

THE CORPORATION OF THE CITY OF GUELPH

By-law Number

A by-law to regulate the destruction or injuring of trees.

WHEREAS sections 9 and 10 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended or replaced from time to time, provide that a municipality has broad authority, including the authority to pass by-laws respecting the economic, social and environmental well-being of the municipality;

AND WHEREAS section 135 of the *Municipal Act* provides that a local municipality may regulate the destruction or injuring of trees;

AND WHEREAS Part XIV (Enforcement) of the *Municipal Act* provides methods for a municipality to enforce its by-laws;

AND WHEREAS trees within the City are recognized for the economic, social and environmental benefits they provide such as increased aesthetic and property values, shade, contributions to physical and psychological well-being, maintenance and enhancement of water quality, prevention of soil erosion and water run-off, wildlife habitat, local climate moderation and improved air quality.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF GUELPH ENACTS AS FOLLOWS:

Part I – Definitions

1. As used in this by-law, the following terms shall have the meanings indicated:

“**Applicant**” means an Owner of a tree who, pursuant to this by-law, applies for a Permit;

“**Application**” means an application pursuant to this by-law for a Permit;

“**Application Fee**” means the fee, in effect from time to time, required in connection with the submission of an Application;

“**Arborist**” means an expert in the care and maintenance of trees and includes a certified arborist qualified by the International Society of Arboriculture, a consulting arborist registered with the American Society of Consulting Arborists, a registered professional forester as defined in the *Professional Foresters Act, 2000*, S.O. 2000, c. 18, as amended

or replaced from time to time, or a person with other similar qualifications as approved by an Inspector;

“**Certificate of Exemption**” means a certificate by an Owner, pursuant to this by-law, that one or more exemptions from the requirement for a Permit apply;

“**City**” means The Corporation of the City of Guelph;

“**Council**” means the council of the City;

“**DBH**” means diameter of a tree, outside the bark, at breast height, where breast height is measured from the existing grade of the ground adjoining the base of the trunk:

- (i) for a trunk rising straight and vertically from ground with a horizontal grade, 1.4 metres above that grade;
- (ii) for a trunk rising straight and non-vertically from ground with a horizontal grade, 1.4 metres along the centre axis of the trunk from that grade;
- (iii) for a trunk rising straight and vertically from ground with a non-horizontal grade, 1.4 metres along the centre axis of the trunk from that grade; and
- (iv) for a trunk rising unstraight, 1.4 metres along the centre axis of the trunk from that grade;

and where diameter is:

- (i) for a tree with a single trunk, the diameter of that single trunk;
- (ii) for a tree with two or three trunks, the total diameter of those two or tree trunks; and
- (iii) for a tree with more than three trunks, the total diameter of the three trunks with the greatest diameters;

“**Destroy**” means remove, ruin, uproot or kill a tree, whether by accident or by design, and whether by cutting, burning, girdling, interfering with its water supply, applying chemicals, puncturing, or compacting, regrading or resurfacing within its drip line, but does not include Maintenance Pruning, and “**Destruction**” has the corresponding meaning;

“**Entry By-law**” means the City’s Power of Entry By-law, being By-law Number (2009)-18776, as amended or replaced from time to time;

“**Hoarding**” means a fence or similar structure used to enclose land in order to protect trees or other vegetation;

“**Injure**” means cause, whether by accident or by design, lasting damage or harm to a tree, which has or is likely to have the effect of inhibiting or terminating its growth, whether by cutting, burning, girdling, interfering with its water supply, applying chemicals, puncturing, or compacting, regrading or resurfacing within its drip line, but does not include Maintenance Pruning, and “**Injury**” has the corresponding meaning;

“**Inspector**” means the City’s Director of Community Design and Development Services, the City’s Director of Operations or any person designated by either of them or by the City to enforce this by-law;

“**Institution**” means an Owner of a large parcel of land used for cemetery, university, golf course or similar institutional or commercial uses;

“**Landscaping, Replanting and Replacement Plan**” means a plan which identifies the location, species and size of existing trees, trees to be planted or replaced and other landscaping elements on land and provides details regarding planting methodology and timing;

“**Lot**” means a parcel of land comprising all contiguous land owned by the same registered Owner;

“**Maintenance Pruning**” means the pruning or removal of tree branches in accordance with good arboricultural practice, limited to the appropriate removal of no more than one-third of the live branches of the tree, in order to maintain the health of the tree;

“**Owner**” means the person having any right, title, interest or equity in the land where a tree is located, or any such person’s authorized representative; a boundary tree may have multiple Owners; and

“**Permit**” means a permit to Destroy or Injure a tree, issued pursuant to this by-law.

Part II – Protection of Regulated Trees

2. (1) For the purposes of this by-law, a “**Regulated Tree**” means a specimen of any species of deciduous or coniferous growing woody perennial plant, supported by a single root system, which has reached, could reach or could have reached a height of at least 4.5 metres from the ground at physiological maturity, and:

- (i) if located on a Lot less than or equal to 0.2 hectares (0.5 acres) in size, has a DBH of at least 20 cm.; and
- (ii) if located on a Lot larger than 0.2 hectares (0.5 acres) in size, has a DBH of at least 10 cm.;

provided that, in a case where a tree has been Destroyed or Injured and part or all of the remaining stump or stumps is or are too short for the DBH to be measured, the relevant DBH shall be extrapolated from the remaining trunk or trunks.

(2) Except as provided in this by-law, no person shall, within the geographic limits of the City, Destroy or Injure, or cause or permit the Destruction of or Injury to, any Regulated Tree.

(3) Notwithstanding subsection (2) of this section 2, a person may Destroy or Injure, or cause or permit the Destruction of or Injury to, a Regulated Tree in compliance with a Permit.

(4) If there is doubt as to whether a specific tree is a Regulated Tree or not, the Owner of the tree may request a determination and an Inspector may provide a written determination as to whether, on the date of the determination, the tree is a Regulated Tree or not.

Part III – Statutory non-application of the by-law

3. This by-law does not apply where there is a conflict with Provincial legislation. Therefore this by-law does not apply:

- (a) to the activities or matters or the Destruction or Injuring of trees described in subsection 135(12) of the *Municipal Act*;
- (b) to restrict the Destruction and Injuring of trees which constitute a normal farm practice carried on as part of an agricultural operation, as so determined by the Normal Farm Practices Protection Board, pursuant to the *Farming and Food Production Protection Act, 1998*, S.O. 1998, c. 1, as amended or replaced from time to time; or
- (c) to the Destruction or Injuring of trees pursuant to a forestry development agreement pursuant to, or deemed to be pursuant to, the *Forestry Act*, R.S.O. 1990, c. F.26, as amended or replaced from time to time, or measures to prevent, retard, suppress, eradicate or destroy an infestation by a forest tree pest, taken by an officer pursuant to the said Act.

Part IV – Permit exemptions

4. (1) Subject to subsections (2) and (3) of this section 4, the Destruction or Injury of a Regulated Tree is exempt from the requirement for a Permit if the Regulated Tree is:

- (a) A tree having no living tissue, having 70% or more of its crown dead, or being infected by a lethal pathogen;
- (b) A tree which is imminently hazardous to people or property;
- (c) A tree certified by a building inspector or engineer as causing structural damage to a drain, load-bearing structure or roof structure;
- (d) A specimen of *Rhamnus cathartica* (Common buckthorn), *Rhamnus frangula* (European or Glossy buckthorn), *Alnus glutinosa* (Black alder), *Elaeagnus umbellata* (Autumn olive) or *Morus alba* (White mulberry);
- (e) A tree located on a rooftop or elevated podium, or in an interior courtyard or solarium, and likely to cause damage;

- (f) A tree growing in contaminated soil and, by its presence, preventing remediation of the contaminated soil, where proof of remediation efforts is provided to the City;
- (g) A tree intended to be managed or clipped on an annual or biannual basis, including, but not limited to, foundation shrubbery, clipped hedges and fruit trees that produce fruit for human consumption;
- (h) A tree which is part of:
 - (i) a tree nursery business where trees are planted, cultivated and harvested for the purpose of live tree sales;
 - (ii) a Christmas tree plantation business where coniferous trees are planted, cultivated, maintained and harvested for Christmas celebration purposes; or
 - (iii) a cultivated orchard business where fruit or nut trees are grown and maintained specifically for the harvesting of their fruit or nuts; or
- (i) A tree at an Institution.

(2) An Owner may claim one or more exemptions set out in subsection 1 of this section 4 and may, without a Permit, Destroy or Injure, or cause or permit the Destruction or Injury of, the Owner's exempted Regulated Tree or Trees, provided that:

- (a) The Owner submits to an Inspector, at least five (5) business days before such planned Destruction or Injury, a Certificate of Exemption; and
- (b) The Inspector does not object to the Certificate of Exemption within the five (5) business days.

(3) The Certificate of Exemption shall contain the following information relating to each Regulated Tree proposed for Destruction or Injury:

- (a) The name and contact information of the Owner;
- (b) A location map;
- (c) A photograph;
- (d) The number of Regulated Trees;
- (e) The size of the lot upon which the Regulated Tree or Trees is or are located;
- (f) The DBH;
- (g) The species;
- (h) The health (for example, on a scale of good, fair or poor) and whether tree disease is present;
- (i) The canopy structure;
- (j) The reason for the Destruction or Injury; and
- (k) The exemption or exemptions set out in subsection (1) of this section 4 which the Owner certifies is or are applicable.

(4) If an Inspector objects to a Certificate of Exemption within the five (5) business days provided, then the Owner is not permitted to Destroy or Injure, or cause or permit the Destruction or Injury of, the Regulated Tree or Trees. However, the Owner may apply for a Permit pursuant to this by-law.

Part V – Application for Permit

5. (1) If an Owner wishes to Destroy or Injure one or more of the Owner's Regulated Trees or wishes to undertake an activity which might Destroy or Injure one or more of the Owner's Regulated Trees, and if none of the exemptions set out in this by-law are applicable, then the Owner shall submit to an Inspector the Application Fee and an Application containing the following information in respect of each such Regulated Tree:

- (a) the name and contact information of the Applicant;
- (b) the names and contact information, and written permission, of all other Owners;
- (c) a plan (or, where applicable, a plan of survey) and photograph, showing the location, species, size and condition of each Regulated Tree;
- (d) the purpose for which the Permit is sought and the nature of the proposed or possible Destruction or Injuring;
- (e) where appropriate, a written evaluation by an Arborist of the condition of the Regulated Tree;
- (f) where appropriate, a tree protection plan identifying the location, species and size of trees on the land and providing tree protection measures, including barriers and Hoarding, to be implemented to protect trees that are to be retained; and
- (g) where appropriate, Landscaping, Replanting and Replacement Plans.

(2) No person shall provide false or misleading information on or in support of an Application.

(3) Submission of an Application shall constitute the granting of permission for the City to enter on the Applicant's land for purposes of this by-law.

(4) When an Applicant has paid the Application Fee and provided such other information and material as required by an Inspector, the Inspector shall provide the Applicant with a written notice which the Applicant shall post on the land where the Regulated Tree or Trees is or are located. The notice shall be posted in such a manner and form, subject to the satisfaction of the Inspector, that it is visible and legible to passers-by and shall remain posted until the Destruction, Injury or activity is completed.

Part VI – Issuance of Permits

6. In deciding whether or not to issue a Permit, an Inspector shall consider:

- (a) the species of each Regulated Tree, and particularly whether it is native to the area, is considered regionally or locally significant or is an endangered species or threatened species as defined in the *Endangered Species Act, 2007*, S.O. 2007, c. 6, as amended or replaced from time to time, or in the *Species at Risk Act*, S.C. 2002, c. 29, as amended or replaced from time to time;
- (b) the condition of the Regulated Tree;

- (c) the location of the Regulated Tree;
- (d) the protection and preservation of ecological systems and their functions, including the protection and preservation of native flora and fauna;
- (e) erosion, flood control and sedimentation of watercourses;
- (f) the submissions of such persons or agencies as the Inspector may consider necessary to confer with for the proper review of the Application;
- (g) the presence, within the Regulated Tree, of breeding birds as contemplated in the *Migratory Birds Convention Act, 1994*, S.C. 1994, c. 22, as amended or replaced from time to time;
- (h) the City's Official Plan and related tree protection and replacement guidelines as may be in place from time to time; and
- (i) any other legislation that may apply or approvals that may be required.

7. In issuing a Permit, the Inspector may make the Permit subject to such conditions as the Inspector may consider necessary, including (but not restricted to) any one or more of the following requirements:

- (a) that the Destruction or Injury occurs in a specified manner;
- (b) that one or more replacement trees with DBH equal to or greater than the DBH of the Destroyed tree or trees be planted and maintained to the satisfaction of the Inspector in accordance with Landscaping, Replanting and Replacement Plans approved by the Inspector;
- (c) that if replacement planting is not required (for example because it is not achievable on the subject land), it be substituted by a payment of cash in lieu in an amount equal to 120% of the estimated cost of replacing the tree or trees with a tree or trees with DBH equal to the DBH of the Destroyed tree or trees, and of maintaining the tree or trees for a period of two years;
- (d) that if the land is not subject to site plan approval, the Applicant provides a written undertaking, release and security to ensure that replacement planting is carried out and maintained in accordance with Landscaping, Replanting and Replacement Plans approved by the Inspector;
- (e) that the Destruction or Injuring only be carried out by or under the supervision of an Arborist;
- (f) that the tree or trees to be retained be protected in accordance with good arboricultural practices; and
- (g) that specified measures be implemented to mitigate the direct and indirect effects of the Destruction or Injuring on other nearby trees, land, water bodies or natural areas.

8. (1) In issuing a Permit, the Inspector shall issue the Permit to the Applicant and provide copies of the Permit to any other Owners.

(2) Following issuance of a Permit, the Applicant shall immediately post a copy of it in a conspicuous place on the land where the Regulated Tree is located, and shall ensure that it remains so posted until the Destruction, Injuring or other related activities are complete.

(3) A Permit is and remains the property of the City and may not be transferred except with the approval of an Inspector.

(4) An Inspector may revoke a Permit if it was issued based on false or misleading information or if the Applicant fails to comply with any condition attached to the Permit or any provision of this by-law.

(5) A Permit shall expire ninety (90) days after its issuance, unless, at least thirty (30) days before that expiry, the Applicant applies to the Inspector and before that expiry the Inspector grants a onetime extension of ninety (90) days.

9. (1) If an Inspector refuses to issue a Permit, or if an Applicant objects to a condition attached to a Permit by an Inspector, the Applicant may appeal to Council through the City's Community Development and Environmental Services Committee. Such appeal shall be made by written notice received by the Inspector within seven (7) days after the date of the refusal or the issuance of the conditional Permit, as the case may be.

(2) Upon considering the appeal, Council may recommend that the Inspector refuse the Permit, issue the Permit or issue the Permit upon such conditions as Council considers appropriate.

Part VII – Entry and inspection

10. (1) The Entry By-law shall apply to activities under this by-law and for purposes of the Entry By-law, each Inspector shall be interpreted as an "Officer" and a Permit shall be interpreted as a "licence".

(2) For the purposes of this by-law, the City may enter upon land at any reasonable time.

Part VIII – Orders and remedial actions

11. If an Inspector confirms, after making an inspection, that there has been a contravention of this by-law (including of an order or a condition of a Permit made pursuant to this by-law) then he or she may make an order requiring the person who contravened it (including the Owner or, if applicable, a contractor of the Owner) to discontinue the activity and/or to do work to correct the contravention at the Owner's expense.

12. (1) If a person is required, under an order pursuant to this by-law, to do a matter or thing, then in default of it being done by the person so required to do it, the matter or thing may be done at the person's expense under the direction of an Inspector.

(2) The City may recover the costs of doing a matter or thing under subsection (1) of this section 12, from the person required to do it, by adding the costs to the tax roll for the subject land and collecting them in the same manner as property taxes.

(3) The amount of the costs mentioned in subsection (2) of this section 12, including interest, shall constitute a lien on the subject land upon the registration, in the proper land registry office, of a notice of lien.

(4) The lien mentioned in subsection (3) of this section 12 shall be in respect of all costs that are payable at the time the notice is registered plus interest accrued to the date payment is made.

13. (1) An order under this by-law may be served:

- (a) personally, in which case it shall be deemed to have been served on the date of that personal service;
- (b) by email, in which case it shall be deemed to have been served on the date of that email;
- (c) by facsimile transmission, in which case it shall be deemed to have been served on the date of that facsimile transmission;
- (d) by sending it by prepaid ordinary mail to the last known address of the person being served, in which case it shall be deemed to have been served on the fifth day after the date it was mailed; or
- (e) by placing a placard containing the provisions of the order in a conspicuous place on the land where the Regulated Tree or Trees are or were located, in which case the order shall be deemed to have been served on the date of such placement, and such placement shall constitute sufficient service of the order on the Owner and any other person to whom it may be directed.

(2) An order shall be served upon the Owner and upon, if known, any other person responsible for the Destruction or Injury of the Regulated Tree or Trees.

(3) No person shall remove or deface the placard provided for in subsection (1) of this section 13, except with the prior consent of an Inspector.

Part IX – Enforcement

14. (1) Any person who contravenes or who causes or permits a contravention of any provision of this by-law, an order issued under this by-law or a condition of a Permit, is guilty of an offence.

(2) Any director or officer of a corporation who concurs in the contravention of this by-law by the corporation is guilty of an offence.

(3) If a contravention of any provision of this by-law, an order issued under this by-law or a condition of a Permit occurs, the contravention is presumed to have been committed by the Owner of the land on which the contravention occurred unless otherwise proven by the Owner.

15. (1) All contraventions of any provision of this by-law, any order issued under this by-law or any condition of a Permit are designated as multiple offences and continuing offences, pursuant to subsection 429(2) of the *Municipal Act*. A multiple offence is an offence in respect of two or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of this by-law and, for greater certainty, when multiple trees are destroyed or injured, the destruction or injury of each tree is a separate offence.

(2) If an order or Permit issued under this by-law has not been complied with, the contravention of the order or Permit shall be deemed to be a continuing offence for each day or part of a day that the order or Permit is not complied with.

16. (1) A person convicted of an offence under this by-law is liable to a fine of not less than \$500.

(2) A person convicted of an offence under this by-law is liable:

- (a) on a first conviction, to a fine of not more than \$10,000 or \$1,000 per tree to a maximum of \$100,000, whichever is greater; and
- (b) on any subsequent conviction, to a fine of not more than \$25,000 or \$2,500 per tree to a maximum of \$100,000, whichever is greater.

(3) Where the person convicted of an offence under this by-law is a corporation:

- (a) the maximum fine in clause (2)(a) of this section 16 is \$50,000 or \$5,000 per tree to a maximum of \$100,000, whichever is greater; and
- (b) the maximum fine in clause (2)(b) of this section 16 is \$100,000 or \$10,000 per tree to a maximum of \$100,000, whichever is greater.

(4) In the case of a continuing offence, for each day or part of a day that the offence continues, the minimum fine shall be \$500 and the maximum fine shall be \$10,000 and the total of all daily fines for the offence is not limited to \$100,000.

(5) In the case of a multiple offence, for each offence included in the multiple offences, the minimum fine shall be \$500 and the maximum fine shall be \$10,000 and the total of all fines for each included offence is not limited to \$100,000.

(6) On conviction of an offence under this by-law, a person is liable to a special fine in accordance with paragraph 429(2)(d) of the *Municipal Act*. The amount of the special fine shall be the minimum fine as provided for in subsection (1) of this section 16, to which may be added the amount of economic advantage or gain that the person has

obtained or can obtain from the contravention of any provision of this by-law, any order issued under this by-law or any condition of a Permit. Pursuant to paragraph 429(3)1 of the *Municipal Act* a special fine may exceed \$100,000.

17. Upon conviction for an offence under this by-law, in addition to any other remedy and to any penalty imposed by this by-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order:

- (a) prohibiting the continuation or repetition of the offence by the person convicted; and
- (b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate, which correction may include:
 - (i) the planting or replanting of any tree or trees Destroyed or Injured or the planting of any replacement tree or trees in a specified location and within a specified period of time; and
 - (ii) the application of any silvicultural treatment that may be necessary to establish or re-establish the tree or trees or replacement tree or trees.

Part X – General

18. Council delegates to the Inspectors the authority to carry out their activities as set out in this by-law.

19. This by-law shall not be interpreted as exempting any person from the requirement to comply with any other City by-law. In the event of conflict between the provisions of this by-law and any other City by-law, the provisions which are more protective of trees shall apply.

20. In this by-law, words importing the singular number shall include the plural, words importing the plural shall include the singular number, words importing the masculine gender shall include the feminine, and words importing the feminine gender shall include the masculine, unless the context requires otherwise.

21. If a court of competent jurisdiction declares any provision or provisions or part or parts of any provision or provisions of this by-law to be invalid, illegal, unenforceable or of no force and effect, it is the intention of Council in enacting this by-law that the remainder of the by-law shall continue in force and be applied and enforced in accordance with its terms to the fullest extent possible according to law.

22. The short title of this by-law is the “Private Tree Protection By-law”.

23. By-law Number (1986) – 12229 is hereby repealed.

24. This by-law shall come into force and take effect on .

PASSED THIS DAY OF , 2010.

KAREN FARBRIDGE – MAYOR

LOIS A. GILES – CITY CLERK

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