

**CITY OF KINGSTON**

Ontario

**BY-LAW NO. 2007-170**

**TREE BY-LAW**

**PASSED: September 4, 2007**

**As Amended By By-Law No:**

<u>By-law No.</u>	<u>Passed On:</u>
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**Tree By-law No. 2007-170**

BEING A BY-LAW TO REPEAL AND REPLACE BY-LAW NO. 2005-289; BEING A BY-LAW TO PROHIBIT AND REGULATE THE DESTRUCTION OR INJURY OF TREES IN THE CITY OF KINGSTON.

**PASSED:** September 4, 2007

**WHEREAS** Section 135(1) of the *Municipal Act*, R.S.O. 2001, S.O. 2001, c. 25, as amended, permits the enactment of a By-Law by the Council of the Corporation of the City of Kingston to prohibit and regulate the destruction or injury of trees;

**AND WHEREAS** Council may also require that a permit be obtained for the injury or destruction of trees within the City of Kingston, and may prescribe the fees for the permit, the circumstances under which a permit may be issued, and the conditions to such a permit;

**AND WHEREAS** Planning Committee held two public information sessions on February 17, 2005 and March 23, 2005 for the purpose of discussing the City's need for a Tree By-Law;

**AND WHEREAS** the maintenance of mature tree cover is recognized as contributing to human health and quality of life;

**AND WHEREAS** trees were identified as an important element of the City's natural and cultural landscape for the following reasons:

- (a) The aesthetic value of woodlands and trees;
- (b) Providing recreational opportunities;
- (c) Reducing airborne pollution;
- (d) Protecting natural heritage features and areas;
- (e) Maintaining and enhancing water quality;
- (f) Preventing soil erosion and water run-off;
- (g) Providing habitat for wildlife;
- (h) Providing cooler air temperatures in the summer; and,
- (i) Reducing the effects of global warming.

**AND WHEREAS** it was found to be desirable to prepare a Tree By-Law for the purposes of:

- (a) Regulating and controlling the removal, maintenance, and protection of trees;
- (b) To support the goal of increasing the City's urban forest; and,
- (c) Promoting Good Forestry Practices and Good Arboricultural Practices that sustain healthy woodlands and the urban forest.

**AND WHEREAS** Planning Committee held a public information meeting on November 17, 2005 regarding a draft copy of a Tree By-Law;

**AND WHEREAS** Council passed By-Law No. 2005-289 at its meeting held on November 22, 2005, being a Tree By-Law;

**AND WHEREAS** it was deemed necessary to refine some of the provisions of the By-Law, in order to provide further clarification regarding the purpose and intent of the By-Law;

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

**DEFINITIONS**

1. In this By-Law, the following definitions apply:

- (1) "Agricultural Operation" means the conduct of Agriculture as a business activity that is carried out with the expectation of gain or reward, and includes the production of maple syrup, honey, eggs, milk or cream, and the operation of machinery and equipment, and may include a hobby farm.
- (2) "Agriculture" means the science, art, or practice of preparing and cultivating the soil; growing field crops, greenhouse crops, mushrooms, nursery stock, and turf grass; and growing, producing or raising livestock, poultry, ratites, fur-bearing animals, cultured fish, deer and elk, game animals and birds, and honey bees.
- (3) "Applicant" means the person who submits an application to the Corporation of the City of Kingston for a Tree Permit pursuant to the provisions of this By-Law.
- (4) "Building Permit" means a building permit issued pursuant to the *Building Code Act*, 1992, S.O. 1992, c. 23, as amended.
- (5) "Certified Arborist" means an arborist certified by the Certification Board of the International Society of Arboriculture.
- (6) "Certified Tree Marker" means an individual who has full certification, and is in good standing, under the Ontario Ministry of Natural Resources program for marking trees.
- (7) "City" means the Corporation of the City of Kingston.

- (8) "Commercial Harvesting" means the business of felling trees and transporting logs to a market, with the expectation of gain or reward.
- (9) "DBH" (Diameter at Breast Height) means the diameter of the stem of a tree measured in centimetres outside the bark at a point that is 1.37 metres above the ground.
- (10) "Designate" means a person who is an employee of the Corporation of the City of Kingston and who has been appointed by the Director to administer all or part of this By-Law on behalf of the Director.
- (11) "Destroy" means any act that renders, or which is likely to render, the tree(s) unviable or compromise its life processes in such a way that it cannot survive, and "destruction" has a corresponding meaning.
- (12) "Director" means the Director of Planning & Development for the City of Kingston, and includes their designate.
- (13) "Distinctive Tree" means a healthy tree that is considered by the Director to be an uncommon species to the City of Kingston region and environment or of an uncommon size, maturity, or age, and includes, without limitation, those tree species listed in Schedule 'A' to this By-Law.
- (14) "Drip Line" means an imaginary line running along the ground directly beneath the outer most branches of the tree(s).
- (15) "Farm" means a tract of land devoted to an Agricultural Operation.
- (16) "Forest Management Plan" means a document, including prescriptions for Silviculture and ecological conservation, prepared by a Registered Professional Forester on behalf of the Owner for the purpose of managing the natural and forestry resources in accordance with Good Forestry Practices and environmental objectives.
- (17) "Good Arboricultural Practice" means the proper planting and care of trees in accordance with the standards set by the International Society of Arboriculture.
- (18) "Good Forestry Practice" means the proper harvesting, renewing, and maintaining of trees within the context of their specific forest and environmental conditions, which minimize detriments to Natural Forest Values.
- (19) "Highway" means a common and public road and includes the road allowance, any bridge, trestle, viaduct or other structure forming part of the road, and, except as otherwise provided, includes a portion of a roadway.

- (20) "Injure" means any action that causes physical, biological, or chemical harm or damage to a tree, and "injury" has a corresponding meaning.
- (21) "Municipal Property" means any land owned, held, and/or used by the City, and includes, but is not limited to, road allowances, easements, boulevards, parks, natural areas, highways, or rights-of-way.
- (22) "Municipal Tree" means a tree, the trunk of which is located entirely or substantially on Municipal Property.
- (23) "Natural Forest Values" mean significant tree based ecosystems, the natural productivity and health of the trees, important fish and wildlife habitat, soil and water quantity and quality, and the aesthetics of the treed landscape.
- (24) "Normal Farm Practice" means any activity undertaken in accordance with the Farming and Food Production Protection Act that is part of an Agricultural Operation, and is conducted in a manner consistent with proper and accepted customs and standards as established and followed by similar Agricultural Operations under similar circumstances, and may make use of innovative technology in a manner consistent with proper advanced farm management techniques.
- (25) "Officer" means an individual appointed by the Corporation of the City of Kingston to enforce the provisions of this By-Law, and includes a municipal by-law enforcement officer.
- (26) "Owner" means the person(s) or corporation(s) registered on the title of the land in the Registry Office or Land Titles Office.
- (27) "Park" means a playground, playing field, ball diamond, sports field, beach, recreation centre, community building, facility, square, garden, water, pedestrian walkway, or any other area owned, leased or used by the City and devoted to active or passive recreation, and includes any lane or walkway or public parking area associated with the Park.
- (28) "Personal Use" means the utilization of a tree(s) or tree sections destroyed or injured by an Owner on their own land and collected solely for their own purpose and use without the sale, exchange, or other disposition of the tree(s) or tree sections to other parties.
- (29) "Plant Nursery" means the use of lands, buildings or structures, or portions thereof, where trees, shrubs or other plants are grown for the purpose of retail or wholesale trade. A plant nursery may include the accessory sale of soil, planting materials, fertilizers, garden equipment, ornaments and similar material.

- (30) "Qualified Forestry Consultant" means a Certified Arborist, a Certified Tree Marker, or a Registered Professional Forester.
- (31) "Registered Professional Forester" means a member of the Ontario Professional Foresters Association as defined in the Professional Foresters Act, 2000, S.O. 2000, c. 18.
- (32) "Rural Area" means the area defined as Rural in the applicable Official Plan.
- (33) "Silviculture" means the theory and practice of controlling forest establishment, composition, growth, and quality of forests to achieve the objectives of forest management.
- (34) "Tree" means any species of woody perennial plant, including its root system, which has reached or can reach a height of at least 4.5 metres at physiological maturity.
- (35) "Tree Permit" means the written authorization from the Director to destroy or injure trees, with or without conditions.
- (36) "Tree Preservation and Protection Plan" means a plan prepared by a Qualified Forestry Consultant, which includes measures required for the protection of trees that eliminate or mitigate the potential risk of tree damage.
- (37) "Tree Protection Zone" means an area surrounding a tree that is marked and fenced off, where storage of materials of any kind, parking or moving of vehicles, and disturbance of the soil or grade is prohibited.
- (38) "Urban Area" means the area defined as Urban in the applicable Official Plan.

#### **APPLICATION OF THE BY-LAW**

- 2. No person shall injure or destroy or cause or permit the injury or destruction of the following trees within the limits of the City of Kingston, except where the injury or destruction is done under the authority of a Tree Permit, or as otherwise exempted in Sections 3 and 4 of this By-Law:
  - (a) All trees classified as an endangered, threatened, or at risk tree species, as defined in the provincial Endangered Species Act, R.S.O. 1990, c. E. 15, or successor legislation;
  - (b) All trees classified as an endangered or threatened tree species, or a tree species of special concern, as defined in the federal Species at Risk Act, or successor legislation;
  - (c) All trees classified as a Distinctive Tree as defined in Section 1 of this By-Law and in accordance with Schedule 'A' of this By-Law;
  - (d) All trees that are fifteen centimetres (15 cm), or greater, in diameter at breast height (DBH);
  - (e) All trees located on Municipal Property;
  - (f) All trees located in areas designated as Environmental Protection Areas (EPA) or as Open Space in a municipal official plan;
  - (g) All trees that have been identified for protection in a Tree Preservation and Protection Plan approved by the Director; and,

- (h) All trees that are subject to commercial harvesting on lands greater than one (1) hectare in area.

### SPECIFIC EXEMPTIONS

3. Trees may be injured or destroyed, without applying for a Tree Permit, where:

- (a) Pruning is necessary to maintain the health and condition of the tree, provided the injury is in accordance with Good Arboricultural Practice;
- (b) It is necessary to remove a hazardous, dead, diseased, or severely injured tree(s), or a portion of such a tree(s), provided a letter confirming the need for the removal has been prepared by a Certified Arborist and approved by the Director, and any such injury or destruction is conducted in accordance with Good Arboricultural Practices.

(By-law No. 2007-170; 2009-42)

- (c) It is necessary to remove trees that are causing, or are likely to cause, structural damage to load-bearing or other structures;
- (d) The tree(s) are located within the limits of any residential lot that existed and was developed with a residential structure prior to the date of the passage of this by-law;
- (e) The tree(s) are within the limits of any residential lot that is created by way of a registered plan of subdivision, consent or registered plan of condominium on or after the date of the passage of this by-law;
- (f) The tree(s) are located within a building or structure, a solarium, a rooftop garden, or an interior courtyard;
- (g) The injury or destruction is imposed as a condition of the approval of a site plan, a plan of subdivision, or a consent under Section 41, 51, or 53 respectively of the *Planning Act* or as a requirement of a Site Plan Control Agreement or Subdivision Agreement entered into under those Sections;
- (h) The injury or destruction is imposed as a condition of a development permit authorized by a regulation made under Section 70.2 of the *Planning Act*, or as a requirement of an agreement entered into under that regulation;
- (i) The injury or destruction is required to permit the establishment or extension of a building or structure, including driveways and access routes, and provided:
  - (i) the proposed use is permitted by the Zoning By-Law;
  - (ii) there is no reasonable alternative to the injury or destruction;
  - (iii) a building permit has been issued for the proposed use; and
  - (iv) no tree is destroyed or injured that is located more than fifteen (15) metres from the outer edge of the building or structure.

- (j) The injury or destruction is necessary to install, provide or maintain utilities or public or private water and sanitary sewer infrastructure required for the construction or use of a building or structure for which a building permit has been issued;
- (k) The destruction is in accordance with Good Arboricultural Practices and Good Forestry Practices and only where the trees are for a landowner's Personal Use;
- (l) The trees that are destroyed are located within a cultivated orchard, tree farm, or plant nursery that are being actively managed and harvested for the purposes for which the trees were planted;
- (m) The injury or destruction occurs on land covered by a Forest Management Plan, approved by a Registered Professional Forester, a copy of which has been submitted to the Director, and provided any injury or destruction is undertaken in accordance with Good Forestry Practices and the Forest Management Plan;
- (n) The injury or destruction is necessary to clear land in accordance with a Normal Farm Practice conducted by an Agricultural Operation for its own Agricultural purposes, provided that the trees are situated outside of areas designated as Environmental Protection Areas (EPA) in a municipal official plan, and outside of the area identified on Schedule 'D' of this By-Law.

(By-law No. 2007-170; 2008-184)

- (o) The injury or destruction is required as part of the operation of an existing cemetery or golf course;
- (p) The injury or destruction occurs 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;
- (q) The injury or destruction is required in order to lawfully establish and operate or enlarge any pit or quarry on land:
  - (i) That has not been designated under the Aggregate Resources Act or a predecessor of that Act; 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.

#### STATUTORY LIMITATIONS & EXEMPTIONS

- 4. Trees may be injured or destroyed, without applying for a Tree Permit, pursuant to the following legislative provisions:
  - (a) Activities undertaken with any rights or powers under Provincial or Federal legislation;
  - (b) Activities or matters undertaken by a municipality, a local board of a municipality, or a Conservation Authority;
  - (c) Activities or matters undertaken under a license issued under the Crown Forestry Sustainability Act, 1994;

- (d) Trees that are injured or destroyed by a person licensed under the Surveyors Act to engage in the practice of cadastral surveying or their agent, while making a survey; and,
- (e) Trees that are injured or destroyed 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.

### **PLANNING & DEVELOPMENT PROCESS**

- 5. (1) The provisions of this Tree By-Law, as amended from time to time, shall form part of the development approval process governed by the Planning Act.
- (2) An application for a Tree Permit may be processed concurrently with an application submitted pursuant to the Planning Act and may form part of the technical information requested in order to consider the Planning Application complete.
- (3) Where there is a development application involving a Planning Approval in the Urban Area, trees shall be protected from injury or destruction resulting from any site preparation, until the issuance of a Tree Permit and/or the receipt of the final approval of the applicable Planning Applications.
- (4) Where there is a development application involving a Planning Approval in the Rural Area for rural estate residential subdivisions, rural commercial developments, rural industrial developments, or rural institutional developments only, trees shall be protected from injury or destruction resulting from any site preparation, until the issuance of a Tree Permit and/or the receipt of the final approval of the applicable Planning Applications.

### **APPLICATION FOR A TREE PERMIT**

- 6. (1) Subject to Section 2, any person may injure or destroy a tree, provided that a Tree Permit has been issued by the Director to permit the injury or destruction and provided that the injury or destruction is conducted in accordance with the terms and conditions of the Tree Permit.
- (2) Every person that intends to injure or destroy a tree(s) specified in Section 2 above, either personally or through another person or corporation, is required by this By-Law to complete and file a Tree Permit Application in the form prescribed by the City.
- (3) The Tree Permit Application shall be filed with the Director, and shall include all information prescribed by the application, including, but not limited to:
  - (a) The names and addresses of the Owner of the land upon which the tree(s) is to be injured or destroyed, the Applicant or Agent (if different), Qualified Forestry Consultant, and contractor (if applicable);
  - (b) The municipal address and legal description of the land upon which the tree(s) is to be injured or destroyed;

- (c) A schedule for the proposed works, including the start and end dates and the construction period;
  - (d) A description of the proposed works, including the number of trees to be removed, the reasons for the removal, the number of trees to be retained, the protection measures to be used for any retained trees, and the number of trees to be replanted;
  - (e) A description of any known cultural or natural heritage features on or adjacent to the subject site;
  - (f) Confirmation of existing Official Plan designations, zoning, and the status of any planning applications on the property as determined by pre-consultation with the Director;
  - (g) Confirmation of any other applications affecting the subject property; and,
  - (h) All required signatures as per Subsection (a) above.
- (4) Every Tree Permit Application shall be accompanied by the prescribed fee, payable in accordance with Schedule 'A' of By-Law No. 2005-10, "A By-Law to Establish Fees and Charges to be Collected by The Corporation of the City of Kingston", as amended.
- (By-law No. 2007-170; 2009-88)
- (5) Where, in the opinion of the Director, additional information is necessary, the Director may require the Applicant to submit a report to be prepared by a Qualified Forestry Consultant that will form part of the Tree Permit Application, and which will address the reasons for the proposed destruction of the tree(s) and the preservation of any trees to be retained. The report shall be prepared in accordance with the City of Kingston's Guidelines for the Completion of an Arborist Report and the Guidelines for Tree Preservation and Protection.
- (6) A Tree Permit Application shall only be considered complete when accompanied by the information required pursuant to Section 6. herein and the fee required in accordance with Schedule 'A' of By-Law No. 2005-10, "A By-Law to Establish Fees and Charges to be Collected by The Corporation of the City of Kingston", as amended.

(By-law No. 2007-170; 2009-88)

### **REVIEW AND DISPOSITION OF A TREE PERMIT APPLICATION**

7. (1) The Director shall review the complete Tree Permit Application and may:
- (a) issue a Tree Permit;
  - (b) issue a Tree Permit with conditions; or,
  - (c) refuse to issue a Tree Permit.

- (2) Following the receipt of a complete Tree Permit Application, the Director may confer with such persons, staff, qualified professionals, and agencies as they consider necessary for the proper review of the application.

#### TERM OF A TREE PERMIT

8. (1) A Tree Permit issued by the Director shall remain in effect for twelve (12) months after the date of issuance, except for a Tree Permit authorizing a Forest Management Plan prepared for commercial harvesting.
- (2) A Tree Permit for the commercial harvesting of trees, in accordance with a Forest Management Plan, shall specify a maximum time period as a condition of the Tree Permit.
- (3) The Applicant may request, in writing, an extension to the Tree Permit for a period of up to two additional years, provided that the request is filed at least 30 days prior to its expiry.
- (4) The Director may extend the expiration date of a permit.
- (5) In considering whether or not to grant a request to extend a permit, the Director shall take into account to what extent the work authorized by the permit has been completed, and to what extent the conditions of the permit have been adhered to, and in no case shall the Director extend a permit so that the permit remains in effect for more than three (3) years from the original date of its issuance.
- (6) No permit shall be renewed where the Owner or Applicant is in breach of any of the terms of this By-Law or a Tree Permit.

#### TERMS AND CONDITIONS OF A TREE PERMIT

9. (1) The Director may impose conditions on a Tree Permit that in his or her sole discretion are reasonable. Without limiting the generality of the foregoing, the following conditions may be imposed by the director:
  - (a) Any conditions in accordance with Good Arboricultural Practice, established Silviculture, and/or Good Forestry Practice;
  - (b) Any conditions recommended by a Qualified Forestry Consultant;
  - (c) The measures to be implemented to protect the retained trees during construction, if applicable;
  - (d) The requirement to prepare a Tree Preservation and Protection Plan, which must be approved by the Director and implemented as a condition of a Tree Permit;
  - (e) The creation of Tree Protection Zones and conditions associated with those zones;
  - (f) The manner and timing of the destruction or injury to the tree(s);
  - (g) A requirement to plant replacement trees in accordance with Section 9(2) of this By-Law; and,

- (h) A requirement to provide compensation, in accordance with Section 10 of this By-Law for Municipal Trees injured or destroyed.
- (2) Where a Tree Permit requires the planting of replacement trees, the Director may impose the following provisions related to the replacement trees:
- (a) The species, size, number, and location of the replacement tree(s) shall be determined by the Director, in consultation with a Qualified Forestry Consultant;
  - (b) Where the removal involves a Distinctive Tree, the replacement tree(s) shall include the same species, where they are commercially available; (By-law No. 2007-170; 2009-42)
  - (c) The number of replacement trees to be planted shall be the greater of the number of trees specified by the conditions of the Tree Permit, or the number of trees to be planted in accordance with the Subdivision Agreement, Condominium Agreement, or Site Plan Agreement, whichever number is greater;
  - (d) The date by which any replacement tree(s) is to be planted shall be determined by the Director, in consultation with a Qualified Forestry Consultant;
  - (e) The maintenance and care of any replacement tree(s) shall be determined by the Director, in consultation with a Qualified Forestry Consultant;
  - (f) Replacement trees are to be maintained and protected in accordance with Good Arboricultural Practices by the Owner or person responsible for the injury or destruction, for a minimum period of two (2) years after planting;
  - (g) Cash or a letter of credit shall be deposited with the City, to be held in trust, for a minimum period of up to two (2) years after planting, to cover the costs of maintaining the replacement trees or for replacing any replacement trees that die; and,
  - (h) Replacement trees shall be subject to the following locational priorities:
    - (i) The first and highest priority shall be to plant the replacement tree(s) on the property where the tree(s) was destroyed; and,
    - (ii) The next highest priority shall be to plant the replacement tree(s) on another site(s) in the Municipality for the purpose of general reforestation, at the discretion of the Director.
- (3) Where the destruction or injury of a tree(s) is not conducted as part of, and in accordance with, a Site Plan Agreement, a Subdivision Agreement, or a Condominium Agreement, the Owner may be required:
- (a) To enter into an agreement regarding the conditions set out in Section 9 of this By-Law which form part of the Tree Permit, including any conditions imposed in accordance with Section 10 of this By-Law; and,
  - (b) To register the agreement on the title to the lands affected by the Tree Permit.

### COMPENSATION

10. (1) The Director shall calculate the compensation for the injury or destruction of a tree(s) required as a condition of a Tree Permit for a Municipal Tree, or required as a condition of an Order issued under this By-Law as follows:
- (a) The value of any tree that is injured or destroyed shall be determined using the International Society of Arboriculture Trunk Formula Method, as illustrated in Schedule 'C' of this By-Law, as it may be amended from time to time.
  - (b) The value of the tree(s) injured or destroyed, as calculated by the Director pursuant to Section 10(1)(a), shall be used to determine the number, species and size of the replacement tree(s) that shall be planted by the permit holder or the person responsible for the injury or destruction, as the case may be. The Director shall make this determination in consultation with a Qualified Forestry Consultant and his or her decision as to the number, species and size of replacement tree(s) shall be final.
  - (c) The provisions of Section 9(2)(c) to (g), with necessary modifications, shall apply to replacement trees planted in accordance with this section.

### TREE MARKING & PRESERVATION

11. (1) All trees identified under Section 2 of this By-Law that are to be destroyed in accordance with an approved Tree Permit shall be marked by a Qualified Forestry Consultant with clearly visible marks of orange paint both at breast height and ground level, at least five (5) days prior to destroying any tree, but not prior to the issuance of a Tree Permit.
- (2) Each stump remaining after cutting shall show the paint marking applied by the Qualified Forestry Consultant.
  - (3) The Applicant shall cause the installation of all tree preservation measures required pursuant to a Tree Permit to be completed under the supervision of a Qualified Forestry Consultant, to the satisfaction of the Director.
  - (4) The tree preservation measures and Tree Protection Zone(s) shall be inspected on a regular basis by a Qualified Forestry Consultant and a bi-monthly report made to the Director for the duration of the active period of construction.

### TREE PERMIT POSTING

12. (1) A copy of the Tree Permit shall be posted on the property prior to the commencement of any injury or destruction of any tree allowed by the Tree Permit, in a conspicuous place on the subject property that is adjacent to a public road and visible to all persons, or at such other location designated by the Director.

**REVOCAION OF A PERMIT**

13. (1) A Tree Permit may be revoked by the Director under any of the following circumstances:
  - (a) If it was issued on mistaken, misleading, false, or incorrect information;
  - (b) If it was issued in error;
  - (c) If the Owner or Applicant requests, in writing, that it be revoked;
  - (d) If the terms of an Agreement under this By-Law are not complied with; or,
  - (e) If an Owner fails to comply with any provision of the Tree Permit or this By-Law.
- (2) When a Tree Permit is revoked, the Owner and/or Applicant shall immediately cease all operations being conducted under the authority of the revoked Permit.

**APPEALS TO COUNCIL**

14. (1) An Applicant for a Tree Permit pursuant to this By-Law may appeal in writing to the Council of the City of Kingston where:
  - (a) The City refuses to issue a Tree Permit, within thirty (30) days after the refusal; or,
  - (b) The Applicant objects to a condition in the Tree Permit, within thirty (30) days after the issuance of the Permit.
- (2) On appeal, the Council has the same powers as the Director under this By-Law, and may:
  - (a) Confirm the refusal to issue the Tree Permit;
  - (b) Issue a Tree Permit, with or without conditions; or,
  - (c) Affirm, vary, or add any conditions to the Tree Permit.

**ENFORCEMENT**

15. (1) This By-Law shall be enforced by an Officer appointed by Council for the purposes of enforcing by-laws within the City of Kingston.
- (2) An Officer may, at any reasonable time, enter and inspect any land to determine whether this By-Law, an Order, or a condition of a Tree Permit is being complied with, provided that the power of entry does not allow the Officer to enter any building.
- (3) An Officer may, in carrying out an inspection, be accompanied by the Director, and any other person necessary to assist the Officer with their enforcement activities.
- (4) No person shall obstruct or interfere with the Director, or an Officer, in the discharge of their duties under this By-Law, and any person who so obstructs the Director or an Officer is guilty of an offence pursuant to this By-Law.

ORDERS

16. (1) Where the Director is satisfied that a contravention of this By-Law has occurred, the Director may issue a Stop Work Order requiring the person that contravened the By-Law, or that caused or permitted the contravention of the By-Law, to stop any injury or destruction to the tree(s).
- (2) The Stop Work Order shall set out reasonable particulars of the contravention adequate to identify the contravention, the location of the contravention and the date by which there must be compliance with the Order.
17. (1) Where the Director is satisfied that a contravention of this By-Law has occurred, the Director may issue an Order requiring the person who contravened the By-Law or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to do the work specified in the Order that is necessary in the opinion of the Director to correct the contravention, including without limitation the planting of replacement tree(s) in accordance with Section 10 of this By-Law.
- (2) The Order shall set out the reasonable particulars of the contravention adequate to identify the contravention, the location of the contravention, and the date by which there must be compliance with the Order.
- (3) The Order may provide that if the person named in the Order fails to comply with the Order by a date specified in the Order, that the City shall have the right to enter upon the land affected by the Order at any time, and to complete the work specified in the Order at the expense of the person named in the Order.
18. (1) A Stop Work Order issued under Section 16, or an Order issued under Section 17, may be served personally by an Officer, may be posted in a conspicuous place on the property where the contravention occurred, or may be sent by registered mail to the person contravening this By-Law.
- (2) Where an Order issued under this By-Law is served personally by an Officer, it shall be deemed to have been served on the date of delivery to the person(s) named.
- (3) The placing of the Order on the affected lands shall be deemed to be sufficient service of the Order on the person or corporation to whom the Order is directed on the date it is posted.
- (4) Where an Order issued under this By-Law is sent by registered mail, it shall be sent to the last known address of:
  - (a) The Applicant;
  - (b) The Owner; or,
  - (c) The person or company retained to work on the trees on the land.
- (5) Where service of an Order is made by registered mail, service shall be deemed to have been served on the fifth day after the Order is mailed.

19. (1) Where a person fails to comply with an Order issued pursuant to Section 17 of this By-Law and the City enters on the lands and completes the work, the City shall be entitled to recover its costs to complete the work from the person named in the Order by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes.
- (a) The costs include interest calculated at a rate of 15 percent, calculated for the period commencing on the day the City incurs the costs and ending on the day the costs, including interest, are paid in full.
- (b) The amount of costs, including interest, constitutes a lien on the land upon the registration in the land registry office of a notice of lien.
- (c) The lien shall be in respect of all costs that are payable at the time the notice is registered plus interest accrued at the rate of 15 percent to the date the payment is made in full.

#### OFFENCE

20. (1) Any person who breaches any provision of this By-Law, contravenes the terms or conditions of any Tree Permit, or contravenes an Order issued by the Director, is guilty of an offence.
- (2) Any officer or director of a corporation who knowingly concurs in the contravention of any provision of this By-Law, contravention of any terms or conditions of any Tree Permit, or contravention of an Order issued by the Director, is guilty of an offence.

#### PENALTIES

21. (1) If any person or corporation is convicted of an offence for contravening this By-Law, the conditions of a Tree Permit, or an Order issued under this By-Law, the Court in which the conviction has been entered, and any Court of competent jurisdiction thereafter, may, in addition to any fine imposed, make an order:
- (a) Prohibiting the continuation or repetition of the offence;
- (b) To rehabilitate the land, including planting replacement trees, applying accepted silvicultural treatments necessary to re-establish the trees, and governing the timing of the rehabilitation, planting, or replanting, within such a period as the Court considers appropriate; and,
- (c) To provide compensation to the City, in accordance with Section 10 of this By-Law;
- (2) In addition to Section 21(1):
- (a) Any person who contravenes any provision of this By-Law, contravenes the terms or conditions of a Tree Permit, or an Order issued under this By-Law, is guilty of an offence and is liable:
- (i) On first conviction, to a fine of not more than \$10,000 or \$1,000 per tree, whichever is greater; and

- (ii) On any subsequent conviction, to a fine of not more than \$25,000 or \$2,500 per tree, whichever is greater.
- (b) Any corporation that contravenes any provision of this By-Law, contravenes the terms or conditions of a Tree Permit, or an Order issued under this By-Law is guilty of an offence and is liable:
  - (i) On first conviction, to a fine of not more than \$50,000 or \$5,000 per tree, whichever is greater; and,
  - (ii) On any subsequent conviction, to a fine of not more than \$100,000 or \$10,000 per tree, whichever is greater.

**ADMINISTRATION**

- 22. (1) The short title of this By-Law is the "Tree By-Law".
- (2) Schedules 'A', 'B', and 'C' shall form part of this By-Law.
- (3) If any Section or Sections of this By-Law or parts thereof are found by any Court to be illegal or beyond the power of the Council to enact, such Section or Sections or parts thereof shall be deemed to be severable and all other Sections or parts of this By-Law shall be deemed to be separate and independent there from and continue in full force and effect unless and until similarly found illegal.
- (4) If there is a conflict between this By-Law and a By-Law passed under the *Forestry Act* or the *Municipal Act*, the provision that is the most restrictive regarding the injury or destruction of trees shall prevail.
- (5) Nothing in this By-Law shall exempt any person or corporation from complying with the requirements of any other by-law in force, or from obtaining any license, permission, permit, authority or approval required under any other by-law or legislation.

**BY-LAW NO. 2005-289**

- 23. (1) By-Law 2005-289 of the City of Kingston shall be repealed effective on the coming into force and effect of this By-Law.
- (2) Any Tree Permits and/or conditions issued in accordance with By-Law 2005-289, prior to the passing of this By-Law, shall remain in effect.
- (3) Despite Section 23(1) of this By-Law, By-Law 2005-289 of the City of Kingston shall continue to apply to proceedings in respect of offences that occurred before its repeal.
- (4) THAT this By-Law shall come into force and effect upon the day of passing thereof.

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SCHEDULE 'A'LIST OF DISTINCTIVE TREE SPECIES

The following is a list of Distinctive Tree Species that are considered to be uncommon to the City of Kingston region and environment:

Common English Name	Latin Name
Black Maple	<i>Acer nigrum</i>
Ginkgo	<i>Ginkgo biloba</i>
Kentucky Coffeetree	<i>Gymnocladus dioica</i>
Blue Ash	<i>Fraxinus quadrangulata</i>
Black Walnut	<i>Juglans nigra</i>
Sycamore	<i>Platanus occidentalis</i>
London Planetree	<i>Platanus x acerifolia</i>
Tulip-tree	<i>Liriodendron tulipifera</i>
Ohio Buckeye	<i>Aesculus glabra</i>
Pitch Pine	<i>Pinus rigida</i>
Douglas-Fir	<i>Pseudotsuga menziesii</i>

**SCHEDULE 'B'**

**Permit Fees**

Permit Fees shall be paid to the City of Kingston at the time of application for a Tree Permit in accordance with the fees set out in Schedule 'A' of City of Kingston By-Law No. 2005-10, "A By-Law to Establish Fees and Charges to be Collected by The Corporation of the City of Kingston", as amended.

(By-law No. 2007-170; 2009-88)

SCHEDULE 'C'

INTERNATIONAL SOCIETY OF ARBORICULTURE – TRUNK FORMULA METHOD

File # \_\_\_\_\_ Property \_\_\_\_\_ Date \_\_\_\_\_

Qualified Forestry Consultant \_\_\_\_\_

*Field Observations*

1. **Species** \_\_\_\_\_
2. **Condition** \_\_\_\_\_%
3. **Trunk Circumference** \_\_\_\_\_ in./cm      **Diameter** \_\_\_\_\_ in./cm
4. **Location %** = [Site \_\_\_\_\_% + Contribution \_\_\_\_\_% + Placement \_\_\_\_\_%] ÷ 3 = \_\_\_\_\_%

*Technical Assessment*

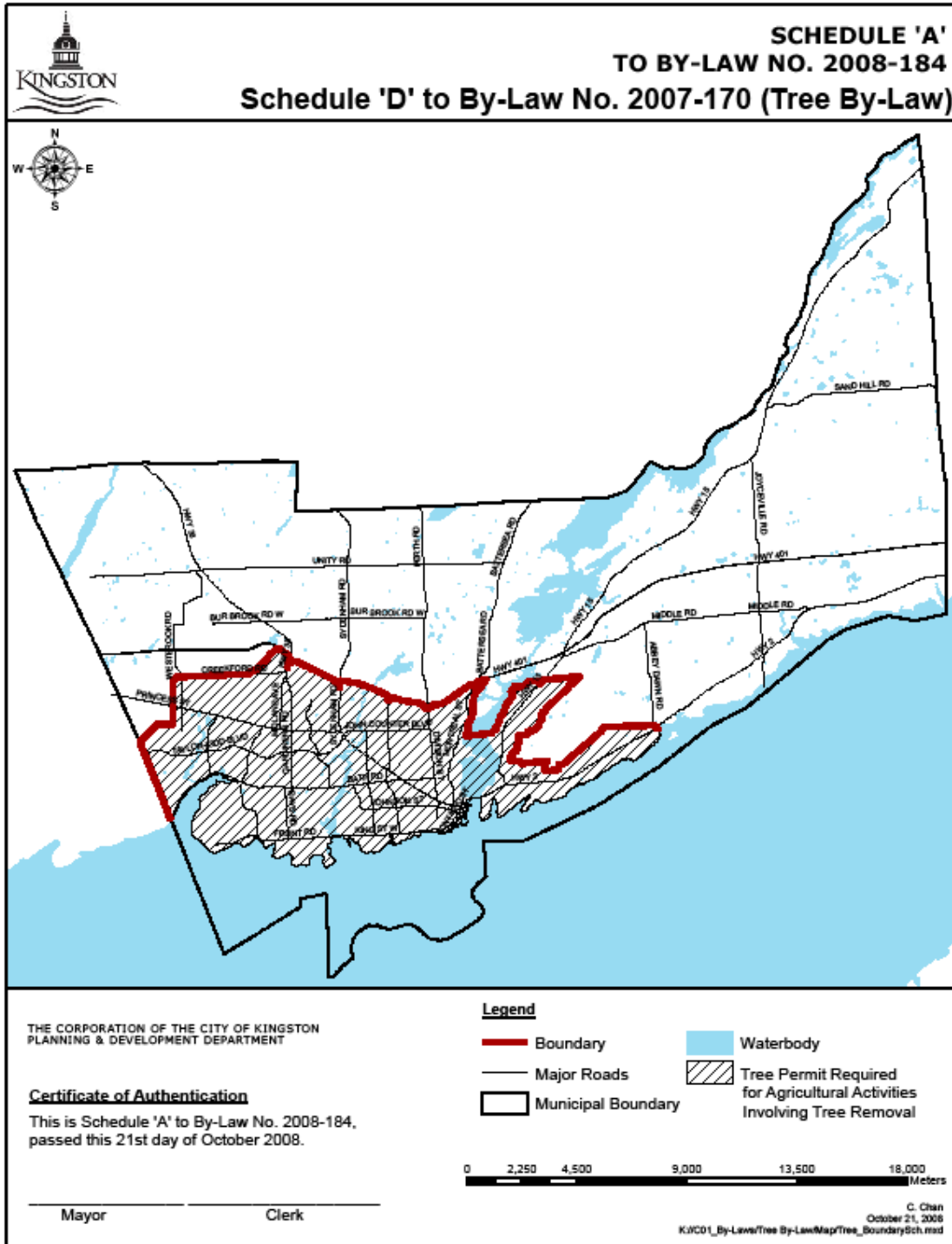
5. **Species rating** \_\_\_\_\_ %
6. **Replacement Tree Size (diameter)** \_\_\_\_\_ in./cm  
(Trunk Area) \_\_\_\_\_ in<sup>2</sup>/cm<sup>2</sup>/TA<sub>R</sub>
7. **Replacement Tree Cost** \_\_\_\_\_ \$  
(see Standard Subdivision Agreement Provisions)
8. **Installation Cost** \_\_\_\_\_ \$
9. **Installed Tree Cost (#7 + #8)** \_\_\_\_\_ \$
10. **Unit Tree Cost** \_\_\_\_\_ \$ per in<sup>2</sup>/cm<sup>2</sup>  
(see Standard Subdivision Agreement Provisions)

*Calculations using Field and Standard Subdivision Agreement Information*

11. **Appraised Trunk Area:**  
TA<sub>A</sub> or ATA<sub>A</sub>; use Tables 4.4-4.7)  
or c<sup>2</sup> (#3) \_\_\_\_\_ x 0.08  
or d<sup>2</sup> (#3) \_\_\_\_\_ x 0.785  
= \_\_\_\_\_ in<sup>2</sup>/cm<sup>2</sup>
12. **Appraised Tree Trunk Increase (TA<sub>INCR</sub>)** =  
TA<sub>A</sub> or ATA<sub>A</sub> \_\_\_\_\_ in<sup>2</sup>/cm<sup>2</sup> (#11) – TA<sub>R</sub> \_\_\_\_\_ in<sup>2</sup>/cm<sup>2</sup> (#6) = \_\_\_\_\_ in<sup>2</sup>/cm<sup>2</sup>
13. **Basic Tree Cost** = TA<sub>INCR</sub> (#12) \_\_\_\_\_ in<sup>2</sup>/cm<sup>2</sup> x **Unit Tree Cost** (#10) \$  
per in<sup>2</sup>/cm<sup>2</sup> = **Installed Tree Cost** (#9) \_\_\_\_\_ \$ = \_\_\_\_\_ \$
14. **Appraised Value** = **Basic Tree Cost** (#13) \_\_\_\_\_ \$ x **Species rating** (#5) \_\_\_\_\_ %  
x **Condition** (#2) \_\_\_\_\_ % x **Location** (#4) \_\_\_\_\_ % = \_\_\_\_\_ \$
15. If the **Appraised Value** is \$5,000 or more, round it to the nearest \$100; if it is less, round to the nearest \$10.
16. **Appraised Value** = (#14) \_\_\_\_\_ \$

Items 5 through 10 are determined by the Technical Assessment of a Qualified Forestry Consultant. The **Wholesale Replacement Tree Cost**, the **Retail Replacement Tree Cost**, or the **Installed Tree Cost** (#9) divided by the **Replacement Tree Size** (#6) can be used for the **Unit Tree Cost** (#10), or it can be set by the Qualified Forestry Consultant in consultation with the Director.

Schedule "D"  
 (as shown below as Schedule 'A' to By-Law-184)



(By-law No. 2007-170; 2008-184)

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