



APPENDIX C

THE CORPORATION OF THE TOWN OF OAKVILLE

BY-LAW NUMBER 2017-038

A by-law to regulate or prohibit the injury or destruction of trees on private property within the Town of Oakville and to repeal by-law 2008-156, as amended, and to amend by-law 2010-163, a by-law to delegate certain powers to the Oakville Appeals Committee

WHEREAS the Council of the Corporation of the Town of Oakville is authorized by subsection 11(2), section 135, 429, 431, and 444 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, to pass by-laws to sustain and promote environmental and social benefits to the community as a whole through the preservation and planting of trees throughout the municipality; to regulate or prohibit the injury or destruction of trees; to require a permit for the removal of trees; to impose conditions on permits; and to provide for a system of fines and other enforcement orders;

WHEREAS the Halton Region Tree By-law 121-05 regulates the destruction or injuring of trees in woodlands having an area of land 1ha and above, as well as woodlands delegated by the Town of Oakville having an area between 0.5ha and 1ha, and greenlands outside 0.5ha or larger;

WHEREAS the destruction or injury to trees owned by the Town of Oakville is regulated through other by-laws, policies and procedures;

WHEREAS the destruction or injury of trees as a consequence of development is evaluated as part of the approval of site plans, plans of subdivision or other approvals under the *Planning Act*, R.S.O. c. P.13; and

WHEREAS the Town of Oakville recognizes the ecological and aesthetic value of trees and is desirous of managing the destruction and injury of trees, particularly large-stature trees and trees of heritage interest;

COUNCIL ENACTS AS FOLLOWS:

DEFINITIONS

1. In this By-law:

“arborist” means a person who has graduated from an accredited college or university with a diploma or degree in Urban Forestry, Arboriculture or equivalent, is licensed by the Town of Oakville, if required by the Licensing By-law 2015-075, and satisfies at least one of the following requirements:

(a) is certified by the Ministry of Advanced Education and Skills Development or the International Society of Arboriculture;

(b) is currently accepted as a consulting arborist with the American Society of Consulting Arborists; or

(c) is a Registered Professional Forester (RPF) as defined in the *Professional Foresters Act*, 2000, S.O. 2000, c. 18;

“arborist report” means a report prepared and signed by an arborist, which includes details on the species, size, health, location of a tree to be destroyed, injured or removed, and an assessment of the structural integrity of the subject tree using the “Tree Risk Assessment, Best Management Practices”, Companion publication to ANSI 300 part 9, standard practices, ISA, as may be amended or replaced;

“boundary tree” means a tree, any part of whose trunk is growing across one or more property lines;

“Council” means the Council of the Corporation of the Town of Oakville;

“dead” means a tree that has no living tissue;

“Designated Official” means Director of Parks and Open Space for the Town of Oakville and the designate or designates of this individual;

“diameter or DBH” means the diameter at breast height, measured outside the bark, of the stem or trunk of a tree, and shall be measured at a point 1.37 metres above the existing grade of the ground adjoining its base or, where there are multiple stems to a tree, means the total of diameter of all stems at a point 1.37 metres above the existing grade, or alternate methods approved by the Designated Official;

“drip line” means the vertical projection of the outermost edge of a tree's canopy;

“emergency work” means any work required where the likelihood of tree failure is imminent and a tree or part of a tree poses an extreme risk in which there is a high likelihood of severe consequences, such as serious injury to persons or property;

“good arboricultural practice” means the proper implementation of removal, renewal and maintenance activities known to be appropriate for individual trees in and around urban areas to minimize detrimental impacts on urban forest

values and includes pruning of trees to remove dead limbs, maintain structural stability and balance, or to encourage their natural form, provided that such pruning is limited to the appropriate removal of not more than 25% of the live branches or limbs of a tree, but does not include pruning to specifically increase light or space, as approved by the Designated Official;

“greenlands” means lands within the Greenlands System, identified in the Halton Region Official Plan and defined in the Halton Region Tree By-law 121-05;

“high risk tree” means there is a high risk of tree failure with significant consequences, but tree failure is not imminent as assessed and identified by an arborist report;

“injure/injury” means damaging or destroying a tree by: removing, cutting, girdling, or smothering of the tree or roots; cutting more than 25% of tree canopy; interfering with the water supply; setting fire to a tree; applying chemicals on, around, or near the tree; compaction or re-grading within the drip line of a tree; damage caused by new development or construction related activities that are not evaluated as part of an approval under the *Planning Act*; storing any materials within the drip line of a tree; any other means resulting from neglect, accident or by design;

“multiple offence” means 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 injured or destroyed, the injury or destruction of each tree is a separate offence;

“lot” means a parcel of land having specific boundaries which is capable of legal transfer;

“nursery” means a lot on which the principal business of selling or growing plants, shrubs, and trees occurs;

“owner” means the registered owner of a lot, his respective successors and assigns, or his agent;

“permit” means a tree removal permit issued under this By-law to remove a tree on private property within the Town;

“person” means an individual, a corporation, a partnership, or an association;

“pruning” means the appropriate removal of not more than 25% of the live branches or limbs of a tree as part of a consistent annual pruning program and in

accordance with good arboricultural practice as approved by A designated official;

“replacement tree” means a tree that is required under this By-law to replace an existing tree that is approved for removal;

“Replacement Tree Planting Fund” means the fund set aside for the purpose of planting trees in locations within the Town of Oakville other than the lot where a tree has been injured, destroyed or removed;

“Town” means the area located within the geographical boundaries of the Corporation of the Town of Oakville;

“tree” means a self-supporting woody plant which will reach a height of at least 4.5 metres at physiological maturity; and

“woodland” means as defined in the Halton Region Tree By-law 121-05, namely: an area of land with at least: 1000 trees, of any size, per hectare or 500 such trees per 0.5 hectare; 750 trees, measuring over five (5) centimetres in diameter at DBH, per hectare or 375 such trees per 0.5 hectare; 500 trees, measuring over twelve (12) centimetres in diameter at DBH, per hectare or 250 such trees per 0.5 hectare; or 250 trees, measuring over twenty (20) centimetres in diameter at DBH, per hectare or 125 such trees per 0.5 hectare; but does not include: an active cultivated fruit or nut orchard; a plantation established for the purpose of producing Christmas trees; a plantation specifically planted and maintained for the purpose of harvesting as certified in writing by an Officer based on field inspection and investigation; a tree nursery, or a narrow linear strip of trees that defines a laneway or a boundary between fields.

SCOPE

2. This By-law applies to all private property in the Town, but does not apply to a woodland or greenlands that are governed by the Halton Region Tree By-law 121-05.

ADMINISTRATION AND ENFORCEMENT

3. (1) The Designated Official shall be responsible for the administration and enforcement of this By-law.
- (2) Municipal law enforcement officers employed by the Town are hereby authorized to enforce this By-law.

- (3) For the purposes of conducting an inspection to determine compliance with this By-law, an order, a permit, or any condition of a permit, any person authorized to enforce this By-law may, upon producing the appropriate identification, at any reasonable time, enter and inspect any lands or property, to determine whether the provisions of this By-law, an order issued under this By-law, or a permit or a condition of a permit issued under this By-law, have been complied with.

GENERAL PROHIBITIONS AND EXCEPTIONS

4. (1) No person shall cause or permit the injury, destruction or removal of any tree classified as an endangered, threatened, or at risk tree species, as defined in the provincial *Endangered Species Act*, 2007, S.O. 2007, c. 6, or any tree classified as an endangered or threatened tree species, or a tree species of special concern, as defined in the federal *Species at Risk Act*, 2002, S.C. 2002, c. 29.
- (2) No person shall cause or permit the injury, destruction or removal of any tree with a diameter equal to or greater than fifteen (15) centimetres on a lot, or any tree required to be retained or planted as a condition of an approved site plan, without first obtaining a permit pursuant to this By-law.
5. The provisions of this By-law do not apply to the removal of trees:
- (a) with a diameter less than fifteen (15) centimetres other than a tree required to be retained or planted as a condition of an approved site plan;
 - (b) for emergency work, subject to the emergency notification requirement contained in this By-law;
 - (c) for the purpose of pruning, maintenance or removal of branches or limbs of any tree where the branches or limbs interfere with existing utility conductors, buildings or structures, provided that such activities shall be carried out, in accordance with good arboricultural practice;
 - (d) located on rooftop gardens, interior courtyards, or solariums;
 - (e) located on a nursery;
 - (f) for the purpose of satisfying a condition to the approval of a site plan, a plan of subdivision, a plan of condominium, or a consent under sections 41, 51, and 53 of the *Planning Act*, or as a requirement of a site plan or subdivision agreement under those sections of the Act;

- (g) to permit the construction of a building or structure, where the removal, injury or destruction is required under a building permit;
- (h) located within a woodland or greenlands governed by the Halton Region Tree By-law 121-05;
- (i) is required under a Property Standards By-law order; or
- (j) in the sole discretion of the Director of Development Engineering for the Town of Oakville, as a result of activities or matters undertaken as part of the approved process for the Environmental Implementation and Functional Servicing requirements for the lands in the North Oakville Secondary Plan area other than the lands designated Natural Heritage System.

EMERGENCY NOTIFICATION

6. Where emergency tree removal is required, where the likelihood of tree failure is imminent and a tree or part of a tree poses an extreme risk in which there is a high likelihood of severe consequences, the owner shall notify the Town as soon as may be practicable with documentation including but not limited to an arborist report, if available, and photographs of the size/height of the tree and distance to building.

TREE REMOVAL PERMIT

7. (1) A person shall file a tree removal permit application for the removal of a tree or trees on a lot by submitting the following to the Designated Official:
- (a) a completed application form, as specified by the Designated Official;
 - (b) payment of a non-refundable fee as set out in the rates and fees schedule approved by Council as part of the annual budget approval process, with the exception of:
 - (i) not-for-profit organizations or individual(s) facing financial hardship who are eligible for a waiver of the fee;
 - (ii) trees identified as dead, infested with Emerald Ash borer (EAB), or infested with Asian Long-Horned Beetle (ALHB), and approved by the Designated Official, or
 - (iii) any species of Buckthorn approved by the Designated Official, or

- (iv) trees identified as high risk and approved by the Designated Official;
 - (c) an arborist report is required for any high risk tree and may be requested for other trees;
 - (d) a written consent from the adjacent property owner if the tree to be removed is considered a boundary tree; and
 - (e) a written consent from the owner of the lot where the subject tree(s) are located if the applicant is not the owner of that lot.
- (2) If an applicant does not provide all the documentation required by the Designated Official within the timeframe as may be specified by the Designated Official, or if the application is one (1) year old and the applicant has not taken any action to provide the Designated Official with all the documentation in the last four (4) months, the applicant shall be deemed to have withdrawn their application and shall not be entitled to any refunds of any payments made. The Designated Official may close the application file when the applicant withdraws or is deemed to have withdrawn the application.
- (3) The Designated Official shall review the application and all the documentation required and may issue a tree removal permit if:
- (a) the lot is designated under the *Ontario Heritage Act*, and a written report by the Town's Director of Planning Services or their designate, has been provided indicating:
 - (i) the tree is not relevant to the heritage designation of the lot; or
 - (ii) the tree is relevant to the heritage designation of the lot, but the Town's Heritage Advisory Committee has approved the removal of the tree;
 - (b) the tree is sufficiently diseased and is confirmed by the Designated Official as such;
 - (c) the tree has a diameter between fifteen (15) to twenty-four (24) centimetres and it is the first tree that has been applied for removal on a lot within a twelve month consecutive period; or
 - (d) the removal of the tree is otherwise acceptable to the Designated Official.
- (4) The Designated Official may issue a tree removal permit with conditions, including, but not limited to:

- (a) the requirement for planting of replacement tree(s) in accordance with Schedule “A” or as may otherwise be determined appropriate by the Designated Official having regard for the existing canopy coverage on the subject site; and/or
 - (b) a submission of a tree preservation plan to the satisfaction of the Designated Official.
- (5) Where the planting of replacement tree(s) has been imposed as a condition of tree removal, the Designated Official may require that:
- (a) the replacement tree(s) be located on the same lot in a location and species to the satisfaction of the Designated Official;
 - (b) the minimum tree replacement size is a thirty (30) millimetre caliper deciduous tree, or a one hundred and fifty (150) centimetre height coniferous tree in a five (5) gallon container or balled and burlapped or in a wire basket;
 - (c) where replacement tree(s) are not physically possible to properly grow on the site, the replacement tree(s) be located at another suitable location to the satisfaction of the Designated Official;
 - (d) a replanting plan be filed to the satisfaction of the Designated Official;
 - (e) a written undertaking by the owner to carry out the replacement planting;
 - (f) monies or a letter of credit in a form satisfactory to the Designated Official be delivered to the Town to cover the costs of the replacement tree(s), and the maintenance of the tree(s) for a period of up to two (2) years; and/or
 - (g) payment for each replacement tree not replanted in accordance with this subsection be made into the Town's Replacement Tree Planting Fund as set out in the rates and fees schedule approved by Council as part of the annual budget approval process.
- (6) The Designated Official may refuse to issue a permit to remove a tree where any one or more of the following applies:
- (a) the permit application has not been submitted in full and is considered incomplete, or where an arborist report is required or requested by the Designated Official in support of the permit application and the report has not been provided;

- (b) any tree with a diameter greater than twenty-four (24) centimetres, or the second tree or more with a diameter between fifteen (15) to twenty-four (24) centimetres, that has been applied for removal within a twelve month consecutive period;
 - (c) an application for rezoning, a consent, a minor variance, a plan of subdivision, a plan of condominium or a site plan to the land on which the tree is located has been submitted to the Town or Region, but has not received final approval;
 - (d) the tree is an endangered, threatened, or at risk tree species, as defined in the provincial *Endangered Species Act, 2007*, S.O. 2007, c. 6, or any tree classified as an endangered or threatened tree species, or a tree species of special concern, as defined in the federal *Species at Risk Act, 2002*, S.C. 2002, c. 29;
 - (e) the tree is relevant to the heritage designation of the lot as determined by the Town's Director of Planning Services; or
 - (f) the tree is required to be retained or planted as a condition of an approved site plan.
- (7) A permit shall be valid for a maximum of one (1) year from the date of issuance.
- (8) A permit holder shall ensure that the permit is securely posted on the lot from which the trees are to be removed, in a location visible from the street at least five (5) days prior to the tree removal being undertaken.
- (9) Failure to comply with any provision or condition of a permit or an order issued under this By-law or any other provision of this By-law may result in the revocation of the permit by the Designated Official, in addition to any other enforcement proceedings against the permit holder as permitted by law.
- (10) In addition to subsection (9), the Designated Official may revoke a permit at any time if it was issued because of mistaken, false or incorrect information received from the applicant or owner.
- (11) The permit holder of a revoked permit shall immediately cease or ensure the immediate cessation of all the activities for which a permit has been issued upon revocation of the permit.

APPEAL

8. (1) Where the Designated Official refuses to grant a permit under Section 7, the applicant shall be notified in writing and provided reasons for the refusal and notice that the applicant may appeal the decision to the Appeals Committee within 21 days of the date of the notice.
- (2) The person requesting the appeal shall deliver to the Designated Official:
 - (a) a written request with reasons for the appeal; and
 - (b) payment of the appeal fee as set out in the rates and fees schedule approved by Council as part of the annual budget approval process
- (3) By-law 2010-163, a by-law to delegate certain powers to the Oakville Appeals Committee, is hereby amended by adding to a new subsection 1(e):
“1(e) Appeals filed in accordance with the Private Tree by-law 2017-038 relating to the issuance of tree permits.”
- (4) An appeal made under this section does not act as a stay of any orders issued, which shall take effect on the day it is served or deemed served, and shall continue to be effective until the Appeals Committee renders a decision indicating otherwise.

ORDER

9. (1) An order may be issued for any contraventions of this By-law or a tree removal permit, including but not limited to an order to cease and desist all work relating to the injury, destruction or removal of trees.
- (2) An order shall set out:
 - (a) the name of the owner and the municipal address of the land or property that is the subject of the contravention;
 - (b) reasonable particulars of the contravention;
 - (c) what the owner or any other person must do to rectify the contravention;
 - (d) a statement that if the work is not done in compliance with the order within a specified time period, the Town may have the work done at the expense of the owner or other person;

- (e) the date and time by which the order must be in compliance with the By-law; and,
 - (f) information regarding the Town's contact person.
- (3) An order may be served by:
- (a) delivering it personally to the owner and/or the person conducting work on the owner's property;
 - (b) sending it by registered mail to the last known address of the owner, which service shall be deemed five (5) days after mailing; or
 - (c) posting it on the owner's property.
- (4) No person shall fail to comply with an order.
- (5) Failure to comply with an order made under this By-law may result in the Town conducting work on behalf of the owner to comply with the order at the expense of the owner. The cost of such work may be collected in the same manner as taxes.

OFFENCE AND PENALTY

- 10.(1) Every person who contravenes any provision of this By-law or an order issued under this By-law is guilty of an offence. In addition, the submission of false information in the tree removal permit application required by Section 7, or in the emergency notification required by Section 6, constitutes an offence.
- (2) All contraventions of this By-law or orders issued under this By-law are designated multiple and continuing offences pursuant to section 429(2) of the *Municipal Act, 2001*.
- (3) Upon conviction of an offence under this By-law a person is liable to a fine as follows:
- (a) the minimum fine for an offence is \$400 and the maximum fine for an offence is \$100,000;
 - (b) in the case of a continuing offence, in addition to the penalty mentioned in clause (a) above, for each day or part of a day that the offence continues, the minimum fine shall be \$400 and the maximum fine shall be \$10,000, and the total of all daily fines for the offence is not limited to \$100,000;

- (c) in the case of a multiple offence, for each offence included in the multiple offence, the minimum fine shall be \$400 and the maximum fine shall be \$10,000, and the total of all fines for each included offence is not limited to \$100,000; and
 - (d) a special fine may be imposed, in addition to a fine under clause (a) to (c) above, in circumstances where there is an economic advantage or gain from the contravention of this By-law or an order under Section 9 of this By-law, and the maximum amount of the special fine may exceed \$100,000.
- (4) If a person is convicted of an offence for contravening the provisions of this By-law, or an order issued pursuant to this By-law, the Court in which the conviction has been entered may order the person to correct the contravention, which may include but is not limited to: planting or replanting such tree(s) in such manner and within such time period as the Court considers appropriate, such as replacement of a comparable species and/or payment of the tree(s) amenity value as determined by the Designated Official.
- (5) Any costs payable or associated with an order of the Court in subsection (4) above, are in addition to, and not in substitution for, the payment of any penalty imposed by the Court for the commission of an offence under this By-law or any other applicable legislation.

MISCELLANEOUS

- 11. The Schedule attached to this By-law shall form part of this By-law.
- 12. By-law 2008-156, as amended by 2009-145, is hereby repealed.
- 13. In the event that any provision or part of this By-law is found to be invalid or unenforceable for any reason whatsoever, then the particular provision or part thereof shall be deemed to be severed from the remainder of the By-law and all other provisions or parts thereof shall remain in full force and shall be valid and enforceable to the fullest extent permitted by law.
- 14. References in this By-law to any legislation or by-law means as may be amended or replaced from time to time, and include any regulations thereunder.
- 15. This By-law may be cited as the "Private Tree Protection By-law."

16. This By-law comes into force and effect on May 1, 2017. Any tree permit applications or tree removal notifications received prior to this date will be processed in accordance with By-law 2008-156.

PASSED this 1st day of May, 2017.

Rob Burton

MAYOR

Vicki Tytaneck

CLERK

SCHEDULE "A"

TREE REPLACEMENT AS THE CONDITION OF PRIVATE TREE REMOVAL PERMIT	
Diameter at Breast Height (DBH) in cm	Number of replacement trees
First tree 15-24	1
15-24	2
25-34	3
35-44	4
45-54	5
55-64	6
65-74	7
75-84	8
85-94	9
95-104	10
105-114	11
>115	12