



City of  
**Peterborough**

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**To:** Members of the Committee of the Whole

**From:** W.H. Jackson, Director of Utility Services

**Meeting Date:** October 16, 2017

**Subject:** Report USDIR17-008A  
Replacing Private Trees as Part of Tree Conservation By-laws

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## Purpose

A supplemental report to determine the replanting conditions attached to a Permit under the proposed Tree and Woodland Conservation By-laws.

## Recommendations

That Council approve the recommendations outlined in Supplemental Report USDIR17-008A, dated October 16, 2017 of the Director of Utility Services as follows:

- a) That the existing Tree By-law 97-68, be repealed;
- b) That Paragraph 1 of Schedule C of the Tree Replacement By-law (Appendix A to Report USDIR17-008) be replaced with the following:

“Permitted removal of a Tree/s or a Stature Tree/s in a healthy condition, not subject to an exemption under the **Planning Act**, shall be replaced at the following ratios:

Trunk Diameter of Healthy Tree Removed	Number of Replacement Trees Required
15 – 30 cm (DBH)	One
31 – 40 cm (DBH)	Two
41 – 50 cm (DBH)	Three
Greater than 50 cm (DBH)	Four

On properties not subject to an exemption under the **Planning Act** in Part IV of this by-law the minimum size of replacement tree will be 6ft (2m) in height (20 mm caliper) for deciduous trees and 4ft (1.3m) for coniferous trees.

Where there is insufficient space to plant on the Owners property then the Owner shall pay to the City its prior year average contracted tree planting cost to purchase and plant the required number of Replacement Trees on publicly-owned property in accordance with City Tree Planting Specification CP801.01.”

- c) That the Tree Conservation By-law attached as Appendix A to Report USDIR17-008 and amended by Recommendation b) of Report USDIR17-008a be approved with a period of public education/consultation to follow for the reasons recommended in Report USDIR17-008;
- d) That the Woodland Conservation By-law attached as Appendix B to Report USDIR17-008 be approved with a period of public education/consultation to follow for the reasons recommended in Report USDIR17-008;
- e) That Council pass a By-law appointing The Urban Forest Manager and Urban Forest Technologist as By-law Appointment Officers under Part XI of the Tree Conservation By-law and under Part VI of the Woodland Conservation By-law;
- f) That a committee be established by Council to conduct hearings regarding Tree and Woodland By-law Permit appeals, with such terms of reference as set out in Schedule “D” of both the Tree and Woodland By-laws;
- g) That the 2017 User Fee By-law be amended to include the Permit fees as detailed in Schedule E of the Tree Conservation By-law attached as Appendix A of this report;
- h) That the 2017 User Fee By-law be amended to include the Permit fees as detailed in Schedule C of the Woodland Conservation By-law attached as Appendix B of this report, and.
- i) That Staff undertake the public education/consultation identified in Recommendations c) and d) following the introduction of the by-laws and report back to Council in the spring of 2019 on the results of this process with any changes that may be required to the by-laws.

## Budget and Financial Implications

The City currently has two staff assigned to the strategic planning and management of the urban forest in accord with the objectives of the Urban Forest Strategic Plan and Emerald Ash Borer Management Plan. Existing staff will administer the new Tree

Conservation and Woodland Conservation By-laws for the first year and report back on any additional resource requirements that may be necessary. If additional resources are identified they will be requested through a further staff report to Council and addressed through the budgeting process.

## **Background**

Council at its meeting of September 25, 2017 in considering Report USDIR17-008 "Introduction of a Tree By-law for the Conservation and Enhancement of the City's Tree Canopy" (copy attached) referred Report USDIR17-008:

"...to allow staff to lessen the financial impact to homeowners in terms of both the cost and number of replacement trees."

### **Proposed Tree Conservation By-Law Presented in Report USDIR17-008**

The proposed Tree Conservation By-law attached to Report USDIR17-008 included criteria that the removal of a healthy tree would be replaced with 3 new trees.

This ratio was first brought forward in the City's approved Urban Forest Strategic Plan Update (Report USDIR16-007) and in the subsequent reports dealing with the 2013 and 2015 Emerald Ash Borer Management Plan Update Reports (Report USDIR13-012 and Report USDIR15-002). The 3 replacement trees for 1 removed tree were proposed to compensate for urban forest canopy loss over a 25-year period.

The property owner was permitted to replant these trees without City intervention which would be the cheapest alternative. If, however, space was insufficient for these plantings then the Owner was required to pay the City's cost to purchase and plant the required number of 50mm caliper trees at a cost based on the prior year average contracted tree planting cost, (currently \$450.00 per tree).

### **Comparative Municipal By-laws**

An extensive review of Tree Conservation by-laws in other municipalities was undertaken and the results are detailed in Appendix B.

Peterborough's cost for replacement trees is in the middle of those municipalities surveyed and near the bottom in terms of caliper of replacement tree specified. There are more differences among the municipalities related to the replacement ratio required with 4 municipalities relating the number of replacement trees required to the size of the healthy tree removed.

## Discussion

The two main areas of concern were the replacement ratios (number of replacement trees required for each healthy tree removed) and the cost of the replacement trees. Discussion on each of these matters is provided below.

### Replacement Ratios

The model used to arrive at the 3 to 1 replacement ratios is based on an average-sized healthy tree of 39 cm trunk diameter. Using an average leads to over-compensating when healthy small trees are removed and under-compensating when larger healthy trees are removed.

In consideration of how other municipalities have handled this area of the by-law and to lessen the financial impact to property owners who are removing healthy trees, it may be more appropriate to use a tiered replacement strategy such as the following:

- 1 replacement tree for each healthy tree removed with a trunk diameter (DBH) of 15-30cm,
- 2 replacement trees for each healthy tree removed with a trunk diameter (DBH) of 31-40cm,
- 3 replacement trees for each healthy tree removed with a trunk diameter (DBH) of 41-50cm,
- 4 replacement trees for each healthy tree removed with a trunk diameter (DBH) greater than 50cm,

Sometimes the size of the tree is not the only criteria in deciding replacement requirements. For example, a Stature Tree is defined within the Tree Conservation By-law and identifies a tree that may be visually, culturally or biologically distinctive within a larger collections of trees, i.e. within a woodland area, groups of trees or a hedgerow. This will not normally be applicable to the Tree Conservation By-law.

### Replanting Costs

The Tree Conservation By-law allows for the homeowner to replace trees on their own property, either themselves or through contracted labour.

The original proposal was that the homeowner would match the City Tree Planting and Establishment specification CP801.01 by providing a 50mm caliper replacement tree or trees. This is a necessary requirement when planting on public property to ensure a robust tree that will provide a visual impact and withstand potential damage.

On the other hand, if replanting is done on private property, where the environment is more closely controlled and less prone to damage, then a smaller tree or trees can be considered. More importantly, a smaller tree is more manageable usually enabling a homeowner to replant for themselves. Accordingly, for replanting trees on private property, a 20mm caliper tree with a minimum height of 2 metres for deciduous trees and, for coniferous trees, a minimum height 1.3m is both suitable replacement sizes. The costs of trees at this size are in the order of \$50.00 to \$80.00 each and are usually supplied in a 2 gallon pot.

## Summary

The City has recognized the value and importance of the urban forest through its adoption of the 2011 Urban Forest Strategic Plan, the 2013 Emerald Ash Borer Management Plan and the 2016 Urban Forest Strategic Plan update.

All of these documents have recognized the community benefit of trees and the need to preserve healthy trees and plant adequate replacements for continued public health, environmental benefit and to mitigate to the effects of climate change.

The proposed replanting requirements for the permitted removal of healthy trees within the Tree Conservation By-law have been developed to present a fair and affordable replacement ratio and cost to the homeowner that adequately compensates for the permitted removal of healthy trees to ensure urban forest sustainability and community benefit.

Submitted by,

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Attachments:

Appendix A: Report USDIR17-008 Tree Conservation By-law  
Appendix B: Tree Replacement Criteria Comparison



City of  
**Peterborough**

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**To:** Members of the Committee of the Whole

**From:** W.H. Jackson, Director of Utility Services

**Meeting Date:** September 25, 2017

**Subject:** Report USDIR17-008  
Introduction of a Tree By-law for the Conservation and  
Enhancement of the City's Tree Canopy

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## **Purpose**

A report to repeal an existing Tree By-law and introduce two new By-laws to conserve and maintain the City's tree canopy.

## **Recommendations**

That Council approve the recommendations outlined in Report USDIR17-008, dated September 25, 2017 of the Director of Utility Services as follows:

- a) That the existing Tree By-law 97-68, be repealed;
- b) That the Tree Conservation By-law attached as Appendix A to Report USDIR17-008 be approved with a period of public education/consultation to follow for the reasons recommended in Report USDIR17-008;
- c) That the Woodland Conservation By-law attached as Appendix B to Report USDIR17-008 be approved with a period of public education/consultation to follow for the reasons recommended in Report USDIR17-008;
- d) That Council pass a By-law appointing The Urban Forest Manager and Urban Forest Technologist as By-law Appointment Officers under Part XI of the Tree Conservation By-law and under Part VI of the Woodland Conservation By-law;

- e) That a committee be established by Council to conduct hearings regarding Tree and Woodland By-law Permit appeals, with such terms of reference as set out in Schedule “D” of both Tree and Woodland By-laws;
- f) That the 2017 User Fee By-law be amended to include the Permit fees as detailed in Schedule E of the Tree Conservation By-law attached as Appendix A of this report;
- g) That the 2017 User Fee By-law be amended to include the Permit fees as detailed in Schedule C of the Woodland Conservation By-law attached as Appendix B of this report, and.
- h) That Staff undertake the public education/consultation identified in Recommendations b) and c) following the introduction of the by-laws and report back to Council in the spring of 2019 on the results of this process with any changes that may be required to the by-laws.

## Budget and Financial Implications

The City currently has two staff assigned to the strategic planning and management of the urban forest in accord with the objectives of the Urban Forest Strategic Plan and Emerald Ash Borer Management Plan. Existing staff will administer the new Tree Conservation and Woodland Conservation By-laws for the first year and report back on any additional resource requirements that may be necessary. If additional resources are identified they will be requested through a further staff report to Council and addressed through the budgeting process.

## Background

Council adopted an Urban Forest Strategic Plan (the “Plan”) for the City in June of 2011 (USPW11-008). Within the Plan, Strategic Objective 5 undertakes:

“To preserve and protect the health of the urban forest and prevent unnecessary damage or removal”.

Specifically, Recommendation 5.1 of that Objective stated the City should:

“Investigate a permitting process for the removal of healthy trees in the City”.

Council at its meeting of June 6, 2016 in considering Report USDIR16-007, “Urban Forest Strategic Plan Update for the City of Peterborough” approved, among other recommendations that;

“Staff be requested to report to Council on potential public and private tree protection and compensatory proposals that would secure the future sustainability of the Urban Forest.”

## **Review of Existing By-Laws**

Under the Municipal Act Section 135 (1), a local municipality may prohibit or regulate the destruction or injuring of trees.

The Act further states that a By-law may require that a permit be obtained to injure or destroy trees and may impose conditions to a permit, including conditions relating to the manner in which destruction occurs, the qualifications of the persons authorized to injure or destroy trees and a requirement to re-plant trees.

Currently there are two City by-laws and a section of the Municipal Code that relate to the protection of public and private trees in the urban forest.

By-law 1982-82 and Municipal Code: Roads – Bridges, Chapter 765 Trees – On Highways, prohibit the injury or destroying of trees on highways; essentially City-owned trees in the road allowance.

By-law 97-68 prohibits and regulates the injury, destruction or removal of trees in “Designated” areas of the City. This by-law regulates tree removal within a parcel of land having an area in excess of 5 acres (Designated Area) under common ownership.

## **The Potential for Loss of Canopy**

The By-law and Municipal Code regulating the injury or destruction of City-owned trees in the road allowance provides the City with control over this area, although infringements by adjacent residents are increasing in number.

Currently, 43% of the urban forest exists in 250 private properties that are greater than 5 acres. The destruction or removal of trees is, in part, controlled by By-law 97-68 within these areas; although it is doubtful if many of the owners of these properties are aware of this. Tree removals are exempt under this By-law if the property is subject to a development application and injury or destruction is controlled through site plan agreements under the **Planning Act**. Conditions imposed through a site plan agreement would usually reflect the natural heritage policies within the City’s Official Plan and any tree conservation By-laws. Without the appropriate reporting and compensation models contained within a tree by-law, a potential for a disconnect and inadequate preservation and/or replanting of trees often occurs within the current planning context.

Presently, over 28% (1300 acres) of the urban forest canopy exists in private properties of 5 acres or less in size (just over 25,000 properties), and therefore, this canopy is currently unprotected by any existing tree conservation By-law. To put this in perspective, this is equivalent to an area of East City bounded by Hunter Street, Maria Street, Burnham Street and Armour Road and would contain approximately 53,000



mature trees. This is twice the amount of canopy that will be lost to the emerald ash borer.

### **The Value of the Urban Forest**

Trees and the urban forest as a whole, provide a wide range of recognized economic, environmental, social and health benefits to the entire community. The benefits of trees located in front and back yards of residential properties are vitally important to mitigate the negative impacts of urban settlement on the local environment, such as increased air pollution, increased heat, exposure to sun and increased storm water runoff.

### **Urban Forest Canopy**

Tree canopy in the City is currently decreasing. Since the adoption of the Urban Forest Strategic Plan in 2011 there has been a reduction in canopy cover through continuing development, natural losses such as drought and the early losses of ash trees due to the emerald ash borer. Indications are that since 2011 overall canopy cover has reduced from approximately 30% to 29%.

As an example, within the Jackson Forestry Management Zone (that area bounded by Parkhill Road West, Ackison Road and Jackson Creek) canopy cover has decreased from 36% in 2008 to 13% in 2015, mainly as a result of the Jackson Creek Meadows subdivision development. If the new plantings for the subdivision are considered, canopy cover will only be restored to 20% after 25 years. If 3 trees had been replanted for every 1 tree removed, and, assuming no losses, canopy would have been restored to 33% in 25 years.

As the City continues to grow and larger treed areas are developed, the retention, or adequate replacement of healthy trees in residential properties becomes ever more important in maintaining the overall function of the forest. The loss of a mature tree located in a private residential yard will always have a greater impact on the local environment than a similar tree in an undeveloped area or park. This is because of the closer proximity to buildings, hard surfaces and the sources of pollution and the trees' ability to mitigate pollution by cleaning and cooling the air, reduce heat build-up by shading buildings and hard surfaces, reduce storm water run-off through interception and increased soil filtration and improve the aesthetics of the immediate environment.

### **Tree Canopy Progress**

Policies now in effect through the Emerald Ash Borer Management Plan and the Urban Forest Strategic Plan and its update, advocate three replacement trees for the removal of one healthy tree (3 for 1) or equivalent canopy area planting for removed tree groups. This is necessary to ensure the replacement of lost canopy within a reasonable timeframe of 25 years and significant progress has been made in this respect since 2013. Because it is not possible to immediately replace the benefits of removed healthy trees it becomes increasingly important to ensure retention of the existing healthy trees,

if at all possible, and ensure adequate compensation for removals if we are to reverse the present decline in tree canopy.

Forestry staff remove approximately 350 publicly-owned trees annually that are, for the greater part, either dead or dying. These trees are replaced on a basis of 1 replacement for each removal. It is not proposed that the 3 for 1 compensatory planting apply to the removal of dead or dying trees. However, healthy trees that are removed should be replaced at a ratio of 3 to 1. Any anticipated increases in tree planting can be reflected in future Public Works budgets going forward. On the other hand, all construction projects that include the removal of healthy trees have for the last three years, budgeted for the replacement of these trees in a ratio of 3 trees for every 1 removed or equivalent areas of canopy where groups of trees are removed.

These compensatory mechanisms are designed to stabilize canopy losses going forward but it is important to note that there are no planting initiatives in the City specifically targeted at reversing the historic decline in canopy, other than small planting projects undertaken by ORCA and other volunteer groups.

### **Protecting the Urban Forest**

In tandem with a greater awareness of the values of the urban forest comes the requirement to regulate the removal of healthy trees and condition replanting in order to maintain and enhance those values.

As increasing instances of healthy tree removals attract public attention and are brought to the attention of staff, it is prudent to regulate more stringently the removal of all healthy trees whether private or publicly owned, if the objectives of the Plan are to be achieved and the urban forest is to be sustained.

The current growth and popularity of the City over the past two years has significantly increased the value to be realized through development, including severing existing lots and developing the land for intensified residential use. In many cases, land that is identified for further development contains healthy trees that are under threat if the owners pay no heed to the value of these existing trees.

Thus, with increasing pressures on healthy trees there is greater emphasis on preserving the existing canopy or receiving adequate compensation for permitted removals to ensure the sustainability of the urban forest.

### **Tree Protection By-Laws**

The purpose of the review of the existing By-laws and the introduction of a Tree Conservation and Woodland Conservation By-law is to regulate the removal of healthy trees and condition the appropriate replacement planting to ensure the sustainability of the urban forest.

The proposed Tree by-laws in this report have been developed based on the experience of other municipalities that have had tree conservation by-laws in place for many years.

The by-laws in this report recognize the value of all healthy trees to the community as a whole and seek to regulate their removal or injury through a permitting process. Trees may occur as individuals or in woodland areas, which will govern the by-law which will be applicable in each particular circumstance as follows:

- The injury or removal of trees with a trunk diameter of 15 cms or greater (measured at a height of 1.37 metres above grade) growing in properties of less than 1 hectare in size will require a permit under the Tree Conservation By-law.
- The injury or removal of trees with a trunk diameter of 7.5 cms or greater (measured at a height of 1.37 metres above grade) growing in properties of more than 1 hectare in size will require a permit under the Woodland Conservation By-law.
- Permits in both cases will specify what can be done and by who and may impose conditions, such as replanting and/or payment in lieu of permitted healthy tree removals.
- Discretion can be exercised on replanting conditions on an individual case basis.
- There are exemptions for dead, dying and hazardous trees and for ash trees infested by the emerald ash borer.
- Permit applications may or may not require an arborist report depending upon each individual circumstance.
- Penalties for contravening either by-law are controlled by the **Provincial Offences Act** but can be a maximum of \$100,000, reflecting the serious nature in which the unnecessary removal of healthy trees is held.

### Public Education/Consultation

Public education/consultation for these, or any by-laws, can be a lengthy but ultimately constructive and rewarding process, and it is recognized that public education and buy in is key to the success of both Tree by-laws.

However, it has been the experience of other municipalities and in Peterborough itself prior to the introduction of By-law 97-68, that a period of public education/consultation before the enactment of the Tree and Woodland Conservation By-laws would place a significant percentage of the urban forest at risk.

A Best Practice Tree By-law Information Package was produced by the Forest Conservation By-law Committee and the Lower Tier Advisory Group in January 2013. These are groups of municipal and provincial staff and other interested agency staff that meet to provide support, train and encourage consistent application of Tree By-laws across Ontario. This best practice document gives the following guidance:

“It should be noted that the **Municipal Act** does not require public consultation for the passing of a tree by-law. Public consultation is usually done to obtain

support for the by-law, and to ensure that the by-law reflects the specific issues present in the community.

“However, municipalities should be aware that once public consultation on a by-law begins, especially where there is not an existing Tree By-law in place, there may be an increase in tree removal in the community as some property owners will not want to be required to comply with additional regulations related to trees on their properties.

Some municipalities have passed a Tree By-law without public consultation, and then committed to a one year period of monitoring and public input, after which amendments may be made to improve the By-law. This option permits the Municipality to both protect its tree coverage and respond to public concerns”.

A public education and consultation program would commence following the enactment of the proposed by-laws. This program will include public information centres (both pre advertised and pop-up) and presentations, meetings with resident groups, developers, homebuilders, as well as businesses in the field of landscape planning and arborist work, all with the ultimate goal of recognizing trees as a shared natural resource that provides benefits to the entire community regardless of where they are located.

A report will come back to Council in the spring of 2019 that would include a review of the two by-laws together with information gathered as part of the education/consultation program and recommendations going forward from that time.

## Summary

The City has recognized the value and importance of the urban forest through its adoption of the 2011 Urban Forest Strategic Plan, The 2013 Emerald Ash Borer Management Plan and the 2016 Urban Forest Strategic Plan update.

All of these documents have recognized the community benefit of trees and the need to preserve healthy trees and plant adequate replacements for continued public health, environmental benefit and to mitigate to the effects of climate change in the future.

The proposed By-laws recognize the importance of retaining healthy trees and adequately compensating for any necessary removals as a crucial element of urban forest sustainability and community benefit.

Submitted by,

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Appendix A: Tree Conservation By-law

Appendix B: Woodland Conservation By-law

Appendix C: By-Law to Appoint By-law Enforcement Officers to Enforce Tree By-law -  
and Woodlot Conservation By-law



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**The Corporation of the City of Peterborough**

**By-Law Number 17-xxx**

Being a By-law to Regulate the Removal and Replacement of Trees in the City of Peterborough, entitled the Tree Conservation By-law

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**Recitals**

- A. Section 10(2) of the **Municipal Act**, 2001, (the “**Act**”) permits a single-tier municipality to pass by-laws respecting the economic, social and environmental well-being of the municipality.
- B. Section 135(1) of the **Act** supplements the broad power contained in Section 10(2) of the **Act**, and permits a local municipality to enact by-laws to prohibit or regulate the destruction or injuring of trees within the municipality.
- C. Section 135(7) of the **Act** provides that a by-law may require that a permit be obtained to injure or destroy trees and may impose conditions to a permit, including conditions relating to the manner in which destruction occurs, the qualifications of persons authorized to injure or destroy trees and a requirement to re-plant trees.
- D. City Council in recognition of the environmental, aesthetic value and public health benefits of trees wishes to conserve and protect trees within the City by regulating the destruction and injury of trees located on private property.
- E. The City’s 2016 Urban Forest Strategic Plan update identified that approximately 28% of the tree canopy within the City is currently unprotected and City Council has determined that regulating and prohibiting the destruction and injury of trees is a matter respecting the economic, social and environmental well-being of the municipality.
- F. City Council has determined that conserving Trees is a matter respecting the economic, social and environmental well-being of the municipality.
- G. City Council has determined that it is desirable to enact a tree conservation by-law for the purpose of achieving the objectives of the City’s Urban Forest Strategic Plan, which objectives include no net loss of tree canopy and using good arboricultural practice to prolong the life of trees.
- H. City Council recognizes that regulating the injury and/or removal of trees within the City will help the City achieve the objectives of the City’s Urban Forest Strategic Plan, which objectives include no net loss of tree canopy and using good arboricultural practice to prolong the life of trees.
- I. City Council recognizes that, in some circumstances, a Hazardous Tree can be made safe and have its life prolonged through pruning and other good arboricultural practices.

**Now therefore** the Council of The Corporation of the City of Peterborough enacts as follows:

## Part I – Title, Scope and Interpretation

1. The short title of this by-law is the “Tree Conservation By-law”.
2. Subject to the exemptions noted in Part IV of this by-law, this by-law regulates the Injury or Destruction of Trees within the City which are located on private property except to Trees which are,
  - a. subject to the exemptions noted in Part IV of this by-law; or
  - b. located to within a Woodland or a Plantation Woodland regulated by By-law 17-xxx.
3. For the purposes of this by-law:
  - a. Certain words have been capitalized for convenience and whether a defined term or phrase appears in the body of this by-law as a capitalized term or in ordinary case, the term or phrase shall have the meaning given to it in Part II. Where any word, not defined in Part II is used the commonly applied English language meaning is intended.
  - b. Wherever a word defined in Part II of this by-law is used as a noun, verb, adverb or adjective it shall be interpreted as having a corresponding defined meaning even if appearing in ordinary case.
  - c. References to items in the singular include the plural, as the context requires.
  - d. References to any act, regulation or by-law include references to any former and successor act, regulation or by-law thereto.

## Part II – Definitions

4. For the purposes of this by-law:
  - a. **Act** – means the **Municipal Act, 2001**, S.O. 2001, c.25, as amended.
  - b. **Arborist** – means a person expert in the care and maintenance of trees with an accredited college or university degree in urban forestry, arboriculture or equivalent and who is:
    - i. an arborist qualified by the Ontario Training and Adjustment Board Apprenticeship and Client Services Branch;
    - ii. an International Society of Arboriculture (ISA) Certified Arborist, holding current certification and in good standing with the ISA;
    - iii. a consulting arborist registered with the American Society of Consulting Arborists (ASCA);
    - iv. A Registered Professional Forester (RPF) as defined in the **Professional Foresters Act**, 2000, S.O. 2000, c. 18, as amended or replaced from time to time;
    - v. the City’s Urban Forest Manager; or
    - v. a person with similar qualifications as approved by the Director.
  - c. **Boundary Tree** – has the meaning given to it in the **Forestry Act**, RSO 1990, c. F.26. (the “**Forestry Act**”)

- d. **City** – means, as the context requires, the Corporation of the City of Peterborough or the land within the municipal boundary of the City of Peterborough.
- e. **City Council** or **Council** – means the municipal council of the Corporation of the City of Peterborough.
- f. **Committee (the)** – means the decision making committee that hears and decides an appeal under this by-law. The Committee’s terms of reference are set out in Schedule D to this by-law.
- g. **DBH** or **Diameter at Breast Height** – 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 Director;
- h. **Destroy** – means any action which causes or results in any of the following to a Tree:
  - i. physiological injury;
  - ii. physical injury; or
  - iii. irreversible decline or death of a Tree including removing or cutting down a Tree;

**Destruction** shall have a corresponding meaning to **Destroy**;

- i. **Director** – means the Director of Utility Services for the City of Peterborough or his or her designate;
- j. **Emergency Work** – means any work required where, in the opinion of an Arborist, 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
- k. **Good Arboricultural Practice** – means the proper implementation of maintenance activities known to be appropriate for individual Trees in and around urban areas to minimize detrimental impacts on urban forest values which includes maintenance pruning performed in accord with the current version of American National Standards Institute (ANSI) A300 Part 1;
- l. **Hazardous Tree** – means:
  - i. a destabilized or structurally compromised Tree, or a Tree with Pest infestation, with a probability of failure that, in the opinion of an Arborist, presents a significant risk of harm to people or property; or
  - ii. a Tree that, in the opinion of an Arborist:
    - 1. can not have its life prolonged or be made safe through Good Arboricultural Practice; or
    - 2. is in a state of irreversible decline and is unlikely to become healthy through a natural process of recovery; or
    - 3. is a threat to the surrounding natural environment.



- m. **Injure** – means to injure or Destroy a Tree by any action that causes physiological, physical, biological or chemical damage to or the death of a Tree, but does not include pruning or removing branches in accord with Good Arboricultural Practice conducted in accordance with a Permit. **Injury** or **Injured** shall have their corresponding meaning.
- n. **Notice of Appeal** – means a written notice received by the City Clerk, sent by or on behalf of an Owner setting out, at a minimum, the following information:
  - i. if the Appeal is to an Order, which aspects of the Order is being appealed and which are not;
  - ii. if the Appeal is to an Order, any relevant information that the Owner thinks Director or Officer failed to take into consideration.
  - iii. if the Appeal is to a condition included in a Permit, which condition is being appealed and which conditions are not;
  - iv. if the Appeal is to a condition included in a Permit, any relevant information that the Owner thinks Director or Officer failed to take into consideration.
- n. **Nursery** – means a lot on which the principal active business is the growing of plants, shrubs and trees for sale to the public.
- o. **Officer** – means an individual appointed by Council for the administration and enforcement of this by-law.
- p. **Orchard** – means a lot on which the principal active business is the growing of fruit for sale to the public.
- q. **Order** – means any Order:
  - i. issued by an Officer or the Director under the authority of this by-law; or
  - ii. issued by a judge or justice of the peace under the authority of the Act, the **Forestry Act**, the **Provincial Offences Act**, this by-law or other applicable law.
- r. **Owner** – means a person having any right, title, interest or equity in land or any such person's authorized representative and includes the Person managing or receiving the rent of the land and includes a lessee or occupant of the land.
- s. **Permit** – means a valid permit, issued under Part VI of this by-law, to Injure or Destroy a Tree.
- t. **Person** – means an individual, including an Owner, an Arborist, an association, a partnership, or a corporation;
- u. **Pest** – means a biotic disorder and includes any insect or disease that, in the opinion of an Arborist, is likely to cause the destruction of or injury to Trees, and shall include the insects and diseases included in Schedule A to this By-law;
- v. **Plantation Woodland** – means a type of Woodland one hectare or more in area which contains Trees which have been intentionally planted. See By-law 17-xxx, the Woodland Conservation By-law, for more detail.

- w. **Replacement Tree** – means a Tree or multiple Trees which is/are replanted under the direction of an Officer in:
  - i. as close to the same location from which a Tree or Hazardous Tree was removed; or
  - ii. another location on the Owner’s property; or
  - iii. a location on City-owned land as determined by the Director.
- x. **Tree** – includes a Boundary Tree and a Hazardous Tree and means any species of woody perennial plant, including its root system, which has reached or has the genetic potential to reach a height of at least 4.5 metres and a DBH of at least 7.5 centimetres at physiological maturity and which is located on privately owned land. A Tree may be located in a hedgerow. The definition of Tree does not include:
  - i. European Buckthorn;
  - ii. Glossy Buckthorn; or
  - iii. an Ash Tree that, in the opinion of an Officer, is infested by the Emerald Ash Borer.
- y. **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.
- z. **Woodland** – has the meaning given to it in the **Forestry Act**, as amended and includes a Plantation Woodland. See the Woodland Conservation By-law, for more detail.

### Part III – Prohibitions

- 5. No Person shall Injure or cause or permit Injury to a Tree:
  - a. unless exempt under Part IV of this by-law; or
  - b. except in accordance with a Permit issued under Part VI of this by-law.
- 6. No Person shall:
  - a. contravene the terms or conditions of a Permit issued under this by-law; or
  - b. cause or permit the contravention of the terms or conditions of a Permit issued under this by-law.
- 7. Every Person shall comply with an Order issued under this by-law.
- 8. No Person shall remove or deface any Order that has been posted pursuant to this by-law.

### Part IV – Exemptions

- 9. This by-law does not apply to:
  - a. A Woodland or to a Plantation Woodland as either of those terms are defined by the Woodland Conservation By-law, being By-law 17-xxx, or any successor by-law thereto;

- b. Injury to Trees that is necessary for Emergency Work;
  - c. Trees with a DBH of less than 15 centimetres which are located on private property;
  - d. Trees located on rooftop gardens or solariums;
  - e. Trees located on a Nursery or Orchard;
  - f. Trees exempted by Council under the provisions of this by-law; or
  - g. any tree, as defined in and protected by or By-law 82-82 or by Chapter 765 of the Peterborough Municipal Code.
10. Despite any other section of this by-law, this by-law does not apply to activities exempted by Subsection 135(12) of the **Act** as follows:
- 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**;
  - c. the injuring or destruction of Trees by a person licensed under the **Surveyors Act** 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 of subdivision agreement entered into under those sections;
  - e. the injuring or destruction of Trees imposed after December 31, 2002 as a condition to a development permit authorized by regulation made under Section 70.2 of the **Planning Act** or as a requirement of an agreement entered into under the regulation;
  - f. the injuring or destruction of Trees 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;
  - g. the injuring or destruction of Trees undertaken on land described in a license for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the **Aggregate Resources Act**; or
  - h. 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**.
11. Despite any other section of this by-law, an Ash Tree, which in the opinion of an Officer is infested by Emerald Ash Borer still requires an Owner to obtain a permit to Injure the Ash Tree but does not require the payment of any fee.

12. Despite any other section of this by-law, an Owner may request an exemption from this by-law from the Director and upon such request Director may:
  - a. grant an exemption;
  - b. grant an exemption with conditions; or
  - c. refuse an exemption and prepare a report for Council's consideration.
13. When evaluating a request for an exemption, with or without conditions, the Director, or on appeal, the Committee shall consider:
  - a. the Officer's report, which shall include the Officer's opinion about whether the exemption constitutes Good Arboricultural Practice;
  - b. the reason for the removal of the Tree;
  - c. whether the proposed activity conflicts with any City policy and/or by-law concerning protection of natural heritage and the environment;
  - d. any other relevant City or Provincial policies, including the requirement in this by-law to plant Replacement Trees;
  - e. the appropriate use of the land;
  - f. whether the conditions it wishes to apply to the exemption adequately compensate for the loss of Trees; and
  - g. whether the Tree is a Boundary Tree.
14. If granting an exemption, the Director, or on appeal, the Committee may impose such conditions as it deems appropriate and shall issue directions concerning:
  - a. the manner and timing of the Injury to the Tree;
  - b. the qualifications of persons authorized to Injure a Tree;
  - c. the species, size, number and location of Replacement Trees to be planted; and
  - d. measures to mitigate the effects of the Injury to the Tree on the natural environment.
15. An Owner requesting an exemption from the Director under this By-law shall, at least 60 calendar days before the proposed injury to a Tree is to take place, submit to the Director a completed, signed Permit application and any supporting information along with the fee prescribed by the City.
16. In the event the Committee considers a request for an exemption, with or without conditions, under this By-law, the City Clerk shall, after receiving the notice of appeal from the Owner, notify the Owner and all owners of lands abutting the subject property of the exemption request at least 7 calendar days prior to the Committee meeting at which the requested exemption will be considered.
17. The City Clerk shall notify in writing the Owner and all persons who participated in the appeal of the Committee's decision.

## **Part V – Hazardous Trees**

18. If an Owner thinks that emergency work is required to Injure a Hazardous Tree, the Owner shall, as soon as practicable, and prior to Injuring the Hazardous Tree:

- a. notify the Director so as to provide the Director with a reasonable opportunity to inspect the Hazardous Tree; and
  - b. provide the Director with documentation including but not limited to:
    - i. a Report, if available;
    - ii. photographs of the size/height of the Hazardous Tree;
    - iii. a diagram showing the distance between the Hazardous Tree and any buildings; and
    - iv. a description of the specific nature of the danger posed by the Hazardous Tree.
19. An Owner may only Injure a Hazardous Tree if:
- a. the process outlined in Section 18 above has been followed and the Director has given his/her written approval to Injure the Hazardous Tree; or
  - b. the Committee, following an appeal, has given its written approval to Injure the Hazardous Tree.
20. The notice and documentation requirements contained in Part V of this by-law shall be sent to: [treebylaw@peterborough.ca](mailto:treebylaw@peterborough.ca) or delivered to City Hall marked as Tree By-law Permit Application.

## Part VI – Permits

21. Council hereby delegates to the Director the power to:
- a. issue a Permit and to impose conditions consistent with Sections 13, 14, 18, 22 and/or 23 of this by-law;
  - b. amend, from time to time, Schedules “A” and “C”;
  - c. establish, from time to time, a new fee for a Permit in Schedule “B”; and
  - d. if the Director exercises his/her authority under Section 21(b) or 19(c), City Council hereby delegates to the City Clerk and the Mayor the power to make such amendments to Schedule “A” and/or “B” and/or “C” as required.
22. The Director may issue a Permit to Injure a Tree provided that an Arborist, if required, satisfies the Director that Injuring the Tree consistent with the goals of the Urban Forest Strategic Plan adopted by Council from time to time. Furthermore, each Permit application will need to demonstrate, to the Director’s satisfaction that:
- a. Injuring the Tree is consistent with Good Arboricultural Practice and will be conducted in the manner prescribed by the Permit application;
  - b. Injuring the Tree is justified, having regard for the size, species, condition and location of the Tree;
  - c. The date(s) and time(s) when the Injury to the Tree will occur has/have been identified;
  - d. Those persons authorized to Injure a Tree are qualified to do so;

- e. The species, size, number and location of Replacement Trees to be planted have been identified; and
  - f. The satisfactory measures to mitigate the direct and indirect effects on the natural environment from injuring the Tree will be implemented.
23. The Director may impose conditions to a Permit to address or specify:
- a. Any matters identified in Sections 13, 14, 18, 22 or 23 of this by-law;
  - b. the manner and timing of Injuring the Tree;
  - c. the qualifications of Person authorized to Injure the Tree;
  - d. the species, size, number and location of Replacement Trees to be planted;
  - e. measures to mitigate the effects of Injuring the Tree on the natural environment including to protect trees on adjacent lands; and
  - f. any other conditions relevant to Injuring Trees or planting Replacement Trees.
24. A Permit issued under this by-law shall expire on the 365<sup>th</sup> day after its date of issuance and the Director may, upon the request of the Owner prior to the Permit's expiry, renew the Permit for a further period of up to 365 days with or without additional conditions.

## **Part VII – Filing a Permit Application**

25. A Person who intends to Injure a Tree shall file a Permit application by submitting the following to the Director:
- a. a complete application in the form required by the City, signed by the Owner/s of the property where the Tree is located;
  - b. information relevant to the conditions of a Permit in Part VI of this by-law;
  - c. the applicable fee as prescribed in Schedule B to this by-law;
  - d. if required by the Director an Arborist's report prepared on the Owner's behalf; and
  - e. the written consent of the adjacent property owner if the Tree to be injured is a Boundary Tree.
26. Upon receipt by the Director of an application for a Permit, the Owner shall permit an Officer to enter upon his or her property and undertake such site inspections as may be required to consider the application. An Officer may undertake a site inspection prior to, during and after the proposed activity.
27. A decision regarding an application for a Permit shall not be made by the Director until such time as all the required documents have been filed, the applicable fee has been paid and any required inspections have been completed.

## **Part VIII – Orders**

28. Where the Director or an Officer reasonably believes that a contravention of this By-law has occurred, the Director or Officer may issue:
- a. an Order to discontinue the contravening activity; and/or

- b. a work Order to correct the contravention including but not limited to planting Replacement Trees.
- 29. The Orders contemplated in Section 28 shall set out:
  - a. the name of the Owner and the municipal address or the legal description of the land;
  - b. reasonable particulars of the contravention;
  - c. the date by which there must be compliance with the Order;
  - d. the work to be done and the date by which the work must be done, if applicable; and
  - e. a statement, if applicable, that if work is not done in compliance with the Order within a specified time period, the City may have the work done at the Owner's expense.
- 30. An Order issued under this by-law may be served personally or served by mail to the last known address of the Owner and such other persons affected by it as determined by the Officer and a copy of the Order may be posted on the land.
- 31. If an Order is served by registered mail, the service shall be deemed to have been made 5 days after mailing.
- 32. Where service cannot be carried out in accordance with the process in Section 30 of this by-law, the Officer shall place a notice containing the terms of the Order in a conspicuous place on the Owner's property, and the placing of the notice shall be deemed to be sufficient service of the Order on the Person or persons to whom the Order is directed.

#### **Part IX – Enforcement**

- 33. The provisions of this by-law may be enforced by an Officer of the City.
- 34. An Officer may, at any reasonable time, enter on land and inspect any land to determine whether this by-law, an Order under this by-law, a condition to a Permit, or a court Order under Section 431 of the **Act** is being complied with.
- 35. An Officer performing a duty under this by-law may be accompanied by a person under his direction.
- 36. For the purpose of determining compliance with this by-law, DBH shall be used to determine whether a Tree which has been Injured would have attained the minimum measurement required by this by-law. In the event a Tree was Injured without a permit being obtained, the diameter of the remaining trunk shall be used to determine whether a Tree which has been Injured would have attained the minimum measurement required by this by-law.

#### **Part X – Penalties and Offences**

- 37. Any Person who contravenes any provision of this by-law, including an Order issued under this by-law or Sections 444 or 445 of the **Act** is guilty of an offence and is liable to a fine, and such other penalties, as provided for in **the Provincial Offences Act**, R.S.O. 1990, c. P.33, as amended and the **Act**.
- 38. No Person shall hinder or obstruct an Officer or attempt to hinder or obstruct an Officer who is performing a duty under this by-law.
- 39. Any Person who provides false information to an Officer shall be deemed to have hindered or obstructed the Officer in the execution of his or her duties.

40. All contraventions of this By-law or of an Order issued under to this By-law are designated multiple and continuing offences under Subsection 429(2) of the **Act**.
41. In addition to Section 37 of this by-law, any Person who is charged with an offence under this By-law, following laying an information under Part III of the **Provincial Offences Act**, is liable, upon conviction, to a fine as follows:
  - a. 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), for each day or part of a day that the offence continues, 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 maximum fine shall be \$10,000 and the total of all fines for each included offence is not limited to \$100,000; and
  - d. If a Person is convicted of an offence under this by-law, the potential for economic advantage from the Injury of a Tree on the affected lands may be considered an aggravating factor for sentencing purposes which may attract a special fine and the maximum amount of the special fine may exceed \$100,000 or such other maximum amount permitted by the **Act**.
42. If a Person is convicted of an offence under this by-law, in addition to any other remedy or any penalty imposed, 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.

## **Part X – Schedules**

43. Schedules A, B, C, D and E form part of this by-law. Schedule E is subject to change in accordance with the by-law entitled “A By-law to Establish User Fees”.
44. The by-law entitled “A By-law to Establish User Fees” is hereby amended by Schedule E attached hereto.

## **Part XI – Severability**

45. If any section, subsection or part or parts thereof are declared by a court of competent jurisdiction to be illegal, invalid or otherwise unenforceable, such provision shall be deemed to be severable and the remainder of this by-law shall be declared to be separate and independent and enacted as such.

## **Part XII – Effective Date**

46. This by-law shall come into effect on the date it receives third reading
47. Despite Section 48 of this by-law, By-law No. 97-68 shall continue to apply to proceedings or to prosecutions that were initiated prior to its/their repeal.

## **Part XIII – Repeal**

48. By-law No. 97-68, of the Municipal Code is repealed effective on the date this by-law is adopted.



By-law read a first, second and third time this 2<sup>nd</sup> day of October 2017.

\_\_\_\_\_  
Daryl Bennett, Mayor

\_\_\_\_\_  
John Kennedy, City Clerk

**Schedule “A” – List of Pests and Diseases**

**Pests:**

- a. Asian Longhorned Beetle (*Anoplophora glabripennis*)
- b. Carpenter Ants (where infestation is significant and treatment impractical);
- c. Emerald Ash Borer (*Agrilus planipennis*);
- d. Hemlock woolly adelgid (*Adelges tsugae*)
- e. Pine Engraver Beetle (*Ips pini*)

**Diseases:**

- a. Bacterial or fungal infection which, in the reasonable opinion of the Director is detrimental to the Tree’s health
- b. Dutch Elm Disease (*Ophiostoma novo-ulmi*)
- c. Verticillium Wilt (*Verticillium dahliae*) where, if left unchecked, and which, in the reasonable opinion of the Director, pose a significant threat to the health of adjacent property, plant material or the urban forest in general; and;

**General:**

- a. Other such Pests or diseases which, if left unchecked, and which, in the reasonable opinion of the Director, pose a significant threat to the health of Trees on adjacent property or the urban forest in general.

**Schedule “B” – Permit Application Form and Fees**

**Fee for Part VI Permit --**    \$150.00 for 1-5 Trees  
    \$300 for 6 -10 Trees  
    \$600 for 11 or more trees

**Application #** \_\_\_\_\_

**Application to Permit the  
Injury or Destruction  
of Trees on Private Property**

**City of Peterborough  
500 George Street North  
Peterborough, Ontario  
K9H 3R9  
Tel: 705 742 7777 x 1813**

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The personal information on this form is collected under By-law 17-xxx and will be used for the purposes of this application only. Questions should be directed to the Freedom of Information Coordinator, City Clerk, 500 George Street North, Peterborough, ON K9H 3R9 Tel. 705-742-7777 x 1820.

**Instructions for Completing the Application:**

1. Please type or print CLEARLY. Submitting an incomplete or illegible application will delay approval.
2. Municipal address: Street name and number must be included for applications to be considered complete.
3. Consult with the Director to determine whether an Arborist’s report will be required as part of a complete application.
4. Payment of the required fee.
5. Provide written consent from an adjacent property owner, and his/her contact information (E.g. telephone and/or Email address) if the Tree is a Boundary Tree.
6. If this application is signed by an applicant other than the Owner, the Owner’s written authorization is required.
7. Submit this application and other supporting documentation to the Director of Utility Services, City of Peterborough, Utility Services Department, 500 George Street North, Peterborough, ON K9H 3R9. Attention: Urban Forest Manager.

**Applicant Information for Injuring or Destroying a Tree**

1.     Municipal address of subject property:\_\_\_\_\_
- \_\_\_\_\_
2.     Name of Applicant/Agent: \_\_\_\_\_
3.     Mailing Address of Applicant:\_\_\_\_\_
4.     Telephone:\_\_\_\_\_Work No.:\_\_\_\_\_
- Email : \_\_\_\_\_
5.     Name of Registered Owner (if different from above):
- \_\_\_\_\_
6.     Mailing address of Owner (if different from above):\_\_\_\_\_
- \_\_\_\_\_
7.     Existing Land Use:\_\_\_\_\_
8.     Are the Tree(s) located on or near any neighbouring property line resulting in the joint ownership of the Tree/s.
- ☐ Yes   ☐ No
9.     If yes, do you have authorization from the neighbouring property owner to act as their representative in this application to Injure or Destroy Tree(s).
- ☐ Yes   ☐ No
10.    Reason why Trees are being Injured or Destroyed. Please circle letter:
- a.     Tree(s) interfere with proposed construction;
- b.     Landscaping on the property;
- c.     Tree(s) is dead, dying or hazardous;
- d.     Tree(s) are interfering with utilities/dwelling/foundation;
- e.     Installing pool;
- f.     Other (please specify)\_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
11.    A diagram showing the location of the Tree being Injured or Destroyed, the distance between the Tree being Injured or Destroyed and other Trees and any buildings on the property is required.
- 12     An Arborist Report (If applicable)
13.    Fee Requirements:
- a.     If a Tree is considered a Hazardous Tree by the Director there is no fee, but a permit must still be obtained
- b.     Otherwise : applicable fee

(Methods of payment major credit cards, interact, cash, or cheque. Fees are non-refundable and must be remitted at the time of initial permit application).

14. **Additional Requirements**

- a. I am the owner of the property or acting on behalf of the owner with written authorization.
- b. The property is not a designated Heritage Property under the City of Peterborough designation.
- c. The applicable fee(s) have been submitted.

**Declaration**

I /we (Print name(s)) \_\_\_\_\_

hereby declare that I have read and understood the required procedures and provisions under the City of Peterborough **Tree Conservation By-law** and the statements and plans made by me upon this application are, to the best of my belief and knowledge, a true and complete representation of the purpose and intent of this application.

I acknowledge that I require a Permit before proceeding with any of the work detailed in the application.

I consent to City of Peterborough employees entering onto the property to conduct Inspections.

Signed at the City of Peterborough this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

Signature of Applicant: \_\_\_\_\_

**Schedule C – Tree Replacement for Permitted Removals**

**Definitions**

**Tree:** See By-law definition

**Stature Tree:** For the purposes of Schedule C, means a Tree in good health with an unimpeded crown located within a Woodland, a group of trees, a hedgerow or a remnant Woodland parcel.

**Woodland:** See Woodland Conservation By-law definition

Groups of Trees, Remnant Woodland and Hedgerow for the purposes of Schedule C shall be treated as Woodland for the application of the recommended Tree Replacement.

**Purpose**

This Schedule contains the procedure to replace permitted Removal of individual Trees, Stature Trees and Woodland canopy as described in the Tree Conservation and Woodland Conservation By-laws.

**Tree Replacement**

1. Permitted removal of a Tree or a Stature Tree in a healthy condition shall be replaced at a ratio of 3:1 (3 new to 1 lost). Where space is insufficient to permit planting the required number of Replacement Trees, the Owner shall pay to the City its cost to purchase the required number of 50 mm caliper Replacement Trees. The City’s cost shall be based on its prior year average contracted tree planting cost for a 50 mm caliper tree in accordance with City Tree Planting Specification CP801.01.

Notes: Per tree cost (planted), \$450.00 (2016 average cost)

**Woodland Replacement**

See Woodland Conservation By-law 17-xxx

**Schedule D – Terms of Reference – Tree and Woodland Appeals Committee**

**Recitals**

- A. The City has enacted a Tree Conservation By-law, being a by-law to regulate the Injury and Destruction of Trees within the City of Peterborough.
- B. A property owner may appeal the refusal to issue a permit or appeal the conditions attached to a permit under the By-law to the Tree and Woodland Appeals Committee (the “Committee”).
- C. The purpose of the Committee is to provide a timely and final determination concerning the issuance or non-issuance of a permit or the conditions attached to a permit issued under the By-law.

**1.0 Purpose of the Committee**

- 1.1 The Committee has the responsibility to hear and determine appeals of all decisions made under the By-law.
- 1.2 On an appeal, the Committee has the authority to:
  - a. confirm or vary the conditions contained in a permit issued under the By-law; or
  - b. confirm the non-issuance of a permit under the By-law; or
  - c. issue a permit under the By-law with or without conditions.

**2.0 Operation of the Committee**

- 2.1 Committee Hearings are attended by Committee members, City staff, and applicants and/or their representatives.
- 2.2 The Committee shall establish its own rules of practice and procedure and the Committee may accept and weigh evidence in such manner as it determines is fair, reasonable and expeditious.
- 2.3 The Committee shall establish its own rules of practice and procedure and the Committee may accept and weigh evidence in such manner as it determines is fair, reasonable and expeditious.
- 2.4 The written decision of the Committee is final.
- 2.5 The decision of the Committee need not be unanimous, and in the event of a split decision, the majority decision shall be the Committee’s final decision.
- 2.6 No appeal shall be heard and determined unless at least 3 Committee members are present for the entire hearing. Only Committee members who have heard all the evidence shall participate in the Committee’s decision making process.
- 2.7 In the event that a majority of the Committee is satisfied that the appellant was provided with reasonable notice of the hearing, and if the appellant is not present at the hearing, the Committee may:
  - a. Adjourn the hearing to another date; or
  - b. Confirm, vary or overturn the Director’s decision.
- 2.8 Only in extraordinary circumstances, which are within the Committee’s discretion to determine, shall more than one adjournment be granted to an appellant.

### **3.0 Term of Office**

- 3.1 The appointed members of the Committee shall hold office for a term concurrent with the term of Council, but every member shall continue in office until his or her successor is appointed.
- 3.2 Any member of the Committee whose term of office has expired is eligible for reappointment.
- 3.3 When a member ceases to be a member before the expiration of his or her term, Council will appoint another eligible person for the unexpired portion of the term.

### **4.0 Composition of the Committee**

- 4.1 The Committee shall include:
  - a. A Registered Professional Forester (“RPF”) as defined in the **Professional Foresters Act, 2000**, S.O. 2000, c. 18, as amended or replaced from time to time registered professional forester; and
  - b. An Aborist, who is not an RPF; and
  - b. a third member duly appointed by the Council for the Corporation of the City of Peterborough, who is not a member of Council.
- 4.2 The Committee will select a Chair and a Secretary.

### **5.0 Qualifications**

- 5.1 In selecting its appointments to the Committee, Council shall consider, among other factors:
  - a. the candidate’s demonstrated commitment to, and interest in, the community;
  - b. the candidate’s status as resident, property owner or employee within the City of Peterborough;
  - c. the candidate’s availability and commitment to be impartial and attend all Committee meetings; and
  - d. the candidate’s ability to objectively and fully consider the information provided at any hearing.

### **6.0 Role of Committee Members**

- 6.1 It is the duty of the Chair to:
  - a. preside at all hearings of the Committee;
  - b. call the hearing to order;
  - c. swear in the staff members, the appellant and all witnesses; and
  - d. determine in conjunction with the other Committee members, the Committee’s procedure.
- 6.2 It is the duty of the Secretary to:
  - a. ensure that the appellant and is informed of the hearing date at least 7 calendar days prior to the hearing;



- b. keep records of all official business of the Committee, including records of all appeals and copies of all decisions respecting each appeal;
- c. issue the Committee's decision within a reasonable time period; and
- d. concurrent with the issuance of the Committee's decision, inform the appellant and staff, of the Committee's decision.

## **7.0 Remuneration**

- 7.1 Members of the Committee shall serve without remuneration.

## **8.0 Meetings**

- 8.1 The Committee shall meet as required to consider appeals that have been filed with the City.
- 8.2 Meetings of the Committee shall be held at City Hall or such other location within the City of Peterborough, as the Committee deems advisable.
- 8.3 Subject to the volume of appeals received, the Committee may be required to meet monthly, bi-monthly, or semi-annually.

## **9.0 Conflict of Interest**

- 9.1 Members of the Committee shall exercise their duties ethically and identify and /or avoid potential conflicts of interest.

### Schedule E – Fees and Charges

G/L Account Number	User Fee Name and Description	Rationale for Fee	Unit Basis	Current Rate Presently in Effect	HST Y or N	2017 Total Budgeted Rev from Fee	Date of rate Change for 2018 if applicable	Proposed Rate as per 2018 Budget	2018 Total Budgeted Rev from Fee
C1	C2	C3	C4	C5	C6	C7	C8	C9	C10
To be advised	Tree Cutting Permit	Partial Recovery of staff costs to inspect trees and administer new by-law	Per permit	\$150.00 for 1-5 Trees \$300 for 6 -10 Trees \$600 for 11 or more trees	N	Unknown	1 January 2018	\$150.00 for 1-5 Trees \$300 for 6 -10 Trees \$600 for 11 or more trees	Unknown

DRAFT

## The Corporation of the City of Peterborough

### By-Law Number 17-xxx

Being a By-law to Regulate the Removal and Replacement of Woodlands in the City of Peterborough entitled the Woodland Conservation By-law.

#### Recitals

- A. Section 10(2) of the **Municipal Act**, 2001, (the “**Act**”) permits a single-tier municipality to pass by-laws respecting the economic, social and environmental well-being of the municipality.
- B. Section 135(1) of the **Act** supplements that broad power contained in Section 10(2) of the **Act**, and permits a local municipality to enact by-laws to prohibit or regulate the destruction or injuring of trees within the municipality.
- C. Section 135(7) of the **Act** permits a local municipality to require that permit be obtained to injure or destroy trees and impose conditions, including conditions relating to the manner in which destruction occurs and the qualifications of person authorized to injure or destroy trees.
- D. City Council in recognition of the environmental, aesthetic value and public health benefits of Woodlands wishes to conserve and protect trees within Woodlands by regulating and prohibiting the destruction and injury of trees within Woodlands.
- E. City Council has determined that conserving Woodlands is a matter respecting the economic, social and environmental well-being of the municipality.
- F. City Council has determined that the enactment and promotion of Woodland conservation regulations, including a permit system which will require replanting trees, are means of heightening public awareness and of achieving the conservation and enhancement of natural areas within the municipality.
- G. City Council has determined that the enactment and promotion of Woodland conservation regulations and the objectives of the City’s Urban Forest Strategic Plan, which objectives include no net loss of tree canopy and using good arboricultural practice to prolong the life of trees.

**Now Therefore**, The Council of Corporation of the City of Peterborough enacts as follows:

#### Part I – Title, Scope and Interpretation

- 1. The short title of this by-law is the “Woodland Conservation By-law”.
- 2. Subject to the exemptions noted in Part IV of this by-law, this by-law regulates the Injury or Destruction of all Trees within Woodlands, including Trees within Plantation Woodlands, located within the City, whether the Woodland is located on private property or on land owned by the City. In the event that a Woodland straddles the City’s boundary, this by-law applies to that portion of the Woodland which is located within the City.
- 3. For the purposes of this by-law:

- a. Certain words have be capitalized for convenience and whether a defined term or phrase appears in the body of this by-law as a capitalized term or in ordinary case, the term or phrase shall have the meaning given to it in Part II. Where any word, not defined in Part II is used the commonly applied English language meaning is intended.
  - b. Wherever a word defined in Part II of this by-law is used as a noun, verb, adverb or adjective it shall be interpreted as having a corresponding defined meaning even if appearing in ordinary case.
  - c. References to items in the singular include the plural, as the context requires.
  - d. References to any **Act**, regulation or by-law include references to any former and successor **Act**, regulation or by-law thereto.
4. This by-law regulates the Injury or Destruction of:
- a. Trees within a Designated Area subject to an Approved Development Agreement; or
  - b. Hazardous Trees within a Designated Area subject to a Permit.

## Part II – Definitions

5. For the purposes of this by-law:
- a. **Act** – means the **Municipal Act, 2001**, S.O. 2001, c.25, as amended.
  - b. **Approved Development Agreement** – means a site plan, draft plan of subdivision, community improvement plan or development agreement, which contains requirements for replanting trees provided such plan or agreement has been circulated and reviewed in accordance with the City’s normal and ordinary practice and which has received approval under the **Planning Act**. An Approved Development Agreement does not include the Official Plan, an Official Plan Amendment or a Secondary Plan. An Approved Development Agreement shall contain such conditions as the Director determines appropriate, including conditions to provide performance security and to replant Trees and shall, once registered on title, constitute a Permit under this by-law.
  - c. **Arborist** – means a person expert in the care and maintenance of trees with an accredited college or university degree in urban forestry, arboriculture or equivalent and who is:
    - i. an arborist qualified by the Ontario Training and Adjustment Board Apprenticeship and Client Services Branch;
    - ii. an International Society of Arboriculture (ISA) Certified Arborist, holding current certification and in good standing with the ISA;
    - iii. a consulting arborist registered with the American Society of Consulting Arborists (ASCA);
    - iv. A Registered Professional Forester (RPF) as defined in the **Professional Foresters Act**, 2000, S.O. 2000, c. 18, as amended or replaced from time to time; or
    - v. the City’s Urban Forest Manager;
    - vi. a person with similar qualifications as approved by the Director.

- d. **Boundary Tree** – has the meaning given to it in the **Forestry Act**, RSO 1990, c. F.26. (the “**Forestry Act**”)
- e. **City** – means, as the context requires, the Corporation of the City of Peterborough or the land within the municipal boundary of the City of Peterborough.
- f. **City Council** or **Council** – means the municipal council of the Corporation of the City of Peterborough.
- g. **Committee (the)** – means the decision making committee that hears and decides an appeal under this by-law. The Committee’s terms of reference are set out in Schedule D to this by-law.
- h. **Designated Area** – means a:
  - i. Woodland as defined in the **Forestry Act** provided the Designated Area is one hectare or more in area; or
  - ii. Plantation Woodland.
- i. **Destroy** – means any action which causes or results in any of the following to a Tree:
  - i. physiological injury;
  - ii. physical injury; or
  - iii. irreversible decline or death of a Tree including removing or cutting down a Tree;

**Destruction** shall have a corresponding meaning to **Destroy**;
- j. **Director** – means the Director of Utility Services for the City of Peterborough or his or her designate;
- k. **Good Forestry Practice** – has the meaning given to it in the **Forestry Act** provided the harvesting, renewal and maintenance activities are implemented in accordance with the conditions, as the case may be, the Approved Development Agreement or the Permit.
- l. **Hazardous Tree** – means:
  - i. a destabilized or structurally compromised Tree, or a Tree with Pest infestation, with a probability of failure that, in the opinion of an Arborist, presents a significant risk of harm to people or property; or
  - ii. a Tree that, in the opinion of an Arborist:
    - 1. can not have its life prolonged or be made safe through Good Arboricultural Practice; or
    - 2. is in a state of irreversible decline and is unlikely to become healthy through a natural process of recovery; or
    - 3. is a threat to the surrounding natural environment.
- m. **Injure** – means to injure or Destroy a Tree by any action that causes physiological, physical, biological or chemical damage to or the death of a Tree, but does not include pruning or removing branches in accord with Good Forestry Practice conducted in accordance with a Permit. **Injury** or **Injured** shall have their corresponding meaning.

- n. **Notice of Appeal** – means a written notice received by the City Clerk, sent by or on behalf of an Owner setting out, at a minimum, the following information:
  - i. if the Appeal is to an Order, which aspects of the Order is being appealed and which are not;
  - ii. if the Appeal is to an Order, any relevant information that the Owner thinks Director or Officer failed to take into consideration.
  - iii. if the Appeal is to a condition included in a Permit, which condition is being appealed and which conditions are not;
  - iv. if the Appeal is to a condition included in a Permit, any relevant information that the Owner thinks Director or Officer failed to take into consideration.
- o. **Nursery** – means a lot on which the principal active business is the growing of plants, shrubs and trees for sale to the public. A Nursery is not a Designated Area.
- p. **Officer** – means an individual appointed by Council for the administration and enforcement of municipal by-laws and includes the City’s Director of Utility Services, the City’s Urban Forestry Manager, and any designate to the foregoing.
- q. **Orchard** – means a lot on which the principal active business is the growing of fruit for sale to the public. An Orchard is not a designated Area.
- r. **Order** – means any Order:
  - i. issued by the Director under the authority of this by-law; or
  - ii. issued by a judge or justice of the peace under the authority of the Act, the **Forestry Act**, the **Provincial Offences Act**, this by-law or other applicable law.
- s. **Owner** – means a person having any right, title, interest or equity in land or any such person’s authorized representative and includes the Person managing or receiving the rent of the land and includes a lessee or occupant of the land.
- t. **Permit** – means a valid permit, issued under Part V of this by-law, to Injure or Destroy a Tree.
- u. **Person** – means an individual, including an Owner, an Arborist, an association, a partnership, or a corporation.
- v. **Pest** – means a biotic disorder and includes any insect or disease that, in the opinion of an Arborist, is likely to cause the destruction of or injury to Trees, and shall include the insects and diseases included in Schedule A to this By-law;
- w. **Plantation Woodland** – means a type of Woodland one hectare or more in area which contains Trees which have been intentionally planted. A Plantation Woodland is a Designated Area.
- x. **Tree** – includes a Boundary Tree and a Hazardous Tree and means any species of woody perennial plant, including its root system, which has reached or has the genetic potential to reach a height of at least 4.5

metres and a DBH of at least 7.5 centimetres at physiological maturity whether the Tree is located on City-owned land or on privately owned land or which forms part of a hedgerow. The definition of Tree does not include:

- i. European Buckthorn;
  - ii. Glossy Buckthorn; or
  - iii. an Ash Tree that, in the opinion of an Officer, is infested by the Emerald Ash Borer.
- y. **Tree Conservation By-law** – means City of Peterborough By-law No. 17-xxx, or any successor by-law regulating the injury or destruction of trees in the City of Peterborough.
  - z. **Woodland** – has the meaning given to it in the **Forestry Act** and includes a Plantation Woodland.

### Part III – Prohibitions

- 6. No person shall Injure or cause or permit Injury to:
  - a. a Tree in a Designated Area except in accordance with an Approved Development Agreement; or
  - b. a Hazardous Tree except in accordance with a Permit issued by the Director under this by-law.
- 7. No Person shall:
  - a. contravene the terms or conditions of an Approved Development Agreement;
  - b. cause or permit the contravention of the terms or conditions of an Approved Development Agreement;
  - c. contravene the terms or conditions of a Permit issued under this by-law; or
  - d. cause or permit the contravention of the terms or conditions of a Permit issued under this by-law.
- 8. Every Person shall comply with an Order issued under this by-law.
- 9. No Person shall remove or deface any Order that has been posted pursuant to this by-law.

### Part IV – Exemptions

- 10. This by-law does not apply to:
  - a. a Designated Area that is the subject of an Approved Development Agreement;
  - b. an Orchard or a Nursery; or
  - c. a Hazardous Tree, for which a Permit has been issued under this by-law.
  - d. activities exempted by Subsection 135(12) of the **Act** as follows:
    - i. activities or matters undertaken by a municipality or a local board of a municipality;

- ii. activities or matters undertaken under a license issued under the **Crown Forest Sustainability Act, 1994**;
  - iii. the injuring or destruction of Trees by a person licensed under the **Surveyors Act** to engage in the practice of cadastral surveying or his or her agent, while making a survey;
  - iv. 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 of subdivision agreement entered into under those sections;
  - v. the injuring or destruction of Trees imposed after December 31, 2002 as a condition to a development permit authorized by regulation made under Section 70.2 of the **Planning Act** or as a requirement of an agreement entered into under the regulation;
  - vi. the injuring or destruction of Trees 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;
  - vii. the injuring or destruction of Trees undertaken on land described in a license for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the **Aggregate Resources Act**; or
  - viii. the injuring or destruction of Trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land, (1) that has not been designated under the **Aggregate Resources Act** or a predecessor of that **Act**, and (2) on which a pit or quarry is a permitted land use under a by-law passed under Section 34 of the **Planning Act**.
- e. a Woodland or Plantation Woodland which is subject to a Managed Forest Tax Incentive Program (a “MFTIP”) approved by the Ministry of Natural Resources and Forestry and a copy of same has been filed with the Director.

## Part V – Permits and Approved Development Agreements

11. If an Owner thinks that emergency work is required to Injure a Hazardous Tree, the Owner shall, as soon as practicable, and prior to Injuring the Hazardous Tree:
- a. notify the City so as to provide the City with a reasonable opportunity to inspect the Hazardous Tree; and
  - b. provide the Director with documentation including but not limited to:
    - i. a Report, if available;
    - ii. photographs of the size/height of the Hazardous Tree;
    - iii. a diagram showing the distance between the Hazardous Tree and any buildings; and
    - iv. a description of the specific nature of the danger posed by the Hazardous Tree.



12. The exemption outlined in Section 11 above, only applies if the City has been provided with a reasonable opportunity to inspect the subject tree and the Director has given his/her verbal or written approval to Injure the Hazardous Tree.
13. The notice and documentation requirements contained in Part V of this by-law shall be sent to: [treebylaw@peterborough.ca](mailto:treebylaw@peterborough.ca) or delivered to City Hall marked as Woodland By-law Permit Application.
14. Council hereby delegates to the Director the power to:
  - a. upon receipt of an application completed in accordance with the requirements of Schedules B and C, issue a Permit, including the authority to include conditions on a Permit, in accordance with Part V of this by-law;
  - b. amend the pricing contained in Table 1 in Schedule B, **Woodland and Plantation Woodland Replanting Costs**, on an annual basis; and
  - c. designate Officers.
15. Every person who intends to Injure or Destroy:
  - a. a Tree in a Designated Area shall, prior to Injuring or Destroying a Tree, apply for and obtain an Approved Development Agreement; or
  - b. a Hazardous Tree in a Designated Area shall, prior to Injuring or Destroying a Hazardous Tree, apply for and obtain a Permit.
16. The Director may issue a permit to Injure or Destroy a Hazardous Tree, if satisfied that the Owner has proposed an activity which:
  - a. is consistent with Good Forestry Practice;
  - b. will not interfere with natural drainage processes;
  - c. will not result in significant soil erosion, significant slope instability or significant siltation in a watercourse;
  - d. will not have a significant impact on any healthy vegetation community within and/or adjacent to the subject site; and
  - e. will not have a significant impact on any fish or wildlife habitat within and/or adjacent to the subject site.
17. The Director may include such terms and conditions on a Permit to Injure or Destroy a Hazardous Tree as recommended by an Officer as necessary to ensure that the proposed activity:
  - a. will be undertaken in accordance with the Good Forestry Practise; and
  - b. adequately provides for replanting Replacement Trees.
18. The Director may, prior to making a decision, refer an Owner's application for a Permit to and obtain comment from:
  - a. municipal staff;
  - b. members of, public agency, advisory body; and/or
  - c. another qualified professional.

19. A Permit issued pursuant to this by-law shall expire on the 365<sup>th</sup> day after its date of issuance and the Director may, upon receipt, prior to expiry, of an Owner's, renew the Permit with or with additional conditions for a further period of up to 365 days.
20. The fee for a Permit to Destroy a Hazardous Tree issued by an Officer under this by-law shall be \$300.00, except that no fee shall apply if the land upon which the Trees are located is subject to:
  - a. an Approved Development Agreement; or
  - b. a MFTIP.
21. The Director shall have the authority to reduce or waive the Permit fee upon such conditions as the Director determines are appropriate.
22. The Director may require the Approved Development Agreement to be registered on title at the Owner's expense to the subject lands. Where appropriate, the Director may also require, as a condition within an Approved Development Agreement, that the Owner post with the City security in an amount determined by the Director in order to ensure performance of the Owner's obligations under the Approved Development Agreement.

#### **Part VI – Administration and Enforcement**

23. This by-law shall be administered by Director, whose powers include: designating one or more persons as Officers, amending the costs contained in Schedule B from time to time and to amending the information being collected under Schedules B and C.
24. This by-law shall be enforced by any Officer, or by any other person authorized to enforce City by-laws.
25. An Officer may, during daylight hours, enter and inspect any land to which this by-law applies and may be accompanied by such persons as he/she determines will be of assistance.

#### **Part VII – Orders and Appeal to the Committee**

26. If, after inspection, an Officer is satisfied that a contravention of this by-law has occurred, the Officer may make an Order requiring the person to stop Injuring or Destroying Trees and the Order shall contain particulars of the contravention.
27. A person:
  - a. who has received an Order issued under this by-law may appeal the Order to the Committee by filing a Notice of Appeal to the City Clerk within 30 days after the date of the Order; or
  - b. to whom a Permit has been issued pursuant to this by-law may appeal the Director's conditions to the Committee by filing a Notice of Appeal to the City Clerk within 30 days after the date of Permit's issuance.
28. Prior to hearing an appeal, the Committee may refer any application, associated plan or information to members of a municipal staff, public agency, advisory body and/or other qualified professional for comment prior to making a decision.
29. As soon as practicable after a Notice of Appeal is filed, the Committee shall hear the appeal and may decide to:
  - a. confirm, vary, or revoke the Order; and/or

- b. confirm or vary the conditions contained within the Permit.
30. The decision of Committee under Section 27 of this by-law is final.

### **Part VIII – General Offence Provisions**

21. Any person who contravenes any provision of the by-law is guilty of an offence and is liable, upon conviction, to a fine as prescribed by applicable law for each offence, recoverable under the provisions of the **Provincial Offences Act**, as follows:
- a. on a first conviction, to a fine of not more than \$10,000; and
  - b. on any subsequent conviction, to a fine of not more than \$20,000.
32. If a person is convicted of an offence under this by-law, in addition to any other remedy or any penalty provided by law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an Order prohibiting the continuation or the repetition of the offence of any person.
33. If a person is convicted of an offence under this by-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may order the person to replant or have replanted Trees in such manner and within such period of time as the court considers appropriate, including any silvicultural treatment necessary to re-establish the Trees or have the Trees re-established.
34. Under Sections 441 and 441.1 of the **Act**, the City's treasurer may add any part of an unpaid fine to the tax roll for any property in the City which the Owner or person is responsible for paying and collect it in the same manner as municipal taxes.

### **Part IX – Schedule**

35. Schedules A, B, C, D and E form part of this by-law. Schedule E is subject to change in accordance with the by-law entitled "A By-law to Establish User Fees".
36. The by-law entitled "A By-law to Establish User Fees" is hereby amended by Schedule E attached hereto.

### **Part X - Severability**

37. If any section, subsection or part or parts thereof are declared by a court of competent jurisdiction to be illegal, invalid or otherwise unenforceable, such provision shall be deemed to be severable and the remainder of this by-law shall be declared to be separate and independent and enacted as such.

### **Part XI – Effective Date**

37. This by-law comes into effect on the date it receives third reading.
38. Despite Section 39 of this by-law, By-law No. 97-68 shall continue to apply to proceedings or to prosecutions that were initiated prior to its repeal.

### **Part XII - Repeal**

39. By-law No. 97-68 is repealed effective on the date this by-law is adopted.

By-law read a first, second and third time this 2<sup>nd</sup> day of October 2017.

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Daryl Bennett, Mayor

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John Kennedy, City Clerk

## **Schedule A – List of Pests and Diseases**

### **Pests:**

- a. Asian Longhorned Beetle (*Anoplophora glabripennis*)
- b. Carpenter Ants (where infestation is significant and treatment impractical);
- c. Emerald Ash Borer (*Agrilus planipennis*);
- d. Hemlock woolly adelgid (*Adelges tsugae*)
- e. Pine Engraver Beetle (*Ips pini*)

### **Diseases:**

- a. Bacterial or fungal infection which, in the reasonable opinion of the Director is detrimental to the Tree's health
- b. Dutch Elm Disease (*Ophiostoma novo-ulmi*)
- c. Verticillium Wilt (*Verticillium dahliae*) where, if left unchecked, and which, in the reasonable opinion of the Director, pose a significant threat to the health of adjacent property, plant material or the urban forest in general; and;

### **General:**

- a. Other such Pests or diseases which, if left unchecked, and which, in the reasonable opinion of the Director, pose a significant threat to the health of Trees on adjacent property or the urban forest in general.

Schedule B – Costs for Replanting

If a Woodland or a Plantation Woodland or a remnant of the foregoing, or if a group of Trees or and a hedgerow is removed, replanting shall occur on an equal area basis and with a species composition designed to replicate the lost diversity of Trees.

Each Woodland and Plantation Woodland will be classified under the Ministry of Natural Resources and Forestry’s **Ontario Ecological Land Classification for Southern Ontario**.

The replanting cost for a Woodland or Plantation Woodland will vary depending on the diversity of Tree species found within the foregoing.

If the area available for replacing Trees is insufficient to permit replanting the required number and species of replacement Trees on the Owner’s land, the Owner shall pay to the City the average of the lowest and highest unit price contained in the Woodland or Plantation Woodland Replanting Costs as set out in the then current Table 1.

Table 1 – Woodland and Plantation Woodland Replanting Costs

Replanting to achieve reforestation assumes planting of seedlings (50/50 mix of coniferous and deciduous species). All Trees shall receive a mulch mat for suppression of weed growth. All hardwoods shall be contained in a tubex tree shelter installed on a metal T-post. The Owner shall guarantee Tree survival and installed materials for a minimum of 2 years.

Materials Item	Pricing					
	Unit			Total (1,500 trees/hectare)*		
	Lowest	Highest	Average	Lowest	Highest	Average
Conifer seedlings	\$0.90	\$3.00	\$1.66	\$1,350.00	\$4,500.00	\$2,485.92
Deciduous seedlings	\$1.25	\$12.00	\$4.88	\$1,875.00	\$18,000.00	\$7,318.95
Average seedling	\$1.08	\$7.50	\$3.27	\$1,612.50	\$11,250.00	\$4,902.43
Tree shelters (based on 50% conifer (no shelter needed) and 50% deciduous planting)	\$3.62	\$4.86	\$4.24	\$2,715.00	\$3,645.00	\$3,180.00
Metal T-bars for tree shelters	\$4.50	\$9.99	\$7.25	\$3,375.00	\$7,492.50	\$5,433.75
Mulch mat (TassuCol)	\$1.07	\$1.07	\$1.07	\$1,605.00	\$1,605.00	\$1,605.00
Staples for mulch mat (2 staples per mat)	\$0.20	\$0.20	\$0.20	\$295.20	\$295.20	\$295.20
Total materials	\$6.40	\$16.19	\$10.28	\$9,602.70	\$24,287.70	\$15,416.38
Installed cost**				\$24,006.75	\$60,719.25	\$38,540.96
Installed cost / tree**				\$16.00	\$40.48	\$25.69

\* 1500 trees/hectare (2.58 m x 2.58 m) based on minimum density to achieve a productive forest. Source: Forests Ontario 50 Million Tree Program Outline. Density range 1,500 to 2,200 trees/ha.

\*\* Installed tree cost is based on 2.5x the cost of tree and materials. Includes a 2-year guarantee. Source: [ww.isaontario.com/news/plant-appraisal-guide-status-update](http://ww.isaontario.com/news/plant-appraisal-guide-status-update), accessed May 19, 2017.

Table 1 shall be updated annually by the Director to reflect the average industry cost to replant Trees.

**Schedule C – Permit Application Form and Fees**

**Fee for Part V Permit - \$300.00 per application**

**Application #\_\_\_\_\_**

**Application to Permit the  
Injury or Destruction of a  
Tree within a Woodland  
or Plantation Woodland**

**City of Peterborough  
500 George Street North  
Peterborough, Ontario  
K9H 3R9  
Tel: 705 742 7777 x 1813**

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The personal information on this form is collected under City By-law 17-xxx and will be used for the purposes of this application only. Questions should be directed to the Freedom of Information Coordinator, City Clerk, 500 George Street North, Peterborough, ON K9H 3R9 Tel. 705-742-7777 x 1820.

**Instructions for Completing the Application:**

1. Application form to be completed by applicant. Please type or print clearly. Submitting an incomplete or illegible application will delay approval.
2. Municipal address: Street name and number must be included for applications to be considered complete.
3. Consult with the Director to determine whether an Arborist report will be required as part of a complete application.
4. If replanting, provide 2 copies of the replanting plan or landscape plan.
5. Payment of the required fees: See Below.
6. Written consent is necessary from an adjacent property owner where the Hazardous Tree is a Boundary Tree.
7. If this application is signed by an applicant other than the Owner, or by an agent, the Owner’s written authorization is required.
8. Submit this application and other supporting documentation to the Director, City of Peterborough, Utility Services Department, 500 George Street North, Peterborough, ON K9H 3R9.
9. Applications submitted after 3:30 p.m. local time will not be processed until the next business day.

**Applicant Information for Injuring or Destroying a Tree within a Woodland or Plantation Woodland**

1. Municipal address of subject property:\_\_\_\_\_
2. Name of Applicant/Agent:\_\_\_\_\_
3. Mailing Address of Applicant:\_\_\_\_\_
4. Telephone:\_\_\_\_\_Work No.:\_\_\_\_\_
- Email :\_\_\_\_\_
5. Name of Registered Owner (if different from above):  
\_\_\_\_\_
6. Mailing address of Owner (if different from above):\_\_\_\_\_
- \_\_\_\_\_
7. Existing Land Use:\_\_\_\_\_
8. Are the Tree(s) located on or near any neighbouring property line resulting in the joint ownership of the Tree/s.  
☐ Yes    ☐ No
9. If yes, do you have authorization from the neighbouring property owner to act as their representative in this application to Injure or Destroy Tree(s).  
☐ Yes    ☐ No
10. Reason why Trees are being Injured or Destroyed. Please circle letter:  
11.
  - a. All Trees are dead, dying or hazardous;
  - b. Trees are interfering with utilities/dwelling/foundation;
  - c. Other (please specify)\_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
11. A diagram showing the location of the Woodland being Injured or Destroyed and the distance between the Woodland and any buildings on the property is required.
12. Fee Requirements:
  - a. If a Tree is considered dead, dying or hazardous by the Director there is no fee, but a permit must still be obtained
  - b. Otherwise : \$300.00 per application

(Methods of payment major credit cards, interact, cash, or cheque. Fees are non-refundable and must be remitted at the time of initial permit application).



13. **Additional Requirements**

1. I am the owner of the property or acting on behalf of the owner with written authorization.
2. The property is not a designated Heritage Property under the City of Peterborough designation.
3. Applicable fees have been submitted.

**Declaration and Acknowledgement**

I /we (Print name) \_\_\_\_\_  
 hereby declare that I have read and understood the required procedures and provisions under the City of Peterborough **Woodland Conservation By-law** and the statements and plans made by me upon this application are, to the best of my belief and knowledge, a true and complete representation of the purpose and intent of this application.

I acknowledge that I require a Permit before proceeding with any of the work detailed in the application.

I consent to City of Peterborough employees entering onto the property to conduct such Inspections as are required by By-law 17-xxx.

I acknowledge that I require a permit before proceeding to perform any work described in the application.

Signed at the City of Peterborough this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

Signature of Applicant: \_\_\_\_\_

## **Schedule D – Terms of Reference –Tree and Woodland Appeals Committee**

### **Recitals**

- A. The City has enacted By-law 17-xxx, being a by-law to regulate the removal and replacement of Woodlands within the City of Peterborough.
- B. A property owner may appeal the refusal to issue a permit or appeal the conditions attached to a permit under By-law 17-xxx to the Tree and Woodland Appeals Committee (the “Committee”).
- C. The purpose of the Committee is to provide a timely and final determination concerning the issuance or non-issuance of a permit or the conditions attached to a permit issued under By-law 17-xxx.

### **1.0 Purpose of the Committee**

- 1.1 The Committee has the responsibility to hear and determine appeals of all decisions made under By-law 17-xxx.
- 1.2 On an appeal, the Committee has the authority to:
  - a. confirm or vary the conditions contained in a permit issued under By-law 17-xxx; or
  - b. confirm the non-issuance of a permit under By-law 17-xxx; or
  - c. issue a permit under By-law 17-xxx with or without conditions.

### **2.0 Operation of the Committee**

- 2.1 Committee Hearings are attended by Committee members, City staff, and applicants and/or their representatives.
- 2.2 The Committee shall establish its own rules of practice and procedure and the Committee may accept and weigh evidence in such manner as it determines is fair, reasonable and expeditious.
- 2.3 The Committee shall establish its own rules of practice and procedure and the Committee may accept and weigh evidence in such manner as it determines is fair, reasonable and expeditious.
- 2.4 The written decision of the Committee is final.
- 2.5 The decision of the Committee need not be unanimous, and in the event of a split decision, the majority decision shall be the Committee’s final decision.
- 2.6 No appeal shall be heard and determined unless at least 3 Committee members are present for the entire hearing. Only Committee members who have heard all the evidence shall participate in the Committee’s decision making process.
- 2.7 In the event that a majority of the Committee is satisfied that the appellant was provided with reasonable notice of the hearing, and if the appellant is not present at the hearing, the Committee may:
  - a. Adjourn the hearing to another date; or
  - b. Confirm, vary or overturn the Director’s decision.
- 2.8 Only in extraordinary circumstances, which are within the Committee’s discretion to determine, shall more than one adjournment be granted to an appellant.

### **3.0 Term of Office**

- 3.1 The appointed members of the Committee shall hold office for a term concurrent with the term of Council, but every member shall continue in office until his or her successor is appointed.
- 3.2 Any member of the Committee whose term of office has expired is eligible for reappointment.
- 3.3 When a member ceases to be a member before the expiration of his or her term, Council will appoint another eligible person for the unexpired portion of the term.

### **4.0 Composition of the Committee**

- 4.1 The Committee shall include:
  - a. A Registered Professional Forester (“RPF”) as defined in the **Professional Foresters Act, 2000**, S.O. 2000, c. 18, as amended or replaced from time to time registered professional forester; and
  - b. An Aborist, who is not an RPF; and
  - b. a third member duly appointed by the Council for the Corporation of the City of Peterborough, who is not a member of Council.
- 4.2 The Committee will select a Chair and a Secretary.

### **5.0 Qualifications**

- 5.1 In selecting its appointments to the Committee, Council shall consider, among other factors:
  - a. the candidate’s demonstrated commitment to, and interest in, the community;
  - b. the candidate’s status as resident, property owner or employee within the City of Peterborough;
  - c. the candidate’s availability and commitment to be impartial and attend all Committee meetings; and
  - d. the candidate’s ability to objectively and fully consider the information provided at any hearing.

### **6.0 Role of Committee Members**

- 6.1 It is the duty of the Chair to:
  - a. preside at all hearings of the Committee;
  - b. call the hearing to order;
  - c. swear in the staff members, the appellant and all witnesses; and
  - d. determine in conjunction with the other Committee members, the Committee’s procedure.
- 6.2 It is the duty of the Secretary to:
  - a. ensure that the appellant and is informed of the hearing date at least 7 calendar days prior to the hearing;

- b. keep records of all official business of the Committee, including records of all appeals and copies of all decisions respecting each appeal;
- c. issue the Committee's decision within a reasonable time period; and
- d. concurrent with the issuance of the Committee's decision, inform the appellant and staff, of the Committee's decision.

## **7.0 Remuneration**

- 7.1 Members of the Committee shall serve without remuneration.

## **8.0 Meetings**

- 8.1 The Committee shall meet as required to consider appeals that have been filed with the City.
- 8.2 Meetings of the Committee shall be held at City Hall or such other location within the City of Peterborough, as the Committee deems advisable.
- 8.3 Subject to the volume of appeals received, the Committee may be required to meet monthly, bi-monthly, or semi-annually.

## **9.0 Conflict of Interest**

- 9.1 Members of the Committee shall exercise their duties ethically and identify and /or avoid potential conflicts of interest.

**Schedule E – Fees and Charges**

"G/L Account Number	User Fee Name and Description	Rationale for Fee	Unit Basis	Current Rate Presently in Effect	HST Y or N	2017 Total Budgeted Rev from Fee	Date of rate Change for 2018 if applicable	Proposed Rate as per 2018 Budget	2018 Total Budgeted Rev from Fee
C1	C2	C3	C4	C5	C6	C7	C8	C9	C10
To be advised	Tree Cutting Permit	Partial Recovery of staff costs to inspect trees and administer new by-law	Per permit	\$300	N	Unknown	January 1, 2018	\$300	Unknown



DRAFT

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**The Corporation of the City of Peterborough**

**By-Law Number 17-XXX**

Being a By-Law to Appoint By-law Enforcement Officers to Enforce Tree and Woodland Conservation By-laws

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The Corporation of the City of Peterborough by the Council thereof hereby enacts as follows:

1. That the following individuals be appointed as By-law Enforcement Officers pursuant to Part IX of The Tree Conservation By-law and pursuant to Part VI of The Woodland Conservation By-law:
  - a. Paul Hambidge, Urban Forest Manager; and
  - b. Leighanne Howard, Urban Forest Technologist.

By-Law read a first, second and third time this                      day of \_\_\_\_\_ 2017.

\_\_\_\_\_  
Daryl Bennett, Mayor

\_\_\_\_\_  
John Kennedy, City Clerk

**USDIR17-008A**
**Appendix B Municipal Comparison of Tree Replacement**

<b>Municipality</b>	<b>Replacement Ratio for Healthy Tree Removal</b>	<b>Tree Replacement Requirements</b>	<b>Tree Replacement Cost (2017 prices) to Replant on Public Property.</b>
<b>Peterborough (Proposed)</b>	15cm – 30cm = 1 31cm – 40cm = 2 41cm – 50cm = 3 Over 50cm = 4	On private property: 20mm caliper deciduous or 150cm high conifer	\$450.00 per tree in lieu of planting a 50mm caliper deciduous tree on Public Property
<b>Guelph</b>	3:1	Not applicable.	\$500.00
<b>Kingston</b>	2:1	Equivalent replanting value to lost tree or trees	Equivalent \$ value to lost tree or trees
<b>Barrie</b>	Approved Landscape Report dependant	Determined in approved replanting report	Based on tree valuation
<b>Toronto</b>	3:1	Not applicable.	\$583.00
<b>Oakville</b>	1 tree for every 10 cm of DBH of healthy tree removed.	Deciduous 30 mm (1.5 in) caliper Coniferous 1.5m in height	\$300.00
<b>Markham</b>	3:1	Not applicable.	\$300.00
<b>Mississauga</b>	49cm or less: 1 tree, 50 cm or greater 2 trees.	Deciduous 60 mm (2.4 in) caliper Coniferous 1.8m in height	Deciduous tree = \$522.75 Coniferous tree = \$549.90
<b>Aurora</b>	1:1	Deciduous or Coniferous, 60mm (2.5 in) caliper	\$500.00
<b>Vaughn</b>	20cm – 30cm = 1 31cm – 40cm = 2 41cm – 50cm = 3 Over 50cm = 4	Deciduous 50 mm (2 in) caliper Coniferous 2.0m in height	\$550.00
<b>Richmond Hill</b>	20cm – 30cm = 1 31cm – 40cm = 2 41cm – 50cm = 3 Over 50cm = 4	Not applicable.	\$343.00