



Draft

## The Corporation of the City of Peterborough

### By-Law Number 19-xxx

Being a By-law to Regulate the Removal and Replacement of Trees in the City of Peterborough, entitled the Tree 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 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 has determined that 71% of the tree canopy is located on privately owned land and City Council has determined that conserving trees and 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, even in the absence of an application but after receiving notice from an Owner, it is desirable to permit an Officer to determine whether or not an Owner’s Tree is a Healthy Tree.
- G. 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 using good arboricultural practice to prolong the life of trees and avoiding a net loss of tree canopy.
- H. City Council recognizes that, in some circumstances, a High Risk Tree can be made safe and have its life prolonged through Pruning conducted in accordance with 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 within a Woodland regulated by By-law 17-121.
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. an Officer; or
    - vi. a person with similar qualifications as approved by the Commissioner.

- 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, (i) the Corporation of the City of Peterborough or (ii) the land within the municipal boundary of the City of Peterborough or (iii) City staff.
- e. **City Council** or **Council** – means the municipal council of the Corporation of the City of Peterborough.
- f. **Commissioner** – means the Commissioner of Infrastructure and Planning Services for the City of Peterborough or designate;
- 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. **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 an Officer or the Commissioner;
- 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. **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 or other operations performed in accord with the current version of the American National Standards Institute (ANSI) A300 series and the accompanying ISA Best Management Practice companion publication;
- l. **Healthy Tree** – means a Tree that, in the opinion of an Officer, is a physiologically healthy Tree;
- m. **Hedge** – means at least three or more of any species of tree planted as a row forming a continuous canopy and which, in the opinion of an Officer, are, or have been, previously managed to a pre-determined height and/or width and that the regular management requires trimming of no more than 10% of the overall height or width;

- n. **High Risk Tree** – means:
  - i. a destabilized or structurally compromised Tree which, in the opinion of an Arborist whose opinion has been confirmed by an Officer, has a high probability of failure and which presents a significant risk of harm to people or property; or
  - ii. a Tree that, in the opinion of an Arborist, whose opinion has been confirmed by an Officer:
    - 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.
- o. **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 conducted in accord with Good Arboricultural Practice and in accordance with a Permit or a written approval. **Injury** or **Injured** shall have their corresponding meaning.
- p. **ISA** – means the International Society of Arboriculture
- q. **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 are being appealed and which are not;
  - ii. if the Appeal is to an Order, any relevant information that the Owner thinks the Commissioner 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 the Commissioner or Officer failed to take into consideration;
  - v. if the Appeal is to the denial of a permit, any relevant information that the Owner thinks the Commissioner or Officer failed to take into consideration.
- r. **Nursery** – means a lot on which the principal active business is the growing of plants, shrubs and trees for sale to the public.
- s. **Officer** – means an individual appointed by Council for the administration and enforcement of this by-law.
- t. **Orchard** – means a lot on which the principal active business is the growing of fruit for sale to the public.
- u. **Order** – means an Order and the conditions attached to or contained therein:
  - i. issued by an Officer or the Commissioner 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.
- v. **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.
- w. **Permit** – means a valid permit, issued under Part VII of this by-law, to Injure or Destroy a Tree.
- x. **Person** – means an individual, including an Owner, an Arborist, an association, a partnership, or a corporation;
- y. **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;
- z. **Plantation Woodland** – means a type of Woodland one hectare or more in area which contains Trees which have been intentionally planted. See By-law 17-121, the Woodland Conservation By-law, for more detail.
- aa. **Pruning** – means cutting, removing or damaging Tree branches;
- bb. **Replacement Tree** – means a Tree or multiple Trees which is/are replanted:
  - i. as a condition of a Permit and in accordance with the requirements of Schedule C; or
  - ii. under the direction of an Officer or the Commissioner; or
  - iii. as a result of an Order; or
  - iv. as a result of the Committee’s decision.
- cc. **Stature Tree** – means a Tree with an unimpeded crown located in a Woodland or in a Plantation Woodland
- dd. **Tree** – includes a Healthy Tree, a Boundary Tree, a Replacement Tree, a Stature Tree located in a Woodland and a High Risk Tree and any species of woody perennial plant which has a DBH of 7.5 centimetres or more and which is located on privately owned land. A Tree may be located in a Hedge. The definition of Tree does not include:
  - i. European Buckthorn;
  - ii. Glossy Buckthorn; or
  - iii. a Tree with a DBH of less than 7.5 centimetres, unless the Tree is a Replacement Tree.
- ee. **Tree Report** – means a report:
  - i. prepared by an Arborist certified in the use of and whose report references, the “Tree Risk Assessment” standard, contained in ANSI A300 Part 9, as it may be amended or replaced;
  - ii. signed by a qualified Arborist;

- iii. which includes, an opinion on the species, size, Health, structural integrity, and risk rating of the Tree;
  - iv. containing a diagram showing the location of a tree to be Destroyed or injured in relation to any buildings on the property;
  - v. containing an assessment of Tree's contribution to the natural environment, including but not limited to an assessment of the Tree's capacity for CO<sup>2</sup> sequestration; carbon storage; reduction in energy use for adjacent buildings; stormwater interception and air purification; and
  - vi. containing any other details the Arborist considers relevant.
- ff. **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;
  - b. except in accordance with a Permit issued under Part VII of this by-law; or
  - c. an Officer has given written approval to Injure a Tree 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;
  - b. cause or permit the contravention of the terms or conditions of a Permit issued under this by-law; or
  - c. Injure a Tree listed in Part VI, without having received an Officer's written approval.
7. No Person shall fail to 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 as that term is defined by the City's Woodland Conservation By-law, excepting that this by-law does apply to a Stature Tree;
  - b. a Tree with the DBH of less than 7.5 cm; or
  - c. fruit trees, which are under 4.5 metres in height, and are grown for the purpose of fruit production.
  - d. Trees located in a Nursery or an Orchard;
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 or 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**.

## Part V – High Risk Trees

- 11. If an Owner thinks that urgent work is required to Injure a High Risk Tree, the Owner shall, as soon as practicable, and prior to Injuring the High Risk Tree:
  - a. notify an Officer and provide the Officer with a reasonable opportunity to inspect the High Risk Tree; and
  - b. provide one or more of the following, if an Officer determines such documentation is necessary:
    - i. a Tree Report completed by an appropriately qualified Arborist;
    - ii. photographs of the size/height of the High Risk Tree;
    - iii. a diagram showing the distance between the High Risk Tree and any buildings; and
    - iv. a description of the specific nature of the danger posed by the High Risk Tree.
- 12. An Owner may only Injure a High Risk Tree if:
  - a. the process outlined in Section 11 above has been followed and an Officer has given written approval to Injure the High Risk Tree; or;

- b. the Commissioner or, on appeal the Committee, has given its written approval to Injure the High Risk 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 Tree By-law Permit Application.

#### **Part VI – Work Requiring Prior Notice but no Permit**

- 14. The following activities require that an Arborist or an Owner provide an Officer with such information as an Officer may reasonably require and a reasonable period of time to assess the Tree and issue written approval before:
  - a. Injuring:
    - i. a High Risk Tree;
    - ii. a Tree with a DBH of more than 7.5 centimetres but less than 15 centimetres;
    - iii. an Ash Tree;
    - iv. a fruit tree which is 4.5 metres in height or taller;
  - b. Pruning a Healthy Tree; and
  - c. Removing a dead tree.
- 15. Prior to issuing written approval under Part VI of this by-law, an Officer may require an Arborist or an Owner to provide supporting information. Provided an Officer is satisfied with the supporting information, he/she shall give the Arborist written approval, which may or may not contain conditions, to Injure a Tree listed in Section 14. If an Officer is not satisfied with the supporting information, he/she may require that the Arborist or Owner complete a permit application under Part VIII of this by-law.

#### **Part VII – Work Requiring a Permit**

- 16. Despite any other section of this by-law, an Owner, or, in the case of a Boundary Tree, the Owners, may apply for a Permit to Injure, Prune or Destroy a Healthy Tree from an Officer. If the Permit is denied by an Officer, the Owner or Owners may request that the Commissioner issue the Permit. The Commissioner may, upon such request:
  - a. issue a Permit with or without conditions; or;
  - b. if the Commissioner refuses to grant a Permit the Owner(s) may appeal the refusal within 30 calendar days, to the Committee and the Commissioner shall, within 30 calendar days of receipt of the appeal, prepare a report for the Committee's consideration.
- 17. An Owner applying for a Permit to Injure, Prune or Destroy a Healthy Tree under this By-law shall, at least 60 calendar days before the proposed Injury or Destruction, submit to the City:
  - a. a completed, signed Permit application;
  - b. a Tree Report;
  - c. any supporting information; and
  - d. the non-refundable fee prescribed by the City.



18. When evaluating a request for a Permit seeking to Injure, Prune or Destroy a Healthy Tree, with or without conditions, an Officer or the Commissioner, or on appeal, the Committee shall consider:
  - a. the Tree Report and, if any, the Officer's report;
  - b. the reason for the Injury or Destruction 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 Permit adequately compensate for the Injury or Destruction of Trees; and
  - g. whether the Tree is a Boundary Tree.
19. If granting a Permit, an Officer or the Commissioner, 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 adequately compensate for the effects of the Injury to or Destruction of the Tree on the City's tree canopy.
20. If a Permit is denied, the Owner may appeal the denial decision to the Committee. Once the City Clerk receives the notice of appeal the City Clerk shall notify the Owner and all owners of lands abutting the subject property at least 7 calendar days prior to the Committee hearing the appeal.
21. The City Clerk shall notify in writing the Owner and all persons who participated in the appeal of the Committee's decision. Decisions made by the Committee are final and binding.
22. Council hereby delegates to:
  - a. an Officer or the Commissioner the power to issue a Permit and to impose conditions consistent with the intent of this By-law
  - b. the Commissioner the power to amend, from time to time Schedule "A" and Schedule "C";
  - c. the Commissioner the power to establish, from time to time, a new fee schedule in Schedule "B"; and;
  - d. the Commissioner, if four or more Trees with a DBH of greater than 50 cm are being Destroyed, the authority to determine how many Replacement Trees are required.
23. If the Commissioner exercises his/her authority under Section 22(b) or 22(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.

24. An Officer or the Commissioner may issue a Permit to Injure a Tree provided that an Arborist, if required, satisfies, as the case may be, an Officer or the Commissioner that Injuring the Tree is consistent with the goals of the Urban Forest Strategic Plan adopted by Council. Furthermore, each Permit application will need to demonstrate, to an Officer's or the Commissioner'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.
25. An Officer or the Commissioner may impose conditions to a Permit to address or specify:
- a. Any matters identified in Sections 16, 19, 24 or 25 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.
26. A Permit issued under this by-law shall expire on the 365<sup>th</sup> day after its date of issuance.
27. A Permit issued under this By-law must be posted in a prominent location on the Property visible to the public prior to Injuring or Destroying a Tree or a Healthy Tree. A Permit must be available for inspection by an Officer, at any reasonable time, upon request.

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

28. A Person who intends to Injure a Tree shall file a Permit application by submitting the following to the City:
- a. a complete application in the form required by the City, signed by the Owner(s) of the property where the Tree is located and any applicable application fee as detailed in Schedule B;
  - b. information relevant to the conditions of a Permit in Part VII of this by-law;
  - c. if required by the City a Tree Report prepared on the Owner's behalf; and

- d. the signed agreement of the adjacent property owner(s) if the Tree to be injured is a Boundary Tree.
- 29. Upon receipt by the City 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 site inspections prior to, during and after the proposed activity.
- 30. A decision regarding an application for a Permit shall not be made by an Officer or the Commissioner until such time as:
  - a. a completed Application has been filed and any applicable application fee has been paid;
  - b. an Officer has assessed the Tree; and
  - c. any supporting information, reasonably required by an Officer, has been received; and
  - d. if the Tree is a Healthy Tree and the Owner wishes to Destroy it;
    - i. a Tree Report has been received and reviewed by an Officer and,
    - ii. the City has received the required non-refundable fee.
- 31. An incomplete Application will be deemed to have been withdrawn by the Owner if it is not completed within 60 calendar days of its receipt by the City.
- 32. An Owner who receives a Permit is deemed to accept the conditions attached to or contained in the Permit and failing to forthwith satisfy the conditions attached to or contained in the Permit is an offence and may result in the City issuing an Order.
- 33. No Permit fee required by this by-law is refundable.

## **Part IX – Orders**

- 34. Where the Commissioner or an Officer reasonably believes that a contravention of this By-law has occurred, the Commissioner or Officer may issue:
  - a. an Order to discontinue the contravening activity; and/or
  - b. an Order to correct the contravention including but not limited to planting Replacement Trees.
- 35. An Order contemplated in Section 34 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.

36. 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.
37. If an Order is served by registered mail, the service shall be deemed to have been made 5 days after mailing.
38. Where service cannot be carried out in accordance with the process in Section 36 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 X – Enforcement**

39. This by-law may be enforced by an Officer of the City.
40. 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.
41. An Officer performing a duty under this by-law may be accompanied by a person under his direction.
42. For the purpose of determining compliance with this by-law, DBH shall be used to determine whether a Tree, which has been Injured, had attained the minimum DBH measurement required by this by-law. In the event a Tree was Destroyed or Injured without a Permit being obtained, the diameter of the remaining trunk or stump shall be deemed to be the DBH.

## **Part XI – Penalties and Additional Offences**

43. Any Person who contravenes any:
  - a. provision of this by-law, including the Prohibitions set out in Part III of this by-law; or
  - b. Order issued under this by-law or under 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/or as provided for in the **Act**.
44. 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.
45. 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.
46. 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**.
47. In addition to Section 43 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**.
48. 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 XII – Schedules**

49. 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”.

## **Part XIII – Severability**

50. 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 XIV – Effective Date**

51. This by-law shall come into effect on the date it receives third reading
52. Despite Section 53 of this by-law, By-law No. 17-120 shall continue to apply to proceedings or to prosecutions that were initiated prior to its repeal.

## **Part XV – Repeal**

53. By-law No. 17-120 is repealed effective on the date this by-law is adopted.

By-law read a first, second and third time this \_\_\_\_\_ day of March 2019.

(Sgd.) Dianne Therrien, Mayor

(Sgd.) 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 Commissioner 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 Commissioner, 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 Commissioner, pose a significant threat to the health of Trees on adjacent property or the urban forest in general.

**Schedule “B” – Application Fees and Permit Fees Under Part VII**

The Permit application form is located at:  
<https://www.peterborough.ca/Assets/City+Assets/Forms/Utility+Services/Tree+By-law+17-120+Permit+Application.pdf>

A Permit application may also be obtained from City Hall at 500 George Street North.

The non-refundable application fee, payable concurrently with the submission of an application, is as follows:

**Table 1 – Application Fees**

Number of Trees	Non-Refundable Application Fee
1 to 10	Free, but only one application for a municipal address will be processed in a calendar year. A subsequent application for the same municipal address in the same year will cost \$150.00.
11to 20	\$150.00
21to 50	\$300.00
51 or more	\$450.00

**Note:** Application fees do not apply to emergency work to High Risk Trees.

The Permit fee, payable prior to the issuance of a Permit, for Destroying a Healthy Tree is as follows:

**Table 2 – Non-Refundable Permit Fees for Destroying a Healthy Tree**

Number of Healthy Trees	Non-Refundable Permit Fee for Destroying a Healthy Tree
1 to 5	\$150.00
6 to 10	\$300.00
11or more	\$600.00

**Note:** An application to Destroy a Healthy Tree requires payment of the non-refundable permit fee at the time the permit is submitted.

Schedule C – Tree Replacement When a Healthy Tree is Being Destroyed

Definitions:

- Healthy Tree:** See By-law definition
- Stature Tree:** For the purposes of Schedule C, means a Tree 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/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 or, at the Commissioner’s discretion, more than four Trees

2. Replacement Trees shall be:
- a. planted, on the Owner’s property, as close to the same location from which the Tree was removed; or
  - b. with an Officer’s consent, planted at another location on the Owner’s property; or
  - c. planted at the Owner’s expense on City property in a location determined by an Officer.
3. 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.
4. Where a building permit has been issued the replanting shall be conducted in accordance with the current City Tree Planting Specification CP801.01.
5. Where a fence permit has been issued for the installation of an in-ground swimming pool, the replanting shall be conducted in accordance with the current City Tree Planting Specification CP801.01.
6. Where there is insufficient space to plant on the Owner’s property, or the Owner does not wish to have a Replacement Tree located on his/her 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.

Woodland Replacement

See Woodland Conservation By-law



## **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.

### **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.

### **Operation of the Committee**

- 1.3 Committee Hearings are attended by Committee members, City staff, and applicants and/or their representatives.
- 1.4 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.
- 1.5 The written decision of the Committee is final.
- 1.6 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.
- 1.7 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.
- 1.8 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 Commissioner’s decision.
- 1.9 Only in extraordinary circumstances, which are within the Committee’s discretion to determine, shall more than one adjournment be granted to an appellant.

### **2.0 Term of Office**

- 2.1 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.

- 2.2 Any member of the Committee whose term of office has expired is eligible for reappointment.
- 2.3 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.

### **3.0 Composition of the Committee**

- 3.1 The Committee appointed by City Council shall, where possible, 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; and
  - b. An Aborist, who is not required to be an RPF; and
  - c. a third member duly appointed by the Council for the Corporation of the City of Peterborough, who is not a member of Council.
- 3.2 The Committee will select from amongst its members a Chair and a Secretary.

### **4.0 Qualifications**

- 4.1 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.
- 9.2 If a Member has a conflict of interest, the remaining Members shall make a unanimous decision.

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
C1	C2	C3	C4	C5	C6
To be advised	Healthy Tree Destruction 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