

THE CORPORATION OF THE CITY OF BURLINGTON

BY-LAW NUMBER XX-20XX

A by-law to conserve and protect trees on private land within the Urban Planning Area Boundary of City of Burlington and to repeal By-law 43-2018, The City of Burlington Pilot Private Tree By-law (RPF -XX-XX, File 820-02)

WHEREAS, without limiting the broad municipal powers, sections 135, 139 to 141, 429, 431 and 444 of the *Municipal Act, 2001* provides municipalities with further authority to regulate and prohibit the destruction or injuring of trees and to provide for a system of fines and other enforcement orders; and

WHEREAS Council has determined that it is desirable to enact a by-law to protect, prohibit and regulate the injury or destruction of trees and encourage the preservation and planting of trees within the Urban Planning Area Boundary of the municipality.

NOW THEREFORE the Council of the Corporation of the City of Burlington hereby enacts as follows:

**PART I: DEFINITIONS**

1.1 For the purposes of this by-law, the following definitions shall apply:

**“Accessory Building or Structure”** a detached building or structure not used for human habitation, the use of which is naturally or customarily incidental and subordinate to, or exclusively devoted to a principal use, building or structure and located on the same lot therewith. Accessory Buildings may include a detached garage, workshop, shed or pool house. Accessory Structures may include arbours, gazebos, pergolas, play structures or detached car port exclusive of patios or decks.

**“Arborist”** means an expert in the care and maintenance of trees as certified by the International Society of Arboriculture, a Registered Professional Forester, a Registered Consulting Arborist with the American Society of Consulting Arborist or an arborist certified by the Ministry of Training, Colleges and Universities;

**“Boundary Tree”** means a Tree whose trunk from the ground level to the first branch straddles or bisects the property line of the lot;

**“City”** as the context requires, means “The Corporation of the City of Burlington”;

**“Contravention Fee”** means the amount collected by the City for any contravention of this By-law as may be prescribed from time to time in the City’s rates and fee schedule pursuant to the City’s approved Current Budget;

**“Council”** means the Council for the City of Burlington and includes its successor;

**“Director”** means the Director of Roads, Parks and Forestry for the City of Burlington, and includes the Director’s designate or successor;

**“Diameter at Breast Height or dbh”** means the measurement of the diameter of the trunk of a Tree from the outside bark at a height of 1.37 meters above the existing ground adjoining its base or where there are multiple stems, the total of the diameters of the stems measured from outside the bark on each stem;

**“Drip Line”** means the outer boundary of an area on the surface of the ground directly below and which corresponds with the outer edge of the crown of the Tree;

**“Emergency Work”** means any work of an urgent nature, including but not limited to work associated with drain repairs, utility repairs, structural repairs to a building and work required to prevent soil erosion, slipping of soil or damage to trees and must be corroborated with supporting documentation, including, but not limited to photographs, work orders, and arborist reports;

**“Good Arboricultural Practice”** means the proper implementation of removal, renewal and maintenance activities known to be appropriate for individual trees in and around urban areas to minimize detrimental impacts on urban forest values, and includes pruning of trees to remove dead limbs, maintain structural stability and balance, or to encourage their natural form, provided that such pruning is limited to the appropriate removal of not more than one-third of the live branches or limbs of a tree, but does not include pruning to specifically increase light or space;

**“Heritage Tree”** means Trees designated under Part IV of the *Ontario Heritage Act* or Trees recognized as heritage trees by the Ontario Heritage Tree Program of Trees Ontario;

**“Imminently Hazardous Tree”** a destabilized or structurally compromised Tree that is in imminent danger of causing damage or injury to life or property as verified or confirmed by an Arborist or by the Manager using the ISA Traq method for risk assessment;

**“Injure/injury”** means to injure or destroy a Tree by an action that causes physical, biological or chemical damage or death to a Tree, but does not include pruning or removing branches for maintenance purposes which is done in accordance with Good Arboricultural Practice;

**“Lot”** means a parcel of land having specific boundaries which is capable of legal transfer;

**“Manager”** means the Manager of Urban Forestry for the City of Burlington, and includes the Manager’s designate or successor;

**“Nursery”** means a Lot on which the principal business of selling plants, shrubs and Trees occurs;

**“Occupied Building”** means a building used for human habitation and does not include an Accessory Building or Structure;

**“Officer”** means a City employee whose duties include the enforcement of this by-law, including but not limited to those persons holding the positions of Director of Roads, Parks and Forestry, Manager of Urban Forestry, Supervisor of Forestry Planning and Health, Supervisor of Forestry, City Forester, Forestry Technician, and Arborist;

**“Orchard”** means a Lot on which the principal active business is the growing of fruit for sale to the public;

**“Order”** means an order issued under this by-law;

**“Permit Fee”** means the amount collected by the City at the time of application for a Tree Permit as may be prescribed from time to time in the City’s rates and fee schedule pursuant to the City’s approved Current Budget;

**“Private Property”** means land other than Public Property;

**“Public Property”** means any land or property owned by the City;

**“Terminally Diseased”** means advanced and irreversible decline in tree health, that has resulted in the majority of crown die back or failure, due to severe insect infestation or infection by a pathogen;

**“Tree”** includes all woody vegetation, which at maturity, will reach of height of at least 4.5m;

**“Tree Permit”** means a permit issued by the City pursuant to Part 6 of this by-law;

**“Tree Protection Zone”** means specifications describing the measures required to protect Trees not designated for removal that may be impacted by the proposed works and as prescribed by the City’s Standard Specifications for Tree Protection and Preservation.

**“Urban Planning Area Boundary”** means lands located within the Urban Planning Area Boundary identified on ‘Schedule ‘B’- Comprehensive Land Use Plan- Urban Planning Area’ of the City’s Official Plan, as amended.

## **PART 2: BY-LAW TITLE**

- 2.1 The short title of this by-law shall be “The City of Burlington Private Tree By-law”.

## **PART 3: APPLICATION OF THE BY-LAW**

- 3.1 This by-law shall apply to all Trees growing or living on Private Property within the Urban Planning Area Boundary in the City of Burlington but does not apply to woodlands that are governed by the Region of Halton by-law 121-05, as amended or replaced.

## **PART 4: AUTHORITY**

- 4.1 The Director and Manager are responsible for the administration and enforcement of this by-law.
- 4.2 The Manager is authorized to:

- (a) issue notices of contravention, orders to comply and stop work orders in relation to contraventions of this by-law;
- (b) issue Tree Permits;
- (c) issue work orders directing as to how and when particular aspects of any authorized work is to be conducted. The authority to issue work orders shall include the authority to order a stoppage of work and the authority to order the proponent of the work to obtain a revised report from an Arborist; and
- (d) make forms, notices, applications, policies, guidelines and documents not otherwise prescribed by this by-law for the administration and enforcement of this by-law.

4.3 Municipal Law Enforcement Officers employed by the City and Officers are hereby authorized to enforce this By-law

#### **PART 5: PROHIBITIONS**

5.1 No person shall:

- (a) cause or permit the Injury, destruction or removal of a Tree with a dbh of 20cm or greater;
- (b) cause or permit the injury, destruction or removal of more than five (5) trees with a Diameter at Breast Height of greater than 10 cm and less than 20 cm in one calendar year.
- (c) cause or permit the Injury, destruction or removal of a Heritage Tree, unless they receive approval to do so under the requirements of the *Ontario Heritage Act, 2005*; or
- (d) cause or permit the injury, destruction or removal of any tree classified as an endangered, threatened, or at risk species, as defined in the provincial *Endangered Species Act, 2007*, c. 6 or any tree classified as an endangered or threatened tree species or a tree species of special concern, as defined in the federal *Species at Risk Act, 2002*, S.C. 2002, c. 29; or
- (e) cause or permit the contravention of the terms or conditions of a Tree Permit.

5.2 The provisions of this by-law do not apply to the Injury, destruction or removal of Trees:

- (a) with a Diameter at Breast Height of less than 20cm, subject to clause 5.1 (b) of this by-law;
- (b) for the purpose of pruning in accordance with Good Arboricultural Practices;
- (c) for Emergency Work;
- (d) for an Imminently Hazardous Tree;

- (e) if the Tree is located in a Nursery or Orchard;
- (f) if the Tree is classified as prohibited or restricted as defined in the provincial *Invasive Species Act*, 2015, S.O. 2015, c. 22- Bill 37, or if the Tree is listed as a noxious weed as defined by the *Weed Control Act*, R.S.O. 1990, c. W5;
- (g) for activities or matters undertaken by a municipality or a local board of a municipality;
- (h) for activities or matters undertaken under a license issued under the *Crown Forest Sustainability Act, 1994*;
- (i) where the Injury, destruction or removal of the Tree is done 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;
- (j) where the removal of the Tree is for the purpose of satisfying conditions to the approval of a site plan, a plan of subdivision, or consent under sections 41, 51 or 53 of the *Planning Act*, or as a requirement of a site plan, subdivision or consent agreement entered into under those sections of the Act;
- (k) where the Injury or removal of the Tree is for the purpose of satisfying a condition to a development permit authorized by regulation made under section 70.2 of the *Planning Act*, as a requirement of an agreement entered into under the regulation;
- (l) where the Injury or removal of the Tree is by a transmitter or distributor as defined in the *Electricity Act 1998* and is for the purpose of constructing and maintaining a transmission system or a distribution system as defined under that Act;
- (m) where the injury or removal of the Tree is undertaken on land described in a license for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*;
- (n) where the injury or removal the Tree is 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, or
  - (ii) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act*; or
- (o) where the removal of a Tree is specifically required in an order made under the City's Property Standards by-law;

- (p) where the injury or removal of a Tree is undertaken for the development of a not-for-profit housing project by Habitat for Humanity.

5.3 The provisions of this by-law shall apply to the Injury, destruction or removal of the following Trees, however shall be exempt from all fees payable under this by-law:

- (a) if the Tree is dead, as confirmed by an Arborist or by the Manager;
- (b) if the Tree is Terminally Diseased;
- (c) if the Tree is within 2m of an Occupied Building (measurement from the edge of the building to the centre of the Tree at dbh);

5.4 Where Emergency Work is required, the owner shall notify the City as soon as may be practicable with documentation including but not limited to an arborist report, if available, and photographs of the size/height of the tree and distance to building.

#### **PART 6: TREE PERMIT**

6.1 A person seeking to undertake any of the activities described in section 5.1 above shall apply to the Manager of Urban Forestry for a Tree Permit to undertake or do the specified activity.

6.2 An application for a Tree Permit shall include the following documents and information:

- (a) the Permit Fee; and
- (b) a report from an Arborist in a form satisfactory to the Manager showing, where applicable:
  - (i) the Tree(s) to be removed or Injured, including the location, size and species and condition of each;
  - (ii) a proposal for the replanting or replacing of Trees that are to be removed or that will be Injured by the works;
  - (iii) confirmation that the Tree Protection Zone established and maintained around any Trees on the property is in accordance with the City's relevant policies and procedures;
  - (iv) the minimum frequency of site inspections by an Arborist during proposed works, where applicable;
  - (v) specifications as to the goals of the work;
  - (vi) for Boundary Tree(s) located within 3 meters of both sides of a mutual Lot line, a letter of agreement to the proposed work, signed by the

adjacent neighbour(s); or documentation from an Arborist attesting that the Boundary Tree(s) will survive the proposed work in healthy condition, and include preservation methods not limited to pruning and fertilizing, according to Good Arboriculture Practices; and

- (vii) any additional relevant information as may be required by the Manager.
- (c) a scaled 2-dimensional tree preservation plan in a form satisfactory to the Manager showing, where applicable:
  - (i) the Tree(s) to be removed or Injured, including graphical reference to a key that identifies the species, diameter, condition, and ownership to each;
  - (ii) identification of all applicable minimum tree protection zones illustrated graphically in accordance with the City's relevant policies and procedures; and
  - (iii) identification of site access, material storage, tree preservation fencing (hoarding), and root protection hoarding where applicable, illustrated graphically.
- (d) a scaled 2-dimensional tree replacement plan in a form satisfactory to the Manager showing, where applicable:
  - (i) All proposed trees to be replaced, illustrated graphically, and referenced in a planting key which identifies the size, species, and planting form of the tree; and
  - (ii) Overlaid estimated canopy coverage expected at 70% full growth.

6.3 The Manager shall determine the appropriate conditions to attach to each Tree Permit, in accordance with Good Arboricultural Practices. The conditions for the issuance of a Tree Permit may include, among other things:

- (a) a requirement to pay all associated permit fees, securities and compensation as cash in lieu of replacement to ensure that the performance of the work is in accordance with the conditions of the Tree Permit;
- (b) a requirement that the authorized work be carried out under the supervision of an Arborist;
- (c) a requirement to replant or relocate a Tree or Trees of a certain size and species;
- (d) a requirement that the site of the work be restored to its original condition;
- (e) a requirement that a Tree Protection Zone be established with the installation of tree preservation fencing around any Trees that will be preserved on the property in accordance with the City's relevant policies and procedures.

- 6.4 The Manager may refuse to issue a Tree Permit if he or she determines that:
- (a) the application for a Tree Permit is incomplete;
  - (b) the proposal is for the Injuring, removal or destruction of a healthy Tree;
  - (c) the methods proposed to be used or the results to be achieved are not in accordance with Good Arboricultural Practice;
  - (d) a person or property will be adversely affected;
  - (e) a nuisance or unsightly appearance may occur;
  - (f) as a result of the removal of the Tree, flood or erosion control, slope stability or the ecological integrity of a natural area will be negatively affected; or
  - (g) the Tree is relevant to the heritage designation of a Lot as determined by the City in accordance with the *Ontario Heritage Act*.
- 6.5 The Manager may revoke a Tree Permit that has been issued:
- (a) if the terms and conditions of a Tree Permit are not complied with;
  - (b) if the specifications and recommendations in the report of the Arborist and associated plans are not followed;
  - (c) if the work orders and directions of the Manager are not followed;
  - (d) for any of the reasons listed in section 6.4;
  - (e) if any term of this by-law is violated by the work undertaken in connection with that Tree Permit; or
  - (f) if the Tree Permit was issued because of mistaken, false or incorrect information received by the Manager.
- 6.6 Upon the revocation of a Tree Permit, the holder of the Tree Permit shall immediately cease or ensure the immediate cessation of all activities for which a Tree Permit had been issued.
- 6.7 Any Tree Permit issued pursuant to this by-law shall be valid for a period of one (1) year from the date of issuance.

#### **PART 7: ENFORCEMENT, REMEDIAL ACTIONS AND RECOVERY OF EXPENSES**

- 7.1 For the purposes of conducting an inspection to determine compliance with this by-law, an order, a permit, or any condition of a permit, any person authorized to enforce this by-law may, upon producing the appropriate identification, at any reasonable time, enter and inspect any lands or property to determine whether the provisions of this By-law, an order issued under this by-law or a permit or a condition of a permit issued under this by-law have been complied with.
- 7.2 When the City becomes aware of a contravention of this by-law or a tree permit, by any person, the City may make an Order in writing to the person to rectify and remedy the contravention within a certain time, including an Order to cease and desist all work relating to the injury,



destruction or removal of trees.

7.3 An Order shall set out:

- (a) The name of the owner and the municipal address of the land or property that is the subject of the contravention;
- (b) Reasonable particulars of the contravention;
- (c) What the owner or any other person must do to rectify the contravention;
- (d) A statement that if the work is not done in compliance with the order within a specified time period, the City may have the work done at the expense of the owner or other person;
- (e) The date and time by which the order must be in compliance with the By-law; and
- (f) Information regarding the City's contact person.

7.4 An Order may be served by:

- (a) Delivering it personally to the owner and/or person conducting work on the owner's property;
- (b) Sending it by registered mail to the last known address of the owner, which service shall be deemed five (5) days after mailing;
- (c) Or posting it on the owner's property.

7.4.1 In the event that the Order in section 7.2 is not complied with by the person within the time stipulated in the notice, then the City may take such action as is necessary to rectify and remedy the contravention of this by-law at the expense of the person, and the City may send an invoice to the person of the expenses incurred by the City thereto. In the event of failure to pay the entire invoice amount within thirty (30) days of the date of the invoice, at the discretion of the City, the outstanding balance of the invoice may be added to the tax roll of the person's property as municipal taxes and collected in the same manner as municipal taxes.

7.5 The City may also recover all expenses owing under this by-law by a court action as a debt due to the City.

#### **PART 8: OFFENCE**

8.1 Any person who contravenes any provisions of this by-law or an Order issued under this by-law is guilty of an offence.

8.2 Any person who obstructs a by-law enforcement officer in carrying out an inspection or who provides false or misleading information to a by-law enforcement officer is guilty of an offence.

- 8.3 Upon conviction of an offence under this by-law, a person is liable to a fine as follows:
- a) the minimum fine for an offence is \$500 and the maximum fine for an offence is \$100,000;
  - b) in the case of a continuing offence, in addition to the penalty mentioned in clause (a) above, for each day or part of a day that the offence continues, the minimum fine shall be \$500 and the maximum fine shall be \$10,000, and the total of all daily fines for the offence is not limited to \$100,000; and
  - c) in the case of multiple offences, for each offence included in the multiple offence, the minimum fine shall be \$500 and the maximum fine shall be \$10,000 and the total of all fines for each included offence is not limited to \$100,000.
- 8.4 Any costs payable or associated with an order of the court are in addition to, and not in substitution for, the payment of any penalty imposed by the court for the commission of an offence under this by-law or any other applicable legislation.

**PART 9: MISCELLANEOUS**

- 9.1 Should a court of competent jurisdiction declare a part or whole of any provision of this by-law to be invalid or of no force and effect, the provision or part is deemed severable from this by-law, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its remaining terms to the extent possible under law.
- 9.2 References in this By-law to any legislation or by-law means as may be amended or replaced from time to time and include any regulations thereunder.
- 9.3 By-law 43-2018 shall be repealed effective on the coming into force and effect of this By-law.

**PART 10: EFFECTIVE DATE**

- 10.1 This by-law shall come into force and take effect on \_\_\_\_\_, 2020. Any tree permit applications or tree removal notifications received prior to this date will be processed in accordance with By-law 43-2018.

ENACTED and PASSED this      day of      , 2020.

\_\_\_\_\_ Mayor Marianne Meed Ward

\_\_\_\_\_ Angela Morgan, City Clerk