

Appendix A

The Corporation of the City of Burlington

City of Burlington By-law XX-2021

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 No. 20-2020, The City of Burlington Private Tree By-law (RPF-05-2020, File 820-02)

Whereas the Council of the Corporation of the City of Burlington is authorized, without limiting the broad municipal powers, by subsection 11(2) sections 135, 139 to 141, 429, 431 and 444 of the *Municipal Act, 2001, S.O.2001 c.25, as amended*, to regulate and prohibit the destruction or injuring of trees and to provide for a system of fines and other enforcement orders;

Whereas the Council of the Corporation of the City of Burlington has determined that not all trees on private property are adequately regulated through other laws, by-laws, policies and procedures and passed By-law No. 20-2020 to regulate the injury or destruction of trees and encourage the preservation and planting of trees within the Urban Planning Area Boundary of the municipality;

Whereas Council for the City of Burlington considers it desirable and necessary to repeal By-law No. 20-2020, and to enact a new by-law to regulate the injury and destruction of private trees;

Whereas the Halton Region Tree By-law 121-05 regulates the destruction or injuring of trees in woodlands with the parameters set out in that By-law; and,

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:

“Administrative Penalties By-law” means the Administrative Penalties By-law of the City, as amended or replaced from time to time.

“Administrative Penalty” means an administrative penalty established by this By-law and specified in the Administrative Penalties By-law;

“Application” means a complete Tree Permit application;

“Applicant” means an Owner of a lot or the Owner’s authorized representative.

“Arborist Report” means a technical report prepared by a Qualified Professional which details specific and accurate information about Trees, including but not limited to location, species, size, condition, structural integrity, disease, infestations and vitality, and identifies the nature of work to be undertaken as well as appropriate Tree protection and preservation measures to be implemented;

“Boundary Tree” means a Tree whose trunk is growing across one or more property lines;

“City” means “The Corporation of the City of Burlington”;

“Compliance Inspection Fee” means the fee charged by the City for an inspection to confirm compliance with this By-law or any Order or direction issued under this By-law as may be prescribed from time to time in the City’s Rates and Fees By-Law;

“Council” means the Council for the City of Burlington;

“Dead” means a Tree with no living tissue;

“Destroy” or **“Destruction”** mean any of the following:

(a) to remove or cut down a Tree; or

(b) to injure a Tree to such an extent that the Tree is deemed by the Manager to be a High Risk Tree or is no longer viable such that it is necessary to remove the Tree, or that the Tree’s vitality has been reduced to such an extent that in the opinion of the Manager, the Tree cannot recover to be maintained in a safe and healthy condition such that it is necessary to remove the Tree.

“Diameter at Breast Height” or **“DBH”**

(a) 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,

(b) where there are multiple stems of a Tree, means the square root of the sum of each stem diameter squared measured from the outside bark at a height of 1.37 meters;

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

“Emergency Work” means any work required to address an immediate danger to the health and safety of any person or property where a Tree must be Injured or Destroyed to conduct the work in order to remove the danger. Emergency work may include but is not limited to works associated with immediate drain repairs, utility

repairs, and structural repairs to a building.

“Good Arboricultural Practice” means the proper removal, planting and Tree maintenance activities in accordance with the American National Standards ANSI 3000 and best management practices identified by the International Society of Arboriculture, conducted to the satisfaction of the Manager;

“Heritage Tree” means Trees designated under Part IV of the *Ontario Heritage Act, 2005*, S.O. 2006, c.6, as amended;

“High Risk Tree” means a destabilized or structurally compromised Tree where the failure of the Tree is high and there is a likelihood of severe or significant consequences, such as serious or substantial injuries to a person or property, if failure occurs;

“Injure” or “Injury” means any act or omission that harms or damages a Tree’s health and/or structure, in any manner, including, but not limited to any or a combination of the following:

- (a) removing, cutting, girdling, or smothering of a Tree or roots;
- (b) removing the canopy or root system that is outside of Good Arboricultural Practice;
- (c) failing to protect a Tree in accordance with the Standard Specifications for Tree Protection and Preservation;
- (d) interfering with water supply of a Tree;
- (e) setting fire to a Tree;
- (f) affixing materials to a Tree;
- (g) applying chemicals on, around or near the Tree;
- (h) compaction or re-grading within the Tree Protection Zone;
- (i) storing materials within the Tree Protection Zone that have the potential, in the sole opinion of the Manager, to affect the health of the tree; and,
- (j) any other damage resulting from neglect, or by design;

“Invasive” means any Tree that 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;

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

“Manager” means the Manager of Urban Forestry and City Arborist for the City of Burlington, or designate;

“Neighbour Tree” means a Tree whose trunk is growing wholly on one property and that is subject of an Application to Injure or Destroy by an adjacent landowner;

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

“Officer” means a City employee who is authorized to enforce this By-law, including the Director of Roads, Parks and Forestry, Manager, Supervisor of Forestry Planning and Health, Supervisor of Forestry Operations, Supervisor of Forest Protection, Forest Protection Officer, Forestry Technician;

“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;

“Owner” means a registered owner of the Lot, and its’ respective successors and assigns;

“Person” includes an individual, sole proprietorship, partnership, association, or corporation;

“Private Property” means all Lots or property except Lots or property owned by the City;

“Pruning” means the removal of branches or roots from a Tree in accordance with Good Arboricultural Practice;

“Qualified Professional” means a professional who has gained recognized certifications, qualifications and expertise in the care and management of Trees. Recognized certifications and qualifications for Qualified Professionals include:

- (a) Registered Consulting Arborist (RCA) with the American Society of Consulting Arborists (ASCA);
- (b) Board Certified Master Arborist or Arborist Municipal Specialist with the International Society of Arboriculture (ISA);
- (c) Registered Professional Forester (RPF) as defined in the *Professional Foresters Act, 2000*, S.O. 2000, c.18;

- (d) Certified Arborist with the International Society of Arboriculture; or,
- (e) Qualified Tree Risk Assessor with the International Society of Arboriculture (ISA);

“Rates and Fees By-law” means City of Burlington By-law to impose Rates and Fees, as amended or replaced from time to time;

“Replacement Planting Plan” means a scaled two-dimensional plan that identifies the location, species, and size of Trees proposed for planting and illustrates planting details;

“Replacement Tree” or **“Replacement Trees”** means:

- (a) a Tree that replaces another Tree that is approved for Destruction under this By-law and is a size and species approved by the Manager; and
- (b) any Tree that was planted as a condition of a Tree Permit under By-law No.02-2020;

“Standard Specifications for Tree Protection and Preservation” means the most recent version of the City of Burlington Standard Specifications for Tree Protection and Preservation;

“Terminal Condition” means the advanced and irreversible decline in physiological and/or structural condition of a Tree, that has resulted in the majority of crown die-back or failure, due to abiotic or biotic factors and/or severe insect infestation or infection by a pathogen as determined by a Qualified Professional;

“TRAQ Report” means a report prepared by a Qualified Professional and who is a qualified tree risk assessor in accordance with the ISA Tree Risk Assessment Qualification;

“Tree” means any species of woody plant, including its root system that will reach a height of at least 4.5m at maturity;

“Tree Permit” means a permit issued by the City under this By-law;

“Tree Protection Plan” means a scaled two-dimensional plan prepared by a Qualified Professional in conjunction with an Arborist Report that identifies the accurate location, species, and size of Trees and identifies the extent of Injury or Destruction, as applicable, and illustrates details of protection measures including the location of protective barriers;

“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, as amended or replaced from time to time;

“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 or replaced from time to time, and in the event of any ambiguity, it means lands as identified and interpreted by Manager of Policy and Community, in its sole discretion, in accordance with the City’s Urban Planning Area Boundary and the City’s Official Plan policies, as amended or replaced from time to time; and,

“Woodland” means an area of land with at least:

- (a)
 - i. 1000 Trees, of any size, per hectare or 500 such Trees per 0.5 hectare;
 - ii. 750 Trees, measuring over five (5) centimetres in Diameter at DBH, per hectare or 375 such Trees per 0.5 hectare;
 - iii. 500 Trees, measuring over twelve (12) centimetres in Diameter at DBH, per hectare or 250 such Trees per 0.5 hectare; or
 - iv. 250 Trees, measuring over twenty (20) centimetres in Diameter at DBH, per hectare or 125 such Trees per 0.5 hectare;

but does not include:

- (b)
 - i. an active cultivated fruit or nut orchard;
 - ii. a plantation established for the purpose of producing Christmas Trees;
 - iii. a plantation specifically planted and maintained for the purpose of harvesting as certified in writing by an Officer based on field inspection and investigation;
 - iv. a Tree nursery, or
 - v. a narrow linear strip of Trees that defines a laneway or a boundary between fields

For the purpose of this By-law, the boundary of a Woodland shall be defined by the ecological limit of the Woodland and not by property boundaries. Where a potential Woodland is dissected by a road or path not wider than 20m or by a natural feature such as a creek, the boundary of the Woodland shall be deemed to cross the road, path or natural feature, but the area of the Woodland shall be calculated exclusive of the area of the road, path or natural feature.

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 on Private Property within the Urban Planning Area Boundary in the City of Burlington, but does not apply to Woodland that are governed by the Halton Region Tree By-law 121-05 as amended, or replaced from time to time.
- 3.2 Nothing in this By-law shall exempt any person from complying with any other By-law or requirement of the City, or from obtaining any certificate, licence, permission, permit, authority or approval required by the City including in any other City By-law.
- 3.3 Nothing in this By-law, or a Tree Permit pursuant to this By-law, is to be construed as permitting anything which is prohibited under federal or provincial legislation, and where there is a conflict in this respect between federal or provincial legislation and this By-law, the federal or provincial legislation prevails.

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 and Orders under this By-law;
 - (b) issue, refuse, or revoke Tree Permits; and
 - (c) 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, as well as all Officers as defined under this By-law, are authorized to enforce this By-law.

PART 5: OBLIGATIONS AND PROHIBITIONS

- 5.1 Except as provided under Part 6 of this By-law, no Person shall, without obtaining a Tree Permit under this By-law:
 - (a) Injure or Destroy a Tree, or cause or permit the Injury or Destruction of a Tree with a DBH of 20cm or greater;
 - (b) Injure or Destroy, or cause or permit the Injury or Destruction of a Heritage Tree, unless they receive approval to do so under the requirements of the *Ontario Heritage Act*, R.S.O 1990, c. O.18;
 - (c) Injure or Destroy, or cause or permit the Injury or Destruction of any Tree listed under the provincial *Endangered Species Act, 2007*, c. 6 or those tree

species provided protection by the federal *Species at Risk Act*, 2002, S.C. 2002, c. 29, unless they receive approval to do so under the requirements of the provincial *Endangered Species Act*, 2007, c. 6 or the federal *Species at Risk Act*, 2002, S.C. 2002, c. 29; or,

- (d) Injure or Destroy a Replacement Tree planted as part of a condition of a Tree Permit issued by the City.

5.2 Every person shall comply with any Order or notice issued under the authority of this By-law.

5.3 No person shall;

- (a) Injure or Destroy, or cause or permit the Injury or Destruction of any Tree or Replacement Tree(s) other than in compliance with this By-law, the Standard Specifications for Tree Protection and Preservation, and all other applicable statutes, regulations, standards, codes, By-laws, guidelines, rules and similar requirements.
- (b) contravene or cause or permit the contravention of the terms or conditions of a Tree Permit, this By-law, or any policy or guideline made or issued under this By-law;
- (c) hinder or obstruct, or attempt to hinder or obstruct, either directly or indirectly, an Officer, Municipal Law Enforcement Officer, or any person who is exercising a power or performing a duty under this By-law;
- (d) provide false or inaccurate information in an application for a Tree Permit issued under this By-law or any document or thing required to be submitted under this By-law; or,
- (e) provide false information or give a false statement to an Officer, Municipal Law Enforcement Officer, employee and/or agent of the City in the lawful exercise of a power or duty under this By-law.

PART 6: EXEMPTIONS

6.1 Despite Section Part 5.1 of this By-law, a Tree Permit is not required for the Injury or Destruction of a Tree in the following circumstances:

- (a) for the purpose of Pruning;
- (b) located in a Nursery or Orchard;
- (c) classified as Invasive;
- (d) for activities or matters undertaken by a municipality or a local board of a

municipality;

- (e) in connection with activities or matters undertaken under a licence issued under the *Crown Forest Sustainability Act, 1994*;
- (f) 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;
- (g) 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 agreement entered into under those sections of the Act;
- (h) 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;
- (i) 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;
- (j) 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*;
- (k) 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,
- (l) for the purpose of Emergency Work.

6.2 Where the Destruction of a Tree is specifically required by an order made under the City's Property Standards By-law No. 28-2009, as amended or replaced from time to time, a Tree Permit is not required.

6.3 Where Emergency Work has occurred, the Owner shall:

- (a) notify the Manager in writing, within seventy-two hours of the commencement of the Emergency Work, and
- (b) provide documentation requested by the Manager, which may include but not limited to an Arborist Report, engineering reports, work orders, locates, photographs of the Emergency Work including those associated with the size

and height of the subject Tree(s) and measurement of the distance to any nearby building or structure.

PART 7: TREE PERMIT

7.1 A Person seeking to Injure or Destroy a Tree for which a Tree Permit is required under this By-law, shall apply to the Manager for a Tree Permit.

7.2 A Person applying for a Tree Permit shall submit a completed application to the Manager that is signed, and which includes, as applicable:

- (a) the name, municipal address, telephone number and email address of the applicant;
 - (b) an Arborist Report in a form satisfactory to the Manager;
 - (c) a scaled, 2-dimensional Tree Protection Plan in a form satisfactory to the Manager;
 - (d) if Destroying a Tree, a scaled, 2-dimensional Replacement Planting Plan in a form satisfactory to the Manager;
 - (e) if the Tree to be Destroyed is a Boundary Tree(s) or Neighbour Tree(s), a written consent from the adjacent property Owner(s) who have interest in the Tree, if required by the Manager;
 - (f) if the Tree to be Injured is a Boundary Tree(s) or Neighbour Tree(s), a written consent from the adjacent property Owner(s) who have interest in the Tree; or documentation from an Arborist attesting that the Boundary Tree(s) or Neighbour Tree(s) will survive the proposed work in healthy condition, and include preservation, and mitigative methods not limited to Pruning and fertilizing in accordance with Good Arboriculture Practices, if required by the Manager;
 - (g) a written authorization from the Owner of the land upon which the subject Tree(s) is situated if the applicant is not the Owner of that land, if required by the Manager;
 - (h) any revised or additional information or documentation as may be required by the Manager to determine if the Tree Permit should be issued; and
 - (i) subject to the exemption in section 7.4 of this By-law, the payment of the prescribed fees in a manner as required by the Manager.
- 7.3 If no Tree Permit has been issued pursuant to this By-law and no active steps are being taken by the applicant to provide the information or documents required under

section 7.2, the application shall be deemed withdrawn one year after its filing, and the applicant shall not be entitled to a refund of any prescribed fees paid.

7.4 Fees, as identified in the Rates and Fees By-law are not required for a Tree Permit if any of the following conditions exist:

- (a) the Tree has been confirmed Dead by a Qualified Professional to the satisfaction of the Manager;
- (b) the Tree has been confirmed to have a Terminal Condition by a Qualified Professional to the satisfaction of the Manager;
- (c) the Tree has been confirmed to be High Risk Tree by a Qualified Professional through the submission of a TRAQ Report, to the satisfaction of the Manager; or,
- (d) the Injury or Destruction of the Tree is undertaken or required by Habitat for Humanity, the Halton Community Housing Corporation, or other recognized not-for-profit housing organizations, as confirmed to the satisfaction of the Manager.

7.5 After receipt of a completed Application, including any revised or additional information required, the Manager may:

- (a) issue a Tree Permit(s), upon payment of the prescribed Permit per Tree fee(s) in a manner as required by the Manager; or,
- (b) advise the applicant that no Tree Permit(s) is required for the work proposed in the Application, and in that case, no further fee shall be payable.

7.6 The Manager may impose conditions as a requirement of obtaining or continuing to hold a Tree Permit under this By-law that it considers appropriate, which may include, but are not limited to, one or more of the following:

- (a) to replace Tree(s) that have been or will be Destroyed with a Replacement Tree(s) within one (1) year of the date of the Tree Permit, in accordance with a Replacement Planting Plan approved by the Manager;
- (b) to pay compensation cash-in-lieu of a Replacement Tree(s) in the prescribed amount;
- (c) to pay a Replacement Tree(s) security deposit in the prescribed amount equivalent to compensation cash-in-lieu for the Replacement Tree(s);
- (d) to contact the City's Forestry Department for inspection of Replacement Tree(s) upon replanting completion;
- (e) to perform any work authorized by a Tree Permit under the supervision of a Qualified Professional;
- (f) to provide a report completed by a Qualified Professional following the completion of the work authorized or required by the Tree Permit;

- (g) to contact the City's Forestry Department for inspection as required by the Tree Permit;
- (h) to restore the subject site to its original condition;
- (i) to establish a Tree Protection Zone and install Tree preservation fencing around any Tree(s) including root protection (horizontal hoarding) in accordance with the City's Tree Protection and Preservation Specification, and in accordance with the approved Tree Protection Plans and Arborist Report, to the satisfaction of the Manager;
- (j) to conduct work authorized by the Tree Permit in accordance with the City's relevant policies, procedures, By-laws as well as the City's Tree Protection and Preservation Specification; and,
- (k) to comply with such other reasonable conditions that the Manager deems necessary for the purposes of regulating the Injury or Destruction of Tree(s).

7.7 The Manager may refuse to issue a Tree Permit on any of the following grounds:

- (a) the application for a Tree Permit is incomplete;
- (b) the application is for the Destruction or Injury of a healthy Tree;
- (c) the methods proposed in the Application or the results to be achieved are, in the opinion of the Manager, not in accordance with Good Arboricultural Practice;
- (d) a person or property will be adversely affected;
- (e) a nuisance may occur;
- (f) as a result of the removal of a Tree, flood or erosion control, slope stability or the ecological integrity of a natural area may be negatively affected; and
- (g) the permissions required by section 5.1(b) and (c) of this By-law have not been obtained.

7.8 Having consideration to this By-law and all applicable law, the Manager may, on their own initiative:

- (a) alter or revoke the terms and conditions of a Tree Permit after it has been issued; and/or
- (b) impose new terms and conditions in a Tree Permit.

7.9 The Manager may immediately suspend or revoke a Tree Permit that has been issued where:

- (a) any term or condition of a Tree Permit, or applicable policy or guideline, is not complied with;
- (b) the specifications and recommendations in the Arborist Report and associated plans are not followed;
- (c) any Order(s) under this By-law or directions of the Manager authorized under this By-law have not been complied with;
- (d) situation of immediate threat or danger to any person or property exists;
- (e) any of the reasons arise for which the Manager could have refused to issue a Tree Permit in this By-law; and
- (f) the Tree Permit was issued because of mistaken, false or incorrect information received by the Manager.

7.10 If the Manager refuses to issue a Tree Permit, or suspends or revokes a permit, the Manager will contact the permit holder in writing by email or mail in accordance with the contact information provided on the Application.

7.11 Upon the revocation of a Tree Permit, the permit holder shall immediately cease all activities being conducted under the Tree Permit or ensure the immediate termination of all activities for which a Tree Permit had been issued.

7.12 A Tree Permit is the property of the City, and may be transferred on the written approval of the Manager and upon payment of the prescribed Permit Transfer Fee.

7.13 A Tree Permit expires on the earlier of:

- (a) the expiry date indicated on the Tree Permit;
- (b) one year from the date of issuance; or,
- (c) on notice of revocation by the Manager.

7.14 Notwithstanding section 7.13 of this By-law:

- (a) on request of the holder of the Tree Permit and payment of the prescribed Permit Extension Fee, the Manager may extend the expiration date of a Tree Permit for a maximum of one additional year.
- (b) In considering whether to grant a request to extend the expiration date of a Tree Permit under subsection (a), the Manager shall consider:
 - i. the extent of completion of work authorized by a Tree Permit;
 - ii. the permit holder's compliance with this By-law; and

iii. the conditions of the Tree Permit.

(c) A permit holder cannot apply for more than one extension and shall make a fresh application under section 7.2 for any other continuation or resumption of activities commenced under an expired Tree Permit.

7.15 (1) A permit holder shall immediately inform the Manager of any change to:

(a) the information contained in an application for a Tree Permit;

(b) the information contained in a Tree Permit that has been issued;

(c) the characteristics of the work for which the Tree Permit has been issued;
or

(d) the cancellation of the work for which the Tree Permit was obtained.

(2) The Manager may require any one or more of revised or additional information, additional prescribed fees, or a fresh Application with respect to a change under subsection (1).

7.16 When undertaking activities under the Tree Permit, the permit holder and Owner, as applicable, shall post the Tree Permit in a conspicuous place on the Lot on which the work under the Tree Permit is being conducted for the duration of the work.

PART 8: ENFORCEMENT, REMEDIAL ACTIONS AND RECOVERY OF EXPENSES

Entry and Inspections

8.1 A person authorized to enforce this By-law may enter on any land, including Private Property, at any reasonable time and in accordance with the conditions set out in the *Municipal Act, 2001* for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

(a) an Order or other requirement under this By-law, including any policy or guideline made or issued in connection to this By-law;

(b) the Tree Permit or a condition of a Tree Permit issued under this By-law; or

(c) an order made under section 431 of the *Municipal Act, 2001*.

8.2 For the purposes of the inspection under section 8.1 and in accordance with the conditions set out in section 436 of the *Municipal Act, 2001*, a person authorized to enforce this By-law may:

- (a) require the production for inspection of documents or things relevant to the inspection;
- (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
- (c) require information in writing or otherwise as required by a Municipal Law Enforcement Officer or Officer from any person concerning a matter related to the inspection; and
- (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection. An Officer or a Municipal Law Enforcement Officer may undertake an inspection pursuant to an Order issued by a provincial judge or justice of the peace under section 438 of the *Municipal Act, 2001*, in accordance with the conditions set out in that section, where they have been prevented or is likely to be prevented from carrying out an inspection under section 8.1 of this By-law.

Orders

8.3 If an Officer of a Municipal Law Enforcement Officer is satisfied that a contravention of this By-law or a Tree Permit has occurred, they may make an Order requiring the Person who contravened the By-law or the Tree Permit, or who has caused or permitted the contravention to discontinue the contravening activity.

8.4 An Order under Section 8.3 shall set out:

- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the Lot on which the contravention occurred; and
- (b) The date or dates by which there be compliance with the Order, which may be of immediate effect should the Officer or Municipal Law Enforcement Officer determine that the circumstances warrant.

8.5 If an Officer or a Municipal Law Enforcement Officer is satisfied that a contravention of this By-law or the Tree Permit has occurred, they may make an Order requiring the Person who has contravened this By-law or the Permit or who caused or permitted the contravention or the Owner or occupier of a premises on which the contravention occurred to do work to correct the contravention.

8.6 An Order under Section 8.5 shall set out:

- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the Lot on which the contravention occurred;

- (b) what the permit holder, the Owner or any other Person who caused or permitted the contravention must do to rectify the contravention, which may include but is not limited to:
 - (i) requiring that prior to performing any additional work or activities, all necessary permits or other approvals be applied for and obtained;
 - (ii) the imposition of any of the conditions set out in section 7.6 of this By-law;
 - (iii) may require that any Injured or Destroyed Tree be replaced on the Lot with a Replacement Tree(s), and further specify the species and location of any Replacement Tree(s), or require payment in lieu of the prescribed compensation of replacement fee;
- (c) the date or dates by which the work required by the Order must be completed;
- (d) a notice that if the work is not completed in compliance with the Order within a specified time period, then the work may be done at the expense of the Person ordered to do the work; and,
- (e) contact information for City's representative.

8.7 An Order under section 8.3 or 8.5 may require the permit holder, an Owner or any other Person who caused or permitted the contravention, to pay a prescribed Compliance Inspection Fee, or any other prescribed applicable fee(s), by a specified date and time.

8.8 An Order under section 8.3 or 8.5 may be served by:

- (a) contacting a permit holder or Owner in writing or by email in accordance with the information provided on the Tree Permit Application; or
- (b) if there is no Tree Permit Application,
 - i. delivering it personally to the Owner or the Person who caused or permitted the contravention; or
 - ii. sending it by registered mail to the last known address of the Owner, or the Person who caused of permitted the contravention, which service shall be deemed effective five (5) days after mailing; or
 - iii. posting it on the Owner's property.

8.9 Where a time frame is set out in an Order or other document for carrying out any action, an Officer or Municipal Law Enforcement Officer may extend the time for

compliance beyond the established time frame provided such extension is required and is acceptable to the Officer or the Municipal Law Enforcement Officer.

City Carrying Out the Work

- 8.10 Where a Person does not comply with a direction or a requirement, including an Order or a condition of a Tree Permit under this By-law to do a matter or thing, the Manager, with such assistance by others as may be required, may carry out such direction, requirement or Order at the person's expense.
- 8.11 The Manager is authorized to give immediate effect to any direction or requirement where the costs of carrying out the direction or requirement do not exceed \$10,000 and, where the costs do exceed \$10,000, as the City's Council may authorize.
- 8.12 The City may recover the costs of doing a matter or thing under section 8.10 by means of any one or more of:
- (a) bringing an action;
 - (b) adding the costs to the tax roll and collecting them in the same manner as property taxes and such costs shall include an annual interest rate of 15 per cent commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full;
 - (c) realizing on security provided for this purpose; or,
 - (d) charging a prescribed fee, where applicable, or as otherwise set and approved by Council from time to time.
- 8.13 The amount of the City's costs, including interest to the date payment is made in full, constitutes a lien upon the land, upon the registration of a notice of lien upon the land.

PART 9: OFFENCE

- 9.1 Any Person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine and such other penalties as provided for by the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended.
- 9.2 All contraventions of any provision of this By-law are designated as multiple offences and continuing offences pursuant to section 429(2) and (5) of the *Municipal Act, 2001*.
- 9.3 Upon conviction of an offence under this By-law, every Person is liable to a fine as follows:

- (a) a Person other than a corporation, is liable for every day or part thereof upon which such offence occurs or continues to a fine not less than \$500 and not more than \$100,000 for a first offence and not less than \$1000 and not more than \$100,000 for a subsequent offence;
 - (b) a Person that is a corporation, is liable for every day or part thereof upon which such offence occurs or continues to a fine of not less than \$1000 and not more than \$100,000 for a first offence and not less than \$5000 and not more than \$100,000 for a subsequent offence;
 - (c) in the case of multiple offences, for each offence included in the multiple offence, a fine of not less than \$1000 and no more than \$10,000 and the total of all fines for each included offence is not limited to \$100,000.
- 9.4 Any Person who contravenes an Order made under this By-law, or an officer or director of a corporation who knowingly concurs in such a contravention by the corporation, is guilty of a continuing offence and upon conviction is liable to a daily fine or penalty of a maximum of \$5,000 for each day or part of a day that the offence continues, and despite section 9.3, the total of all the daily fines imposed for an offence is not limited by the fine amounts listed in those sections.
- 9.5 Every Person who is convicted of an offence under this By-law may be liable, in addition to the fines established under sections 9.1-9.4, to a special fine, which may exceed \$100,000, designed to eliminate or reduce any economic advantage or gain from contravening this By-law or failing to comply with an order made under this By-law.
- 9.6 Where a Person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, make an order:
- (a) prohibiting the continuation or repetition of the offence by the Person convicted; and
 - (b) requiring the Person convicted to correct the contravention in the manner and within the period that the court considers appropriate.
- 9.7 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 10: REVIEW

- 10.1 A Person who has received a notice of refusal to issue a Tree Permit from the Manager may request a Review to the Director by sending a request for review in writing, as directed by the Manager, within 14 days of receiving the notice of refusal.

10.2 On a review of the Manager's decision to refuse a Tree Permit and in exercising its authority under this Part, the Director has all the powers and functions of the Manager who made the decision, and may confirm, modify or rescind the decision of the Manager to refuse the Tree Permit.

10.3 The decision of the Director under this Part is final.

PART 11: ADMINISTRATIVE PENALTIES

11.1 This By-law in its entirety is designated as a By-law to which the City's Administrative Penalties By-law applies.

11.2 Every Person who contravenes this By-law, and each Owner, when given a Penalty Notice, in accordance with the City's Administrative Penalties By-law, shall be liable to pay the City an Administrative Penalty in the amount specified in the Administrative Penalties of this By-law, and any fees related thereto.

11.3 Where an Administrative Penalty and Administrative Fee(s) respecting the Administrative Penalty are not paid within sixty days after the date that they become due and payable, the treasurer of the City may add the Administrative Penalty and Administrative Fee(s) to the tax roll for any property for which all of the owners are responsible for paying the Administrative Penalty and Administrative Fee(s), and collect it in the same manner as municipal taxes.

PART 12: MISCELLANEOUS

12.1 Unless otherwise specifically stated, all fees referred to in this By-law shall be as set out in the City's Rates and Fees By-law, or as otherwise set and approved by Council from time to time.

12.2 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, then the particular provision or part thereof 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.

12.3 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.

PART 13: REPEAL, EFFECTIVE DATE AND TRANSITION

13.1 By-law No. 20-2020 is hereby repealed.

13.2 This By-law comes into force on the date of its passing.

13.3 Despite the repeal of By-law No. 02-2020 under section 13.1:

- (a) the repeal shall not affect any offence committed against the provisions of that By-law or any penalty or fee incurred in respect thereof or any investigative proceedings thereunder;
- (b) that By-law shall continue to apply to proceedings in respect of offences that occurred before its repeal;
- (c) any Tree Permit Applications received by the City prior to the date of the repeal, for which a decision has not been rendered on the date of the repeal, will be processed in accordance with By-law No. 02-2020, and the fees and charges payable for the Tree Permit Applications shall be those in effect at the time the Application was submitted; and
- (d) all approvals and Tree Permits issued under By-law No. 02-2020 that are in effect at the time of the repeal or that are issued in accordance with subsection 13.3(c) above, shall be deemed to be approvals issued under this By-law with all necessary modifications, and all rules, requirements and regulations of this By-law shall apply.

Passed this day of 2021

Mayor Marianne Meed Ward _____

City Clerk Kevin Arjoon _____