

~~CITY OF KINGSTON~~

City of Kingston

Ontario

~~BY-LAW NO. 2007-170~~

~~TREE BY-LAW~~

~~————— PASSED: September 4, 2007~~

~~As Amended By By-Law Number 2016-XXX~~

Tree By-Law ~~No:~~

(Updated: August 13, 2009)

By-law No.

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City of Kingston ~~“TREE”~~ BY-LAW No. 2007-170

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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

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Tree By-Law Number 2016-XXX

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

Passed: 2016

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

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

~~AND WHEREAS~~And Whereas trees ~~were~~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; and,
- (i) Reducing the effects of global warming.

~~AND WHEREAS~~And Whereas Council deems it ~~was found~~ to be desirable to ~~prepare~~enact a Tree By-Law for the purposes of:

- (a) Regulating and controlling the removal, maintenance, and protection of trees;
- (b) ~~To support~~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.;

~~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~~ **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~~ **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. SO 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 and Forestry program for marking trees.

(7) "City" means ~~the~~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) "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)~~(9) "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)~~(10) "Destroy" means any act that renders, or which is likely to render, ~~the~~a tree(s) 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 ~~& Development for the City of Kingston~~, Building and Licensing Services or any successor position, and includes ~~their designate~~his or her Designate.

(13) "Distinctive Tree" means a healthy tree that is considered by the Director to be an uncommon species ~~to~~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) "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.~~

(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.

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- (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.
- ~~(16)~~(18) _____ "Forest Management Plan" means a document, including prescriptions for ~~Silviculture~~silviculture and ecological conservation, prepared by a Registered Professional Forester on behalf of ~~the~~an Owner for the purpose of managing ~~the~~ natural and forestry resources in accordance with Good Forestry Practices and environmental objectives.
- ~~(17)~~(19) _____ "Good Arboricultural Practice" means the proper planting and care of trees in accordance with the standards set by the International Society of Arboriculture.
- ~~(18)~~(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.

~~(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)~~(21) "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.~~

(22) "Landscape Architect" means an individual with certification in landscape architecture, who develops land for human use and enjoyment through effective placement of structures, vehicular and pedestrian ways and plantings.

(23) "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.

(24) "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.

(25) "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

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identified due to single, multiple or successive development or site alteration activities.

~~(24)~~(26) "Normal Farm Practice" means ~~any activity undertaken in accordance with a practice, as defined in the Farming and Food Production Protection Act that is part of an Agricultural Operation, and, 1998, SO 1998, c. 1, that~~ is conducted in a manner consistent with proper and ~~accepted~~acceptable customs and standards as established and followed by similar ~~Agricultural Operations~~agricultural operations under similar circumstances, ~~and may make; or makes~~ use of innovative technology in a manner consistent with proper advanced farm management ~~techniques~~practices.

~~(25)~~(27) "Officer" means an individual appointed by the ~~Corporation of the City of Kingston~~City to enforce the provisions of this By-Law, and includes a municipal by-law enforcement officer.

(28) "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.

~~(26)~~(29) "Owner" means the person(s) or corporation(s) registered on the title of the land in the Land 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)~~(30) "Personal Use" means the utilization of a tree(s), trees or tree sections destroyed or injured by an Owner on ~~the~~his or her own land and collected solely for ~~the~~his or her own purpose and use without the sale, exchange, or other disposition of the tree(s) or tree sections to other parties.

~~(29)~~(31) "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)~~(32) _____ “Qualified ~~Forestry Consultant~~Person” means ~~a Certified Arborist, a Certified Tree Marker, an individual with current knowledge in the field of biology, ecology or a Registered Professional Forester~~other specialty as required by the specific circumstances.

~~(31)~~(33) _____ “Registered Professional Forester” means a member of the Ontario Professional Foresters Association as defined in the *Professional Foresters Act, 2000*, ~~S.O.~~SO 2000, c. 18.

~~(32)~~(34) _____ “Rural Area” means the area defined as *Rural* in the ~~applicable~~ Official Plan.

~~(33)~~(35) _____ “Silviculture” means the theory and practice of controlling forest establishment, composition, growth, and quality ~~of forests~~ 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.

~~(34)~~(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.

~~(35)~~(38) _____ “Tree Permit” means the written authorization from the Director to destroy or injure trees, with or without conditions.

~~(36)~~(39) _____ “Tree Preservation and Protection Plan” means a plan prepared by a ~~Qualified Forestry Consultant~~Certified Arborist, which includes measures required for the protection of trees that eliminate or mitigate the potential risk of tree damage.

~~(37)~~(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.

~~(38)~~(41) _____ “Urban Area” means the area within the Urban Boundary as defined as Urban in the ~~applicable~~ Official Plan.

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(42) "Woodlands" means trees defined in the *Forestry Act* that are more than 1 hectare in area. This includes both Contributory and Significant Woodlands.

(a) "Contributory Woodlands" means woodlands as defined in the Official Plan.

(b) "Significant Woodlands" means woodlands as defined in the 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:~~

2. This By-Law shall apply to:

~~a)(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; 2007, SO 2007, c. 6;

~~b)(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 SC 2002, c. 29;

~~c)(c)~~ All trees Any tree 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)(d)~~ All trees that are fifteen centimetres (15 cm), or greater, in diameter at breast height ~~(DBH);~~ ;

~~e) — All trees located on Municipal Property;~~

(e) Any removal or injury to trees on property owned by the City that is undertaken by a private landowner;

~~f)(f)~~ All trees located in areas designated as Environmental Protection Areas (EPA) or as Open Space in ~~a municipal official plan;~~ the Official Plan;

~~g)(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 within Contributory Woodlands and/or Significant Woodlands;

(i) 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.*

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

SPECIFIC EXEMPTIONS

~~3.(j) Trees may be injured or destroyed, without applying for a A Tree Permit, where: 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.~~

(k) Notwithstanding the above, all trees on a residential lot that are located within Contributory and/or Significant Woodlands; and,

(l) All trees on a residential lot located within an Environmental Protection Area.

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 Section 7 of 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 section 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 licence 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;*

~~(a)(h)~~ Pruning ~~is~~ necessary to maintain the health and condition of the tree, provided the ~~injury~~pruning is in accordance with Good Arboricultural Practice;

~~(b)(i)~~ ~~It is necessary to remove a hazardous,~~Removal of a dead, diseased, or severely injured tree~~(s),~~ or a portion of such a tree~~(s),~~ 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~~;~~

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

~~(j)~~ ~~It is necessary to remove~~Destruction or injury of trees as part of
Emergency Work;

~~(c)(k)~~ Removal of trees that are causing, or are likely to cause, structural damage to load-bearing walls or other structures;

~~(d)~~ ~~The tree~~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~~ a residential lot that ~~is~~was 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~~By-law;

~~(l)~~ ~~The~~ ~~unless the~~ tree(s) ~~are~~is located within an Environmental
Protection Area, Significant Woodlands or Contributory
Woodlands;

~~(f)(m)~~ Tree(s) 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;~~

- ~~(j)(n)~~ The injury or destruction is Injury or destruction 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)(o)~~ The injury 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)(p)~~ The destruction is Destruction in accordance with Good Arboricultural Practices and Good Forestry Practices ~~and, but~~ only where the trees are for ~~a landowner's~~ an Owner's Personal Use;
- ~~(l)(q)~~ The Destruction of trees ~~that are destroyed are~~ located within a cultivated orchard, tree farm, or ~~plant nursery that~~ Plant Nursery and are being actively managed and harvested for the purposes for which the trees were planted;
- ~~(m)(r)~~ The injury Injury or destruction ~~occurs~~ on land ~~covered by~~ 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)~~ The injury Injury or destruction ~~is~~ of a tree(s) that are protected under the Endangered Species Act (ESA) (e.g., butternut trees) in 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 a Normal Farm Practice conducted by an Agricultural Operation for its own ~~Agricultural~~agricultural purposes, ~~provided that the trees are situated outside of areas designated as Environmental.~~ Whether a farm practice is a Normal Farm Practice shall be determined in accordance with the provisions of the Farming and Food Production Protection Areas (EPA) in a municipal official Act, including final arbitration by the Farm Practices Protection Board.

PLANNING AND DEVELOPMENT PROCESS

~~(n) An Owner who has made an application for the approval of a site 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 a plan of subdivision 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 consent 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 34section 41, 51 or 53, respectively, of the Planning Act.~~

STATUTORY LIMITATIONS & EXEMPTIONS

~~4.6. Trees may be injured or destroyed, without applying, prior to approval, make an application for a Tree Permit, pursuant to the following legislative provisions subject to:~~

~~(a) Activities undertaken with any rights or powers under Provincial or Federal legislation;~~

~~(b) Activities or matters undertaken by a municipality, a local board Provision 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,~~

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- ~~(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

- ~~(a) 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 financial securities in accordance with the terms and conditions of the Tree Permit. Section 17; and~~
- ~~(b) (2) Such other terms and conditions as determined by the Director.~~

TREE PERMITS

Permit Application Process

- ~~7. 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 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 an Environmental Impact Assessment, if required by the Director, in consultation with the Cataraqui Region Conservation Authority, if the trees are located within a designated Environmental Protection Area, Contributory Woodlands or Significant Woodland. 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) 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.

Where 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 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)

(d) ~~(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 prepared by a Certified Arborist setting out the reasons for the proposed destruction of the tree(s) and the preservation of 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.

(e) ~~(6)~~ A Tree Permit Application shall only be considered complete when accompanied by the information required pursuant to this Section 6. herein and the fee required in accordance with Schedule 'A' of By-Law No. 2005-10, "A By-Law to Establish the City's Fees and Charges to be Collected by The Corporation of the City of Kingston", as amended By-Law in place at the time of the application.

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

REVIEW AND DISPOSITION OF A TREE PERMIT APPLICATION

7. ~~(1)~~ The Director shall

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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~~Issue a Tree Permit;
- (b) ~~issue~~Issue a Tree Permit with conditions; or,
- (c) Refuse to issue a Tree Permit.

~~(c)~~9. The Director may 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.~~where:

TERM OF A TREE PERMIT

- (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 to the land on which the tree is located has been submitted to the City, but has not received final approval;
- (e) The tree(s) is an endangered or threatened species as defined in Ontario's *Endangered Species Act, 2007* and the *Species at Risk Act, SC 2002, c. 29*;
- (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

8. 10. (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~~ be renewed for a period of up to two (2) additional years, ~~provided that the~~ upon written request is filed from the Owner at least 30 days prior to its expiry.
- (4) ~~The,~~ provided that 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~~ is satisfied that the permit remains in effect for more than three (3) years from the original date of its issuance ~~there are reasonable grounds for the renewal.~~
- (6) No ~~permit~~ Tree Permit shall be renewed where the Owner or Applicant is in breach of any of the ~~terms~~ 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.

TERMS AND CONDITIONS OF A TREE PERMIT

Permit Conditions

9. 11. (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~~ are reasonable, which may include, but are not restricted to:
- a) ~~Any conditions~~ Requirements that injuring or destruction is carried out in accordance with Good Arboricultural Practice, established Silviculture, and/or Good Forestry Practice;
- b) ~~Any conditions~~ Conditions recommended by a ~~Qualified Forestry Consultant;~~ Certified Arborist;

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~~(c)~~ The measures Conditions and recommendations in an Environmental Impact Assessment;

~~(c)~~ (d) Measures to be implemented to protect ~~the retained~~ remaining trees during construction, if applicable;

~~(d)~~ (e) The A 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)~~ (f) The creation of Tree Protection Zones ~~and conditions associated with these zones;~~ ;

~~(f)~~ (g) The manner and timing of the destruction or injury to the tree(s);

~~(g)~~ (h) A requirement to ~~plant~~ submit a Landscaping, Replacement and Replanting Plan which indicates the species, size, number and location of the replacement trees ~~in accordance with Section 9(2) of this By-Law; and;~~ ;

~~(h)~~ (i) A requirement to provide compensation, in accordance with Section ~~10~~ 16 of this By-Law, ; for ~~Municipal Trees~~ trees injured or destroyed ;

~~(2) — Where a Tree Permit requires the planting of replacement trees, the Director may impose the following provisions related~~ A requirement ~~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:
 - ~~(i) (a) To enter into an agreement regarding the conditions set out in Section 9 of this By-Law with the City which form part of the Tree Permit, including sets out the Owner's obligations to replace trees and any conditions imposed in accordance with Section 10 of this By-Law; and,~~
 - ~~(b) To register the agreement on the title A requirement to the lands affected by the Tree Permit.~~~~

COMPENSATION

- ~~10.(k) (1) The Director shall calculate the compensation provide financial security for the injury or destruction performance 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 the Owner's obligations under this By-Law as follows: the agreement.~~
- ~~(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~~

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~~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.~~ 12. (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~~ Certified Tree Marker or Certified Arborist with clearly visible marks of orange paint both at 1.37 metres in 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~~ The Applicant shall ensure that each stump remaining after cutting shall show the paint marking applied by the ~~Qualified Forestry Consultant.~~ 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 ~~Qualified Forestry Consultant~~ Certified Arborist, to the satisfaction of the Director.
- ~~14.~~ (2) The Applicant shall ensure that tree preservation measures and Tree Protection Zone(s) ~~shall be~~ inspected on a regular basis by a ~~Qualified Forestry Consultant~~ Certified Arborist and a bi-monthly report made to the Director for the duration of the active period of ~~construction.~~ tree removal.

TREE PERMIT POSTING

- ~~12-14.~~ (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 ~~allowed~~ authorized 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

~~13-15.~~ (1)- A Tree Permit may be revoked by the Director under any of the following circumstances:

(a) ~~(a)~~ If it was issued based on mistaken, misleading, false, or incorrect information;

~~(b) If it was issued in error;~~

~~(c)~~ (b) If the Owner or Applicant requests, in writing, that it be revoked;

~~(d)~~ (c) If the terms of an ~~Agreement under~~ agreement entered into pursuant to this By-Law are not complied with; or,

~~(e)~~ (d) If an Owner fails to comply with any provision of the Tree Permit or this By-Law.

(2) ~~When~~ Upon notice that a Tree Permit ~~is~~ 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) Financial compensation will be required when replacement trees cannot be accommodated on the property. Financial compensation shall be used by the Municipality for the purpose of general reforestation, at the discretion of the Director.

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 may 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 may be determined using the following criteria, which apply to new subdivision development.

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- (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.
- (c) 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 permit holder or the person responsible for the injury or destruction.
- (2) 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 which form part of the Tree Permit.
- (3) 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 which form part of the Tree Permit.

Agreements and Securities

17. (1) Owners will be required to enter into an agreement with the City where financial securities are required to secure the replacement of trees that are planted as a condition of the Tree Permit. Financial securities 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 Landscape Architect or City Forestry staff and confirmed by the Director.

The securities 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.

APPEALS TO CITY COUNCIL

18. ~~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 whereif~~:

(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 ~~in~~of the Tree Permit, within thirty (30) days after the issuance of the Tree Permit.

(2) (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, ~~the~~ Council has the same powers as the Director ~~under this By-Law~~, and may make a decision to:

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- ~~(a)~~ Confirm the refusal to issue the Tree Permit;
- ~~(b)~~(a) Issue a Tree Permit, with or without conditions; ~~or~~;
- (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

~~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.~~

19. An Officer (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.

~~(2)~~(3) An Officer may enter on land at any reasonable time, enter and inspect any land 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, provided that the power of entry does not allow the Officer to enter any building.

~~(3)~~(4) An Officer may, 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 ~~the~~ 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.

~~(4)(6)~~ No person shall hinder or obstruct or interfere with the Director, or an Officer, in the discharge of their duties under this By-Law, and, or attempt to hinder or obstruct any person who ~~so obstructs the Director or an Officer is guilty of an offence pursuant to~~ is exercising a power or performing a duty under this By-Law.

ORDERS

~~20.~~ ~~16.~~ (1) Where the Director is satisfied that a contravention of this By-Law has occurred, the Director may issue a ~~Stop Work~~ An Order to Discontinue requiring the person ~~that~~who contravened the By-Law, or ~~that~~who caused or permitted the contravention, or the Owner or occupier of the land on which the contravention of the By-Law, ~~to stop any injury or destruction occurred,~~ to the tree(s) discontinue the contravening activity.

(2) The ~~Stop Work~~ 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.~~ ~~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~~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 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 and may draw on any financial security provided by the Owner to complete the work.

~~22.~~ ~~18.~~ (1) A ~~Stop Work~~An Order to Discontinue issued under Section ~~16~~20, or an Order issued under Section ~~17~~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 ~~placing~~posting of the Order on the ~~affected lands~~property where the contravention took place shall be deemed to be sufficient service of the Order on the person or corporation ~~to whom~~named in 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: the person named in the Order and shall be deemed to have been served on the fifth day after the Order is mailed.

~~(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.~~

23. ~~19.~~ (1) ~~Where~~if a person fails to comply with an Order issued pursuant to Section ~~1721~~ of this By-Law ~~and, 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 ~~shall be entitled to~~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 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.

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- (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.—

PENALTIES

(1) ~~Any~~Every person who ~~breaches any~~contravenes a 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.

24. (2) Any officer or director of, and, if the person is a corporation, every director or officer of the 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 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 Bylaw 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 \$10,000, and the total of all daily fines is not limited to \$100,000.

(2) When a ~~PENALTIES~~

~~21. (1) If any~~ person or corporation is convicted of an offence ~~for contravening~~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) ~~To~~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, including planting replacementplant or replant trees, ~~applying accepted silvicultural treatments~~or perform any silviculture treatment 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):~~

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- ~~(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

- ~~22-26.~~ (1) The short title of this By-Law is the "Tree By-Law".
- (2) ~~Schedules~~ Schedule 'A', 'B', and 'C' 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 ~~there from~~therefrom and continue in full force and effect ~~unless and until similarly found illegal.~~
- ~~(4)~~(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.
- ~~(5)~~(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.

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~~Any application received prior to the passage of this By-Law.
- ~~(2) Any Tree Permits and/or conditions issued,~~ would be processed 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.~~

Law Number 2016-XXX (Tree)

(7) the provisions of By-Law 2007-170.

SCHEDULE 'A'

- LIST OF DISTINCTIVE TREE SPECIES

The following is a list of Distinctive Tree ~~Species~~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)~~

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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) _____ in²/cm²/TA_R
7. **Replacement Tree Cost** _____ \$
(see Standard Subdivision Agreement Provisions)
8. **Installation Cost** _____ \$
9. **Installed Tree Cost (#7 + #8)** _____ \$
10. **Unit Tree Cost** _____ \$ per in²/cm²
(see Standard Subdivision Agreement Provisions)

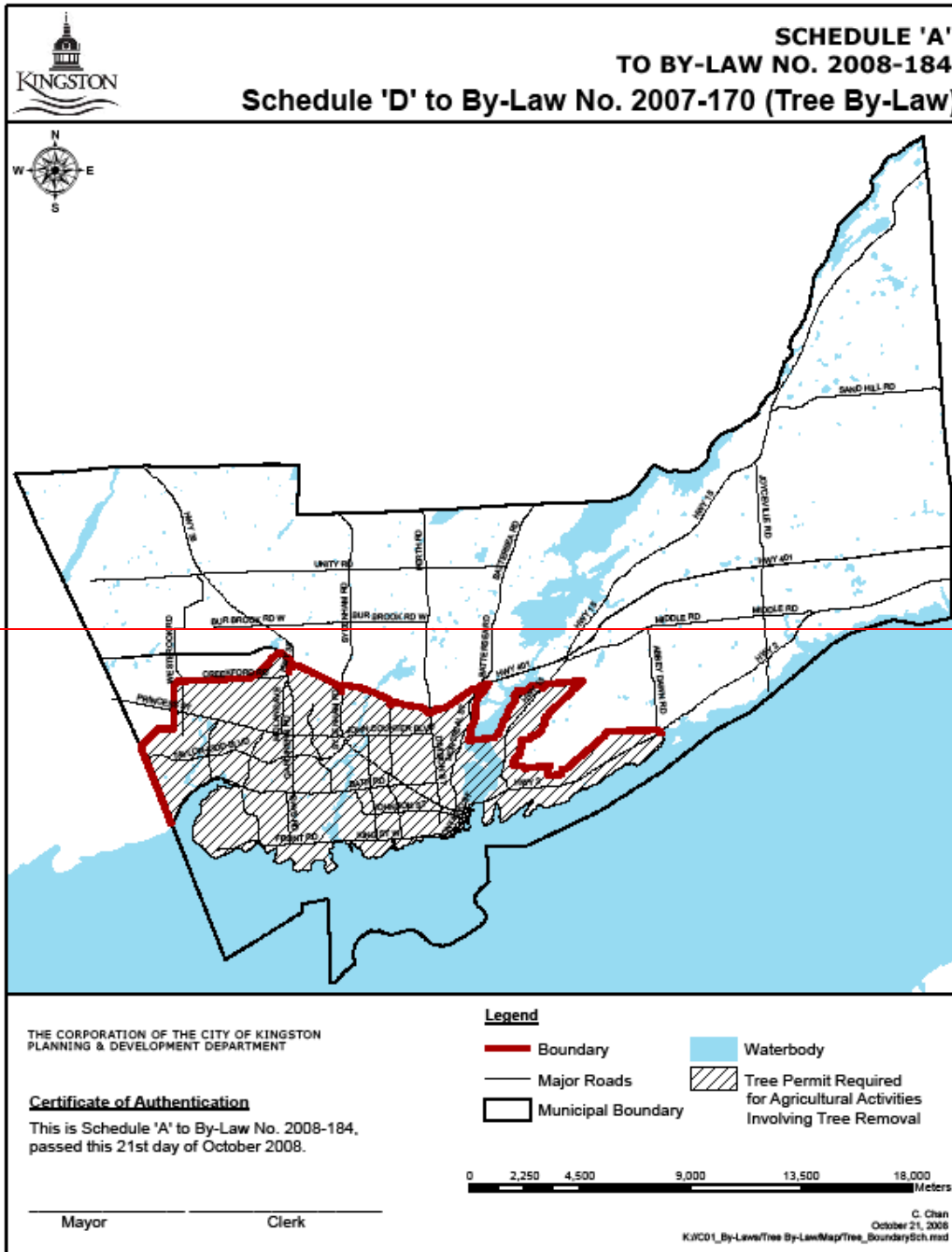
Calculations using Field and Standard Subdivision Agreement Information

11. **Appraised Trunk Area:** _____
TA_A or ATA_A; use Tables 4.4-4.7)
or c² (#3) _____ x 0.08
or d² (#3) _____ x 0.785] = _____ in²/cm²
12. **Appraised Tree Trunk Increase (TA_{INCR})** =
TA_A or ATA_A _____ in²/cm² (#11) - TA_R _____ in²/cm² (#6) = _____ in²/cm²
13. **Basic Tree Cost** = TA_{INCR} (#12) _____ in²/cm² x **Unit Tree Cost** (#10) \$
per in²/cm² = **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)



Law Number XXX (Tree)

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