

## **The Corporation of the City of Pembroke**

### **By-law Number 89-71**

#### **Being a By-law for the establishment of regulation for trees within the municipality**

The City of Pembroke recognizes that its trees are virtually important to the social and economic wellbeing of the community and its people. Trees create an aesthetically pleasing environment and increase property values, while instilling a sense of community stability and history. All these factors are desired characteristics for a good place to live and invest. The Council through its direction of city employees is responsible for the planting, maintenance and removal of trees located on City streets and other municipally-owned lands. The Council will preserve existing and established new trees on all suitable City property and encourage the same type of management on privately and institutionally owned lands. These activities will be directed towards an ultimate goal of providing a permanent canopy of healthy trees throughout the City.

This bylaw regulates the planting, maintenance, protection, preservation, and removal of trees on and adjacent to public streets, parks and other public land within the municipality; recognizes the Works Department as the agency for implementing and enforcing its provisions; provides for the elimination of public nuisances; provides for the giving of consent for work which may affect public trees; and prescribes penalties for violations of provisions.

#### **Bylaw**

**Whereas** Section 313 of the Municipal Act, R.S.O. 1980, authorizes the Council of a municipality to pass bylaws regulating trees within the municipality;

**And Whereas**, the municipal Council of the Corporation of the City of Pembroke enacts as follows;

**Now Therefore** the Municipal Council of the Corporation of the City of Pembroke enacts as follows:

1. Title:  
This bylaw may be cited as "The Tree Bylaw".
2. Interpretation:  
Arborist – a person assigned by Council to implement and enforce the provisions of this bylaw, or his delegate.

Department – The Works Department designated by Council to have primary jurisdiction over public trees.

Maintenance of Trees – includes replanting, pruning, cabling, spraying, irrigation, fertilization, repairs and treatment of wounds.

Private Land – Any land other than public land.

Public Land – Any park, street, highway, and any other land owned, leased or otherwise vested in or controlled by the municipality.

Public Tree – A tree or any part of the trunk of which is on public land.

Specifications – The arboricultural specifications, guidelines, and standards of practice adopted by the municipality.

Tree – Any woody plant of a species which at maturity is usually over five (5) metres in height, having one or more self-supporting trunks and including the roots, branches, trunk, crown or any part thereof.

Tree Program – A program designed to enhance the appearance of the municipality and further the welfare of the residents by the planting, maintenance, protection and preservation of public trees, including the establishment and implementation of the master tree plan and the specifications.

Utility – Includes the facilities for energy, communications and transportation, the provision of those facilities, and the persons responsible for their provision and maintenance, whether the facilities are publicly or privately owned.

Work – Includes the installation and maintenance of utilities, the paving or repairing of roads, sidewalks, or boulevards, the construction, demolition or replacement of any structure, excavation, landscaping activities, snow removal, and grounds maintenance.

3. Recognition of the Works Department:  
The Works Department is designated by Council to have primary jurisdiction over public trees.
4. Authority and Duties of the Council
  - a. Tree Program  
The Council shall carry out a program designed to enhance the appearance of the municipality and further the welfare of the residents by the planting, maintenance, protection and preservation of public trees, including the establishment and implementation of the master tree plan and the specifications, known as the Tree Program.
  - b. Assistance to private owners in the public interest  
The Council may give technical assistance to landowners to encourage the planting, preservation, maintenance or removal of trees, the prevention or treatment of disease, or correction of a condition in relation to trees on public or private land that constitutes a public nuisance, and to discourage the destruction, mistreatment or neglect of trees, on private land.
  - c. Required tree planting on private lands  
The Council may stipulate as a condition for the issuing of building permits, subdivision agreements or other agreements involving the construction of new buildings that trees be planted on private property.
  - d. Special agreements  
The Council may in the public interest, and for carrying out any order by the municipality at the request of the person responsible for carrying out the order, enter into agreements with the owners of public or private land for the planning, maintenance, protection, preservation, and removal of trees on public land or on private land within two point five (2.5) metres of any public land, and any such agreement may be made subject to such terms and conditions as the Council considers proper.
  - e. Tree plan or specifications amendments  
The Council on the advice of the arboriculture technician may amend the tree plan or specifications at any time that the circumstances make it advisable.
5. Arbor Day  
The Council may establish an annual Arbor Day.
6. Arborist

The arborist shall assist the department in the implementation and enforcement of the provisions of this bylaw.

7. Powers and Duties of the Arborist

a. Bylaw implantation

The arborist shall assist the department in the implementation and enforcement of the provisions of this bylaw.

b. Tree Program

The arborist shall recommend changes to the tree program to the Council for its approval, and shall be responsible for implanting it, having regard to the needs of the residents of the municipality for safety, the preservation of aesthetic values, noise and pollution control, recreation, and protection of wildlife, water and soil.

c. Master Tree Plan

The arborist shall prepare and submit to the council for its approval a master tree plan specifying the species of trees to be planted on each of the streets and other public land in the municipality.

d. Consultations

The arborist shall prepare and submit to the council for its approval a master tree plan specifying the species of trees to be planted on each of the streets and other public land in the municipality.

e. Specifications

The arborist shall recommend changes to the specifications and submit them to the Council for its approval.

f. Suitability of trees

(i) The arborist shall consider existing and future structures, utilities, and environmental factors when recommending a species for any public land, and when carrying out his duties pursuant to this bylaw, and may designate trees as unsuitable on the basis of these considerations.

(ii) Where a native species is as suitable as or more suitable than an exotic one, preference should be given to the native species.

g. Consent of the arborist

Where the consent of the arborist is required, it may be given orally or by written permit.

h. Outstanding or historic trees

The arborist may designate public trees as outstanding trees on the basis of species, age, or historic importance. The arborist may identify such trees by a plaque or other suitable method and shall make every effort to provide them with care and protection.

i. Value of trees

The arborist shall determine the value of any tree according to the current shade tree evaluation procedure of the Ontario Shade Tree Council.

j. Planting of trees on private property by the municipality

The arborist shall supervise the carrying out of any agreement made pursuant to Section 4 (b).

k. Cooperation with other municipal departments

(i) the arborist may comment on, prior to final approval, all permits, plans and programs for sewer, lighting, water supply and other utilities, paving, subdivision of land, and

any other permits, plans or programs that may result in injury to trees.

- (ii) The arborist and the officers and employees of other municipal department, boards and agencies, including the authorities responsible for public works, planning, roads and transportation, street lighting and parks, and the police department and fire department, shall cooperate in planning for the present and future amenities of the municipality when the activities of such authorities may affect public trees.

l. Performance contracts

For the purpose of this bylaw, the arborist may, where his consent is required, order any person to furnish a bond, cash deposit, or other security in an amount which in his opinion is sufficient to cover any injury to trees that may result from that person's activities.

m. Reporting violations

The arborist may inspect any construction, demolition, excavation, or grading site for which there is any term or condition in a subdivision agreement or building permit relating to trees. The arborist shall report violations of the agreement or permit to the Chief Building Official.

8. Duties of the department

The Department with the assistance of the arborist shall supervise, implement and enforce the provisions of this bylaw, and shall formulate, follow and enforce the specifications and shall implement the tree program in accordance with the specifications.

9. Prohibited activities

The following are hereby declared to be activities which in the opinion of Council are objectionable or may injure any public tree, and are hereby prohibited, and no person, without first obtaining the consent of the arborist, shall cause or permit such activities:

- a. removing, spraying, fertilizing, pruning, disturbing, cutting above or below ground, or altering in any other way, any public tree;
- b. depositing, placing, storing or maintaining on public or private land any stone, brick, sand, concrete, soil or other materials or equipment which may impede the free passage of water, air or nutrients to the roots of any public tree;
- c. marking, breaking, removing bark from or in any other way defacing any public tree;
- d. fastening any sign, bill, notice, wire, rope, nail or other object to or around or through any public tree in any manner;
- e. fastening any sign, bill, notice, wire, rope, nail or other object to or around or through the stakes, posts, guards, barriers or wires which support or protect any public tree;
- f. causing or permitting any gaseous, liquid or solid substance which is harmful or toxic to public trees to come in contact with them;
- g. causing or permitting the heat from any fire or other source of heat to come in contact with a public tree;

- h. raising or lowering the grade level or altering the drainage pattern in a manner which may interfere with access of water, air or nutrients to any public tree;
  - i. attaching any material to or leaning any material against any public tree when work is being done in the vicinity;
  - j. removing or interfering with any stakes, posts or wires supporting trees or any barrier on, around, or about any public tree;
  - k. closing, covering, obstructing, or otherwise interfering with any open space within a barrier around a public tree in a manner that may interfere with access of water, air or nutrients to the tree;
  - l. causing or permitting any evacuation, soil disturbance or compaction within the drip line of any public tree
  - m. excavating any ditches, tunnels, or trenches, laying any walkway or driveway or paving within a distance of zero point five (0.5) metres from the surface (at breast height) of the trunk of any public tree for every five (5) centimeters of diameter of the trunk at breast height.
10. Protection of public trees during work
- A. Responsibility of work authority
    - (i) Any person responsible for work near any public tree shall protect the tree, before work begins, with a barrier sufficient to ensure the protection of the tree and shall maintain the barrier in good condition so that it can perform its function. Segments of the barrier shall be attached to each other and not to the tree. all building material, soil and other debris should be kept outside the barrier.
    - (ii) All below-ground utilities shall be installed by tunneling at a depth and in a manner, which will prevent or minimize injury to trees.
    - (iii) When a utility trims public trees or does other work which may affect them, the work shall be limited to the actual necessities of the service of the utility, and shall be done in a neat and workmanlike manner and in accordance with the specifications. The department may assign an inspector to supervise the work and the cost of such inspection shall be charged to the utility.
    - (iv) Every person who intends to move any building or other large structure on any highway, in any park, or on other public land within the municipality shall give notice in writing to the department and shall obtain the consent of the arborist in addition to any consent required from any other public authority.
    - (v) Such notice shall give the date and time proposed for moving the structure, the proposed route, and an undertaking that the person shall not damage any tree.
  - B. Consent of the Arborist
    - Unless the arborist specifies otherwise, his consent shall be subject to the following conditions:
      - (i) All work shall be completed within the time and in the manner specified by the arborist and shall comply with the tree program.

- (ii) Where consent is given to remove any public tree, the person to whom consent was given may be required to plant one or more trees of the type and size, at a location or locations, and within a time specified by the arborist.
    - (iii) The person given consent shall restore the affected area to a condition satisfactory to the department.
    - (iv) In the event that any of the conditions is violated, the consent of the arborist is deemed to be withdrawn and any further work which would have been an offence under this bylaw, if done without consent, is an offence.
  - C. Exception  
Sections 10 A and B do not apply in any case of emergency or immediate necessity where work is done to protect the life, health, safety or property of the public.
- 11. Duties of the private landowner or occupant  
The owner, occupant of land or trees subject to an agreement shall not cut or remove any such trees except in accordance with the agreement.
- 12. Public Nuisance from trees on private land:
  - A. Nuisance Declared  
The Department may declare to be a public nuisance any tree on private land which unduly interferes with the use of any public land, creates a hazard to the life, health, safety or property of the public, or is a source or cause of any disease which may endanger the health of other plants.
  - B. Eliminating the nuisance
    - (i) Where a tree is declared a public nuisance, the arborist may order the owner, servant, occupier, or person in charge of the land containing the tree, at his expense, to treat, repair or remove the tree or to eliminate the condition creating the public nuisance in such a manner and within such a period of time as the order requires.
    - (ii) Every order under this section shall be in writing and be delivered to the owner, tenant, occupant or person in charge of the land or sent by registered mail to his last or usual place of residence, and shall specify that if the public nuisance is not treated and the conditions corrected or removed in the manner or within the time specified in the order, the municipality may proceed with the treatment or the removal of the nuisance at this expense, and shall notify him of his right to appeal the order and of the manner in which to appeal.
    - (iii) Within ten (10) days of delivery of the order, the owner, tenant, occupant, or person in charge of the land may appeal the offer to the Council or a committee designated by the Council on the grounds that its requirements are unsuitable or unnecessary, and the Council or committee shall hold a hearing. At this hearing the person appealing, the arborist, and any other person specified by the Council or committee are parties and may give evidence, call witnesses, appear by counsel, and cross-examine witnesses.
- 13. Trimming and other maintenance of public trees

The Department may maintain all public trees in accordance with the specifications without prior notice to owners and occupants of land in the vicinity.

14. Removal, replanting and replacement of trees

A. Removal or repair

- (i) Where any public tree has interfered or may interfere with any work, or by reason of damage or disease or for any other reason has endangered or may endanger any person or property, the department may, in accordance with the specifications, do anything to prevent, eliminate, remove, or repair the interference or danger, provided that in carrying out such work it makes all reasonable efforts to preserve and protect the tree.
- (ii) The Department may, upon the request of an owner or occupant of adjoining land, or upon the request of the arborist, after the latter has satisfied himself that such trees are not suitable to their location or that their removal is not contrary to the public interest, and after giving seven (7) days' notice of the intended removal to owners and occupants of land in the vicinity, remove healthy public trees subject to the requirements of Section 13.
- (iii) Notwithstanding any provisions for public participation, notice or consent in this bylaw, where a tree, upon investigation, appears to the arborist to be in a condition creating an immediate hazard to any person or property, the department may remove it or do other work to it after making reasonable efforts to notify the owner or occupant of the property, without any written notice, consent or hearing.

B. Replacement

When such public trees are removed, the municipality shall make reasonable efforts to replace them with similar trees in the same location or, if this is impractical, shall plant more suitable trees in the same location, on adjoining land, or in some other suitable location.

C. Transplanting

If it is necessary to remove a healthy public tree, reasonable efforts shall be made, where practical, to transplant it to another location within the municipality rather than destroy it.

15. Bylaw Enforcement

- a. No person shall hinder or obstruct the arborist, his delegate or any representative of the department in the course of his duties, or furnish him with false information or refuse to furnish him with information.
- b. Any person who causes or permits any activity which injures or may injure any public tree shall forthwith notify the arborist.
- c. Where any person in contravention of any provision of this bylaw or by failure to comply with an order or any term or condition of a consent injures or damages any land, water, property, or plant life, the arborist, where his is of the opinion that it is in the public interest to do so, may order that person to do all things and take all steps necessary to repair, at his expense, the injury or damage.
- d. Where a person to whom an order or permit is directed or issued under any section of this bylaw does not comply with the order or permit, the arborist may cause the necessary work to be done and

charge such person with the cost thereof, which may be recovered with costs in any court of competent jurisdiction.

- e. Any sum due to the municipality in connection with the enforcement of this bylaw may be added by the Clerk to the collector's roll and be collected in the same manner as municipal taxes.

16. Penalty

Except as otherwise provided in this bylaw, every person, whether as principal or agent, or an employee of either of them, who contravenes any provision of this bylaw, or fails to comply with an order or any term or condition of a permit made or issued under this bylaw, is guilty of an offence and on summary conviction is liable to a fine of not more than Twenty-five dollars (\$25.00).

- 17. This bylaw shall come into force and take effect upon the date of the final passing thereof.

Read a first and second time this 5<sup>th</sup> day of September, 1989

Clerk

Mayor

Read a third time short and passed this 5<sup>th</sup> day of September, 1989

Clerk

Mayor