

## By-Law Number 2017-XXX

### Being a By-Law to Prohibit and Regulate the Destruction or Injuring of Trees in the City of Kingston, and to Repeal and Replace By-Law Number 2007-170, as amended

**Passed:** (Date Passed)

**Whereas** Section 135(1) of the *Municipal Act, 2001*, SO 2001, c. 25, permits the enactment of a By-Law by the Council of The Corporation of the City of Kingston to prohibit or regulate the destruction or injuring 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** the maintenance of mature tree cover is recognized as contributing to human health and quality of life; and

**Whereas** trees are identified in the City's Official Plan 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;
- (i) Reducing the effects of global warming; and

**Whereas** Council deems it to be desirable to enact a Tree By-Law for the purposes of:

- (a) Regulating and controlling the removal, maintenance, and protection of trees;
- (b) Supporting 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;

**Therefore be it Resolved That** 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 a person who submits an application to the City 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*, SO 1992, c. 23.
  - (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 and Forestry 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 financial gain or reward.
  - (9) “Designate” means a person who is an employee of the City and who has been appointed by the Director to administer all or part of this By-Law on behalf of the Director.

- (10) “Destroy” means any act that renders, or which is likely to render, a tree unviable or compromise its life processes in such a way that it cannot survive, and “destruction” has a corresponding meaning.
- (11) “Diameter at Breast Height” (“DBH”) 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.
- (12) “Director” means the Director of Planning, Building and Licensing Services or any successor position, and includes his or her Designate.
- (13) “Distinctive Tree” means a healthy tree that is considered by the Director to be an uncommon species in the City of Kingston region and environment, or a tree of an uncommon size, maturity or age, and includes, without limitation, those tree species listed in Schedule ‘A’ to this By-Law.
- (14) “Ecological Function” means the natural processes, products or services that living and non-living environments provide or perform within or between species, ecosystems and landscapes. These may include biological, physical and socio-economic interactions.
- (15) “Emergency Work” means any work required to be carried out immediately in order to prevent imminent danger to life, health or property from natural events (including lightning, wind, hail or extreme snow event) or unforeseen circumstances (e.g., automobile accident). Emergency Work includes work of an urgent nature which can be associated with drain repairs, utility repairs or structural repairs to a building, and work required to prevent soil erosion, slipping of soil or damage to trees.
- (16) “Environmental Impact Assessment” (“EIA”) means an analysis performed by a Qualified Person which assesses the impact of a proposed development on Natural Heritage Features and Areas, and their Ecological Function and makes recommendations for measures to ensure that the proposed development has no Negative Impacts.
- (17) “Environmental Protection Areas” means areas of natural and scientific interest (ANSIs), fish habitat or significant wildlife habitat areas, provincially significant wetlands, significant coastal wetlands and locally significant wetlands, rivers, streams and small inland lake systems and the Snake and Salmon Islands, located in Lake Ontario, all of which are shown in the Official Plan.
- (18) “Forest Management Plan” means a document, including prescriptions for Silviculture and ecological conservation, prepared by a Registered Professional Forester on behalf of an Owner for the purpose of managing

natural and forestry resources in accordance with Good Forestry Practices and environmental objectives.

- (19) “Good Arboricultural Practice” means the proper planting and care of trees in accordance with the standards set by the International Society of Arboriculture.
- (20) “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.
- (21) “Injure” means any action that causes physical, biological, or chemical harm or damage to a tree, and “injury” has a corresponding meaning.
- (22) “Landscaping, Replanting and Replacement Plan” means a plan which identifies the number, location, species and size of existing trees, trees to be planted or replaced and other landscaping elements on a property and provides details regarding planting methodology and timing.
- (23) “Natural Heritage Features and Areas” means features and areas, including significant wetlands, significant coastal wetlands, other coastal wetlands, fish habitat, waters supporting aquatic species at risk, Significant Woodlands, significant valleylands, significant habitat of endangered species and threatened species, significant wildlife habitat, and significant areas of natural and scientific interest, which are important for their environmental and social values as a legacy of the natural landscapes of an area.
- (24) “Negative Impacts” means that in regard to other Natural Heritage Features and Areas, degradations that threaten the health and integrity of the natural features or Ecological Functions for which an area is identified due to single, multiple or successive development or Site Alteration activities.
- (25) “Normal Farm Practice” means a practice, as defined in the *Farming and Food Production Protection Act*, 1998, SO 1998, c. 1, that is conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances; or makes use of innovative technology in a manner consistent with proper advanced farm management practices.
- (26) “Officer” means an individual appointed by the City to enforce the provisions of this By-Law, and includes a municipal by-law enforcement officer.

- (27) “Official Plan” means the document in which the City sets out its land use planning goals and policies that guide: physical development and redevelopment, protection of natural and cultural heritage, resource management, and necessary supporting infrastructure.
- (28) “Owner” means the person(s) or corporation(s) registered on the title of the land in the Land Registry Office.
- (29) “Personal Use” means the utilization of a tree, trees or tree sections destroyed or injured by an Owner on his or her own land and collected solely for his or her own purpose and use without the sale, exchange or other disposition of the tree(s) or tree sections to other parties.
- (30) “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.
- (31) “Qualified Person” means an individual with qualifications and/or credentials related to a field of study and who is therefore appropriate for conducting a study and/or providing an expert opinion that has been required by the City. The qualifications and credentials of the Qualified Person must be to the satisfaction of the City, or where appropriate, are defined by relevant legislation, regulation and standards.
- (32) “Registered Professional Forester” means a member of the Ontario Professional Foresters Association as defined in the *Professional Foresters Act, 2000*, SO 2000, c. 18.
- (33) “Rural Area” means the area defined as *Rural* in the Official Plan.
- (34) “Significant Woodlands” means woodlands as defined in the Official Plan.
- (35) “Silviculture” means the theory and practice of controlling forest establishment, composition, growth, and quality to achieve the objectives of forest management.
- (36) “Site Alteration” means activities, such as grading, excavation and the placement of fill that would change the landform and natural vegetative characteristics of a site.
- (37) “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.

- (38) "Tree Permit" means the written authorization from the Director to destroy or injure trees, with or without conditions.
- (39) "Tree Preservation and Protection Plan" means a plan prepared by a Certified Arborist, which includes measures required for the protection of trees that eliminate or mitigate the potential risk of tree damage.
- (40) "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.
- (41) "Urban Area" means the area within the Urban Boundary as defined in the Official Plan.
- (42) "Woodlands" means trees defined in the *Forestry Act*, RSO 1990, c F.26, that are more than one (1) hectare in area.

### **Application of the By-Law**

2. This By-Law shall apply to:

- (a) All trees that are 15 centimetres or greater, in Diameter at Breast Height;
- (b) All trees classified as endangered, threatened, or at risk tree species, as defined in the provincial *Endangered Species Act, 2007*, SO 2007, c. 6;
- (c) 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*, SC 2002, c. 29;
- (d) All trees classified as a Distinctive Tree as shown on Schedule A ;
- (e) All trees located in areas designated as Environmental Protection Areas (EPA) or as Open Space in the Official Plan;
- (f) All trees that have been identified for protection in a Tree Preservation and Protection Plan approved by the Director;
- (g) All trees that are within Significant Woodlands;
- (h) All trees that are subject to Commercial Harvesting on lands greater than one (1) hectare in area. A Tree Permit for the Commercial Harvesting of trees on lands greater than one (1) hectare shall remain in effect for a period of time to be specified in an agreement entered into with the City, pursuant to Section 17;
- (i) The injuring or destruction of trees on property owned by the City that is undertaken by a private landowner; and,

- (j) The injuring or destruction of trees for the purpose of the construction of a renewable energy project under the *Green Energy Act*, 2009, SO 2009, c. 12, Schedule A;

### **General Prohibitions**

- 3. No person shall injure or destroy a tree or cause the injury or destruction of a tree:
  - (a) Unless exempted by Section 5 of this By-Law; or
  - (b) Unless in possession of a Tree Permit issued under this By-Law and in accordance with its terms and conditions.
- 4. No person shall:
  - (a) Contravene the terms or conditions of a Tree Permit issued under this By-Law; or
  - (b) Fail to comply with an order issued under Section 20 or 21 of this By-Law.

### **Exemptions**

- 5. Despite Section 2 of this By-Law, this By-Law does not apply to:
  - (a) Activities or matters undertaken by a municipality or a local board of a municipality;
  - (b) Activities or matters undertaken under a license issued under the *Crown Forest Sustainability Act*, 1994, SO 1994, c. 25;
  - (c) The injuring or destruction of trees by a person licensed under the *Surveyors Act*, RSO 1990, c. S.29 to engage in the practice of cadastral surveying or his or her agent, while making a survey;
  - (d) The injuring or destruction of trees imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under Sections 41, 51 or 53, respectively, of the *Planning Act* or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;
  - (e) The injuring or destruction of trees by a transmitter or distributor, as those terms are defined in Section 2 of the *Electricity Act*, 1998, SO 1998, c. 15, Schedule A for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;

- (f) The injuring or destruction of trees 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*, RSO 1990, c. A.8;
- (g) The injuring or destruction of trees 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* 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*;
- (h) Pruning necessary to maintain the health and condition of the tree, provided the pruning is in accordance with Good Arboricultural Practice;
- (i) Removal of a dead, diseased, or severely injured tree, or a portion of such a tree provided that a letter of opinion confirming the need for the removal has been prepared by a Certified Arborist and approved by the Director prior to removal, and any such injury or destruction is conducted in accordance with Good Arboricultural Practices;
- (j) Destruction or injury of trees as part of Emergency Work;
- (k) Removal of trees that are causing, or are likely to cause, structural damage to load-bearing walls or other structures;
- (l) Tree(s) located within the limits of any residential lot that was developed with a residential structure or a residential lot that was created by way of a registered plan of subdivision, consent or registered plan of condominium on or after the passage of this By-Law unless the tree(s) is located within an Environmental Protection Area and/or Significant Woodlands;
- (m) Tree(s) located within a building or structure, a solarium, a rooftop garden, or an interior courtyard;
- (n) Injury or destruction required to permit the establishment or extension of a building or structure, including driveways and access routes, 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 15 metres from the outer edge of the building or structure;

- (o) Injury or destruction 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;
- (p) Destruction in accordance with Good Arboricultural Practices and Good Forestry Practices, but only where the trees are for an Owner's Personal Use;
- (q) Destruction of trees located within a cultivated orchard, tree farm, or Plant Nursery and are being actively managed and harvested for the purposes for which the trees were planted;
- (r) Injury or destruction on land for which a Forest Management Plan, approved by a Registered Professional Forester has been prepared, 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;
- (s) Injury or destruction of a tree(s) that are protected under the *Endangered Species Act* for which the landowner has obtained approval from the Ontario Ministry of Natural Resources and Forestry to destroy or remove the tree(s);
- (t) Injury or destruction required as part of the operation of an existing cemetery or golf course; and,
- (u) Injury or destruction necessary to clear land in accordance with Normal Farm Practice conducted by an Agricultural Operation for its own agricultural purposes. Whether a farm practice is a Normal Farm Practice shall be determined in accordance with the provisions of the *Farming and Food Production Protection Act*, including final arbitration by the Farm Practices Protection Board.

### **Planning and Development Process**

6. An Owner who has made an application for the approval of a site plan, a plan of subdivision or a consent under Sections 41, 51 or 53, respectively, of the *Planning Act*, may, prior to approval, make an application for a Tree Permit, subject to:
  - (a) Provision of financial security in accordance with Section 17; and
  - (b) Such other terms and conditions as determined by the Director.

## Tree Permits

### Permit Application Process

7. (1) Every person that intends to injure or destroy a tree, either personally or through another person or corporation, shall:
  - (a) Complete and submit an application for a Tree Permit in the form prescribed by the City from time to time;
  - (b) Pay the required fee, as set out in the City's Fees and Charges By-Law in place at the time of the application;
  - (c) Submit a site specific Environmental Impact Assessment (EIA), if required by the Director, in consultation with the Cataraqui Region Conservation Authority, if the trees are located within an Environmental Protection Area, or Significant Woodlands. The EIA shall be prepared by a Qualified Person and include the following components:
    - (i) A description of the proposal and rationale for undertaking the tree removal activity;
    - (ii) A survey illustrating the legal boundaries of the property, any easements, rights-of-way or other encumbrances;
    - (iii) An inventory and description of the key features present and their significance, including a reference to all Natural Heritage Features and Areas and Ecological Functions;
    - (iv) An evaluation of Ecological Functions of the natural heritage features on and adjacent to the property;
    - (v) The identification of any portion of the property where tree removal should be precluded;
    - (vi) Where the tree injury or removal is proposed within Significant Woodlands, the EIA shall include criteria such as the size, interior habitat, hydrological values, connection to significant features and the age of the woodland;
    - (vii) A professional conclusion as to whether the proposal is acceptable, considering potential impacts to Natural Heritage Features and Areas, related Ecological Functions and the type of mitigation required to protect the natural heritage features(s) or area(s) affected, consistent with the Provincial Policy Statement and the Official Plan.

- (d) Where required by the Director, submit a report prepared by a Certified Arborist setting out the reasons for the proposed destruction of the tree(s) and the preservation plan for 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.
  - (2) A Tree Permit Application shall only be considered complete when accompanied by the information required pursuant to this Section and the fee required in accordance with the City's Fees and Charges By-Law in place at the time of the application.
8. When all the requirements set out in Section 7 have been provided, the Director will 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.
9. The Director may refuse to issue a Tree Permit where:
- (a) Trees are healthy as confirmed by the Director or by a Certified Arborist;
  - (b) Natural Features and Areas will not be adequately protected and preserved;
  - (c) Erosion or flood control will be negatively impacted;
  - (d) An application for rezoning, a consent, a minor variance, a plan of subdivision or a site plan for the land on which the tree is located has been submitted to the City, but has not received final approval;
  - (e) The tree is an endangered or threatened species as defined in the *Endangered Species Act, 2007* or the *Species at Risk Act*;
  - (f) Approval is inconsistent with an approved Tree Preservation and Protection Plan or an approved Silvicultural Prescription; or,
  - (g) The proposed activities would be in contravention of other provincial or federal legislation, including, without limitation, the *Migratory Birds Convention Act, 1994*, SC 1994, c. 22, the *Fish and Wildlife Conservation Act, 1997*, SO 1997, c. 41 and the *Species at Risk Act*, SC 2002, c. 29.

### **Term of a Tree Permit**

10. (1) A Tree Permit issued by the Director shall remain in effect for twelve (12) months after the date of issuance.
- (2) A Tree Permit may be renewed for a period of up to two (2) additional years, upon written request from the Owner at least thirty (30) days prior to its expiry, provided that the Director is satisfied that there are reasonable grounds for the renewal.
- (3) No Tree Permit shall be renewed where the Owner or Applicant is in breach of any of the provisions of this By-Law or the terms and conditions of the Tree Permit.
- (4) Every application to renew a Tree Permit shall be accompanied by the applicable fee as set out in in the City's Fees and Charges By-Law in place at the time of application.

### **Permit Conditions**

11. (1) The Director may impose conditions on a Tree Permit that are reasonable, which may include, but are not restricted to:
  - (a) Requirements that injuring or destruction is carried out in accordance with Good Arboricultural Practice, established Silviculture, and/or Good Forestry Practice;
  - (b) Conditions recommended by a Certified Arborist;
  - (c) Conditions and recommendations in an Environmental Impact Assessment;
  - (d) Measures to be implemented to protect remaining trees;
  - (e) A requirement to prepare a Tree Preservation and Protection Plan, which must be approved by the Director;
  - (f) The creation of Tree Protection Zones;
  - (g) The manner and timing of the destruction or injury to the tree(s);
  - (h) A requirement to submit a Landscaping, Replacement and Replanting Plan which indicates the species, size, number and location of the replacement trees;
  - (i) A requirement to provide compensation, in accordance with Section 16 of this By-Law, for trees injured or destroyed;

- (j) A requirement to enter into an agreement with the City which sets out the Owner's obligations to replace trees and any conditions imposed in accordance with this By-Law; and,
  - (k) A requirement to provide financial security for the performance of the Owner's obligations under the agreement.
- 12.
  - (1) All trees that are to be destroyed in accordance with an approved Tree Permit shall be marked by a Certified Tree Marker or Certified Arborist with clearly visible marks of orange paint both at 1.37 metres above ground level and at ground level, at least five (5) days prior to destroying any tree, but not prior to the issuance of a Tree Permit.
  - (2) The Applicant shall ensure that each stump remaining after cutting shall show the paint marking applied by the Certified Tree Marker or Certified Arborist.
- 13.
  - (1) 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 Certified Arborist, to the satisfaction of the Director.
  - (2) The Applicant shall ensure that tree preservation measures and Tree Protection Zone(s) are inspected on a regular basis by a Certified Arborist and a bi-monthly report made to the Director for the duration of the active period of tree removal. The report should confirm that the tree(s) that were to remain on the site were not damaged during construction.
- 14.
  - (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 authorized by the Tree Permit, in a conspicuous place on the property that is adjacent to a public road and visible to all persons, or at such other location designated by the Director.
- 15.
  - (1) A Tree Permit may be revoked by the Director under any of the following circumstances:
    - (a) If it was issued based on mistaken, misleading, false, or incorrect information;
    - (b) If the Owner or Applicant requests, in writing, that it be revoked;
    - (c) If the terms of an agreement entered into pursuant to this By-Law are not complied with; or
    - (d) If an Owner fails to comply with any provision of the Tree Permit or this By-Law.

- (2) Upon notice that a Tree Permit has been revoked, the Owner and/or Applicant shall immediately cease all operations being conducted under the authority of the revoked Tree Permit.

## **Compensation**

16. (1) An Applicant for a Tree Permit will be required to pay financial compensation when replacement trees cannot be accommodated on the property. Financial compensation shall be used by the City for the purpose of general reforestation, at the discretion of the Director.
- (2) The financial compensation amount that is required for the injury or destruction of a tree(s), as a condition of a Tree Permit, or required as a condition of an Order issued under this By-Law will be calculated as follows:
  - (a) The value of any tree that is injured or destroyed will be determined using the International Society of Arboriculture Trunk Formula Method, as amended from time to time, or;
  - (b) The value of any tree that is injured or destroyed as part of an approved plan of subdivision may be determined using the following criteria:
    - (i) Trees in poor condition will be exempted and not used to calculate compensation amounts;
    - (ii) Ash trees will be exempted and not used to calculate compensation amounts;
    - (iii) Trees in moderate condition, regardless of size will be given a one replacement per one tree removed ratio;
    - (iv) Trees in good condition will be given a two (2) replacement trees per one tree removed ratio; and,
    - (v) Trees within proposed road allowances as identified in an existing Secondary Plan or an approved Draft Plan of Subdivision may be exempted and not used to calculate compensation amounts; or
  - (c) The value of any tree that is injured or destroyed will be determined at the Director's discretion in consultation with City Forestry staff and the review of a report prepared by a Certified Arborist.
- (3) The value of the tree(s) injured or destroyed shall be used to determine the number, species and size of the replacement tree(s) that shall be

planted by the Applicant for a Tree Permit. The Owner shall enter into an agreement with the City as set out in Section 17 of this By-Law with respect to replacement trees required as a condition of the Tree Permit.

- (4) The Owner shall enter into an agreement as set out in Section 17 of this By-Law for Commercial Harvesting on lands greater than one hectare, in accordance with Section 2 of this By-Law with respect to replacement trees required as a condition of the Tree Permit.

### **Agreements, Security and Replacement Trees**

17. (1) Owners will be required to enter into an agreement with the City where financial security is required to secure the replacement of trees that are planted as a condition of the Tree Permit. Financial security may be used for the replacement and maintenance of any trees which do not survive for a period of two (2) years.
- (2) The total amount of financial security required shall be determined by a Qualified Person or City Forestry staff and confirmed by the Director. The financial security must be in the form of cash or an irrevocable letter of credit in Canadian currency to cover the costs of replacing and maintaining any trees that die. The financial security must be to the satisfaction of the City and shall be provided to the City prior to the issuance of the Tree Permit. The financial security shall be deposited with the City and shall be held for a minimum of two (2) years after planting.
- (3) Replacement trees are to be maintained and protected in accordance with Good Arboricultural Practices by the Owner for a minimum period of two (2) years after planting.
- (4) It is the responsibility of the Owner to request that the City carry out a final inspection of the trees and to obtain the approval from the Director that the Owner has complied with the conditions of the Tree Permit. Once two (2) years following planting has elapsed and once the conditions have been fully complied with to the satisfaction of the Director, the City shall release the financial security to the Owner.
- (5) Where an Owner who has made an application for the approval of a site plan, a plan of subdivision or a consent under Sections 41, 51 or 53, respectively, of the *Planning Act* and has been issued a Tree Permit, prior to approval, the amount of financial security held by the City as part of the Tree Permit may be reduced, once approval for the *Planning Act* application is granted and financial security required as a condition of the approval has been provided, to the City's satisfaction.

## **Appeals to City Council**

18. (1) An Applicant for a Tree Permit may appeal in writing to the Council of the City if:
  - (a) The City refuses to issue a Tree Permit, within thirty (30) days after the refusal; or,
  - (b) The Applicant objects to a term or condition of the Tree Permit, within thirty (30) days after the issuance of the Tree Permit.
- (2) An Applicant shall submit an appeal in writing, by way of registered mail, to the City Clerk.
- (3) The Director shall prepare and forward a report to Council which will set out the reasons for the refusal of the Tree Permit or reasons for the terms and conditions of the Tree Permit, as the case may be. At the Council meeting in which the report from the Director is presented, the Applicant will be permitted to appear as a delegation.
- (4) On appeal, Council has the same powers as the Director and may make a decision to:
  - (a) Issue a Tree Permit, with or without conditions;
  - (b) Confirm the refusal to issue the Tree Permit; or
  - (c) Affirm, vary, or add any conditions to the Tree Permit.
- (5) The decision made by Council on the appeal of the Tree Permit is final. The Clerk will notify the Applicant in writing of Council's decision within five (5) business days.

## **Enforcement**

19. (1) Council hereby delegates to the Director the authority to enforce this By-Law, to issue Tree Permits under this By-Law and to impose terms and conditions to such permits.
- (2) The Director may appoint from time to time, persons to act as Officers to administer and enforce the provisions of this By-Law.
- (3) An Officer may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not this By-Law, an Order, or a condition of a Tree Permit is being complied with.

- (4) An Officer, in carrying out an inspection, pursuant to Section 19(3) may be accompanied by the Director, and any other person necessary to assist the Officer with his or her enforcement activities.
- (5) An Officer carrying out an inspection pursuant to Section 19(3) may:
  - (a) require the production for inspection of documents or things relevant to the inspection;
  - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
  - (c) require information 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.
- (6) No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this By-Law.

## **Orders**

20. (1) Where the Director is satisfied that a contravention of this By-Law has occurred, the Director may issue an Order to Discontinue 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 of the By-Law occurred, to discontinue the contravening activity.
  - (2) The Order to Discontinue shall set out reasonable particulars of the contravention adequate to identify the contravention, the location of the land on which the contravention occurred and the date by which there must be compliance with the Order.
21. (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 17 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 land on which

the contravention occurred, if applicable, 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 and may draw on any financial security provided by the Owner to complete the work.
22.
  - (1) An Order to Discontinue issued under Section 20, or an Order issued under Section 21, 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 posting of the Order on the property where the contravention took place shall be deemed to be sufficient service of the Order on the person or corporation named in the Order 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 the person named in the Order and shall be deemed to have been served on the fifth (5<sup>th</sup>) day after the Order is mailed.
23.
  - (1) If a person fails to comply with an Order issued pursuant to Section 21 of this By-Law, the City may enter the lands at any reasonable time for the purposes of doing the things described in the Order at the person's expense.
  - (2) If the City enters on the lands and completes the work, the City may recover its costs to complete the work from the person named in the Order by drawing upon the financial security, or 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 fifteen (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 the costs, including interest, constitutes a lien on the land upon the registration in the proper 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 fifteen (15) percent to the date the payment is made in full.

## **Penalties**

- 24. (1) Every person who contravenes a provision of this By-Law is guilty of an offence, and, if the person is a corporation, every director or officer of the corporation who knowingly concurs in the contravention is guilty of an offence, and all such offences are designated as continuing offences.
- (2) Every person who contravenes an Order under Section 20 or Section 21 of this By-Law is guilty of an offence, and all such offences are designated as continuing offences.
- 25. (1) A person who is convicted of an offence under this By-Law is liable, for each day or part of a day that the offence continues, to a maximum of Ten Thousand (\$10,000) Dollars, and the total of all daily fines is not limited to One Hundred (\$100,000) Dollars.
- (2) When a person or corporation is convicted of an offence under 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; and,
  - (b) Requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate, including requiring the person to abide by any term or condition of the relevant Tree Permit, rehabilitate the land, plant or replant trees, or perform any Silviculture treatment necessary to re-establish the trees.

## **Administration**

- 26. (1) The short title of this By-Law is the "Tree By-Law".
- (2) Schedule 'A', shall form part of this By-Law.
- (3) References to any statute or any provision thereof include such statute or provision as amended, revised, re-enacted and/or consolidated from time to time, and any successor statute.

- (4) If any Section or Sections of this By-Law or parts thereof are found by any Court of competent jurisdiction 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 therefrom and continue in full force and effect.
- (5) 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.
- (6) 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.
- (7) Any application received prior to the passage of this By-Law, will be processed in accordance with the provisions of By-Law 2007-170, as amended.

Given all Three Readings and Passed: (Meeting Date)

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**John Bolognone**  
**City Clerk**

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**Bryan Paterson**  
**Mayor**

### **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:

<b>Common English Name</b>	<b>Latin Name</b>
Black Maple	<i>Acer nigrum</i>
Ginkgo	<i>Ginkgo biloba</i>
Kentucky Coffeetree	<i>Gymnocladus dioica</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>

(By-Law Numbers 2007-170; 2008-184)