

DRAFT FOR CONSULTATION

Authority:
Bill No.

**CITY OF HAMILTON
BY-LAW NO. 25-xxxx
-xxxx**

**A By-law to Prohibit and Regulate the Destruction and Injury of Trees on
Private Property within the Urban Boundary of the City of Hamilton**

WHEREAS the urban forest benefits the City of Hamilton by, amongst other things, providing habitat, better air and water quality, shade and lower air temperatures, storm water control, improved climate resiliency, cultural, social, and aesthetic value and improved well-being of residents of all ages;

AND WHEREAS the Council of the City of Hamilton has approved an Urban Forest Strategy with a goal of increasing the tree canopy coverage in the City through education, protection, and enhancement;

AND WHEREAS protection of trees is required to grow the City of Hamilton's tree canopy;

AND WHEREAS sections 8, 9 and 10 of the *Municipal Act, 2001* authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes, and in particular, paragraphs 5, 6 and 8 of subsection 10(2) authorize by-laws respecting the economic, social and environmental well-being of the municipality, including respecting climate change; the health, safety and well-being of persons; and the protection of persons and property;

AND WHEREAS subsection 135(1) of the *Municipal Act, 2001* authorizes the City of Hamilton to prohibit or regulate the destruction or injuring of trees and subsection 135(7) authorizes the City to pass a by-law that requires a permit be obtained to injure or destroy trees and may impose conditions relating to the manner in which destruction occurs and the qualifications of persons authorized to injure or destroy trees;

AND WHEREAS the *Municipal Act, 2001* 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 conduct inspections; and to make orders to discontinue activity or to do work to correct the contravention;

AND WHEREAS subsection 429(1) of the *Municipal Act, 2001* authorizes the City of Hamilton to establish a system of fines for offences for a by-law passed under this act;

AND WHEREAS section 446 of the *Municipal Act, 2001* authorizes the City of Hamilton to proceed to do things at a person's expense which that person is otherwise required to do under this by-law but has failed to do and the costs incurred by a municipality may be recovered by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes;

AND WHEREAS paragraph 7 of subsection 270 (1) of the Municipal Act, 2001 directs the City of Hamilton to adopt and maintain policies with respect to the manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality;

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

Application

1. This By-law applies to Trees on Private Property within the City of Hamilton's Urban Boundary.

By-law Title

2. Short title of this By-law shall be the Private Tree By-law.

Definitions

3. In this By-law:

"Arborist Report" means a report prepared by a Qualified Tree Professional which provides, at minimum, details on the species, size, and health of Tree(s) to be Destroyed or Injured or retained, reason for Destruction, Injury or retention, description of how the Tree(s) will be Destroyed or Injured, date of inspection, description of the Tree Protection Measures, the professional accreditation of the Qualified Tree Professional, and any other information which may be requested by the General Manager;

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

"Application" means the Application referred to in Section 10 of this By-law;

"Building Permit" means a Building Permit as issued under the *Building Code Act, R.S.O 1992, c.23*, as amended, or any successor thereof;

"Boundary Tree" means a Tree, of which any part of the Trunk is growing across one or more Lots;

"By-law" means this By-law;

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

"Council" means the Council of the City of Hamilton;

"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” or “DBH” means:

- (a) the measurement of the diameter of a Trunk measured from outside the bark at a height of 1.4 metres above existing grade of the grade adjoining its base; or,
- (b) where there are multiple Trunks on a Tree, the total sum of the diameters of the stems measured from outside the bark on each Trunk at a height of 1.4 metres above existing grade of the grade adjoining its base;

“Dripline” means a point on the grade equivalent to the outer limits of the branches of the tree;

“Emergency Work” means work necessary to terminate an immediate danger to life or property as determined by the General Manager and includes, but is not limited to, work associated with water main repairs, utility repairs and structural repairs to a building where the work is necessary to terminate an immediate danger to life or property;

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

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

“General Manager of Public Works” means the General Manager of Public Works 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 in and around urban areas and includes Pruning of Trees;

“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 Tree Professional;

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

“Heritage Tree” means a Tree that has received designation under Part IV of the Ontario Heritage Act, 2005, S.O. 2006, c.6, as amended;

“Injure” means to cause, directly or indirectly, whether by accident, intent or design, lasting damage or harm to a Tree, including over-pruning. The terms “Injury” and “Injured” shall have a corresponding meaning;

“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*;

“Landscape Plan” means a plan prepared by a Qualified Tree Professional or a full member Landscape Architect, with seal and stamp in good standing with the Ontario Association of Landscape Architects, that identifies, at minimum proposed Tree species, quantity, size and location, existing and proposed surface treatments, locations of proposed and existing buildings and structures, locations of proposed and existing utilities, and any other requirements determined by the General Manager;

“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);

“Lot” means all contiguous land under one ownership which can be legally conveyed pursuant to the provision of the Planning Act, except in relation to a Multiple Dwelling Townhouse comprising townhouse units on parcels of tied land, where, in such case, Lot shall mean the cumulative parcels of land comprising the parcels of tied land and common element condominium lands tied thereto;

“Municipal Law Enforcement Officer” means the General Manager, 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 whose duties are to enforce or administer this By-law;

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

“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;

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

“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, in the form of an approved Permit Application, in accordance with this By-law, to Injure or Destroy Trees;

“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” means an individual, a corporation and its directors and officers, or partnership and their heirs, executors, assignees, and administrators;

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

“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;

“Public Property” means any land that is owned by, leased to, controlled by, or vested in the City including those public unassumed alleys which have been occupied or fenced by a Person other than the City;

“Public Works Committee” means the City of Hamilton's Public Work Committee or any successor Committee;

“Qualified Engineer” means a professional who is licensed by Professional Engineers in the Province of Ontario in accordance with the *Professional*

Engineers Act;

“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) An Arborist qualified by the Ontario Ministry of Training, Colleges and Universities;
- (c) Board Certified Master Arborist or Arborist Municipal Specialist with the International Society of Arboriculture (ISA);
- (d) Registered Professional Forester (RPF) as defined in the Professional Foresters Act, 2000, S.O. 2000, c.18; or,
- (e) Certified Arborist with the International Society of Arboriculture;

“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;

“Tree” or “Trees” means a woody perennial plant whether Healthy or unhealthy, including the root system where the plant has reached or could reach a height of at least 4.5 metres at physiological maturity;

“Tree Protection Measures” means a fence, barrier or similar structure used to enclose a portion of a property to protect an existing Tree including its Tree Protection Zone or other vegetation. Tree Protection measures may also include horizontal hoarding, mulching, or watering;

“Tree Protection Plan” means a plan prepared by a Qualified Tree Professional in accordance with Good Arboricultural Practices, which, at a minimum, itemizes the existing number, species, location and condition of all Trees on the Lot and within 6 metres of the Lot or, where the Lot includes ravine or valley lands, within 12 metres of the Lot, and includes a management schedule related to Destroying, Injuring or retaining and protecting intentions;

“Tree Protection Zone” means the minimum setback from a Tree (including

above, below and at grade) required to protect the biological health and maintain the structural integrity of a Tree, as determined by the General Manager;

“Trunk” 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; and,

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

Authority to Administer and Enforce By-law

4. The General Manager of Public Works shall be responsible for the administration of this By-law.
5. The General Manager of Planning shall be responsible for the enforcement of this By-law.
6. The General Manager of Public Works or Planning may delegate any responsibilities conferred under this By-law to an employee or designated Person of the City.
7. The General Manager of Public Works shall have the power to:
 - (a) issue a Permit;
 - (b) refuse a Permit;
 - (c) revoke a Permit;
 - (d) impose terms and conditions on a Permit, including special conditions; and,
 - (e) prescribe the format and content of any forms or other documents required under this By-law.

Prohibitions

8. Except as provided under Section 10 of this By-law, no Person shall, without obtaining a Permit:
 - (a) Injure or Destroy a Tree, or cause or permit the Injury or Destruction of a Tree with a DBH of 45 centimetres 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 50 centimetres at grade then the provisions of this By-law apply;
 - (b) Injure or Destroy, or cause or permit the Injury or Destruction of a Heritage Tree, without approval under the *Ontario Heritage Act*; or,

- (c) Injure or Destroy, or cause or permit the Injury or Destruction of any Tree protected under provincial or federal legislation, without approval from the relevant jurisdiction.
9. No Person through their own actions or through the actions of any of Person shall:
- (a) contravene the terms or conditions of Permit issued under this By-law;
 - (b) fail to comply with a notice or Order issued under Section 43 or Section 45 of this By-law;
 - (c) remove or deface any Order posted pursuant to Section 48 of this By-law;
or,
 - (d) Injure or Destroy a Replacement Tree.

Exemptions

10. Despite Section 8, a Permit is not required to Injure or Destroy a Tree located on Private Property:
- (a) that has a DBH less than 45 centimetres;
 - (b) that is a Hazard Tree or Dead Tree;
 - (c) that is necessary to conduct Emergency Work;
 - (d) that is also located within 2 metres of an Occupied Building;
 - (e) that is also located on a Nursery or Orchard;
 - (f) that is also located on a rooftop garden, within a building structure, in an interior courtyard or in a solarium;
 - (g) that is also located on a Plantation;
 - (h) where the Destruction of a Tree is specifically required in an order made pursuant to the City's Property Standards By-law 10-221;
 - (i) for the purpose of Pruning;
 - (j) for Trees classified as Invasive;
 - (k) where the Injury or Destruction of a Tree is in connection with activities or matters undertaken by a municipality or a local board of a municipality;
 - (l) by a Person licensed under the *Surveyors Act, R.S.O. 1990, c. S.29* to engage in the practice of cadastral surveying or his or her agent, while making a survey;

- (m) where the Injury or Destruction of a Tree is in connection with activities or matters undertaken under a license issued under the *Crown Forest Sustainability Act, 1994, S.O. 1994, c. 25*;
- (n) for the purpose of satisfying conditions to the approval of a site plan, plan of subdivision or a consent under sections 41, 51 or 53 of the *Planning Act, R.S.O. 1990, c. P.13*, or as a requirement of a site plan or subdivision agreement entered into under those sections of the Planning Act;
- (o) 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;
- (p) by a transmitter or distributor or transmission company as defined in the *Electricity Act, 1998, S.O. 1998, c. 15, Sched. A*, and is for the purpose of constructing and maintaining a transmission system or a distribution system as defined under that Act;
- (q) where the Injury or Destruction of a Tree is undertaken on land described in a license for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*;
- (r) where the Injury or Destruction of a Tree is undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land;
 - (i) that has not been designated under the *Aggregate Resources Act, R.S.O. 1990, c. A.8*, 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; or,
- (s) if an approval has been provided under Subsection 7(b) or Subsection 7(c).

Application for Permits

11. A Person seeking to Injure or Destroy a Tree(s) for which a Permit is required, shall submit an Application to the General Manager of Public Works, that includes the following:
- (a) a completed Permit Application in a form prescribed by the General Manager;
 - (b) a non-refundable Application fee as described in the City's Fees and Charges By-law;
 - (c) where two or less Trees are to be Injured or Destroyed, a drawing or sketch showing the location of the Tree(s) to be Injured or Destroyed, and

any Tree(s) to be protected and retained;

- (d) where three or more Trees are to be Injured or Destroyed, an Arborist Report, in a form satisfactory to the General Manager;
- (e) where three or more Trees are to be Injured or Destroyed, a scaled, 2-dimensional Tree Protection Plan, in a form satisfactory to the General Manager of Public Works;
- (f) where five or more Replacement Trees are required and will be accommodated on the Lot where the Trees to be Injured or Destroyed are located, a Landscape Plan, in a form satisfactory to the General Manager of Public Works;
- (g) the written consent of the Owner of the Lot where the Tree(s) to be Injured or Destroyed is located, if the Person who is applying for the Permit is not the Owner of the Lot;
- (h) the written consent of the impacted Lot Owner, if the Tree(s) to be Injured or Destroyed is a Boundary Tree(s);
- (i) if any of the adjoining Lots upon which which the Boundary Tree is located is a City-owned Lot, then the Public Tree Protection By-law 15-125 will apply; and,
- (j) any revised or additional information or documentation as may be required by the General Manager of Public Works to determine if the Tree Permit should be issued.

12. An Application shall not be considered for approval until the Application is considered complete to the satisfaction of the General Manager of Public Works.

13. If the General Manager of Public Works considers the Application to be complete in accordance with Section 11, including any revised or additional information required, the General Manager of Public Works may:

- (a) issue a Permit if the circumstances are in compliance with Section 16 of this By-law, with conditions, in accordance with Sections 19 and 20 of this By-law;
- (b) refuse to issue a Permit for any of the reasons stated in Sections 21 and 22 of this By-law;
- (c) advise that a Permit is not required for the work proposed in the Application, and in that case, no further fee shall be payable; or,

- (d) where an application under the Planning Act on which the Tree(s) is located has been submitted to the City, but has not received final approval, advise the Applicant that any Permit Applications associated with the same Lot(s) will be considered together with, and will be dependent upon any final approvals associated with those related applications under the Planning Act, and that no Tree(s) shall be removed until the application under the Planning Act has been approved.
14. (a) If an Applicant does not provide the information or documents required under Section 11, and the Application was submitted to the General Manager of Public Works more than one year ago, the Application shall be deemed withdrawn, and the Applicant shall not be entitled to a refund of any prescribed fees paid.
- (b) Despite Subsection 14(a), where the Applicant gives the General Manager of Public Works a written and signed request to extend the Permit Application before the expiration date, the General Manager may approve an extension of up to one additional year.
15. If a Permit Application is withdrawn by the Applicant or is deemed to be withdrawn under Subsection 14(a), the General Manager of Public Works shall close the Permit Application, and the Applicant is required to submit a new Application and pay the non-refundable Application fee as described in the City's Fees and Charges By-law if they require a Permit.

Issuance of Permits

16. The General Manager of Public Works may issue a Permit where:
- (a) the Application satisfies the requirements under Section 11, and is complete;
- (b) there will be no negative impacts to flood or erosion control or slope stability that can not be adequately mitigated;
- (c) the Application is to permit the creation or extension of an Occupied Building which requires the Tree(s) to be Injured or Destroyed, and the General Manager of Public Works determines that there are no reasonable alternatives to the Injury or Destruction of the Tree(s);
- (d) the Tree(s) is in conflict with a pool enclosure, and the General Manager of Public Works determines that there are no reasonable alternatives to the Injury or Destruction of the Tree(s);
- (e) the Tree(s) is causing or is likely to cause damage to underground infrastructure or the structural integrity of an Occupied Building based on

the opinion of a Qualified Engineer;

(f) the Owner has submitted a Tree Protection Plan to the satisfaction of the General Manager of Public Works, and it is reasonably determined by the General Manager that:

- i. the Injury is minor in nature; or,
- ii. the Applicant has proposed remedial and / or mitigative measures and the Tree(s) is expected to continue to survive in good condition; or,

(g) none of the reasons under Subsection 16(a-f) are applicable, but the General Manager of Public Works determines that there are no reasonable alternatives to the Injury or Destruction of the Tree(s).

17. Each Permit issued under this By-law shall be in the form and manner as provided by the General manager of Public Works and shall include, at minimum, the following information:

- (a) the Permit number;
- (b) the name of the Permit Holder;
- (c) the date the Permit was issued and the date it expires;
- (d) the municipal address of the premises on which the Tree(s) to be Injured or Destroyed is located;
- (e) the Tree(s) that are permitted to be Injured or Destroyed; and,
- (f) the nature of the Injury or Destruction.

18. (a) A Permit issued under this By-law shall be in the name of the Owner and shall expire one year after issuance.

(b) Despite Subsection 18(a), where the Permit Holder gives the General Manager of Public Works a written and signed request to extend the Permit before the expiration date, the General Manager of Public Works may approve an extension of up to one additional year.

(c) Despite Subsection 18(b), where the General Manager of Public Works determines that the nature and intent of the work has changed, then the Applicant shall be required to submit a new Permit Application pursuant to Section 11.

Automatic Conditions of All Permits

19. Where the General Manager of Public Works issues a Permit, the following conditions shall apply:

- (a) having regard for Good Arboricultural Practices;
- (b) that the Injury or Destruction of the Tree(s) must be undertaken by a Licensed Tree Cutter;
- (c) that no Permit issued under this By-law may be sold, purchased, leased, mortgaged, charged, assigned, pledged, transferred, seized, distrained, or otherwise dealt with. 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 Applicant or Permit Holder to obtain all other approvals which may be required by any level of government and agencies; and,
- (e) that a Permit Holder shall comply with any condition imposed by the General Manager of Public Works pursuant to this By-law.

Additional Conditions that may be Imposed

20. The General Manager of Public Works may impose other conditions on a Permit, including, but not limited to:

- (a) planting a Replacement Tree(s) at Replacement Tree ratio of:
 - i. 1:1 for all Applications other than those described in Subsections 20(a)ii-iii;
 - ii. 3:1, where five or more Trees are to be Injured or Destroyed; or,
 - iii. 3:1, where the Lot on which the Tree(s) is to be Injured or Destroyed contains a natural heritage system, an environmentally sensitive area, an ecological system, a natural landform or a contour any of which are defined in the City's Official Plan;
- (b) that any Replacement Tree(s) be planted and maintained in good condition;
- (c) in the event that a Replacement Tree(s) should die within two years of planting, that the Owner or Permit Holder, plant a new Replacement

Tree(s) and maintain such Replacement Tree(s) in good condition;

- (d) where a Replacement Tree(s) cannot physically be located on the Lot(s) on which the Tree(s) will be Injured or Destroyed as determined by a Qualified Tree Professional or Landscape Plan, to pay Replacement Tree(s) fees as cash-in-lieu per the City's approved Fees and Charges By-law;
- (e) that the Injury or Destruction of the Tree(s) is carried out in a particular manner or during a particular time;
- (f) that the Permit Holder install and maintain Tree Protection Measures per the approved Permit, to the satisfaction of the General Manager of Public Works;
- (g) that the Permit Holder ensures that a Tree Protection Plan satisfactory to the General Manager of Public Works is implement by a required date;
- (h) that the Permit Holder posts the Permit in a public location for a time period before, during and after the Injury or Destruction of the Tree(s);
- (i) that the Permit Holder posts a Security that the City may draw upon in full if the By-law is contravened or if there is a failure in the proper and complete execution of a Permit and its conditions; or,
- (j) any other condition as may be required by the General Manager of Public Works.

Refusal or Revocation of a Permit

21. The General Manager of Public Works shall refuse to issue, revoke, or impose a term or condition on a Permit to Injure or Destroy a Tree(s) where:
- (a) the Application for a Permit is incomplete;
 - (b) the Application for a Permit was found to contain inaccuracies or falsified information;
 - (c) an application under the Planning Act on the Lot on which the Tree(s) is located has been submitted to the City, but has not received final approval;
 - (d) the Tree(s) 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;

- (e) the Tree(s) belongs to a Tree species of special concern, as defined in the Species at Risk Act, 2002, S.C. 2002, c. 29, as may be amended or replaced from time to time and the Person has not been issued a permit pursuant to that Act;
 - (f) an Applicant, Owner 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, Owner or Permit Holder is carrying on activities that are in contravention of this By-law;
 - (h) a natural heritage system, an environmentally sensitive area, an ecological system, a natural landform or a contour any of which are defined in the City's Official Plan will not be adequately protected and / or preserved; or,
 - (i) the Applicant, Owner or Permit Holder does not comply with applicable laws, including but not limited to, this By-law, municipal by-laws, provincial or federal laws.
22. The General Manager of Public Works may refuse to issue, revoke, or impose a term or condition on a Permit to Injure or Destroy a Tree(s) where:
- (a) the Tree(s) is relevant to the heritage designation of a Lot as determined by the General Manager of Planning;
 - (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 of Public Works is satisfied that there is a material change in circumstances in connection with or on the site and the General Manager of Public Works is satisfied that the Permit needs to be revoked to avoid further Injury or Destruction of the Tree(s); or,
 - (g) the Tree(s) is a Healthy Tree.
23. Where the General Manager of Public Works refuses to issue 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; and,
- (d) include the grounds for the General Manager of Public Works' refusal.

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

Appeals

- 24. An Owner who does not agree with conditions imposed under Sections 19, 20 or 32, or who receives a notice of refusal or revocation under Section 23, may request an appeal to the Public Works Committee.
- 25. An appeal request by an Owner under Sections 24 shall be made in writing, accompanied by the applicable fee in accordance with the City's Fees and Charges By-law, and delivered to the Legislative Coordinator of the Public Works Committee within 20 days of the date the Permit is issued with conditions under Sections 19, 20, or 32, or of the date contained in the notice of refusal or revocation under Section 23. The Owner shall also include the grounds for their appeal request.
- 26. Where an appeal request meeting the requirements of Section 25 has been delivered to the Legislative Coordinator of the Public Works Committee, the appeal shall be scheduled before the Public Works 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 Public Works Committee may proceed in the absence of the Owner, and the Owner shall not be entitled to further notice in the proceeding.
- 27. The notice of the appeal date may be given by delivering it personally 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.
- 28. The Public Works 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 of Public Work's report with respect to the Permit Application;
 - (b) special circumstances or conditions applying to the land where the Tree(s) is located;
 - (c) whether strict application of the provisions of this By-law in the context of the special circumstances applying to the Tree(s) will 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.
29. Council, after considering the recommendation of the Public Works 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 Public Works Committee, this By-law, and other applicable law.
30. After Council has made a decision in respect of the recommendation of the Public Works Committee, notice of that decision shall be sent to the Owner by personal delivery or by registered mail to the last known address of the Owner on file with the City.
31. Where the decision of Council is to issue a Permit, the General Manager of Public Works shall issue the Permit on the terms directed by Council.

Replacement Trees and Securities

32. Where the General Manager of Public Works has imposed a condition to plant a Replacement Tree(s) in accordance with Subsections 20(a-c), the General Manager of Public Works may also require any one or more of the following:
- (a) that Replacement Tree(s) be located on the same Lot from which a Tree was Destroyed, in a location, number, size and / or species to the satisfaction of the General Manager of Public Works;
 - (b) where five or more Replacement Trees are required and will be planted on the same Lot from which Tree were Destroyed, that a Security in accordance with the City's Fees and Charges By-law in a form satisfactory to the General Manager of Public Works be delivered to the General Manager of Public Works to cover the costs of the Replacement Trees.
33. The Permit Holder shall notify the General Manager of Public Works:
- (a) when the Replacement Tree(s) has been planted; and,

(b) when at least one year has passed following the date when the Replacement Tree(s) was planted in order for a Municipal Law Enforcement Officer to complete a final inspection.

34. Following notification as set out in Section 33, a Municipal Law Enforcement Officer shall conduct a final inspection and:

(a) within sixty (60) days return the Security without interest to the Permit Holder if the General Manager of Public Works has determined that the Replacement Tree(s) has been planted and is Healthy; or,

(b) notify the Permit Holder if any outstanding work needs to be completed, including but not limited to the re-planting of Replacement Tree(s), and to provide the Permit Holder with a date as to when the work must be completed.

35. If the Permit Holder fails to comply with Subsection 34(b), the Security shall be permanently forfeited by the Permit Holder and shall be deposited by the General Manager of Public Works into the Reserve Fund.

Enforcement

General

36. The General Manager of Planning is authorized to enforce this By-law including but not limited to:

(a) 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,

(b) prescribing the format and content of any forms or other documents required under this By-law.

37. The General Manager of Planning 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.

38. The General Manager of Planning or the General Manager of Public Works may assign duties or delegate tasks under this By-law to be carried out in the General Manager's absence or otherwise.

Entry and Inspections

39. A Municipal Law Enforcement Officer may enter on any land at any reasonable time, and in accordance with the conditions set out in Sections 435 and 437 of the *Municipal Act, 2011*, 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) any Permit or a Permit condition issued under this By-law; or,
- (d) an Order made under Section 431 of the *Municipal Act, 2001*.

40. A Municipal Law Enforcement Officer may, for the purposes of the inspection under Section 39 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 a Municipal Law Enforcement 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.

41. No Person shall decline or neglect to give, produce or deliver any access, information, document or other thing that is requested by any Municipal Law Enforcement Officer pursuant to this By-law.
42. 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 39.

Orders

43. If a Municipal Law Enforcement Officer is satisfied that a contravention of this By-law or the Permit has occurred, they may make an Order requiring the Person who contravened the By-law or the Permit, or who has caused or permitted the contravention, to discontinue the contravening activity.
44. An Order under Section 43 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 Municipal Law Enforcement Officer determine that the circumstances warrant.
45. If a Municipal Law Enforcement Officer is satisfied that a contravention of this By-law or the Permit has occurred, they may make an Order requiring the Person who has contravened this By-law or the Permit or who caused or permitted the contravention or the Owner or occupier of a premises on which the contravention occurred, to do work to correct or rectify the contravention.
of a premises on which the contravention occurred, to do work to correct or rectify the contravention.
46. An Order under Section 45 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, 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 Sections 20, 21 or 32 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);
- iv. the date or dates by which the work required by the Order must be completed;
- v. 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,
- vi. contact information for the City's representative.

47. Delivery of an order to discontinue a contravening activity made under Section 43, or an order to do work made under Section 45, 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.

48. In addition to delivery, in accordance with Section 47, an Order to discontinue contravening activity made under Section 43, or an Order to do work made under Section 45, may be delivered by a Municipal Law Enforcement Officer by placing a placard containing the Order in a conspicuous place on the Lot where the contravention occurred.

49. Where delivery cannot be given in accordance with Section 47, sufficient delivery is deemed to have taken place when given in accordance with Section 487.

50. 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.

51. Where a time frame is set out in an Order or other document 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.
52. If an Municipal Law Enforcement Officer is satisfied that a contravention of this By-law or 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(s) 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

53. Where a Person does not comply with a direction or a requirement, including an Order or a condition of a Permit under this By-law to do a matter or thing, the General Manager of Planning, with such assistance by others as may be required, may carry out such direction, requirement or order at the Person's expense.
54. Where the costs of doing a matter or thing under Section 53 are estimated to be:
- (a) less than \$10,000, the General Manager of Planning may proceed without further approval, and in accordance with the City's Procurement Policy; or,
 - (b) \$10,000 or more, the General Manager of Planning may proceed with approval of an authorized person or of Council, and in accordance with the City's Procurement Policy.
55. The City may recover the costs of doing a matter or thing under Section 53 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 percent 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

56. 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 of Planning or Municipal Law Enforcement 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.

57. Despite Section 56, where the Person convicted is a corporation,

- (a) the maximum fines in Subsection 56(a) are \$50,000 or \$5,000 per Tree Injured or Destroyed; and,
- (b) the maximum fines in Subsection 56(b) are \$100,000 or \$10,000 per Tree Injured or Destroyed.

58. Every Person who is convicted of an offence under this By-law may be liable, in addition to the fines established under Sections 56 and 57, 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.

59. 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.

Validity of the By-law

60. If any section, subsection or part or parts thereof are declared by a court of competent jurisdiction to be illegal, invalid or otherwise unenforceable, such provision shall be deemed to be severable and the remainder of this By-law shall be declared to be separate and independent and enacted as such.

61. (a) The provisions of this By-law apply in addition to the provisions contained in any other applicable By-laws of the City of 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 more conflicting provisions provide 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 provide for public health or safety, then the provision which is most protective of Trees prevails.

Repeal, Effective Date and Transition

62. The following are hereby repealed:

- (a) The Corporation of the Town of Ancaster By-law No. 2000-118;
- (b) The Corporation of the Town of Dundas By-law No. 4513-99; and,
- (c) The Corporation of the Town of Stoney Creek By-law No. 4401-96.

63. Despite the repeal of the aforementioned By-laws:

- (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 Permit Application 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 Subsection 63(d) of this By-law, be processed in accordance with the aforementioned By-laws, and the fees and charges payable for the Permit applications shall be those in effect at the time the Application was submitted;
- (d) any Permit Application received by the City prior to the date of the repeal shall be subject to Section 11 of this By-law; and,
- (e) all of the terms and conditions of any Permits issued under the aforementioned By-laws that are in effect at the time of the repeal or that are issued in accordance with Subsection 63(d), will continue as terms and conditions of a Permit issued under this By-law and be subject to this By-law.

64. This By-law comes into force on the day it is passed.

PASSED this _____ day of _____, 20_____.

A. Horwath
Mayor

M. Trennum
City Clerk