

The Corporation of the City of Burlington

City of Burlington By-law 40-2022

A by-law to prohibit and regulate the destruction and injury of trees on private land within the Urban Planning Area Boundary of City of Burlington and to repeal By-law No. 02-2020, The City of Burlington Private Tree By-law (RPF-08-2022, File 802-11)

Whereas the Council of the Corporation of the City of Burlington is authorized, without limiting the broad municipal powers, by subsection 11(2) and 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. 02-2020 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. 02-2020, 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 Monetary Penalties By-law” means the Administrative Penalties By-law 40-2016 of the City, as amended or replaced from time to time;

“administrative penalty” means an administrative monetary penalty (AMP) established by this By-law and specified in the Administrative Monetary Penalties By-law;

“applicant” means an owner of a lot or the owner’s authorized representative;

“application” means a complete tree permit application;

“application processing fee” means the fee charged by the City for the administration of a tree permit application under this By-law as may be prescribed from time to time in the City’s Rates and Fees By-law;

“arborist report” means a technical report prepared by a qualified tree 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 according to the Standard Specifications for Tree Protection and Preservation;

“boundary tree” means a tree where any part of its 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 tree work” means:

- (a) any work requiring the destruction of a tree where the likelihood of tree failure is imminent or a tree or part of tree is in active failure; or
- (b) where a tree must be injured or destroyed to conduct work in order to address an immediate danger to the health and safety of any person or property. Work may include but is not limited to works associated with immediate watermain repairs, drain repairs, utility repairs, and structural repairs to a building.

“fee” or **“fees”** means the fees prescribed in the Rates and Fees By-law;

“good arboricultural practice” means the removal, planting and tree maintenance activities in accordance with the American National Standards ANSI A300 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*, R.S.O. 1990, c. 0.18, as amended or trees recognized as heritage trees by Forests Ontario and the Ontario Urban Forest Council;

“high-risk tree” means a destabilized or structurally compromised tree where there is a high-risk of failure, but the failure is not imminent;

“injure” or **“injury”** or **“injured”** means any act or omission that may harm or damage 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) pruning that does not follow good arboricultural practice;
- (c) failing to protect a tree in accordance with the Standard Specifications for Tree Protection and Preservation;
- (d) interfering with the water supply of a tree;
- (e) setting fire to a tree;
- (f) affixing materials to a tree;
- (g) mechanical damage to a tree;
- (h) transplanting a tree;

- (i) applying chemicals on, around or near the tree;
- (j) compaction, excavation or re-grading within the tree protection zone;
- (k) 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,
- (l) any other damage resulting from neglect, or by design;

“invasive” means any tree that is classified as prohibited or restricted as defined in the *Invasive Species Act*, 2015, S.O. 2015, c. 22, or if the tree is listed as a noxious weed as defined by the *Weed Control Act*, R.S.O. 1990, c. W.5;

“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, or designate;

“nursery” means a lot on which the principal active business is the selling of plants, shrubs and trees to the public;

“Officer” means a person appointed by Council as a municipal law enforcement officer, a by-law enforcement officer of the City, or a person appointed under this By-law to administer or enforce this By-law and includes a person employed by the City whose duties are to enforce this By-law;

“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 their respective successors and assigns;

“permit extension fee” means the fee charged by the City to extend a tree permit under this By-law as may be prescribed from time to time in the City’s Rates and Fees By-law;

“permit holder” means:

- (i) the owner(s) of a lot for which a tree permit has been issued; or
- (ii) an agent that has obtained a tree permit on behalf of the owner;

“permit issuance fee” means the fee charged by the City under this By-law when a tree permit is issued as may be prescribed from time to time in the City’s Rates and Fees By-law;

“permit transfer fee” means the fee charged by the City to transfer or assign a tree permit under this By-law as may be prescribed from time to time in the City’s Rates and Fees By-law;

“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 from a tree in accordance with good arboricultural practice;

“qualified tree 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 tree 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 61-2021 to impose Rates and Fees, as amended or replaced from time to time;

“replacement tree” or **“replacement trees”** means a tree(s) that is planted as a condition of a tree permit issued under this By-law to replace another tree(s) that was approved for destruction under this By-law.

“replacement tree security” means the fee charged by the City, to be held as a security deposit, pending compliance with a tree replacement plan submitted under this By-law, as may be prescribed from time to time in the City’s Rates and Fees By-law;

“replacement tree fee” means the fee charged by the City for payment as cash-in-lieu of planting a replacement tree(s) under this By-law, as may be prescribed from time to time in the City’s Rates and Fees By-law, which fee shall be deposited by the Manager into the Reserve Fund;

“reserve fund” means the Tree Planting Initiative Reserve Fund established by City of Burlington By-law 55-2020, as amended;

“significant tree” means a tree with a diameter at breast height of 75cm or greater;

“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;

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

“tree” means any species of woody perennial plant, including its root system that will reach a height of at least 4.5m at physiological 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 tree 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 the minimum setback from a tree (including above and below ground level) required to protect the health and structural integrity of a tree as prescribed by the City’s Standard Specifications for Tree Protection and Preservation, as amended or replaced from time to time;

“tree replacement plan” means a scaled two-dimensional plan that identifies the location, species, and size of trees proposed for planting and illustrates planting details;

“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 defined as a woodland in the Halton Tree By-law 121-05, as amended, 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 “Private Tree By-law”.

PART 3: APPLICATION OF THE BY-LAW

- 3.1 This By-law applies to 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 issued 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 authorized to administer and enforce this By-law.
- 4.2 The Director is authorized to:
 - (a) perform any act that the Manager or an Officer is authorized to perform under this By-law;
 - (b) prescribe the form of any notices, applications, permits, policies, guidelines, and documents required or permitted pursuant to this By-law, and to amend or revise such notices, applications, permits, policies, guidelines or documents, from time to time;
 - (c) impose, amend or revise the City standards and specifications relating to this By-law; and
 - (d) conduct reviews under Part 9 of this By-law and, on a review under Part 9 of this By-law, where in the Director's opinion it is reasonable to do so, provide relief from the tree permit application requirements under section 7.1 of this By-law.
- 4.3 The Manager is authorized to:
 - (a) issue notices and orders under this By-law;
 - (b) issue, refuse, revoke, extend, transfer, or assign tree permits; and
 - (c) establish conditions related to tree permits.

- 4.4 Officers are authorized to enforce this By-law and shall have the authority to:
- (a) carry out inspections;
 - (b) issue orders or impose other requirements as authorized under this By-law; and
 - (c) give immediate effect to any orders or other requirements made under 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. Where a tree has been injured or destroyed and a DBH measurement is no longer possible, then the tree stump will be measured at grade. If the tree stump measurement is 20cm at grade then the provisions of this Bylaw apply;
 - (b) injure or destroy, or cause or permit the injury or destruction of a heritage tree, unless they also 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 also 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.
- 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(s) or replacement tree(s) other than in compliance with this By-law, the Standard Specifications for Tree Protection and Preservation, and all other applicable laws;
 - (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 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 under this By-law or any document or thing required to be submitted under this By-law;
- (e) provide false information or give a false statement to an Officer or an employee and/or agent of the City while in the lawful exercise of a power or duty under this By-law;
- (f) fail to submit a tree protection plan required under section 7.17 of this By-law; or
- (g) fail to comply with a tree protection plan required under section 7.17 of this By-law.

PART 6: EXEMPTIONS

6.1 This By-law does not apply to the injury or destruction of trees:

- (a) for the purpose of pruning;
- (b) located in a nursery or orchard;
- (c) classified as invasive;
- (d) in connection with 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) by a person licenced 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*.
- (l) for the purpose of emergency tree work, subject to the emergency notification requirements contained in this By-law;
- (m) where the destruction of a tree is required by an order made under the City's Property Standards By-law 28-2009, as amended or replaced from time to time; or
- (n) that are the property, or under the care and/or control, of either the Royal Botanical Gardens or Conservation Halton.

6.2 Where emergency tree work has occurred, the owner shall:

- (a) notify the Manager in writing, within seventy-two hours of the commencement of the emergency tree work; and
- (b) provide documentation requested by the Manager, which may include, but is not limited to, an arborist report, engineering reports, work orders, locates, photographs of the emergency tree 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 PERMITS AND TREE PROTECTION

Tree Permits - General

- 7.1 A person seeking to injure or destroy a tree(s) in relation to which a tree permit is required under this By-law, shall apply for a tree permit by submitting the following to the Manager:
- (a) a completed tree permit application form;
 - (b) a non-refundable application processing fee, subject to section 7.4 of this By-law;
 - (c) prior to the issuance of a tree permit, and the applicable permit issuance fees;
 - (d) a drawing or sketch showing the location of trees to be injured, destroyed, or retained;
 - (e) an arborist report, if required, in a form satisfactory to the Manager;
 - (f) a scaled, 2-dimensional tree protection plan, if required, in a form satisfactory to the Manager;
 - (g) if seeking to destroy a tree:
 - (i) a tree replacement plan in a form satisfactory to the Manager and the required replacement tree security, as determined by the Manager; or
 - (ii) replacement tree fees as determined by the Manager;
 - (h) if the person who is applying for the tree permit is not the owner of the lot where the tree(s) that will be injured or destroyed is located, the written consent of the owner of the lot where the tree(s) that will be injured or destroyed is located;
 - (i) where the tree(s) is considered a boundary tree(s), the written consent of the adjacent property owner(s);
 - (j) a report completed by a qualified tree professional, which may include, but is not limited to, a TRAQ Report, prior to the issuance of a tree permit for the purpose of determining if the proposed work is able to proceed to the satisfaction of the Manager; and,
 - (k) any revised or additional information or documentation as may be required by the Manager to determine if the tree permit should be issued.

- 7.2 After receipt of a complete application, including any revised or additional information required, the Manager may:
- (a) issue a tree permit(s) with or without conditions, in accordance with section 7.6 of this By-law;
 - (b) refuse to issue a tree permit(s) for any of the reasons stated in section 7.7 of this By-law;
 - (c) 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; or
 - (d) where an application for rezoning, official plan amendment, a consent, a minor variance, a plan of subdivision or a site plan to the lot on which the tree(s) is located has been submitted to the City, but has not received final approval, advise the applicant that any tree permit applications associated with the same lot will be considered together with and will be dependent upon any final approvals associated with those other types of applications.

7.3 If an applicant for a tree permit:

- (a) does not provide the information or documents required under section 7.1 within the time specified by the Manager; or
- (b) has not taken any active steps to complete the tree permit application process and the application is more than one year old,

the application shall be deemed withdrawn and the applicant shall not be entitled to a refund of any prescribed fees paid. The Manager may close the tree permit application file when the applicant withdraws or is deemed to have withdrawn the application.

Fee Exemptions

7.4 Application processing fees and permit issuance fees are not required for a tree permit application if any of the following conditions apply:

- (a) the tree(s) has been confirmed dead, to the satisfaction of the Manager;
- (b) the tree(s) has been confirmed to have a terminal condition, to the satisfaction of the Manager;
- (c) the tree(s) has been confirmed to be a high-risk tree, to the satisfaction of the Manager;
- (d) the injury or destruction of the tree(s) 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; or

- (e) the tree(s), to the satisfaction of the Manager, is in conflict with work or activities that are necessary to remedy or prevent a deficiency affecting a person or property associated with underground infrastructure or the structural integrity of a building, as confirmed through the supply of supporting documentation including, but not limited to, reports from contractors and/or engineers.

Issuing Tree Permits

7.5 The circumstances in which the Manager may issue a tree permit for the injury or destruction of a tree include the following:

- (a) the tree(s) has been confirmed dead, to the satisfaction of the Manager;
- (b) the tree(s) has been confirmed to have a terminal condition, to the satisfaction of the Manger;
- (c) the tree(s) has been confirmed to be a high-risk tree, to the satisfaction of the Manager;
- (d) despite subsections 7.7(b) and 7.7(c) of this By-law, where the application satisfies the requirements of this by-law, there will be no negative impacts to flood or erosion control or slope stability that cannot be adequately mitigated, and:
 - (i) the application is to permit the creation or extension of a building or structure which requires the tree(s) to be injured or destroyed for the proposed works, and the Manager determines that there are no reasonable alternatives to the injury or destruction of the tree(s);
 - (ii) the tree(s) is in conflict with a pool enclosure, and the Manager determines that there are no reasonable alternatives to the injury or destruction of the tree(s);
 - (iii) the tree(s) are causing or are likely to cause damage to underground infrastructure or the structural integrity of a building;
 - (iv) the tree(s) are to be relocated and the Manager is satisfied that the tree(s) will be sufficiently prepared for relocation;
 - (v) the owner has submitted a tree protection plan to the satisfaction of the Manager and it is reasonably determined by the Manager that:
 - i. the injury is minor in nature; or
 - ii. that the applicant has proposed remedial and/or

mitigative measures and the tree is expected to continue to survive in good condition; or

- (vi) none of subsections 7.5(d)(i) –(v) are applicable, but the Manager determines that there are no reasonable alternatives to the injury or destruction of the tree(s).

Tree Permit Conditions

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

- (a) to plant replacement tree(s) in accordance with the tree replacement plan and the tree replacement guidelines as identified on the tree permit and within the time specified on the tree permit;
- (b) that any replacement tree(s) shall be planted and maintained in good condition for a minimum of two years from the date of planting;
- (c) in the event any replacement tree(s) required under s. 7.6(a) of this By-law should die within two years of planting, to plant new replacement tree(s) and maintain such replacement tree(s) in good condition for a minimum of two years from the date of planting;
- (d) to deliver replacement tree security in a form satisfactory to the Manager, to cover the cost of the replacement tree(s). The replacement tree security shall be released without any interest thereon upon confirmation by the Manager that any replacement tree(s) have been planted as required. In the event the permit holder fails to plant replacement tree(s), as required, the replacement tree security shall be permanently forfeited by the permit holder and shall be deposited by the Manager into the reserve fund;
- (e) where a replacement tree(s) cannot physically be located on the lot on which the tree(s) will be injured or destroyed:
 - a. to pay replacement tree fees, which shall be deposited by the Manager into the reserve fund; or
 - b. that a replacement tree(s) be located at another suitable location to the satisfaction of the Manager in accordance with a tree replacement plan approved by the Manager and that the person pay replacement tree security, as required by the tree permit;
- (f) to perform any work authorized by a tree permit under the supervision of a qualified tree professional;
- (g) to provide a report completed by a qualified tree professional following the completion of the work authorized or required by the tree permit;

- (h) to contact the City's Forestry Department for inspection as required by the tree permit;
- (i) to restore the subject site to its original condition;
- (j) to establish a tree protection zone and install and maintain tree protection fencing around any tree(s) including horizontal (on grade) root protection in accordance with the City's Tree Protection and Preservation Specification, and in accordance with the approved tree protection plan and arborist report, to the satisfaction of the Manager;
- (k) 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,
- (l) to comply with such other reasonable conditions that the Manager deems necessary for the purposes of regulating the injury or destruction of tree(s).

Refusing a Tree permit

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 and there are reasonable alternatives to the injury or destruction of the tree;
- (c) the application is for the destruction of a significant tree and there are reasonable alternatives to the injury or destruction of the tree;
- (d) 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;
- (e) a person or property will be adversely affected;
- (f) a nuisance may occur;
- (g) 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; or
- (h) the permissions required by section 5.1(b) and (c) of this By-law have not been obtained.

Suspension, Alteration, and Revocation of Tree permits

7.8 The Manager may immediately suspend, alter, or revoke a tree permit 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, tree protection plan, or associated plans are not followed;
- (c) any order(s) or notices of the Manager under this By-law have not been complied with;
- (d) a situation of immediate threat or danger to any person or property exists;
- (e) any of the reasons for which the Manager could have refused to issue a tree permit under this By-law arise; or
- (f) the tree permit was issued because of mistaken, false or incorrect information received by the Manager.

7.9 If the Manager refuses to issue a tree permit, or alters, suspends or revokes a permit, the Manager will contact the applicant or permit holder, as the case may be, in writing by email or regular mail in accordance with the contact information provided on the tree permit application.

7.10 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.

Tree Permit Terms and Requirements

7.11 A tree permit is the property of the City and may not be transferred or assigned without the written approval of the Manager and upon payment of the prescribed permit transfer fee.

7.12 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.

7.13 Notwithstanding section 7.12 of this By-law:

- (a) on request of the permit holder 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) any conditions of the tree permit.
- (c) a permit holder cannot apply for more than one extension and shall make a new application under section 7.1 for any other continuation or resumption of activities commenced under an expired tree permit.

7.14 (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 new application with respect to a change under subsection 7.14(1).

7.15 When undertaking activities under a tree permit, the permit holder 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.

7.16 When any tree permit relates to a significant tree(s), the permit holder shall, in addition to the requirement set out in section 7.15 of this By-law, post the tree permit in a conspicuous place on the lot on which the work under the tree permit will take place, at least 7 days before any work commences under the tree permit.

Tree Protection

7.17 Where the Manager, under this By-law or any other City By-law or applicable process, reviews any applications, excluding matters addressed through the provisions of the *Planning Act*, to determine whether the proposed work may impact any tree(s) to which this By-law applies, the Manager may, notwithstanding that the person is not seeking to injure or destroy any tree(s), require that the person establish a tree protection zone and install tree protection fencing around any tree(s) located on the lot and which may, in the opinion of the Manager, be

negatively impacted by work or activities taking place on the lot, including horizontal (on grade) root protection in accordance with the City's Tree Protection and Preservation Specification, and in accordance with an approved tree protection plan and arborist report, to the satisfaction of the Manager.

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 an 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.
- 8.3 Any person authorized to enforce this By-law 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 this By-law.

Orders

8.4 If an 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.

8.5 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 determine that the circumstances warrant.

8.6 If an 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 has contravened this By-law or the tree 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 or rectify 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) the work to be completed by the owner or any other person who caused or permitted the contravention in order to rectify the contravention, which may include but is not limited to requiring:
 - (i) that prior to performing any additional work or activities, all necessary permits or other approvals be applied for and obtained;
 - (ii) compliance with any of the conditions set out in section 7.6 of this By-law;
 - (iii) 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 of the prescribed replacement tree fee in lieu of planting a replacement tree(s), which replacement tree fee the Manager shall deposit into the Reserve Fund;
- (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 the City's representative.
- 8.7 An order under this By-law 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 Where a time frame is set out in an order or other document for carrying out any action, an Officer may extend the time for compliance beyond the established time frame provided such extension is required and is acceptable to the Officer.
- 8.9 If an Officer is satisfied that a contravention of this By-law or a tree permit has occurred, the owner of the lot on which the tree(s) is located shall be presumed to have or permitted the injury or destruction of the tree or caused or permitted the contravention of the conditions of a tree permit issued under this by-law, as the case may be, which presumption may be rebutted by the owner by evidence to the contrary on a balance of probabilities.

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: REVIEW

- 9.1 A person who has received a notice of refusal to issue a tree permit or notice that a tree permit has been revoked 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.
- 9.2 On a review of the Manager's decision to refuse or revoke a tree permit and in exercising its authority under this Part, the Director may confirm, modify or rescind the decision of the Manager to refuse the tree permit.
- 9.3 The decision of the Director under this Part is final.

PART 10: OFFENCE

- 10.1 Any person who contravenes any provision of this By-law or an order 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.
- 10.2 All contraventions of any provision of this By-law or an order are designated as multiple offences and continuing offences pursuant to section 429(2) and (5) of the *Municipal Act, 2001*.
- 10.3 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.
- 10.4 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 10.3, the total of all the daily fines imposed for an offence is not limited by the fine amounts listed in those sections.
- 10.5 Every person who is convicted of an offence under this By-law may be liable, in addition to the fines established under sections 10.1-10.4, 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.
- 10.6 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.
- 10.7 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 11: ADMINISTRATIVE PENALTIES

- 11.1 This By-law in its entirety is designated as a By-law to which the City's Administrative Monetary 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 Monetary Penalties By-law, and any fees related thereto.
- 11.3 Where an administrative penalty and administrative fee(s) respecting the administrative penalty, as specified in the Administrative Monetary Penalties By-law,

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.

Methods of Giving Notice

- 12.4 Any notice given by the City pursuant to this by-law in writing, including an order, may be given in any of the following ways:
 - (a) personally;
 - (b) by posting it on the recipient's property;
 - (c) by fax to the recipient's last known fax number;
 - (d) by e-mail to the recipient's last known e-mail address; or
 - (e) by registered or regular mail or courier or hand delivery addressed to the recipient's last known address.

Deemed Effective

- 12.5 Notice given in accordance with section 12.4 shall be deemed to be effective:
 - (a) on the date it is personally given, posted to the recipient's property, delivered by courier, or hand delivered;
 - (b) on the date on which the fax is sent;

- (c) on the date the e-mail is sent; or
- (d) on the fifth day after the date of mailing by registered or regular mail.

PART 13: REPEAL, EFFECTIVE DATE AND TRANSITION

13.1 By-law No. 02-2020 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, subject to section 13.3(d) of this By-law, 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;
- (d) any tree permit application(s) received by the City prior to the date of the repeal shall be subject to section 7.3 of this By-law;
- (e) all of the terms and conditions of any tree permits issued under By-law 02-2020 that are in effect at the time of the repeal or that are issued in accordance with subsection 13.3(c) above, will continue as terms and conditions of a tree permit issued under this By-law and be subject to this By-law.

Enacted and passed this 19th day of April, 2022.

Mayor Marianne Meed Ward _____

City Clerk Kevin Arjoon _____