

Tree Conservation and Normal Farm Practices

City of London

Trees and Forests Advisory Committee (TFAC)

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Introduction

Municipal tree conservation by-laws typically contain exemptions which allow for the injury, destruction or removal of trees for normal farm practices.



Part of the reason is to recognize that many farms across Ontario contain a woodlot that is often integrated into the active agricultural operation.

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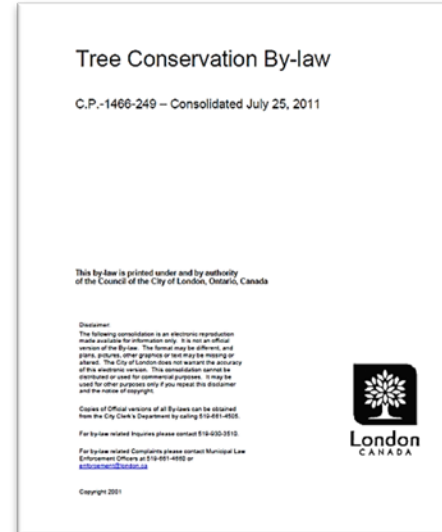


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The City's By-law

The City of London's Tree Conservation By-law was consolidated July 25, 2011 so it pre-dates the model by-law; however, the exemption for normal farm practices [**section 3.1 (d)**] and the associated definitions of '*agriculture operation*' and '*normal farm practice*' are very similar to the provincial template.



Section 3.1 (d) of the City's By-law exempts:

“the injury, destruction or removal of trees occurring as part of a Normal Farm Practice and carried on as part of an Agricultural Operation, and as approved in advance in writing by the City Planner, or as determined by the Normal Farm Practices Protection Board;”

The City's By-law continued...

Furthermore, section 3.1 d) also exempts:

“the cutting of wood for fuel or other personal use, provided the total volume cut or removed by the Owner in any calendar year does not exceed 2.5 full cords per hectare of wooded area, and provided it is in accordance with Good Forestry Practices”.



The City's By-law continued...

In addition, section 3.1 e) also exempts:

“the injury, destruction or removal of trees in a cultivated fruit or nut orchard or a plantation established for the purpose of producing Christmas trees or nursery stock.”



The City's By-law continued...

The City's By-law uses the following definitions:

“Normal Farm Practice” has the same meaning as contained in the *Farming and Food Production Protection Act, 1998*, S.O. 1998, C. 1, as amended, or any successor legislation.

“Agricultural Operation” has the same meaning as contained in the *Farming and Food Production Protection Act, 1998*, S.O. 1998, C. 1, as amended, or any successor legislation.

Farming and Food Production Protection Act (1998)

Purpose of the FFPPA:

- The Legislature was concerned that it was becoming increasingly difficult for farmers to produce food, fibre and other products effectively, because of complaints from neighbouring residents.



- The Act was established to promote and protect agricultural uses and normal farm practices in agricultural areas, in a way that balances the needs of the agricultural community with provincial health, safety and environmental concerns.



The Act Protects Farmers From

Nuisance complaints related to seven disturbances:



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Nuisance complaints related to seven disturbances:

1. Odour



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Nuisance complaints related to seven disturbances:

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2. Noise



The Act Protects Farmers From

Nuisance complaints related to seven disturbances:

1. Odour
2. Noise
3. Dust



The Act Protects Farmers From

Nuisance complaints related to seven disturbances:

1. Odour
2. Noise
3. Dust
4. Light



The Act Protects Farmers From

Nuisance complaints related to seven disturbances:

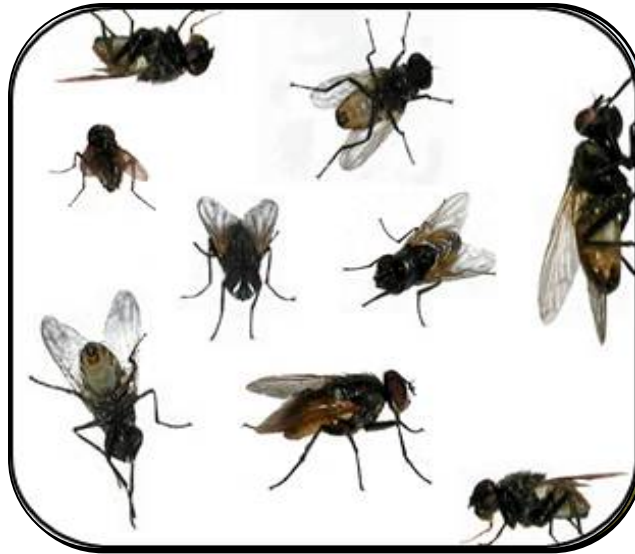
1. Odour
2. Noise
3. Dust
4. Light
5. Smoke



The Act Protects Farmers From

Nuisance complaints related to seven disturbances:

1. Odour
2. Noise
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5. Smoke
6. Flies



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Nuisance complaints related to seven disturbances:

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2. Noise
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5. Smoke
6. Flies
7. Vibration



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Municipal by-laws which restrict their normal farm practices.

Normal Farm Practice

The Act defines a 'normal farm practice' as a farming practice which:

- is consistent with proper, acceptable customs and standards of similar operations; or
- uses innovative technology according to proper, advanced farm management practices.

The FFPPA does not give farmers the right to contravene:

- (a) *Environmental Protection Act*,
- (b) *Pesticides Act*,
- (c) *Health Protection and Promotion Act*,
- (d) *Ontario Water Resources Act*, and,
- (e) Regulations established under the *Nutrient Management Act*.

The Normal Farm Practices Protection Board (NFPPB)

The NFPPB is established under the *FFPPA*.

The Act authorizes the Board to determine what constitutes a normal farm practice through a Board hearing:

- Quasi-judicial process usually held at the municipal chambers
- A pre-hearing/settlement conference is held first
- For the hearing, panel of three board members
- Parties do not need lawyers, but they can bring lawyers if they choose
- Hearing takes average of 3 days
- Decision rendered within 60 working days

Conflict Resolution Process is Mandatory

OMAFRA receives an average of 174 complaints per year regarding farm practices.

Before the Normal Farm Practices Protection Board can consider an application for a hearing, the case must first go through the Farm Practices Conflict Resolution Process.

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98% of cases are resolved through conflict resolution by OMAFRA's agricultural engineers or environmental specialists.

Board Decisions

There are three decision the Board can render:

1. **Normal Farm Practice** - Farmer can continue the activity
2. **Normal if modified** - Farmer must modify the activity as directed by the Board
3. **Not Normal Farm Practice** - Farmer must stop the activity or comply with the By-law



Decisions

Every Board decision is case-specific.

In arriving at a decision, the Board considers several factors to balance the farmer's needs with provincial health, safety and environmental concerns.

This is especially relevant in cases involving municipal by-laws, where the Board considers:

- the purpose of the by-law;
- the effect of the farm practice on adjoining lands and neighbours; and
- whether the by-law reflects a provincial interest under any other piece of legislation or the Provincial Policy Statement.

Normal Farm Practices are Case Specific

Consequently, there is no definitive list of normal farm practices.

A practice may be ruled as a normal farm practice at a particular location under a particular set of circumstances.



The same practice could be ruled as not a normal farm practice at a different location, or under a different set of circumstances.

Normal Farm Practices are Case Specific

For example, consider a Board hearing about noise from equipment used to scare birds from vineyards (bird bangers). The NFPPB might decide that it was normal to use this equipment:

1. In a location with few neighbours, but not normal if there were many residences nearby.
2. In a vineyard in the Region of Niagara, but not normal if used to scare coyotes from sheep pastures in Bruce County.
3. With a method of operation using automatic shutoff switches, but not normal using manual shutoff switches.
4. When bird presence was greatest during the early morning and late afternoon, but not normal during the middle of the day in hot weather when birds eat less frequently.

Tree Cutting Examples

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- The removal and/or on-going maintenance of field fence rows where required.
- Creating or expanding field access as a laneway for farm equipment.
- Maintaining current vegetative boundaries (e.g. preventing forest succession/creep).



Tree Cutting Examples continued...

- Individual trees in fields



Tree Cutting Examples continued...

- Minor rounding-out of field edges for efficiencies



Tree Cutting Examples continued...

- Minor rounding-out of field edges for efficiencies



Tree Cutting Examples continued...

- Minor rounding-out of field edges for efficiencies



Agriculture Drainage Infrastructure

There are also exemptions provided for the injury, destruction or removal of trees for the construction of drainage works authorized under the *Drainage Act*, R.S.O. 1990, c. D.17, as amended; and/ or

...the injury, destruction or removal of trees that is reasonably required in order to install a single non-perforated pipe through woodlands but without clearing of the woodlands, to serve as an outlet for a private agricultural tile drainage system on existing crop or pasture land.



What is not Contemplated?

Generally speaking in the aforementioned examples, the affected wooded area must remain intact after completion of the farm work.



Although perhaps accepted at one time, wholesale clearing of land for agricultural purposes is generally no longer considered a normal farm practice for most of southern Ontario. Therefore, farm field perimeters should not be expanded without the valid issuance of a permit through the by-law process. This is not to say that there may not be valid reasons for the removal of certain wooded areas (e.g. excessive diseased trees or a small woody patch determined to be of minor significance by the municipality), however the proper process must be followed in those cases.

Woodlot Removal

The Farming and Food Production Protection Act was never intended to be used to sanction the wholesale removal of natural features.



OMAF and MRA continue to advise that farmers follow best management practices related to the management of their privately owned woodlands and wetlands.

Best Management Practices (BMP's)

BMP = “a practical, affordable approach to conserving a farm's soil and water resources without sacrificing productivity.”

- Farm Forestry and Habitat Management
- Fish and Wildlife Habitat Management
- Buffer Strips
- Agroforestry Series Volume 1 - Woodlot Management
- Agroforestry Series Volume 2 - Establishing Tree Cover
- Controlling Soil Erosion on the Farm



Conclusion



Farmers are generally good stewards of the natural feature on their land. However, they also may benefit from the management of trees and woodlands on or adjacent to agricultural land. For example – the periodic management of woody species may be deemed necessary by the farm operator or by guidance from a qualified agricultural advisor or a Qualified OPFA Member to ensure the sustainability and the good health of farm crops, livestock, woodlands and natural areas.

Conclusion



Many of these activities are consistent with the intent of a forest conservation by-law; however, there may be situations where the activities proposed exceed the intent of the by-law, or where abuse of the exemption is contemplated. These cases will need to be reviewed individually under both the municipal by-law and the FFPPA.

Need More Info?

Website: www.omafra.gov.on.ca/english/engineer/nfppb/nfppb.htm

- Citizen's Guide to the Normal Farm Practices Protection Board
- Outreach Pamphlet: "So...You're Moving to the Country?"
- Hearing Pamphlet: "Are You Preparing For A NFPPB Hearing?"
- Hearing Pamphlet: "The Hearing Procedure"
- Normal Farm Practices Conflict Resolution Process
- Farming and Food Production Protection Act (E-Laws)
- Annual Reports and Decisions Summaries
- Agricultural Information Contact Centre: 1-877-424-1300

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