	175 cm (69 in.)	or	56 cm (22 in.)
15 cm (6 in.)	208 cm (82 in.)	or	66 cm (26 in.)
2.5 cm (1 inch)	240 cm (96 in.)	or	76 cm (30 in.)

Group 2 Tree Species

Ash	Black (<i>Fraxinus nigra</i>)
Birch	Yellow (<i>Betula alleghaniensis</i>)
Hemlock	Eastern (<i>Tsuga canadensis</i>)
Larch	European (<i>Larix decidua</i>)
Maple	Manitoba (<i>Acer negundo</i>)
Pine	Jack (<i>Pinus banksiana</i>)
	Scots (<i>Pinus sylvestris</i>)
Sassafras	(<i>Sassafras albidum</i>)
Spruce	White (<i>Picea glauca</i>)
	Black (<i>Picea mariana</i>)
	Norway (<i>Picea abies</i>)

Group 2 Minimum Circumference and Diameter

Prescribed circumference or diameter for the species listed in Group 2 of this Schedule:

Column 1 Point of Measurement	Column 2 Circumference		Column 3 Diameter
46 cm (18 in.)	112 cm (44 in.)	or	36 cm (14 in.)
31 cm (12 in.)	136 cm (54 in.)	or	44 cm (17 in.)
15 cm (6 in.)	160 cm (63 in.)	or	51 cm (20 in.)
2.5 cm (1 in.)	208 cm (83 in.)	or	66 cm (26 in.)

Group 3 Tree Species

Birch	White (<i>Betula papyrifera</i>)
Beech	Blue (<i>Carpinus caroliniana</i>)
Cedar	Red (<i>Juniperus virginiana</i>)
	White (<i>Thuja occidentalis</i>)
Cherry	Choke (<i>Prunus virginiana</i>)
	Pin (<i>Prunus pensylvanica</i>)
Fir	Balsam (<i>Abies balsamea</i>)
Ironwood	(<i>Ostrya virginiana</i>)
Tamarack	(<i>Larix laricina</i>)
Poplar	Trembling Aspen (<i>Populus tremuloides</i>)
	Large-toothed Aspen (<i>Populus grandidentata</i>)
	Eastern Cottonwood (<i>Populus deltoides</i>)
	Balsam (<i>Populus balsamifera</i>)
	Jack Aspen (<i>Populus balsamifera</i> X <i>Populus deltoides</i>)
Willow	Black (<i>Salix nigra</i>)
	Species. (<i>Salix</i> spp.)

Group 3 Minimum Circumference and Diameter

Prescribed circumference or diameter for the species listed in Group 3 of this Schedule:

Column 1 Point of Measurement	Column 2 Circumference	Column 3 Diameter
46 cm (18 in.)	64 cm (25 in.)	or 20 cm (8 in.)
31 cm (12 in.)	79 cm (31 in.)	or 25 cm (10 in.)
15 cm (6 in.)	88 cm (35 in.)	or 35 cm (14 in.)
2.5 cm (1 in.)	152 cm (60 in.)	or 49 cm (19 in.)

SAMPLE ONLY