

DRAFT FOR CONSULTATION

Authority:

Bill No.

CITY OF HAMILTON
BY-LAW NO. 23-
088

**To Promote the Conservation and Sustainable Use of Woodlands on
Private Property within the Urban Boundary of the City of Hamilton**

WHEREAS the Council of the City of Hamilton deems it necessary to preserve and enhance biodiversity, forest, water, and soil resources of the municipality by promoting the sustainable use and wise management of woodlands in the City of Hamilton;

AND WHEREAS the Council of the City of Hamilton desires to promote the conservation and sustainable use of woodlands on private property within the urban boundary of the City of Hamilton;

AND WHEREAS Sections 8, 9, and 10 of the Municipal Act, 2001, SO 2001, c 25, as amended, authorize the City of Hamilton to pass By-laws necessary or desirable for municipal purposes, and in particular, Paragraph 5 of Subsection 10(2) authorizes By-laws respecting the economic, social, and environmental well-being of the municipality,088;

AND WHEREAS Subsection 135(1) of the Municipal Act, 2001 provides that the City may prohibit or regulate the destruction or injuring of trees;

AND WHEREAS Subsection 135(7) of the Municipal Act, 2001 provides that the City may require that a Permit be obtained to injure or destroy trees and impose conditions to a Permit, including conditions relating to the manner in which destruction occurs and the qualifications of a person authorized to injure or destroy trees;

AND WHEREAS Section 425 of the Municipal Act, 2001 authorizes the City of Hamilton to pass By-laws providing that a person who contravenes a By-law of the City of Hamilton passed under that Act is guilty of an offence;

AND WHEREAS the Municipal Act, 2001 further authorizes the City of Hamilton, amongst other things, to delegate its authority, to impose fees or charges on persons for services or activities provided or done by or on behalf of it, to provide for inspections and inspection orders, and to make orders to discontinue activity or to do work;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

Definitions:

1. In this By-law:

“Agricultural Operation” means an agricultural, aquacultural, horticultural, or silvicultural operation that is carried on in the expectation of gain or reward;

“Applicant” means the Owner who, pursuant to this By-law, applies for a Permit;

“Application” means an Application referred to in Section 7 of this By-law;

“Arborist” means an expert in the care and maintenance of Trees and includes an Arborist certified by the Ontario Ministry of Training, Colleges and Universities or the International Society of Arboriculture, or a consulting Arborist registered with the American Society of Consulting Arborists;

“Basal Area” means:

- (a) the area of the cross-section of a Trunk of a Tree, including the bark measured at the Diameter at Breast Height as square metres per hectare; and,
- (b) where there are multiple Trunks, the total area of the cross-sections of the multiple Trunks of a Tree, including the bark, measured at the Diameter at Breast Height as square metres per hectare;

“Boundary Tree” means a Tree where any part of its Trunk is located on more than one Lot;

“Business Day” or “Business Days” means 8:30 a.m. to 4:30 p.m. on any day on which the City of Hamilton’s administration buildings are open for business;

“Certified Tree Marker” means an individual who is currently certified through the Ontario Ministry of Natural Resources and Forestry Certified Tree Marker Program unless a suspension, term, condition or limitation of certification applies which would restrict the individual from carrying out responsibilities under this By-law;

“City” means the geographical area of the City of Hamilton or the municipal corporation as the context requires;

“Clear Cutting” means a break in the canopy of Trees in Natural Features in which the cumulative area of the canopy of Trees Injured or Destroyed exceeds 0.1 hectare, with or without a Permit. Clear Cutting shall include the cumulative incremental or continuous Injury or Destruction of Trees since the enactment of this By-Law;

“Conservation Authority” means a local public sector agency established to manage watersheds under the Conservation Authorities Act, R.S.O. 1990, chapter C.27;

“Council” means the Council of the City of Hamilton;

“Cultivated Fruit or Nut Orchard” means the intentional planting of Trees that are maintained for food production as part of an Agricultural Operation, this does not refer to orchards that have ceased being managed or harvested for their intended purpose for a period of fifteen (15) years or more;

“Dead” means a Tree that has no living tissue;

“Destroy” means to cut down, remove, uproot, unearth, topple, burn, bury, shatter, poison or in any way cause a Tree to die or be killed, or where the extent of the Injury caused to a live Tree is such that it is likely to die or be killed, whether by accident, intent or by design. The terms “Destroyed” and “Destruction” shall have a corresponding meaning;

“Diameter at Breast Height” (DBH) means:

- (a) the diameter of a Trunk of a Tree, including the bark measured at 1.40 metres above the highest point on the Tree where the grade meets its Trunk; and,
- (b) where there are multiple Trunks, the total diameters of the multiple Trunks of a Tree, including the bark, measured at 1.40 metres above the highest point on the Tree where the grade meets one of those Trunks;

“Drip Line” means an imaginary line running directly beneath the outermost branches of an individual Tree or of the Trees forming the perimeter of the Woodland;

“Farm” means the premises where a Person who has a current and valid farming business registration number under the Farm Registration and Farm Organization Funding Act, 1993 operates that farming business;

“Fees and Charges By-law” means the City’s User Fees and Charges By-law 25-023, as amended, or its successor(s);

“Forest Management Plan” means a document, including Silvicultural Prescriptions prepared on behalf of the Owner of a Woodland or Woodlands by a Qualified OPFA Member in accordance with the Ministry of Natural Resources document “A Silvicultural Guide to Managing Southern Ontario Forests”, as amended from time to time, for the purpose of managing the natural and forestry resources of the Woodland(s) in accordance with Good Forestry Practices while accommodating to the extent possible the short term and long term objectives of the Owner;

“General Manager” means the General Manager of Planning and Economic Development for the City of Hamilton or their designate;

“Good Arboriculture Practices” means the proper implementation of removal, renewal and maintenance activities known to be appropriate for individual

Trees and includes Pruning of Trees to remove Dead limbs, or to maintain structural stability and balance;

“Good Forestry Practices” means the proper implementation of harvest, renewal and maintenance activities known to be appropriate for the forest and environmental conditions under which they are being applied and that minimize detriments to forest values, including significant ecosystems, important fish and wildlife habitat, soil and water quality and quantity, forest productivity and health and the aesthetics and recreational opportunities of the landscape;

- (a) the cutting and removal of Hazardous, severely damaged, diseased and insect-infested Trees which must be removed in order to prevent contamination or infestation of other Trees or because they no longer contribute to the achievement of forest values;
- (b) in the case of Hazardous, damaged, diseased or insect-infested Trees, the maintenance of a Woodland after the cutting and removal is completed unless it is determined through a report prepared by Qualified OPFA Member that Trees must be removed and a Woodland would not be maintained; and,
- (c) the forestry management practices as set out in the Ministry of Natural Resources document “A Silvicultural Guide to Managing Southern Ontario Forests”, as amended from time to time;

“Hazard” means a Tree that is a potential safety concern to property or life, but not an immediate threat, including, but not limited, to a destabilized or structurally compromised Tree as determined by a Qualified OPFA Member. The term “Hazardous” shall have a corresponding meaning;

“Healthy” means a Tree that has a vigorous canopy with no significant disease or decay as determined by a Qualified Arborist or Qualified OPFA Member;

“Injure” means any action that causes physical, biological, or chemical damage to a Tree, including any lasting damage which has the effect of inhibiting or terminating its growth. The terms “Injury”, “Injured”, or “Injuring” shall have a corresponding meaning;

“Landscape Architect” means a person who is a full member in good standing of the Ontario Association of Landscape Architects;

“Licensed Tree Cutter” means a Person licensed in the City of Hamilton to perform Tree cutting services in accordance with the City’s By-law to License and Regulate Various Businesses 07-170, as amended, or its successor(s);

“Local Board” means a municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities, excluding a school board and a Conservation

Authority;

“Lot” or “Lots” means all contiguous land under one ownership which can be legally conveyed pursuant to the provision of the Planning Act;

“Municipal Law Enforcement Officer” means enforcement staff or a Person appointed by Council or by the **General Manager** for the enforcement or administration of this By-law, and includes a Person employed by the City of Hamilton whose duties are to enforce or administer this By-law;

“Natural Feature” means natural elements of a landscape, which may include geophysical formations, soil, landforms, vegetation, hydrological features, and lands that contain Sensitive Natural Areas;

“Occupied Building” means a permanent structure used or intended to be used for the shelter, accommodation or enclosure of Persons for residential, business, institutional or recreational purposes. For the purposes of this By-law, an attached garage shall be deemed to be part of an Occupied Building;

“Official Plan” means the City’s Urban Hamilton Official Plan;

“Order” means an Order issued under this By-law;

“Owner” means the registered Owner of a Lot, and their respective successors and assigns, or their agent;

“Permit” means the written authorization from the General Manager to Injure or Destroy any Tree in a Woodland;

“Permit Holder” means:

- (a) the Owner(s) of a Lot for which a Permit has been issued; or,
- (b) an agent that has obtained a Permit on behalf of the Owner;

“Person” or “Persons” means any individual or individuals, or any corporation or corporations, their respective heirs, executors, administrators or other duly appointed representatives;

“Planning Act” means the *Planning Act, R.S.O. 1990, c. P.13* and any amendments thereto;

“Planning Committee” means the City of Hamilton's Planning and Economic Development Committee or any successor Committee;

“Plantation” means lands where Trees of selected species have been planted or seeded in a pre-determined pattern or arrangement for the purpose of cultivation and sale at a later time, such as for the sale of Christmas Trees, but does not include former Plantations that have been left untended and may have naturalized;

“Private Property” means any Lot not owned by, leased to, controlled by, or vested in the City;

“Pruning” or “Prune” means the appropriate and selective removal of not more than 20 percent of the live foliage or crown of a Tree within an annual growing season with the intent of maintaining the health and structural integrity of the Tree. Pruning must be performed by a Licensed Tree Cutter in accordance with Good Arboricultural Practices and with the American National Standard Institute Standard (ANSI) A300 (Part 1)-2008 Pruning;

“Qualified Arborist” means an expert in the care and maintenance of Trees and includes an arborist certified by the Ontario Ministry of Training, Colleges and Universities or the International Society of Arboriculture, or a consulting arborist registered with the American Society of Consulting Arborists;

“Qualified OPFA Member” means a Registered Professional Forester or Associate Member of the Ontario Professional Foresters Association under the Professional Foresters Act 2000, c.18, as amended, to practice professional forestry, unless a suspension, term, condition or limitation of applies which would restrict the Member from carrying out responsibilities under this By-law;

“Replanting Plan” means a plan to create or restore a forest ecosystem through the selection of appropriate Tree species and planting methods, including post-planting care prepared by a Qualified OPFA Member;

“Replacement Tree” or “Replacement Trees” means a Tree of a size and type determined by the General Manager that is required to be planted to replace a Tree Destroyed or Injured pursuant to a Permit under this By-law;

“Security” means an agreement between the City and an Applicant where the Applicant arranges an irrevocable letter of credit from a reputable financial institution to specify and lodge a sum of money as determined by the General Manager as a condition of a Permit;

“Sensitive Natural Areas” or “Sensitive Natural Area” include, but are not restricted to:

- (a) Environmentally Significant Areas, as identified by the City of Hamilton in its Official Plans;
- (b) Provincial or Regional Life Science Areas of Natural and Scientific Interest (“ANSI”), as identified by the Ontario Ministry of Natural Resources;
- (c) Wetlands, as identified by the Ontario Ministry of Natural Resources or a Conservation Authority;
- (d) Habitat of Threatened, Endangered, Special Concern, or Locally Rare Species, as identified by the City of Hamilton, the Ontario Ministry of Natural Resources, or the Species at Risk Act (Canada);

- (e) Significant Wildlife Habitat, as identified by the City of Hamilton, the Ontario Ministry of Natural Resources, or a Conservation Authority;
- (f) Significant Woodlands, as identified by the City of Hamilton in its Official Plans;
- (g) Significant Valley Lands, as identified by the City of Hamilton, the Ontario Ministry of Natural Resources, or a Conservation Authority; and,
- (h) Core Areas within the Natural Heritage System, as identified by the City of Hamilton in its Official Plans;

“Silvicultural Prescription” means the site-specific operational plan, signed and sealed by a Qualified OPFA Member, that describes the existing forest conditions and the forest management objectives for an area, and which prescribes the methods for Harvesting the existing forest stand and a series of silvicultural treatments that will be carried out to establish a free-growing stand in a manner that accommodates other resource values as identified;

“Tree” or “Trees” means a woody perennial plant (including its root system) which has reached or could reach a height of at least 4.5m at maturity;

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

“Tree Protection Plan” means a plan, reviewed and approved by the General Manager, prepared by an Arborist, Landscape Architect, or Qualified OPFA Member, in accordance with the City of Hamilton's Tree Protection Guidelines pursuant to an application under the Planning Act, which protects and preserves trees on private woodland property (excluding significant woodlands) where development or disturbance of the natural forest cover for the purposes of building construction and/or land division will be occurring;

“Trunk” or “Trunks” means the part of a Tree from its point of growth away from its roots up to where it branches out to limbs and foliage;

“Urban Boundary” means the area where all urban development is allowed within the City of Hamilton as identified in the Urban Hamilton Official Plan; and,

“Woodland” or “Woodlands” means land with at least:

- (a) 1,000 trees of any size, per hectare, calculated ‘in proportion to the actual area of the woodland;
- (b) 750 trees, with a diameter at breast height of over 5 centimetres per hectare, calculated in proportion to the actual area of the woodland;
- (c) 500 trees, with a diameter at breast height of over 12 centimetres per hectare, calculated in proportion to the actual area of the woodland; or,

- (d) 250 trees, with a diameter at breast height of over 20 centimetres per hectare, calculated in proportion to the actual area of the woodland;

But does not include:

- (e) a Cultivated Fruit or Nut Orchard;
- (f) a Tree Nursery; or,
- (g) a Plantation;

For the purposes of this By-law, the boundary of the Woodland shall be defined by the ecological limit of the Woodland and not by Lot boundaries. Where a potential Woodland is dissected by a road or path not wider than 30m 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.

Application:

- 2. This By-law applies to Trees in a Woodland equal to or greater than 0.2 hectares located within the Urban Boundary.
- 2a. In addition to Section 2 of this By-law, for those lands identified in Schedules "A1", "A2" and "A3" to this By-law, this By-law shall apply to:
 - (a) Trees with a Diameter at Breast Height equal to or greater than 20 centimetres, except such Trees that are:
 - (i) located within 7.5 metres (25 feet) of the outer edge of an Occupied Building existing at the date of passage of this By-law and do not form part of a Woodland; or,
 - (ii) Siberians Elms (*Ulmus pumila*), Norway Maples (*Acer platanoides*), Tree of Heaven (*Ailanthus altissima*), or Manitoba Maples (*Acer negundo*) and the Destruction of one or more of the Trees does not have the effect of reducing the number of Trees in a Woodland below the number of Trees necessary to constitute a Woodland.

Prohibitions:

- 3. Except as otherwise permitted under Sections 5 or 6 of this By-law, no Person shall Injure or Destroy, or cause or permit the Injury or Destruction of any Trees in a Woodland.
- 3a. In addition to Section 3 of this By-law, for those lands identified in Schedules "A1", "A2" and "A3" of this By-law, except as otherwise permitted under Sections 5 or 6 of this By-law or Subsections 2a (a) (i) of (ii), no Person

through their own actions or through the actions of any other Person shall Injure or Destroy any Tree with a Diameter at Breast Height equal to or greater than 20 centimetres or permit the Destruction or Injury of any Tree with a Diameter at Breast Height equal to or greater than 20 centimetres.

4. No Person through their own actions or through the actions of any other Person shall:
 - (a) contravene any term or condition of a Permit issued under this By-law;
 - (b) fail to comply with a notice, Order, or Permit under this By-law; or,
 - (c) remove or deface any Order posted under this By-law.

Exemptions - Not Requiring Permit:

5. Despite Sections 2 and 2a, this By-law does not apply to:
 - (a) activities or matters undertaken by the City or a Local Board;
 - (b) activities or matters undertaken, in accordance with a license issued under the Crown Forestry Sustainability Act, 1994;
 - (c) the Injuring or Destruction of a Tree in a Woodland or a Tree or Trees identified in Section 2a by a Person licensed under the Surveyors Act, 1990 to engage in the practice of cadastral surveying or his or her agent while making a survey;
 - (d) the Injuring or Destruction of a Tree in a Woodland or a Tree or Trees identified in Section 2a in accordance with an approved Tree Protection Plan submitted with an application for a Site Plan, a Plan of Subdivision, or a Consent under Sections 41, 51, or 53 of the Planning Act, 1990 or as a requirement of a Site Plan Agreement or Subdivision Agreement entered into under those Sections;
 - (e) the Injuring or Destruction of a Tree in a Woodland or a Tree or Trees identified in Section 2a in accordance with an approved Tree Protection Plan submitted with an application for a Condominium Plan under the Condominium Act, 1998;
 - (f) the Injuring or Destruction of a Tree in a Woodland or a Tree or Trees identified in Section 2a by a transmitter or distributor, as those terms are defined in Section 2 of the Electricity Act, 1998, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that Section;
 - (g) the Injuring or Destruction of a Tree in a Woodland or a Tree or Trees identified in Section 2a by any provider of a public utility, as that term is defined in Subsection 1(1) of the Municipal Act, 2001, for the purpose of constructing and maintaining the public utility;

- (h) the Injuring or Destruction of a Tree in a Woodland or a Tree or Trees identified in Section 2a 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, 1990;
- (i) the Injuring or Destruction of a Tree in a Woodland or a Tree or Trees identified in Section 2a undertaken on land in order to lawfully establish and operate or enlarge a pit or quarry on land,
 - (i) that has not been designated under the Aggregate Resources Act, 1990 or a predecessor of that Act; and,
 - (ii) on which a pit or quarry is a permitted land use under a By-law passed under Section 34 of the Planning Act, 1990;
- (j) the Pruning of a Tree in a Woodland or a Tree or Trees identified in Section 2a, in accordance with Good Arboricultural Practice to maintain the Tree's health;
- (k) the Injuring or Destruction of a Tree in a Woodland or a Tree or Trees identified in Section 2a with its Trunk or Trunks entirely located within 3 metres of the outer edge of an existing Occupied Building;
- (l) the Injuring or Destruction of a Tree in a Woodland or a Tree or Trees identified in Section 2a necessary for the erection of a building, structure, or thing in respect of which a Building Permit under the Building Code Act, 1992 has been issued by the City provided no Tree is Injured or Destroyed more than 10 meters from the outer edge of the building, structure, or thing; or,
- (m) Any activity undertaken by a Conservation Authority on land owned or managed by such Conservation Authority.

Permit Process:

Applications:

6. An Owner may Injure or Destroy a Tree in a Woodland or a Tree or Trees identified in Section 2a or permit the Injuring or destruction of a Tree in a Woodland or a Tree or Trees identified in Section 2a, provided that they comply with a Permit obtained from the General Manager to do so.
7. An Owner shall apply for a Permit under Section 6 by submitting to the General Manager a completed Permit Application in a form as prescribed by the General Manager, and any Application fee as described in the City's User Fees and Charges By-law.
8. Before issuing a Permit for the Injuring or Destruction of Trees in a Woodland or a Tree or Trees identified in Section 2a, the General Manager may require that:
 - (a) the Owner submit a Forest Management Plan or Silvicultural

Prescription;

- (b) the Trees to be Injured or Destroyed are marked with paint by a Certified Tree Marker or Qualified OPFA Member, in accordance with the Forest Management Plan or Silvicultural Prescription;
 - (c) where Trees are considered a Boundary Trees, that the Owner submit written consent of the adjacent property Owner(s); and,
 - (d) any revised or additional information or documentation as may be required by the General Manager to determine if a Permit should be issued.
9. No Permit shall be issued for the Injuring or Destruction of Trees in a Woodland or a Tree or Trees identified in Section 2a unless:
- (a) the Permit Application form has been completed and submitted to the General Manager;
 - (b) any Application fee has been submitted to the General Manager; and,
 - (c) no substantially similar Permit Application has been previously refused, in whole or in part:
 - (i) by the General Manager, under Sections 11 or 12; or,
 - (ii) by Council, under Section 25.
10. The General Manager may issue a Permit for the Injuring or Destruction of Trees in a Woodland or a Tree or Trees identified in Section 2a where they are satisfied that:
- (a) the proposed Injuring or Destruction of the Trees is in accordance with Good Forestry Practices, and:
 - (i) the Trees have been damaged by disease, insects, wind, ice, fire, lightning, or other natural causes, to the extent that the health of the Trees is likely to further deteriorate;
 - (ii) the Trees should be cut or removed to prevent disease or insects from spreading to other Trees; or,
 - (iii) the Trees have been marked to be cut back or removed as part of a Forest Management Plan or Silvicultural Prescription; or,
 - (b) the proposed Injuring or Destruction of the Trees is necessary to protect the health or safety of the public.
11. The General Manager shall refuse to issue or may revoke a Permit for the Injuring or Destruction of Trees in a Woodland or a Tree or Trees identified in Section 2a where:

- (a) the Application for a Permit is incomplete;
 - (b) an Application for a Permit was found to contains inaccuracies or falsified information;
 - (c) an Application under the Planning Act, 1990 on the Lot on which the Trees are located has been submitted to the City, but has not received final approval;
 - (d) a Sensitive Natural Area will not be adequately protected or preserved, as determined in consultation with the relevant Conservation Authority or authorities having jurisdiction;
 - (e) stream or wetland functions, including flood or erosion control or drainage processes, will be negatively impacted, as determined in consultation with the relevant Conservation Authority or authorities having jurisdiction;
 - (f) the Applicant or Permit Holder does not meet one or more of the requirements of this By-law or a condition imposed on a Permit;
 - (g) the Applicant or Permit Holder is carrying on activities that are in contravention of this By-law; or,
 - (h) the Applicant does not comply with applicable laws, including but not limited to, this By-law, municipals By-laws, provincial or federal laws.
12. The General Manager may refuse to issue or may revoke a Permit for the Injuring or Destruction of Trees in a Woodland or a Tree or Trees identified in Section 2a where:
- (a) the Trees are Healthy;
 - (b) the Permit was issued in error;
 - (c) the Permit Holder or Owner requests, in writing, that it be revoked;
 - (d) the Permit Holder is no longer the Owner of the Lot while the Permit is still valid or the Owner on title of the Lot has changed;
 - (e) the Permit Holder or Owner fails to comply with an Order issued under this By-law;
 - (f) the General Manager is satisfied that there is a material change in circumstances in connection with, or on the Lot, and the General Manager is satisfied that the Permit needs to be revoked to avoid further Injury or Destruction of the Trees;
 - (g) a Tree species is an endangered, threatened or special concern Tree species as defined in the provincial Endangered Species Act, 2007,

S.O. 2007, c.6, as may be amended or replaced from time to time and the Person has not been issued a permit pursuant to that Act;

- (h) the total Basal Area of Trees in the Woodland will be reduced to below 20 square metres per hectare on Trees greater than 10 centimetres DBH, calculated in proportion to the actual area of the Woodland; or,
 - (i) the number of Trees in the Woodland will be reduced to below the minimum number of Trees necessary to constitute a Woodland.
13. Where the General Manager issues a Permit, the following conditions shall apply:
- (a) that the Injuring or Descruction of Trees must be undertaken with regard for Good Forestry Practice;
 - (b) that the Injuring or Destruction of Trees must be undertaken by a Licensed Tree Cutter;
 - (c) that no Permit issued under this By-law may be sold, purchased, leased, mortgaged, assigned, pledged, transferred, seized, distrained, or otherwise dealt with, unless in accordance with section 19 of this By-law. All Permits issued under this By-law are owned by the City and are valid only in respect of the Permit Holder and Lot named on it;
 - (d) that a Permit issued pursuant to this By-law does not preclude the responsibility of the Permit Holder to obtain all other approvals which may be required by any level of government or agencies; and,
 - (e) that the Permit Holder shall comply with any conditions imposed by the General Manager pursuant to this By-law.
14. Where the General Manager issues a Permit, they may impose conditions on the Permit, including but not limited to, conditions: :
- (a) requiring that Replacement Trees be planted on the Lot where the Injuring or Destruction of the Trees is to take place;
 - (b) requiring Security be deposited with the City to ensure compliance with this By-law;
 - (c) as to the manner and timing in which Injury or Destruction is to occur;
 - (d) as to the species, size, number, and location of Trees to be Destroyed or Injured;
 - (e) requiring the implementation of any recommendations included in a Silvicultural Prescription or Forest Management Plan;
 - (f) requiring measures to be implemented to mitigate the direct or indirect effects of the Injuring or Destruction of Trees on the natural

environment;

- (g) specifying that damage to residual stems and the site shall not exceed the acceptable minimum standards contained in the Silvicultural Guide for Managing Southern Ontario Forests (OMNR 2000), as amended from time-to-time;
 - (h) requiring the Owner provide proof prior to commencement of the Injuring or Destruction of Trees that a Licensed Tree Cutter has been retained to complete the work; or,
 - (i) any other terms or conditions deemed appropriate and imposed by the General Manager or Council.
15. Where the planting of Replacement Trees has been imposed as a condition under Section 14, the General Manager may impose further conditions on the Permit, including, but not limited to, conditions:
- (a) as to the species, size, number, and location of the Replacement Trees;
 - (b) requiring the submission of a Replanting Plan, satisfactory to the General Manager;
 - (c) requiring the submission of a written undertaking signed by the Owner stating the Replanting Plan will be carried out; or,
 - (d) requiring that the Replacement Trees be planted and maintained, to the satisfaction of the General Manager.
16. Where the planting of Replacement Trees is not possible on the Lot owned by the Owner, the General Manager may impose conditions on the Permit requiring that an amount be paid to the City in accordance with the City's User Fees and Charges By-law, for the cost of replanting and maintaining the required number of Replacement Trees for a period of 2 years.
17. Where the General Manager refuses to issue or revokes a Permit, a notice shall:
- (a) be sent to the Owner who applied for the Permit;
 - (b) be delivered personally, electronically or by sending it by prepaid registered mail to the last known address of the Owner on file with the City;
 - (c) include the date of refusal or revocation; and,
 - (d) include the grounds for the General Manager's refusal or revocation.

Service by registered mail shall be deemed to have taken place 5 Business Days after the date of mailing.

18. (a) A Permit issued under this By-law shall be in the name of the Owner, and shall expire 1 year after its issuance;
- (b) Despite Subsection 18(a), where the Owner gives the General Manager a written and signed request to extend the Permit before the expiration date, the General Manager may approve an extension of up to 1 additional year.
19. No Permit issued under this By-law is transferable without the prior written consent of the General Manager, and, where such consent has not been given, a Permit is deemed to be revoked upon the transfer of ownership of the land to which it applies.

Appeals:

20. An Owner who does not agree with conditions imposed under Sections 13, 14, or 15, or who receives a notice of refusal or revocation under Section 17, may request an appeal to the Planning Committee.
21. An appeal request by an Owner under Section 20 shall be made in writing, accompanied by the applicable fee, and delivered to the Legislative Coordinator of the Planning Committee within 20 days of the date the Permit is issued with conditions under Sections 13, 14, or 15, or of the date contained in the notice of refusal or revocation under Section 17. The Owner shall also include the grounds for their appeal request.
22. Where an appeal request meeting the requirements of Section 21 has been delivered to the Legislative Coordinator of the Planning Committee, the appeal shall be scheduled before the Planning Committee, and notice of the appeal date shall be given to the Owner. The notice of the appeal date shall include:
 - (a) a statement of the time, date, and purpose of the appeal; and,
 - (b) a statement that if the Owner does not attend the appeal, the Planning Committee may proceed in the absence of the Owner, and the Owner shall not be entitled to further notice in the proceeding.
23. The notice of the appeal date may be given by delivering it personally, electronically or by sending it by prepaid registered mail to the last known address of the Owner. Delivery by registered mail shall be deemed to have taken place five Business Days after the date of mailing.
24. The Planning Committee recommends to Council that a Permit be refused, revoked, or issued, or that a condition be confirmed, rescinded, varied, or imposed on a Permit, and in doing so, shall consider:
 - (a) the General Manager's report with respect to the Permit Application;
 - (b) special circumstances or conditions applying to the Lot where the Trees are located;

- (c) whether strict application of the provisions of this By-law in the context of the special circumstances applying to the Trees would result in practical difficulties or unnecessary and unusual hardship for the Owner, inconsistent with the general intent and purpose of this By-law; and,
 - (d) whether such special circumstances or conditions are pre-existing and not created by the Owner.
25. Council, after considering the recommendation of the Planning Committee, may refuse, revoke or issue a Permit, or confirm, rescind, vary, or impose a condition on a Permit, all without an appeal hearing, having regard to the matters considered by the Planning Committee, this By-law, and other applicable law.
26. After Council has made a decision in respect of the recommendation of the Planning Committee, notice of that decision shall be sent to the Owner by personal delivery, electronically or by registered mail to the last known address of the Owner on file with the City.
27. Where the decision of Council is to issue a Permit, the General Manager shall issue the Permit on the terms directed by Council.

Administration and Enforcement:

General:

28. The General Manager is authorized to administer and enforce this By-law including but not limited to:
- (a) issuing a Permit;
 - (b) refusing a Permit;
 - (c) revoking a Permit;
 - (d) imposing terms and conditions on a Permit;
 - (e) arranging for:
 - (i) the assistance or work of City staff, City agents, or the assistance of police officers;
 - (ii) the making of Orders or other requirements and the imposition of conditions, as authorized under this By-law;
 - (iii) the obtaining of court orders or warrants, as may be required;
 - (iv) the commencement of such actions on behalf of the City to recover costs or restrain contravention of this By-law, as deemed necessary; and,

- (f) prescribing the format and content of any forms or other documents required under this By-law.
29. The General Manager may assign Municipal Law Enforcement Officers to enforce this By-law, and Municipal Law Enforcement Officers so assigned or appointed by Council to enforce this By-law shall have the authority to:
- (a) carry out inspections;
 - (b) make Orders or other requirements, as authorized under this By-law; and,
 - (c) give immediate effect to any Orders or other requirements made under this By-law.
30. The General Manager may assign duties or delegate tasks under this By-law to be carried out in the General Manager's absence or otherwise.
31. All fees referred to in this By-law shall be as set out in the City's User Fees and Charges By-law, or as otherwise set and approved by Council from time-to-time.

Entry and Inspections:

32. A Municipal Law Enforcement Officer may enter on land at any reasonable time, and in accordance with the conditions set out in Sections 435 and 437 of the Municipal Act, 2001, for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
- (a) this By-law;
 - (b) a direction or Order made under this By-law;
 - (c) a condition of a Permit issued under this By-law; or,
 - (d) an Order made under s. 431 of the Municipal Act, 2001.
33. A Municipal Law Enforcement Officer may, for the purposes of the inspection under Section 32 and in accordance with the conditions set out in Section 436 of the Municipal Act, 2001:
- (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 the Municipal Law Enforcement Officer, from any Person concerning a matter related to the inspection; or,

- (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.
34. 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 Sections 32 and 33.

Orders:

35. If a Municipal Law Enforcement Officer is satisfied that a contravention of this By-law has occurred, they may make an order requiring the Person who contravened the By-law or who caused or permitted the contravention or the Owner or occupier of the property on which the contravention occurred, to discontinue the contravening activity.
36. An Order under Section 35 shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which the contravention occurred; and,
 - (b) the date or dates by which there must be compliance with the Order, which may be of immediate effect should the Municipal Law Enforcement Officer determine that the circumstances warrant.
37. If a Municipal Law Enforcement Officer is satisfied that a contravention of this By-law has occurred, they may make an Order requiring the Person who contravened the By-law or who caused or permitted the contravention or the Owner or occupier of the property on which the contravention occurred, to do work to correct the contravention.
38. An Order under Section 37 shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of property on which the contravention occurred;
 - (b) the work to be completed;
 - (c) the date or dates by which the work must be completed; and,
 - (d) notice that if the Order is not complied with, then the work may be done at the expense of the Owner.
39. Delivery of an Order to discontinue a contravening activity made under Section 35, or an Order to do work made under Section 37, may be given personally or by registered mail to the last known address of:"
- (a) the Owner; or,

- (b) such other Persons affected by the Order as a Municipal Law Enforcement Officer determines.

Delivery by registered mail shall be deemed to have taken place five Business Days after the date of mailing.

- 40. In addition to delivery, in accordance with Section 39, an Order to discontinue contravening activity made under Section 35 or an Order to do work made under Section 37, may be delivered by a Municipal Law Enforcement Officer by placing a placard containing the Order in a conspicuous place on the property where the contravention occurred.
- 41. Where delivery cannot be given in accordance with Section 39, sufficient delivery is deemed to have taken place when given in accordance with Section 40.
- 42. Where a time frame is set out in an Order for carrying out any action, a 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 Municipal Law Enforcement Officer.

City Carrying Out Work:

- 43. Where a Person does not comply with a direction or a requirement, including an Order, under this By-law to do a matter or thing, the General Manager, with such assistance by others as may be required, may carry out such direction or requirement at the Person's expense.
- 44. Where the costs of doing a matter or thing under Section 43 are estimated to be:
 - (a) less than \$10,000, the General Manager may proceed without further approval, and in accordance with the City's Procurement Policy; or,
 - (b) \$10,000 or more, the General Manager may proceed with approval of an authorized Person or of Council, and in accordance with the City's Procurement Policy.
- 45. The City may recover the costs of doing a matter or thing under Section 43 by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes, and such costs shall include an 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. 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.

Penalties:

- 46. Every Person who contravenes any provision of this By-law or fails to comply with any Order made under this By-law, and every general manager or officer of a corporation who knowingly concurs in the corporation's contravention of

the provision or failure to comply with the Order is, upon conviction, guilty of an offence and is liable:

- (a) on a first conviction, to a fine of not more \$10,000 or a fine of \$1,000 per Tree Injured or Destroyed, whichever is greater; and,
 - (b) on any subsequent conviction, to a fine of not more than \$25,000 or a fine of \$2,500 per Tree Injured or Destroyed, whichever is greater.
47. Despite Section 46, where the Person convicted is a corporation,
- (a) the maximum fines in Subsection 46(a) are \$50,000 or \$5,000 per Tree Injured or Destroyed; and,
 - (b) the maximum fines in Subsection 46(b) are \$100,000 or \$10,000 per Tree Injured or Destroyed.
48. Every Person who is convicted of an offence under this By-law may be liable, in addition to the fines established under Sections 46 and 47, 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.
49. 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; or,
 - (b) requiring the Person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

General Provisions:

50. This By-law may be referred to as the Urban Woodland Conservation By-law or the Hamilton Urban Woodland Conservation By-law.
51. The Schedules attached to this By-law form part of it.
52. If a court of competent jurisdiction declares any Subsection, Section, or part of this By-law invalid, it is the intention of Council that the remainder of the By-law shall continue to be in force.
53. in this By-law, a reference to any Act, by-law, rule or regulation or to a provision thereof shall be deemed to include a reference to any Act, by-law, rule or regulation or provision enacted in substitution therefor or amendment thereof.
54. (a) The provisions of this By-law apply in addition to the provisions contained in any other applicable By-laws of the City or applicable

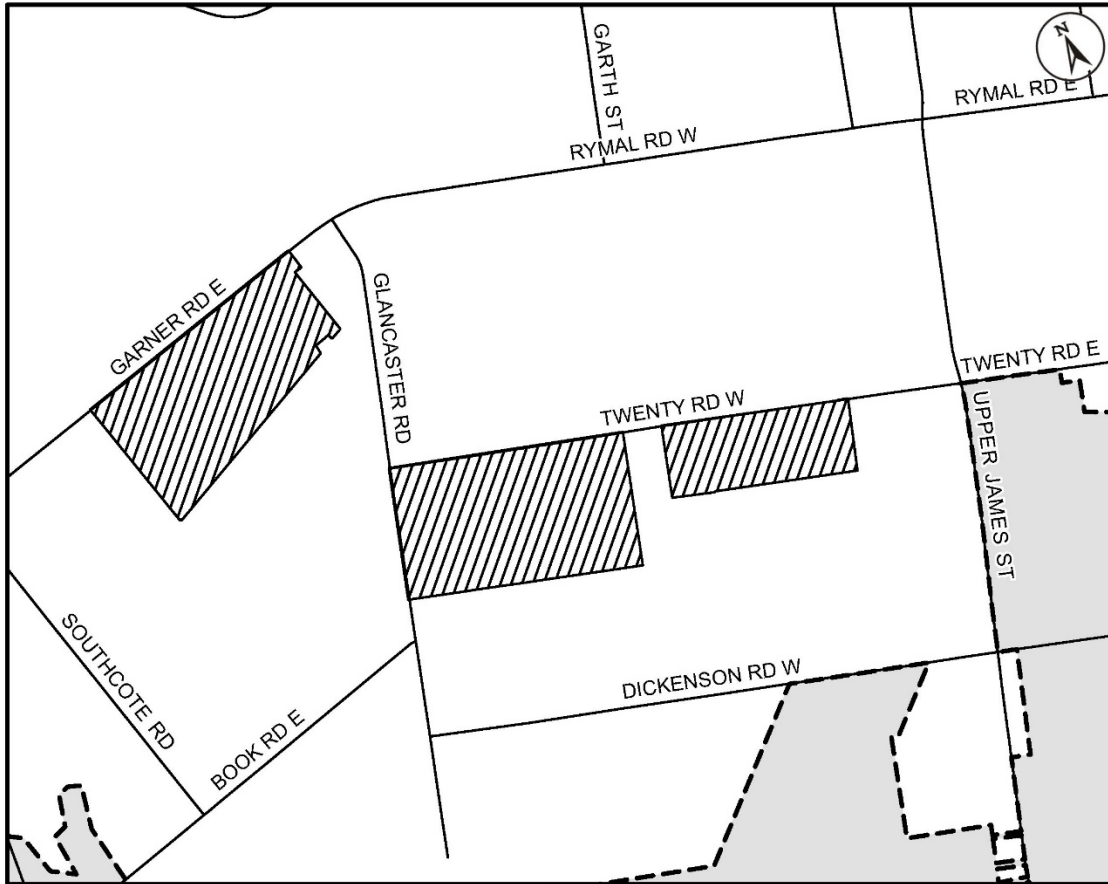
provincial or federal statutes or regulations.

(b) In the event of a conflict between this By-law and any other applicable By-law of the City:

(i) where one or more conflicting provisions provides for public health or safety, then the provision which is most protective of public health or safety prevails; or,

(ii) where none of the conflicting provisions provides for public health or safety, then the provision which is most protective of Trees prevails.

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






This is Schedule "A1" to By-law No. 23-
Passed the day of, 2023


Mayor

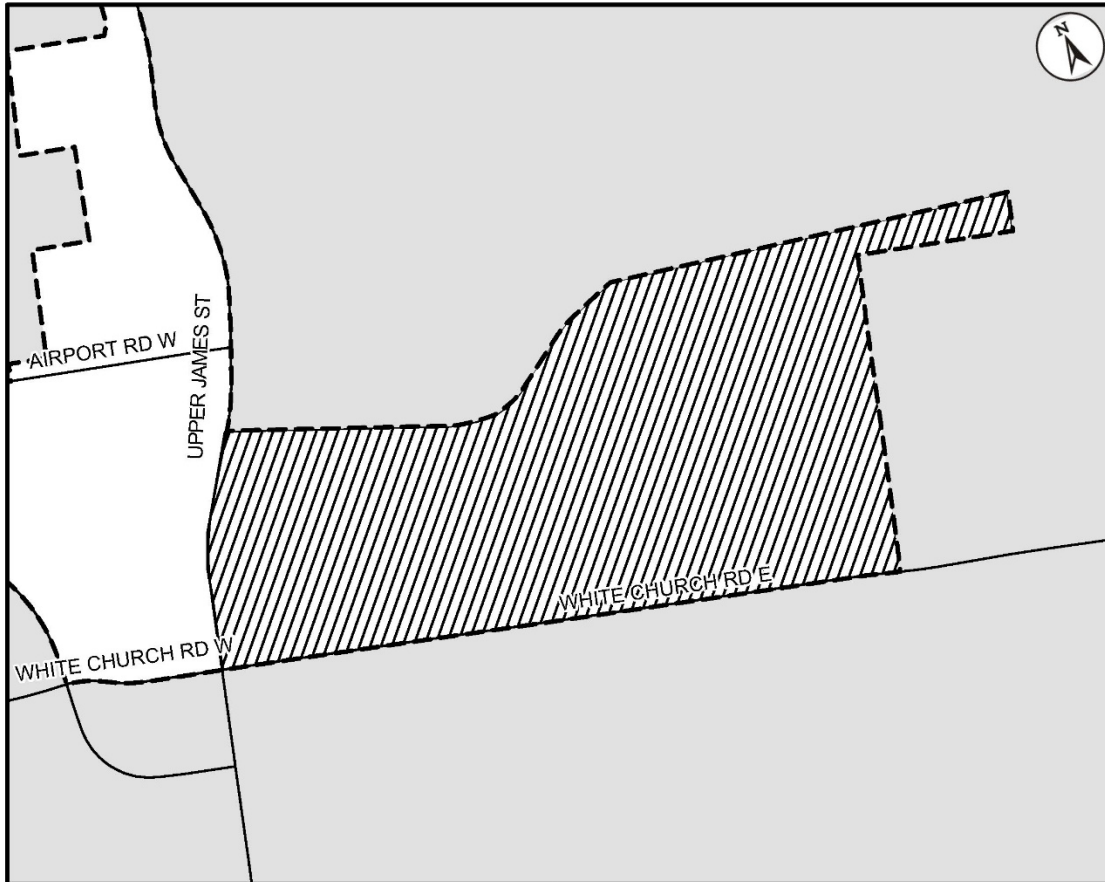
Clerk

Schedule "A1"
Map forming Part of
By-law No. 23-_____

to Amend By-law No. 14-212

Subject Property
 Lands Subject to additional Provision for trees, not part of a Woodland
 Rural Area
 Urban Boundary

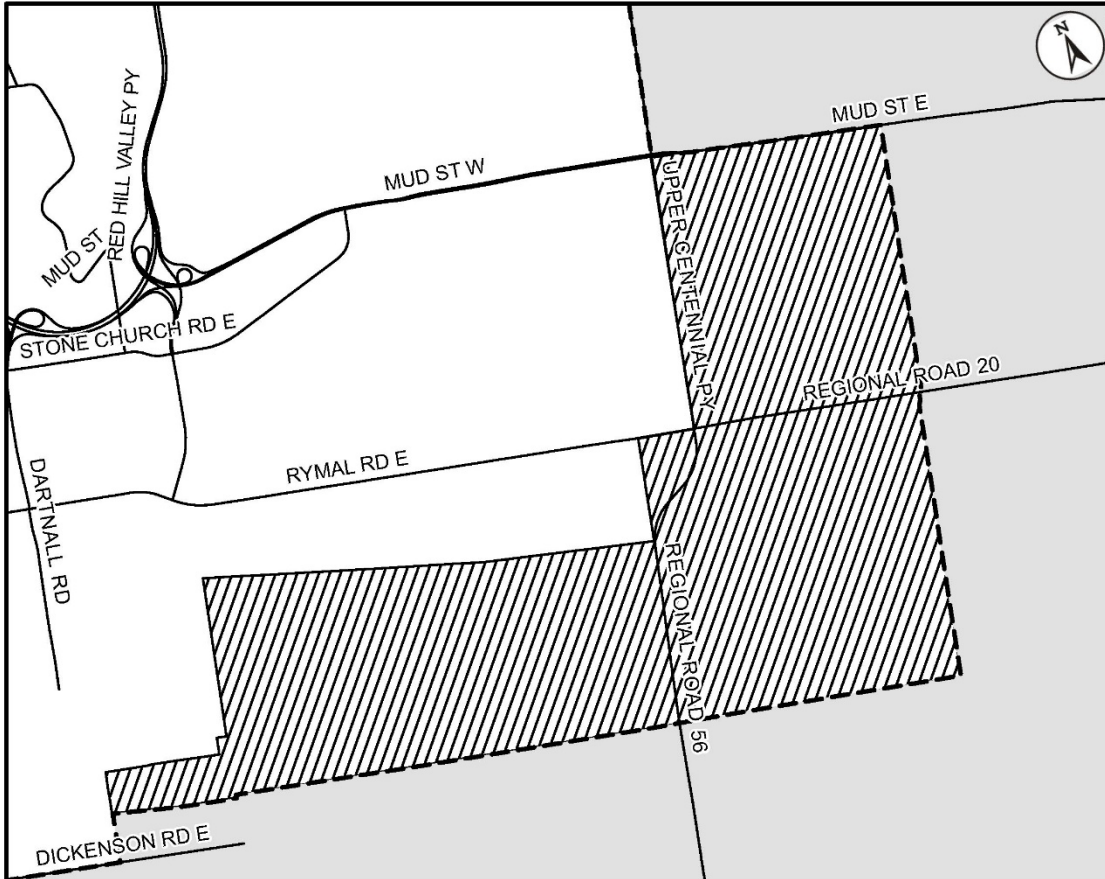
Scale: N.T.S	File Name/Number: Tree By-law	 Hamilton
Date: April 24, 2023	Planner/Technician: SR/NB	
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT		



This is Schedule "A2" to By-law No. 23- Passed the day of, 2023	----- Mayor ----- Clerk
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<h2>Schedule "A2"</h2> <p>Map forming Part of By-law No. 23-_____</p> <p>to Amend By-law No. 14-212</p>	Subject Property Lands Subject to additional Provision for trees, not part of a Woodland Rural Area Urban Boundary
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Scale: N.T.S	File Name/Number: Tree By-law	
Date: April 24, 2023	Planner/Technician: SR/NB	
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT		



This is Schedule "A3" to By-law No. 23-

Passed the day of, 2023

Mayor




Clerk

Schedule "A3"

Map forming Part of
By-law No. 23-_____

to Amend By-law No. 14-212

Subject Property

-  Lands Subject to additional Provision for trees, not part of a Woodland
-  Rural Area
-  Urban Boundary

Scale: N.T.S	File Name/Number: Tree By-law
Date: April 24, 2023	Planner/Technician: SR/NB
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT	

