

**THE CORPORATION OF THE TOWN OF ANCASTER**

**BY-LAW NO. 2000-118**

**Being a By-law to prohibit the injury or destruction of specified classes of trees on public and private property in the Town of Ancaster**

**WHEREAS** the Council of the Corporation of the Town of Ancaster is empowered under section s.223.2 of the *Municipal Act, R.S.O. 1990 c.M.45*, as amended, to:

- (a) Pass by-laws for prohibiting or regulating the injury or destruction of trees or any class of trees specified in the by-law in any defined area or on any class of land;
- (b) Require that a permit be obtained for injury or destruction of trees specified in the by-law and prescribing fees for the permit;
- (c) Prescribe circumstances under which a permit may be issued; and

**AND WHEREAS** the Regional Municipality of Hamilton-Wentworth Woodland Conservation By-law (R00-054) protects specified tree species of specified sizes in all regional woodlands of 0.81 ha (2 acres) or greater; and

**AND WHEREAS** Council has determined that it is desirable to enact such a By-law for the purpose of protecting the unique diversity and character of the Town's tree resources because of their ecological, cultural and economic value.

**NOW, THEREFORE, THE COUNCIL OF THE CORPORATION OF THE TOWN OF ANCASTER ENACTS AS FOLLOWS:**

**SECTION 1: BY-LAW TITLE**

1.1 This By-law may be cited as the "Tree Protection By-law".

**SECTION 2: DEFINITIONS**

For the purpose of this By-law:

- 2.1 "building permit" means a building permit as issued under the *Building Code Act, R.S.O. 1992, c.23*, as amended, or any successor thereof;
- 2.2 "Clerk" means the Clerk of the Town of Ancaster or successor authority;
- 2.3 "coppice growth" means where more than one tree stem grows from a single tree stump below a point 1.4 metres (4.5 feet) above the ground in an undisturbed state at the base of the tree;
- 2.4 "Council" means the Council of the Town of Ancaster or successor authority;
- 2.5 "DBH" means "diameter at breast height" and refers to the diameter, including the bark, of the stem of a tree measured at a point 1.4 meters (4.5 feet) above the ground in an undisturbed state at the base of the tree, except in the case of coppice growth where the point of measurement shall be at the point on the tree trunk where the tree stems separate, provided that the point of separation occurs below a point 1.4 metres (4.5 feet) above the ground in an undisturbed state at the base of the tree;

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- 2.6 “destroy” means the removal, harm or ruin of trees by cutting, burning, uprooting, chemical application or other means including irreversible injury which may result from neglect, accident, or design;
- 2.7 “Director of Planning and Building” means the Director of the Planning and Building Department or his designate or an equivalent successor authority;
- 2.8 “Director of Operations” means the Director of the Operations Department or his designate or an equivalent successor authority;
- 2.9 “drip line” means a point on the ground equivalent to the outer limits of the branches of the tree;
- 2.10 “emergency work” means any work necessary to protect lives or property, and may include utility repairs and structural repairs to a building;
- 2.11 “Good Arboricultural Practice” means the proper implementation of removal, renewal and maintenance activities known to be appropriate for individual trees in and around dense human settlements (i.e. urban settings) that minimize detriments to urban forest values including: significant trees, associated wildlife habitats, urban forest diversity and health, and significant views or vistas; “good arboricultural practice” includes pruning trees to remove dead limbs, maintain structural stability and balance, or encourage their natural form but does not include pruning to specifically increase light or space;
- 2.12 “Good Forestry Practice” means the proper implementation of harvest, renewal and maintenance activities known to be appropriate for a given Woodland and the environmental conditions under which it is being applied, and which minimizes detriments to significant ecosystems, important fish and wildlife habitat, soil and water quality and quantity, forest productivity, diversity and health, aesthetics and recreational opportunities of the landscape; “good forestry practice” includes:
- (i) the retention of dead and snag trees in Woodlands for the provision of wildlife habitat or to contribute to forest sustainability;
  - (ii) the appropriate use of machinery, equipment, and timing of operations so as to minimize damage to the Woodland soil and ecosystem;
  - (iii) the destruction of trees that are:
    - diseased or insect-infested and should be cut or removed to prevent disease or insects from spreading to other trees;
    - damaged by natural causes (such as wind, ice or lightning) and should be cut because they are inhibiting the healthy development of the trees remaining in the Woodland;
    - approved for cutting by a certified tree marker or Registered Professional Forester in accordance with the guidelines laid out in this article (2.13);
    - of an invasive species not indigenous to the Region.
- 2.13 “harvesting” means the injury or destruction of trees and may be either a single cut or a series of cuts, and shall have the same meaning as logging;
- 2.14 “injure” includes any action or treatment which causes harm or irreversible damage to a tree and includes the injury of trees by changing grades around trees, compacting soil over root areas, severing roots, the improper application of chemicals, improper pruning or the removal of bark;

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- 2.15 "Heritage Tree" means any tree with a DBH of no less than 45 cm (18 in.) with the exception of:
- (i) all Willow species (*Salix* spp.)
  - (ii) all Poplar species (*Populus* spp.)
  - (iii) Siberian Elms (*Ulmus pumila*)
  - (iv) Manitoba Maples (*Acer negundo*), and
  - (v) Norway Maples (*Acer platanoides*).
- 2.16 "maintenance" includes all operations of trimming, pruning, spraying, injecting, fertilizing, treating, cabling and bracing in accordance with Good Arboricultural Practice; pruning shall be limited to the appropriate removal of no more than one-third of the live branches or limbs of a tree;
- 2.17 "Occupied Building" means a permanent structure used or intended to be used for the shelter, accommodation or enclosure of persons for residential, business, institutional or recreational purposes. For the purposes of this By-law, an attached garage shall be deemed to be part of an Occupied Building.
- 2.18 "Officer" means a By-law Enforcement Officer employed by the Town or successor authority, as appointed by Council, for the administration and enforcement of this By-law;
- 2.19 "orchard" means an area of land of at least one-fifth hectare under current cultivation having a fruit or nut tree density of at least sixty-five trees per hectare;
- 2.20 "owner" means the person identified in the in the most recent municipal assessment roll as the property owner pursuant to subsection 14(1), paragraph 4 of the *Assessment Act, R.S.O. 1990, c.A. 31*;
- 2.21 "Permit" means the written authorization from the Officer, in the form of an approved permit application, in accordance with Schedule "E" of this By-law, to injure or destroy trees;
- 2.22 "Person" means any individual, public or private corporation, partnership, association, firm, trust, public agency, municipality, or other entity and includes any legal representative(s) acting on behalf of or under the authority of such an entity;
- 2.23 "plantation" includes lands where trees of selected species have been planted or seeded in a pre-determined pattern or arrangement for the purpose of cultivation and sale at a later time, such as for the sale of Christmas trees, but does not include former plantations that have been left untended and may have naturalized;
- 2.24 "private lands" means any land not owned or leased by a public body or agency;
- 2.25 "public lands" include Town road allowances and municipally owned lands within the Town, as well as lands owned by a public corporation or agency;
- 2.26 "Qualified Tree Expert" means someone who has graduated from an accredited college or university with a diploma or degree in urban forestry, arboriculture or the equivalent. Qualified individuals include an arborist certified by the Ontario Training and Adjustment Board or by the International Society of Arboriculture, a consulting arborist with the American Society of Consulting Arborists, a Registered Professional Forester (R.P.F.) as defined in the *Ontario Professional Foresters Act*, or an

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individual with comparable qualifications approved by the Director of Planning and Building;

- 2.27 Region" means the Regional Municipality of Hamilton-Wentworth;
- 2.28 "Town" means the Corporation of the Town of Ancaster;
- 2.29 "Tree" means any species of woody perennial plant which has reached or can reach a height of at least 4.5 meters (15 feet) at physiological maturity;
- 2.30 "Tree Preservation Area" means tree protection zones identified within specific development areas that have been approved by Council for inclusion in this By-law as shown in Schedule "B";
- 2.31 "Woodland" means any area of land 0.2 ha (0.5 acres) or more with at least:
- (i) 1000 trees per hectare (405 trees per acre) of any size;
  - (ii) 750 trees per hectare (303 trees per acre), measuring over 5 cm DBH (2 in);
  - (iii) 500 trees per hectare (202 trees per acre), measuring over 12 cm DBH (5 in);
  - (iv) 250 trees per hectare (101 trees per acre), measuring over 20 cm DBH (8 in);
- not including orchards or plantations. For the purposes of this By-law, the boundary of the Woodland shall be defined by the ecological limit of the Woodland and not by private property boundaries, and shall include the area up to the drip line of the Woodland and any corridors (i.e. breaks in the Woodland canopy including but not limited to highways, roads, railway right-of-ways, lanes, paths, golf course fairways, utility lines or natural open spaces) measuring up to and including 30 m in width. Where a potential woodlot is dissected by a corridor or natural feature such as a creek, the area of the woodlot shall be calculated exclusive of the area of the corridor or natural feature;
- 2.32 "Woodland Management Plan" means a plan prepared by a Qualified Tree Expert according to guidelines set by the Ontario Ministry of Natural Resources or other recognized guidelines, which sets out short and long-term management strategies for a given Woodland in accordance with Good Forestry Practice;
- 2.33 "Zoning By-law" means the by-law regulating land use as provided for under the *Planning Act, R.S.O. 1990, c.P.13*, as amended, within the Town.

### SECTION 3: SCOPE OF BY-LAW

#### 3.1 APPLICATION OF BY-LAW

- 3.1.1 The provisions of this By-law shall apply to specified classes of trees (as listed in Section 3.1.2) located within the Urban Area boundaries within the Town as shown on Schedule "A" to this By-law, and within lands owned and managed by the Hamilton Region Conservation Authority pursuant to the *Conservation Authorities Act, R.S.O. 1990, c. 27*.
- 3.1.2 The provisions of this by-law shall apply to:
- (i) Heritage Trees on public and private lands located outside of Woodlands;
  - (ii) Woodlands of 0.2 ha (0.5 acres) or more; and

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- (iii) Tree Protection Areas as designated in Schedule "B" to this By-law.

### 3.2 NON-APPLICATION

The provisions of this By-law do not apply to:

- (i) trees located within waste disposal sites as defined in Part V of *the Environmental Protection Act, R.S.O. 1990 c.E.19*;
- (ii) activities or matters undertaken by the provincial or federal government or their agents;
- (iii) the exercise of any rights or powers of Ontario Hydro Financial Corporation, pursuant to section 54(1) of the *Electricity Act 1998*, or any public utility board or commission that is performing its function for or on behalf of the Crown, given that the activities are conducted in accordance with Good Forestry Practice or Good Arboricultural Practice;
- (iv) activities or matters authorized under the *Crown Forest Sustainability Act, R.S.O. 1994 c.25*;
- (v) activities carried out pursuant to a Certificate issued under the *Abandoned Orchard Act, R.S.O. 1990 c. A.1*;
- (vi) activities or matters prescribed by regulation by the Lieutenant Governor in Council;
- (vii) drainage works under the *Drainage Act, R.S.O. 1990 c.D.17* or the *Tile Drainage Act, R.S.O c.T. 8*;
- (viii) works authorized under a development permit issued under Section 24 of the *Niagara Escarpment Planning and Development Act, R.S.O. 1990 c.N 2*;
- (ix) activities of any municipality or local board as defined in the *Municipal Affairs Act, R.S.O. 1990, c.C.51*, as amended or any successor thereof;
- (x) works carried out under Section 26 of the *Public Transportation and Highway Improvement Act, R.S.O.1990 c.P.50*;
- (xi) trees cut by a person licensed under the *Surveyors Act R.S.O. 1990 c. S.29*;
- (xii) trees injured or destroyed in compliance with a tree saving or tree management plan imposed as a condition of a consent, plan of subdivision, plan of condominium or site plan approved by the Town or Region pursuant to the *Planning Act, R.S.O. 1990, c.P.13*, as amended, or any successor thereof;
- (xiii) trees necessarily injured or destroyed while conducting emergency work authorized by the Director of Operations or the Director of Planning;
- (xiv) the removal of damaged or destroyed trees in the interests of public safety, health and general welfare following any man-made or natural disasters, storms, high winds, floods, fires, snowfall, freezes.

### 3.3 COMPLIANCE WITH OTHER STATUTES AND BY-LAWS

In the event of any conflict between this By-law and a by-law passed under the *Forestry Act, R.S.O. 1990 c.F.26*, or any other statute or by-law, the provision that is the most restrictive of the injury or destruction of trees prevails.

### 3.4 INTERPRETATION

In this By-law, unless the context otherwise requires, words imparting the singular number shall include the plural and words imparting the masculine gender shall include the feminine and further, the converse of the foregoing also applies where the content so requires.

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#### SECTION 4: GENERAL PROVISIONS

Except for the areas of non-application (Section 3.2) and permit exceptions (Section 5.1) provided in this By-law, no person or owner shall:

- (i) remove, injure, or destroy a tree as prescribed in Section 3.1 of this By-law without a Permit;
- (ii) cause through an agent the removal, injury, or destruction of a tree as prescribed in Section 3.1 of this By-law without a Permit;
- (iii) contravene the terms of a Permit issued under this By-law or the conditions attached thereto;
- (iv) cause or allow the unnecessary injury or destruction of trees during harvesting or while conducting renewal or maintenance activities required under Good Forestry Practices or Good Arboricultural Practices;
- (v) fail to comply with an Order issued under this By-law;
- (vi) remove, pull down, or deface any Order issued under this By-law without the consent of the Officer; and
- (vii) obstruct or attempt to obstruct an Officer or a person acting under the Officer's instructions in the exercise of a power under this By-law.

#### SECTION 5: PERMITS

##### 5.1 PERMIT NOT REQUIRED

- 5.1.1 A Permit for the injury or destruction of trees shall not be required:
- (i) for the maintenance of Heritage Trees in accordance with Good Arboricultural Practice;
  - (ii) for the removal of Heritage Trees on public or private lands within 7.5 m (25 ft) of the outer edge of an Occupied Building;
  - (iii) for maintenance and harvesting activities in Woodlands conducted by designated staff or a Certified Tree Expert, on:
    - (a) Hamilton Golf Course & Country Club lands;
    - (b) lands owned and managed by the Hamilton Region Conservation Authority pursuant to the *Conservation Authorities Act, R.S.O. 1990, c. 27.*; and
    - (c) municipally owned lands;provided that such activities are conducted in accordance with Good Forestry Practice;
  - (iv) where the removal or destruction of a tree is required because significant portions of the tree is considered dead, diseased or hazardous as certified by the Officer, a Qualified Tree Expert or the Director of Operations;
  - (v) for harvesting trees in a Woodland in accordance with an approved Woodland Management Plan provided that such work is undertaken in accordance with Good Forestry Practice and that a copy of such a Plan is submitted to the Clerk;
  - (vi) where trees are injured or destroyed in order to construct a building authorized by a municipal building permit applied for on or before the date that this by-law was enacted and passed;
  - (vii) where trees are injured or destroyed in order to install a domestic well or sewage disposal system authorized under Section 76 of the *Environmental Protection Act, R.S.O. 1990*, provided that no tree protected under this By-law is destroyed more than 7.5 m (25 ft) from the outer edge of the well or sewage system.
- 5.1.2 For proposed tree cutting activities undertaken by the Town for purposes outside the scope of Good Forestry Practices, the Town shall:

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- (i) post a notice of intent on the affected property in a visible location;
- (ii) bring this activity to the attention of Council; and
- (iii) delay their proposed activity until Council has reached a decision.

5.1.3 For proposed tree cutting activities undertaken by the Conservation Authority or Hamilton Golf Course & Country Club for purposes outside the scope of Good Forestry Practices, the responsible person(s) shall obtain a Permit.

**5.2 CONDITIONS FOR ISSUANCE OF A PERMIT**

5.2.1 The Officer may issue a Permit to injure or destroy tree(s) where the Officer is satisfied that:

- (i) the injury or destruction of the tree(s) is in accordance with Good Forestry Practice or Good Arboricultural Practice; or
- (ii) the destruction of tree(s) is required to permit the establishment or extension of a use permitted by the Zoning By-law and there is no reasonable alternative to the destruction or injury of the tree(s).

5.2.2 The issuance of a Permit shall not be authorized where:

- (i) the Permit Application form has not been submitted in full (i.e. without the application fee and/or without applicable Authorization Forms), or is considered incomplete by the Officer;
- (ii) applications for rezoning, subdivisions or site plans related to lands on which the tree is located have been submitted to the Town or the Region but have not received final approval;
- (iii) the tree is an endangered species as defined in the *Endangered Species Act, R.S.O. 1990, c.E.15*, or successor legislation;
- (iv) for Woodlands, the proposed activity will reduce the number of trees below the minimum number of trees necessary to constitute a Woodland as defined in this By-law;
- (v) the ecological integrity of a Woodland will not be adequately protected and preserved as determined by a Qualified Tree Expert or the relevant Conservation Authority;
- (vi) flood or erosion control will be negatively impacted as determined by the relevant Conservation Authority;
- (vii) the Officer is not satisfied that the applicant has undertaken to implement adequate replanting plans and/or a Woodlot Management Plan consistent with the principles of Good Forestry Practices.

**SECTION 6: PERMIT APPLICATIONS**

6.1 Every owner who intends on injuring or destroying a tree where a Permit to do so is required shall first complete a Permit Application form as set out in Schedule "C" to this By-law.

6.2 Where there is more than one owner of the land subject of the Permit Application, only one owner shall be considered the applicant. The other owners shall complete the Authorization Form as set out in Schedule "D" to this By-law.

6.3 The Permit Application shall be submitted personally or forwarded by pre-paid first class mail to to the Clerk at least thirty (30) days prior to the planned destruction of any trees.

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- 6.4 All Permit Applications shall be accompanied by the prescribed, non-refundable fee as set out in Schedule "F" of this By-law.
- 6.5 The person responsible for injuring or destroying the trees shall provide proof of public and general liability insurance to the satisfaction of the Clerk.
- 6.6 The Officer may require the applicant to submit a report prepared by a Qualified Tree Expert regarding the reasons for the proposed destruction of trees.
- 6.7 Following receipt of a Permit Application an Officer or any person acting under the Officer's instructions may inspect the lands to help determine whether or not a Permit, as set out in Schedule "E" to this By-law, should be issued.
- 6.8 Any Permit issued pursuant to this By-law shall be issued in the name of the owner and shall expire sixty (60) days after issuance unless a written request for an extension is received by the Clerk on or before the Permit expiration date.
- 6.9 Any request for a Permit extension which is received after the permit expiration date will require the submission of a new Permit Application.
- 6.10 A copy of the approved Permit should be posted on the property where the tree cutting is to take place for at least fourteen (14) days prior to and after the cutting takes place so that it is legible and visible to passers-by.
- 6.11 The Director of Planning and Building or the Officer shall, so far as is practicable, notify the Ward Councillor and abutting property owners of the Permit Application and whether or not it has been approved.

**SECTION 7: ADMINISTRATION AND ENFORCEMENT**

- 7.1 The Officer is responsible for administration of this By-law and is hereby delegated the authority to review Permit Applications, issue Permits and attach conditions hereto, issue Orders as set out in Schedule "G" to this By-law, and to designate or approve Qualified Tree Experts for the purposes of enforcing this By-law.
- 7.2 Each Officer shall be issued a Certificate of Designation by Town Council as in the form prescribed in Schedule "H" to this By-law .
- 7.3 The Director of Planning and Building shall ensure that the Officer is properly trained to perform her or his duties and shall supervise the Officer.
- 7.4 The provisions of this By-law may be enforced by:  
(i) An Officer appointed for the purposes of this By-law by Council;  
(ii) An assisting person designated by the Officer and acting under their instructions.
- 7.5 For the purposes of conducting an inspection to determine compliance with this By-law, designated Officers may, during daylight hours and upon producing a Certificate of Designation, enter and inspect any lands (but not buildings) to which this By-law applies.

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**SECTION 8: ORDERS**

- 8.1 Where an Officer is satisfied that a person has contravened any provision(s) of this By-law, the Officer has the authority to make an Order as per Schedule "G" to this By-law requiring the person to stop the injury or destruction of trees and to set out the particulars of the contravention.
- 8.2 A person to whom an Order under this section has been directed may appeal the Order by filing a notice of appeal with the Clerk within thirty (30) days after the date of the Order (refer to Section 9).
- 8.3 An Order issued may be served to the owner of the subject land(s) and/or to the person responsible for injury or damage to the tree(s).
- 8.4 An Order issued may be served personally or, by pre-paid registered mail to the last known address of the owner of the subject land(s) and/or to the person responsible for injury or damage to the tree(s).
- 8.5 The Officer shall also place a sign containing the terms of the Order in a conspicuous place on the subject lands. Where service cannot be effected under Sections 8.3 and 8.4, placing the placard on subject lands will be deemed sufficient service of the Order on the person and/or owner to whom the Order is directed.

**SECTION 9: APPEALS**

**9.1 APPEALS REGARDING PERMITS**

- 9.1.1 An applicant for a Permit under this By-law may appeal to the Ontario Municipal Board:
- (i) where the Officer refuses to issue a permit, within thirty (30) days after the refusal, or
  - (ii) where the Officer fails to make a decision on a Permit Application, within forty-five (45) days after the Permit Application is received by the Clerk, or
  - (iii) where the applicant objects to a condition in the Permit, within thirty (30) days after the issuance of Permit.
- 9.1.2 The Ontario Municipal Board may make any decision that the Officer who received the Permit Application for a permit could have made.
- 9.1.3 The decision of the Ontario Municipal Board is final and binding.

**9.2 APPEALS REGARDING ORDERS**

- 9.2.1 Where the person to whom the Order is directed has been served in accordance with this By-law is not satisfied with the terms of the Order, the person may appeal to Council by filing notice of appeal by personal service or pre-paid registered mail to the Clerk within thirty (30) days after the date of the Order.
- 9.2.2 Where an appeal has been filed, Council shall hear the appeal as soon as is practicable.
- 9.2.3 Before conducting a hearing under Section 9.2, the Clerk shall give appropriate notice.

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- 9.2.4 After hearing an appeal, Council may confirm, modify or revoke any Order issued under this By-law or may extend the time for complying with the Order, provided that, in the opinion of Council, the general intent and purpose of this By-law and of the Official Plan have been maintained.
- 9.2.5 The decision of Council is final and binding.
- 9.2.6 The terms and conditions of an Order issued under Section 8.1 shall be final and binding:
- (i) upon the there being no appeal and the time for an appeal expiring;
  - (ii) in the event that there is an appeal confirming the Order.

**9.3 APPEALS REGARDING OFFENSES ON PUBLIC LANDS**

- 9.3.1 If a person wishes to object to a proposed tree removal on public lands, they may appeal to Council by filing notice of appeal by personal service or pre-paid registered mail to the Clerk within thirty (14) days of the proposed activity date.
- 9.3.2 If the cutting has already taken place, the person may still appeal to Council to request appropriate replanting and site restoration.
- 9.3.3 Where an appeal has been filed, Council shall hear the appeal as soon as is practicable.
- 9.3.4 Before conducting a hearing under Section 9.3, the Clerk shall give notice in accordance with the *Planning Act, R.S.O. 1990, c.P.13*, as amended, or any successor thereof.
- 9.3.5 If Council supports the appeal, they may stop the proposed activity or require appropriate replanting and/or site restoration activities to be conducted within a specified time.
- 9.3.6 The decision of Council is final and binding.

**9.4 APPEAL FEES**

All appeal applications must be accompanied by the prescribed fee set out in Schedule "F" to this By-law.

**SECTION 10: PENALTIES FOR NON-COMPLIANCE WITH BY-LAW**

- 10.1 A person who contravenes any provision of this By-law, the terms or conditions of a Permit, or an Order is guilty of an offence and on conviction is liable;
- (i) on a first conviction, to a fine of not more than \$10,000.00, and
  - (ii) on any subsequent conviction, to a fine of not more than \$20,000.00.
- 10.2 In addition to any other remedy and to any penalty imposed by the By-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may:
- (i) make an Order prohibiting the continuation or repetition of the offence by the person convicted;
  - (ii) may Order the person to replant or have replanted trees in such manner and within such a period of time as the court considers appropriate.

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10.3 In addition to any other remedy and to any penalty imposed by the By-law, any such further contraventions may be restrained by action by the Town or a ratepayer thereof.

**SECTION 11: VALIDITY OF THE BY-LAW**

Where a court of competent jurisdiction declares any section or part of a section of this By-law invalid, the remainder of this By-law shall continue in force unless the court makes an Order to the contrary.

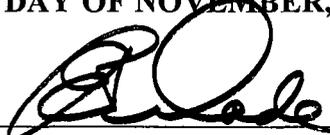
**SECTION 12: SCHEDULES**

Summary of Schedules attached hereto that shall form part of this By-law.

- Schedule "A": Area of Application of the Tree Protection By-law
- Schedule "B": Designated Tree Preservation Areas within the Urban Area – *none designated to date*
- Schedule "B-1": *none designated to date*
- Schedule "C" – Permit Application Form
- Schedule "D" – Multiple Landowner Authorization Form
- Schedule "E" – Permit Form
- Schedule "F" – Permit and Appeal Fees
- Schedule "G" – Order Form
- Schedule "H" - Certificate of Designation Form

This by-law shall come into force and take effect on the date of its passing and enactment by Council.

**ENACTED AND PASSED THIS 6th DAY OF NOVEMBER, 2000**

  
\_\_\_\_\_  
MAYOR

  
\_\_\_\_\_  
CLERK/TREASURER

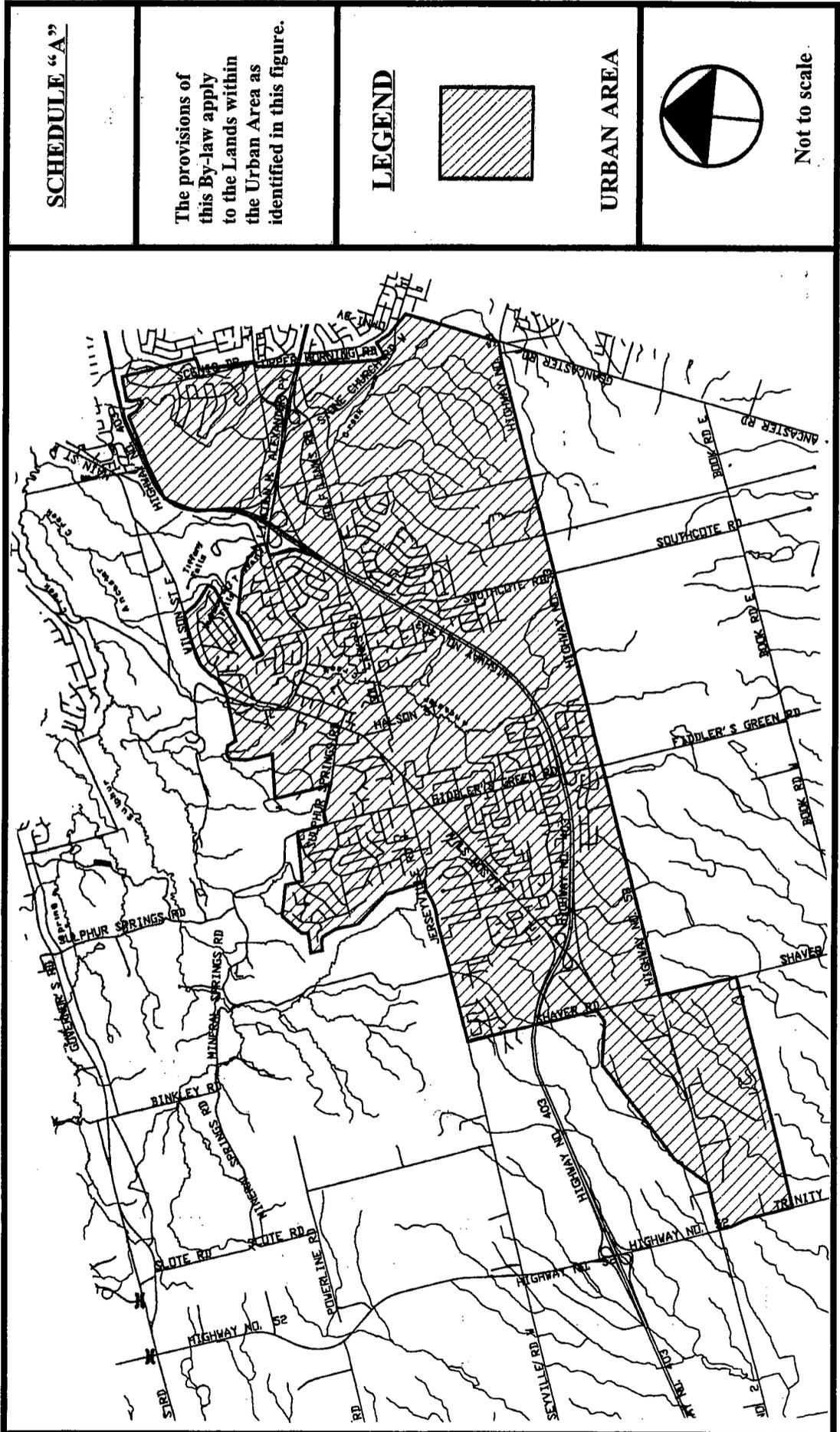
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SCHEDULE "A"

AREA OF APPLICATION OF TREE PROTECTION BY-LAW



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**SCHEDULE "B"**

**DESIGNATED TREE PRESERVATION AREAS**

*No Tree Preservation Areas have been designated to date, however Schedule "B" is designed to allow for the insertion of these areas into the By-law in the future. Schedule "B" should be an "overview" map while the associated inserts ("B-1", "B-2", etc.) should show the boundaries of the specific Tree Preservation Areas. The requirements for these Schedules is outlined in the report Section 4.2.7.*

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SCHEDULE "C"

TOWN OF ANCASTER
300 Wilson Street East, Ancaster, Ontario L9G 2B9
Phone (905) 648-4447, Fax (905) 648-9457
INSERT TOWN
CREST

PERMIT APPLICATION

Please remember to:

- 1. Include Land Owner Authorization Form(s) (see Schedule "D" to this By-law) in cases where more than one landowner is involved.
2. Fill out the application form in full and include the required fees, if applicable (see Schedule "F" to this By-law).
3. Deliver the completed form personally or send it by pre-paid first class mail to the Town Clerk at least thirty (30) days prior to any injury or destruction of any trees protected by this By-law.

Under no circumstances shall the injury or destruction of trees commence until the permit application has been approved and a permit (as per Schedule "E" in this By-law) issued. Failure to comply with the provisions of this By-law may result in legal action.

1. Land Owner\*

Name:
Address:
Postal Code: Fax No.:
Telephone No - Business:
Home:

\*In cases of multiple landowners, list the primary Land Owner here and attach Land Owner Authorization Forms as required.

2. Tree Cutting Contractor (if different from Land Owner above)

Name:

3. Contact Person for Contractor/Owner

Name:
Address:
Postal Code: Fax No.:
Telephone No - Business:
Home:

Name of Public and General Liability Insurance Carrier
Insurance Minimum \$

4. Land Description

Lot: Concession: Township:
Municipal Street Address:

5. Time Period

THE CORPORATION OF THE TOWN OF ANCASTER

BY-LAW NO. 2000-118

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Expected Starting Date: \_\_\_\_\_

Expected Completion Date: \_\_\_\_\_

6. Information on Property and Tree(s)/Woodland

Attach a sketch and/or survey showing:

- o limits of land owner's property and adjacent roads
- o artificial features such as fence lines, buildings and structures, rail lines, and internal road
- o natural features such as streams and wetlands

Describe the trees to be destroyed by providing:

- o number, species, and size (dbh)
- o type of Woodland, if applicable (ie. Sugar Maple-Beech forest)
- o location on property and/or portion of Woodland where trees are to be destroyed
- o any other relevant information about the tree(s) or stand

7. Has the Ministry of Natural Resources or a Qualified Tree Expert, marked this tree/woodlot for cutting?

NO \_\_\_\_\_ YES \_\_\_\_\_ Name: \_\_\_\_\_  
 Telephone: \_\_\_\_\_

8. Is the tree/woodlot within an area controlled and/or regulated by the Niagara Escarpment Commission?

NO \_\_\_\_\_ YES \_\_\_\_\_

9. Describe the reason for the tree destruction and the method of removal i.e. (cutting, burning etc.)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

I agree that the tree cutting operations will be conducted in accordance with the Town of Ancaster Tree Protection By-law No. \_\_\_\_\_ and that I am familiar with the contents and requirements of that By-law and acknowledge having received a copy thereof, and in signing this application, I am acting with the full authority and permission of the land owner and on his/her behalf.

DATED AT \_\_\_\_\_ THIS \_\_\_\_\_

DAY OF \_\_\_\_\_

Signature of Land Owner \_\_\_\_\_

Deliver personally or forward by first class mail to:

The Clerk of the \_\_\_\_\_ of \_\_\_\_\_

Address for Delivery: \_\_\_\_\_

Address for Mailing: \_\_\_\_\_

*Permit Application for Tree Protection By-law*



THE CORPORATION OF THE TOWN OF ANCASTER

BY-LAW NO. 2000-118

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SCHEDULE "E"

TOWN OF ANCASTER
300 Wilson Street East, Ancaster, Ontario L9G 2B9
Phone (905) 648-4447, Fax (905) 648-9457
INSERT TOWN
CREST

PERMIT NO.

1. Land Owner

Name:
Address:
Postal Code:
Telephone No.:

2. Land Description

Lot: Concession:
Area
Municipality

3. Expected Starting Date
Permit Expiration Date

4. Tree Cutting Contractor:
(if different from Land Owner above)

5. Contact Person for Operation/Owner

Name:
Address:
Postal Code:
Telephone No:

6. CONDITIONS

- The unnecessary injury or destruction of any tree not authorized by this permit during removal and/or harvesting or while conducting harvesting renewal and maintenance activities is hereby prohibited.
Upon completion of the removal and/or harvesting of destroyed trees, specified trees shall be replanted in accordance with replanting plans approved by the By-law Officer.
Upon completion of removal and/or harvesting of destroyed trees, all crowns, branches, and other woody debris shall be removed leaving the site in a clear and clean condition.
All requirements of a Woodlot Management Plan, approved by a Registered Professional Forester, and as approved by the City Clerk shall be complied with.
The injury or destruction of trees and any required clean up or re-planting plans

**THE CORPORATION OF THE TOWN OF ANCASTER**

**BY-LAW NO. 2000-118**

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authorized or required by this permit shall be complied with on or before the expiration of this permit.

- A copy of the approved Permit should be posted on the property where the tree cutting is to take place for at least fourteen (14) days prior to and after the cutting takes place so that it is legible and visible to passers-by.
- A report by a Qualified Tree Expert (i.e. a Certified Arborist or Registered Professional Forester) is required before the requested activity can take place

Other:

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**THE CORPORATION OF THE TOWN OF ANCASTER**

**BY-LAW NO. 2000-118**

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**SCHEDULE "F"**

**PERMIT AND APPEAL APPLICATION FEES**

**The following fees shall be payable for permit applications and appeal applications submitted pursuant to Sections 6 and 9 of the Town of Ancaster's Tree Protection By-law No. :**

- |  |                  |
|--|------------------|
| <b>1. One Tree (in calendar year):</b> | <b>NO CHARGE</b> |
| <b>2. Two to Ten Trees:</b>            | <b>NIL</b>       |
| <b>3. Eleven to Twenty Trees:</b>      | <b>NIL</b>       |
| <b>4. Over Twenty Trees:</b>           | <b>NIL</b>       |
| <b>5. Appeal to Council</b>            | <b>NIL</b>       |

THE CORPORATION OF THE TOWN OF ANCASTER

BY-LAW NO. 2000-118

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SCHEDULE "G"

TOWN OF ANCASTER
300 Wilson Street East, Ancaster, Ontario L9G 2B9
Phone (905) 648-4447, Fax (905) 648-9457
INSERT TOWN
CREST

ORDER

PURSUANT TO SECTION 8 OF THE TOWN OF ANCASTER TREE PROTECTION BY-LAW NO.

Issued to: Permit No.
Municipal Address
Legal Address
Location of Lands

An inspection of the lands named herein on \_\_\_\_\_ has disclosed that the conditions of a permit issued on \_\_\_\_\_ by the Town Clerk have not been complied with and/or Section \_\_\_\_\_ of By-law No. \_\_\_\_\_ has been violated.

THEREFORE TAKE NOTICE THAT:

- 1. The injury and destruction of trees on these lands is hereby Ordered Stopped Forthwith
2. The injury or destruction of trees shall not resume without the approval of the Town's By-law Officer and unless the provisions of this By-law or the conditions attached to Permit no. \_\_\_\_\_ are complied with on or before \_\_\_\_\_
3. If you are not satisfied with the terms of this Order, you may appeal to Town Council by sending notice of appeal by personal service or by certified mail to the City Clerk within thirty (30) days of the date on this Order.
4. In the event that no appeal is taken, the Order shall deemed to have been confirmed.

Section 4 of By-law No. \_\_\_\_\_ states: No person shall remove, pull down, or deface any Order issued under this By-law without the consent of the Officer

Every person who contravenes any provision of this by-law or an Order issued pursuant to this by-law is guilty of an offence and on conviction pursuant to the provisions of subsection 223.2 (15) of the Municipal Act R.S.O. 1990, c.M. 45 is liable;
(a) on a first conviction, to a fine of not more than \$10,000.00, and
(b) on any subsequent conviction, to a fine of not more than \$20,000.00.

Date

By-Law Enforcement Officer

THE CORPORATION OF THE TOWN OF ANCASTER

BY-LAW NO. 2000-118

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SCHEDULE "H"

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*INSERT TOWN*  
*CREST*

TOWN OF ANCASTER  
300 Wilson Street East, Ancaster, Ontario L9G 2B9  
Phone (905) 648-4447, Fax (905) 648-9457

Certificate of Designation

(Issued pursuant to Section 223.2 (8)  
The Municipal Act R.S.O. 1990, c.M.45)

THIS CERTIFIES  
THAT:

\_\_\_\_\_

IS DESIGNATED AN OFFICER UNDER THE TOWN OF ANCASTER TREE  
PROTECTION BY-LAW NO. \_\_\_\_\_ TO INSPECT ANY LAND IN THE TOWN  
OF ANCASTER TO ENFORCE THE AFORESAID BY-LAW AND ITS  
REGULATIONS RESPECTING THE INJURY OR DESTRUCTION OF TREES  
IN THE TOWN.

CERTIFICATE ISSUED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_

\_\_\_\_\_  
Clerk-Treasurer

**Authority:** Item 13, Public Works, Infrastructure  
and Environment Committee  
Report 06-010 (PW06034a)  
CM: June 14, 2006

**Bill No. 151**

## **CITY OF HAMILTON**

### **BY-LAW NO. 06-151**

#### **To Regulate the Planting, Maintenance, and Preservation of Trees on or Affecting Public Property**

**WHEREAS** Council deems it in the public interest to protect Hamilton's tree assets on Public Property to preserve the quality of life and environment for the present and future inhabitants, and to ensure that any necessary tree removal is considered in advance and carried out under conditions as may be imposed;

**AND WHEREAS** *the Municipal Act S.O. 2001, Chapter 25* as amended, Sections 2 and 8 through 11, allows that Council may provide necessary and desirable services, manage and preserve public assets, foster environmental well-being, and exercise specific and general powers to act, and to regulate and prohibit the acts of others;

**AND WHEREAS** the City, pursuant to Section 135 of *the Municipal Act S.O. 2001, Chapter 25* may by by-law prohibit or regulate the injuring or destruction of trees;

**AND WHEREAS** the City, pursuant to Section 141 of *the Municipal Act* may provide trees to the owners of land adjacent to any highway;

**AND WHEREAS** the City, pursuant to Section 62(1) of *the Municipal Act* may, at any reasonable time, enter upon land lying along any of its highways to inspect trees and conduct tests on trees; and to remove decayed, damaged, or dangerous trees or branches of trees if, in the opinion of the municipality, the trees or branches pose a danger to the health or safety of any person using the highway;

**AND WHEREAS** the City, pursuant to Section 62(2) of *the Municipal Act* may remove a decayed, damaged or dangerous tree or branch of a tree immediately without notice to the owner of the land upon which the tree is located, if in the opinion of the Employee or agent, the tree or branch poses an immediate danger to the health or safety of any person using the highway;

**AND WHEREAS** *the City of Hamilton Act, 1999, S.O. 1999, Chapter 14, Schedule C* did incorporate, as of January 1st 2001, the municipality known as the "City of Hamilton";

**AND WHEREAS** the City of Hamilton is the successor to the following former area municipalities, namely: The Corporation of the Town of Ancaster; The Corporation of the Town of Dundas; the Corporation of the Town of Flamborough; The Township of Glanbrook; The Corporation of the City of Hamilton; and the Corporation of the City of

Stoney Creek, and to the Regional Municipality of Hamilton-Wentworth, all hereinafter referred to as the "former municipalities";

**AND WHEREAS** *the City of Hamilton Act, 1999*, provides that the By-laws of the former municipalities continue in force and effect in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

**NOW THEREFORE** the Council of the City of Hamilton enacts as follows:

### **Definitions and Application**

1(1) In this By-law:

- (a) "City" as the context requires, means the municipal corporation "City of Hamilton" or the geographical limits of the municipality;
- (b) "Contractor" means a person engaged to perform a specific activity or service, on or at a particular land or premises;
- (c) "Council" means the Council for the City of Hamilton and includes its successor;
- (d) "Destroy" in relation to a tree includes any action which causes or results in the death of the tree, not limited to but including the acts of cutting, burning or knocking over the tree, and "destruction" shall have a corresponding meaning;
- (e) "Diameter at Breast Height or "DBH" means the diameter, including the bark, of the trunk of a tree measured at the lower of (a) a point 1.3 meters (4 feet and 3 inches) above the ground in an undisturbed state at the base of the tree, (b) in the case where the main trunk of the tree splits below the point in (a) the point of measurement shall be at the point on the tree trunk where the trunk separates, or (c) at the top of the stump of the tree where the tree has been cut down and all that remains of the stump is below the point in (a);
- (f) "Director" means the Director of Operations and Maintenance for the City and includes the Director's designate or successor;
- (g) "Drip Line" means the outer boundary of an area on the surface of the ground directly below and which corresponds with the outer edge of the crown of the tree;
- (h) "Emergency Work" means any work carried out by the City, a public utility service, or other authority and its contractors, whether above and below ground level, which is work necessary in an emergency situation for maintenance, or to restore or ensure service is maintained, and specifically includes the following whether as a repair, upgrade, or new installation, and without limiting the generality of the foregoing: utility

work, storm or accident damage repairs, road work, storm sewer and sanitary sewer work;

- (i) "Employee" means all employees, servants, and agents of the City of Hamilton or contractors hired by the City of Hamilton;
- (j) "Forestry and Horticulture Section" means the Forestry and Horticulture Section of the Operations and Maintenance Division within the Public Works Department of the City of Hamilton and includes its successor;
- (k) "Forestry Management Plan" refers to all City of Hamilton policies and procedures governing forest health, tree maintenance, planting requirements, activities affecting public trees, and includes the policies attached to this By-law as schedules;
- (l) "Good Arboricultural Practice" shall be a reference to the guidelines and practices relating to proper tree maintenance and care, as defined and published by the ISA (International Society of Arboriculture);
- (m) "Highway" means a common and public highway under the jurisdiction of the City of Hamilton, and includes any bridge, trestle, viaduct or other structure forming part of a highway, and includes any portion of a highway to the full width thereof;
- (n) "Improper Pruning" means trimming a tree so as to cause irreversible damage in a manner contrary to Good Arboricultural Practices;
- (o) "Injure" includes any act or treatment which causes irreversible damage to a tree and includes, but is not limited to the acts of changing grades around trees so as to affect further growth or health of the tree by exposing roots or burying the trunk or branches, compacting soil over root areas so as to prevent sufficient absorption by the tree of water, severing or damaging roots, the improper application of chemicals, improper pruning or the removal of bark and "injuring" and "injury" shall have corresponding meanings;
- (p) "Municipal Law Enforcement Officer" means a person appointed as such under this or any by-law of the City;
- (q) "Naturalized Area" means an area that has been set aside by the City of Hamilton for the undisturbed growth of any tree species where the desired effect is that of natural growth, and for the purposes of this By-law the term will include municipal woodlots and woodlands;
- (r) "Officer" means any person designated by the Director to carry out duties, issue orders or take actions under this By-law, and the term includes the Director;

- (s) "Operations and Maintenance Division" refers to the Operations and Maintenance Division of the Public Works Department of the City of Hamilton and includes its successor;
- (t) "Pest" means any organism, including but not limited to such things as insects or diseases whether viral, fungal, or bacterial, which directly or indirectly cause irreversible damage to the long-term health, vitality, longevity, and integrity of a tree;
- (u) "Planning and Economic Development Department" refers to the Planning and Economic Development Department for the City of Hamilton and includes its successor;
- (v) "Private Property" means land other than public property, and includes those public unassumed alleys which have been occupied or fenced by a person other than the City;
- (w) "Private Tree" means any tree which has greater than fifty (50) per cent of its trunk diameter measured at ground level on private property;
- (x) "Pruning" means the cutting away of parts of a tree for reasons including but not limited to: safety concerns; maintenance of legislated clearances; tree health and vitality; disease control; clearance for pedestrian and vehicular traffic; visibility clearance for stop signs, traffic signals, and bus stops; clearance for buildings; removal of deadwood; crown thinning for tree health or to improve sunlight penetration; crown balancing to correct storm damage; crown reduction when overall size is considered problematic; or clearance from hydro lines and other utilities;
- (y) "Public Property" includes a highway, park, public unassumed alley, or any other public place or land owned by, or leased to, or controlled by, or vested in, the City;
- (z) "Public Tree" means any tree which has greater than or equal to fifty (50) per cent of its trunk diameter measured at ground level on public property, and "public tree" shall be used interchangeably with "municipal tree", "municipally owned tree", "City tree" or "City owned tree";
- (aa) "Public Works Department" means the Public Works Department for the City of Hamilton and includes its successor;
- (bb) "Removal" means the elimination, in whole or in part, of a tree;
- (cc) "Tree" means a plant of any species of woody perennial including its root system, which has reached or can reach a height of at least 4.5 metres at physiological maturity;

- (dd) "Tree Maintenance" includes all operations of watering, trimming, pruning, spraying, injecting, fertilizing, treating, cabling and bracing, and any other like activity;
  - (ee) "Tree Protection Zone (TPZ)" means a restricted area, enclosed by fencing, around the base of a tree with a minimum radius equal to the drip line, which serves to protect a tree and its root zone;
  - (ff) "Work" means the labour, task, duty, function, or assignment often being a part or a phase of a larger activity or project, and shall include, but not be restricted to, excavation, construction, development, ditching, tunnelling, trenching, soil disturbances, or compaction.
- 1(2) In this By-law, the singular tense is deemed to be inclusive and interchangeable with the plural tense; the plural tense is deemed to be inclusive and interchangeable with the singular tense.
- 1(3) In this By-law, where both metric and imperial measurements are given for the same item, the imperial measurement is provided for convenience only and is approximate.
- 2(1) Subject to subsection 2(2), this By-law applies to:
- (a) Persons within the City of Hamilton;
  - (b) Public trees; and
  - (c) Private trees, which pose a threat or hazard to persons or property on public property.
- 2(2) This By-law does not apply to:
- (a) Trees in private woodlands, as woodlands are defined in By-law No. R00-054 of the former Regional Municipality of Hamilton-Wentworth, or such successor by-law enacted under the authority of Section 135 of *the Municipal Act*;
  - (b) Woodlots, as defined in By-law No. 4401-96, as amended of the former City of Stoney Creek; or
  - (c) The matters listed in sub-section 135(12) of the Municipal Act.
- 2(3) The requirements and prohibitions in this By-law are in addition to any applicable prohibitions or requirements in the City of Hamilton Parks By-law No. 01-219 as amended, and in the event of conflict, the provisions which are most protective of trees prevail.

**Authority of the Director**

- 3(1) The Director is hereby authorized to administer and enforce this By-law and has delegate authority granted by Council to execute the provisions of this By-law or to provide consent or approval where required, including the imposition of conditions as necessary to ensure compliance with this By-law and ensure minimal removal or other negative effects from removal of trees.
- 3(2) The Director may request municipal law enforcement officers to enforce this By-law, who shall have the authority to carry out inspections, issue orders, and otherwise enforce this By-law, and the Director may assign duties or delegate tasks under this By-law whether in his or her absence or otherwise.
- 4 The Director has the authority to develop and maintain a Forestry Management Plan including level of service standards and practices / guidelines.
- 5 Where consent of the Director is required under this By-law, and where permission or approval has been refused, or where permission or approval has been granted and subsequently withdrawn, written justification must be provided to the individual detailing the basis for not granting approval.
- 6 In addition to the authority otherwise provided in this By-law and subject to the Council authorized budget, the Director is authorized to perform or arrange the performance of the following duties:
  - (a) Supervision of the planting, care, and maintenance of public trees;
  - (b) Supervision of the pruning or removal of trees:
    - (i) Upon public property;
    - (ii) Upon private property where the branches extend over public property and the removal is performed by City employees or contractors; or
    - (iii) Upon a highway where the branches of any public or private tree extend over a highway and the removal is performed by City employees or contractors.
- 7 The Director, once designated as an inspector by the President of the Canadian Food Inspection Agency, for the purposes of the *Plant Protection Act*, S. C. 1990, c.22, has the authority to inspect for the presence of pests and to take action including the removal of trees on all public and private property, in accordance with that Act.

### **Prohibitions Against Injury or Destruction**

- 8 No Person shall undertake to or cause or permit the undertaking of any of the following actions towards a public tree:

- (a) Injure, remove, disturb, damage, destroy, cut above or below ground, spray, prune, or alter in any way a public tree; without prior approval and compliance with terms provided in Section 10, or as provided for in the City of Hamilton Public Tree Removal Policy; or
- (b) Deposit, place, store, or maintain any stone, brick, sand, concrete, soil, or any material, equipment, or vehicles that may impede the free passage of water, air, or nutrients to the roots of a public tree, or perform any work within the dripline of a public tree which causes the destruction of, removal of, or injury to the tree, without prior approval and compliance with terms provided in Section 10; or
- (c) Fasten any sign, bill, notice, wire, rope, nail, or other object to, around, on, or through any public tree in any manner, or around, on or through the stakes or posts that protect such tree; or
- (d) Cause or permit any gaseous, liquid, or solid substances which are harmful or toxic to any public tree, to come in contact with any public tree, or apply to a public tree or an area used by said tree's root system; or
- (e) Set fire to or permit any fire to burn where such fire or the heat thereof will injure any portion of any public tree; or
- (f) Interfere with fences, structures, barriers delineating tree protection zones, or associated signage or other protective devices around any public tree; or
- (g) Alter or change any soil levels on public property within the drip line of any public tree in a manner likely to cause injury to said tree; without prior approval and compliance with terms provided in Section 10; or
- (h) Excavate any ditch, tunnel, trench, or lay any walkway or driveway, or disturb the soil on public property, within the drip line of a public tree; without prior approval and compliance with terms provided in Section 10; or
- (i) Climb, or permit any person under their care or control to climb any public tree.

9(1) A person who damages or injures a public tree on public property or who causes or permits a person to damage or injure such a tree, shall be subject to the regulations listed in the City of Hamilton Reforestation Policy – Municipally Owned Lands in addition to any necessary enforcement under this By-law.

9(2) Where a person reports having injured or damaged a public tree, or where a person is found to have injured or damaged a public tree, the Director shall issue an order requiring that the person arrange for the payment of restitution in accordance with the regulations of the City of Hamilton Reforestation Policy –

Municipally Owned Lands, in addition to any necessary enforcement of this By-law.

### **Protective Measures For Trees During Construction**

- 10 Any person undertaking to perform any work within the drip line of a public tree, requires the consent of the Director, and shall follow the regulations and conditions listed in the City of Hamilton Tree Preservation and Protective Measures For Trees Affected by Construction Policy and otherwise shall comply with any conditions imposed through the Director's consent.

### **Planting of Trees**

#### **Prohibited Species**

- 11(1) No person shall plant or place, or cause or permit the planting or placing of a tree of the type or species listed below upon public property:
- (a) *Acer negundo* - Manitoba Maple;
  - (b) *Acer saccharinum* - Silver Maple;
  - (c) *Populus* spp. - Poplar Species;
  - (d) *Salix* spp. - Willow Species;
  - (e) *Ulmus pumila* - Siberian Elm; or
  - (f) *Ginkgo biloba* - Female only.
- 11(2) Unless authorized by the Director in writing, no person shall plant or place, or cause or permit the planting or placing of any coniferous trees upon public property.

#### **Planting Trees on Public Property**

- 12(1) No person shall, without prior written consent of the Director, plant or cause to be planted any tree on public property.
- 12(2) The City reserves the right, at its sole discretion, to plant, or to have planted trees on any portion of public property.
- 12(3) All trees planted by the City of Hamilton, or by any contractor or person on public property, are subject to this By-law, the City of Hamilton Street Tree Planting Policy – New Developments; and the City of Hamilton Street Tree Planting Policy – Planning & Design.
- 12(4) Any Tree planted or located on a highway is deemed to be a public tree and is subject to all the provisions and regulations contained in this By-law as well as

to the City of Hamilton Street Tree Planting Policy – New Developments; City of Hamilton Street Tree Planting Policy - Planning & Design; and the City of Hamilton Street Tree Planting Policy – Rural Roadways.

13(1) Notwithstanding Section 12;

- (a) Any tree planted on public property with or without the consent of the Director, is the property of the City, is deemed to be a public tree, and is subject to all terms and conditions as set out in this By-law;
- (b) For greater certainty, a tree referred to in subsection (a) above may be treated as a public tree or removed as provided for in this By-law, and in particular, any tree removed by the City may be removed without compensation owing by the City, and if removed by someone other than the City without the required permission for removal by the City, may result in enforcement, claims for compensation, and replanting costs and orders, and if such tree planted is a prohibited species, may be removed by the City or its contractors at the expense of the person planting or causing such planting to occur.

#### **Tree Planting on Private Property**

- 14(1) Any tree planted on private property, whether planted by the City or by any other person, is the property of the land owner and as such is the owner's sole responsibility.
- 14(2) The owner of property on which a private tree is standing shall not permit or leave the tree or branches thereof projecting over the highway in such manner as to obstruct the reasonable and safe use of the highway.

#### **Removal of Trees**

- 15 All authorized public tree removals and all private tree removals or pruning carried out by or on behalf of the City shall be performed by the City or by a contractor approved by the Director.
- 16 Excluding those public tree removals performed as "necessary for the public interest", as that phrase is defined in Section 18:
  - (a) The removal of all live, healthy public trees shall be subject to the provisions of the City of Hamilton Reforestation Policy - Municipally Owned Lands; and the City of Hamilton Public Tree Removal Policy;
  - (b) A person removing, injuring or damaging a public tree, where the Director in his sole discretion, decides that the tree needs to be replaced, shall, in addition to any enforcement of this By-law, be subject to the requirements of the City of Hamilton Reforestation Policy.

## **Public Tree Removals**

- 17 The Director is authorized to remove or cause to be removed a tree or part thereof on public property when it is considered "necessary for the public interest", as that phrase is defined in Section 18, or in accordance with the City of Hamilton Public Tree Removal Policy.

## **Necessary for the Public Interest**

- 18 For the purpose of Section 17, "necessary for the public interest" means removal for one or more of the following reasons:
- (a) A tree is decayed in whole or in part;
  - (b) A tree that has failed, or in its current physiological condition has the potential to fail, and by its failure, or potential failure, poses a direct and immediate threat to public property or to individuals using public property;
  - (c) A tree that is a source, host, or infested with any pest which directly or indirectly causes irreversible damage to the long-term health, vitality, longevity, and integrity of a tree;
  - (d) A tree whose structural value, or integrity, as determined by the Director, has been seriously compromised by construction, weather related events, or by pruning;
  - (e) A tree planted along a highway which obstructs or impedes the safe use of the same;
  - (f) A tree whose root system has been proven to compromise the structural integrity of the foundation of any building; or
  - (g) A tree of poor quality, or undesirable species whose removal is required to facilitate new street tree plantings.

## **Naturalized Areas**

- 19(1) No person shall remove, or cause, or permit the removal of any public tree that has fallen in a naturalized area from such area.
- 19(2) Any public tree that has fallen in a naturalized area and impedes on the use of public property may be cut back by the City of Hamilton so as to provide safe access and use of the public property, however, the tree will not be removed from the area.

## **Private Trees**

- 20(1) Subsections (2) and (3) of this section do not apply where the City does not enter private property for its property or highway maintenance purposes, and in particular do not apply when the City, from its own property, removes the portions of private trees growing upon or over its property and highways for the purposes of property or highway maintenance so as to ensure reasonable or appropriate use of the property or highway as determined solely by the City and the elimination of dangers or obstructions for users of the City properties or highways; and further, any rights or permissions granted in this or any by-law to persons to maintain trees on private property or part of the road allowance, or other public property shall be subject to this provision for needs or maintenance purposes and so as to allow the City to meet the legal obligations to maintain its highways and carry out its intentions towards use of its properties for its own and the public benefit.
- 20(2) Pursuant to section 62 of the *Municipal Act, 2001* and in accordance with section 431 of that Act where required, a municipal employee or a contractor of the municipality, for the purpose of tree trimming in relation to highways or for the maintenance of highways, may where necessary, at any reasonable time, enter on lands adjacent to any of its highways to:
- (a) inspect or conduct tests on trees; or
  - (b) remove decayed, damaged or dangerous trees or their branches, where in the opinion of the employee or contractor, the tree or branch poses a danger to the health and safety of any person using the highway.
- 20(3) Pursuant to subsection 62(2) of *the Municipal Act, 2001* a municipal employee or a contractor, where such person is of the opinion that a tree or branch of land adjacent to the highway poses an immediate danger to the health and safety of any person using the highway, where necessary and in accordance with paragraphs (b), (c) or (d) of section 431 of that Act where required, may enter the land without notice to remove the tree or branch.
- 20(4) Subsections 20(2) and (3) do not permit entry into a building on the land excepting where proper notices have been given or permissions obtained.
- 20(5) The owner of private property shall ensure that all trees growing partially on public property are maintained in good condition and state of repair, free of decay or damage, such that the tree or branches thereof do not pose a danger to persons on City properties or its highways.
- 20(6) The obligations in subsection 20(5) shall be deemed to include the requirement of the owner to cause or carry out such inspections and testing as are reasonably necessary to determine the condition of the private tree and its branches.

## **Regulations and Enforcement**

## **Exclusions and Exceptions**

- 21 The provisions of this By-law shall not apply to:
- (a) The employees of the City of Hamilton while engaged in the performance of their duties;
  - (b) The operators, drivers and attendants of authorized emergency services vehicles, Police Officers, Officers of the Hamilton Fire Service, or Municipal Law Enforcement Officers appointed by the Council of the City of Hamilton, while engaged in the performance of their duties; or
  - (c) The operators, drivers and attendants of authorized public utility companies including, but not limited to, a natural gas utility, a hydro electric provider, and any other public utility, or telecommunication company, provided that their vehicles and crews are clearly identified by a crest or other marking and provided the operator, driver or attendant is actively engaged in the provision of any emergency services offered by the utility.

#### **Enforcement**

- 22 A Municipal Law Enforcement Officer, an employee of the City designated as an officer by the Director for the purpose of this Section or a police officer is authorized to inform any person of the provisions of this By-law, to issue warnings or notices, and to issue an order for discontinuance or for compliance therewith in the terms and content required by Section 137 of the *Municipal Act, S. O. 2001, c. 25*.
- 23(1) A Municipal Law Enforcement Officer or police officer may enforce the provisions of this By-law.
- 23(2) An officer appointed for the purposes of this By-law may be issued identification by the Director for purposes including the issuing of orders.

#### **Penalty and Remedies for Breach or Contravention**

- 24 Any Person contravening any provision of this By-law or contravening an order to discontinue issued under this By-law pursuant to section 137 of the *Municipal Act* is guilty of an offence, and upon conviction is liable to the fines and obligations for replanting and rehabilitation specified in Section 138 of the *Municipal Act, S.O. 2001, Chapter 25*.
- 25(1) In addition to any other remedy and to any penalty imposed by the By-law, a court in which a conviction has been entered under this By-law, and any court of competent jurisdiction thereafter may:
- (a) Make an Order prohibiting the continuation or repetition of the offence by the person convicted; and

- (b) Order the person to rehabilitate the land or to plant or replant trees in such a manner and within such period as the court considers appropriate, including any silvicultural treatment necessary to re-establish the trees.

25(2) Where under this By-law a person is required or directed that a matter or thing be done and the person defaults or otherwise fails to comply, the Director may, pursuant to section 427 of the *Municipal Act, 2001*, carry out the thing or cause the matter to be done at the person's expense, and recover the City's costs as defined in that section by action or by adding the costs to the tax roll for the person and collecting them in the same manner as taxes.

### **Severance**

26 Should a court of competent jurisdiction declare a part or whole of any provision of this By-law to be invalid or of no force or effect, the provision or part is deemed severable from this By-law, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its remaining terms to the extent possible under law.

### **Short Title**

27 The Short Title of this By-law shall be "The City of Hamilton Public Trees By-law".

### **Repeals and Enactment**

28(1) The following By-laws of the former area municipalities, as may be amended, are hereby repealed: By-law No. 4156-95 (Stoney Creek), By-law No. 91-36-P (Flamborough), By-law No. 4502-99 (Dundas), By-law No. 4486-99 (Dundas), By-law No. 241-82 (Glanbrook), and By-law No. 92-155 (Hamilton).

28(2) By-law No. 86-077 (Hamilton Streets By-law), as may be amended, is hereby further amended in the following respects:

- (a) At the beginning of subsection 4(2), deleting the words "Subject to the provisions of this By-law respecting trees on highways, and";
- (b) Within subsection 4(2) repealing the words "grass, flowers and trees" and replacing them with the words "grass and flowers";
- (c) Section 5 of By-law No. 86-077 (Hamilton Streets By-law), as amended, is hereby repealed;
- (d) Sub-section 16(9) of By-law No. 86-077 (Hamilton Streets By-law), as may be amended, is hereby further amended by repealing the words "of trees" after the word "climbing"; and

- (e) In all other respects, By-law No. 86-77 (Hamilton) is confirmed without change.
- 28(3) By-law No. 328-86 (Glanbrook) as may be amended is hereby further amended by deleting “tree,” from clause 8(g), and in all other respects, By-law No. 328-86 (Glanbrook) is confirmed without change.
- 28(4) By-law No. 2000-118 (Ancaster) as may be amended, is hereby further amended in the following respects:
- (a) the title to By-law No. 2000-118 (Ancaster) is repealed and replaced with the following:

“Being a By-law to Prohibit the Injury or Destruction of Specified Classes of Trees on Private Property in the Geographic District of former Town of Ancaster in the City of Hamilton”;
  - (b) By-law No. 2000-118 (Ancaster) is further amended by repealing and replacing section 2.20 with the following:

“2.20 “Owner” means the owner as registered on title to the lands.”;
  - (c) By-law No. 2000-118 (Ancaster) is further amended by repealing and replacing section 2.31 with the following:

“2.31 “woodland” means any area of private land of 0.2 hectare (0.5 acres) or more with at least:

    - (i) 1000 trees per hectare (405 trees per acre) of any size;
    - (ii) 750 trees per hectare (303 trees per acre) measuring over 5 centimetres (2 inches) DBH;
    - (iii) 500 trees per hectare (202 trees per acre) measuring over 12 centimetres (5 inches) DBH; or
    - (iv) 250 trees per hectare (101 trees per acre) measuring over 20 centimetres (8 inches) DBH, not including orchards or plantations.

For the purposes of this By-law, the boundary of the woodland shall be defined by the ecological limit of the woodland and not by private property boundaries, and shall include the area up to the drip line of the woodland and any corridors measuring up to 30 metres in width. Where a potential woodlot is dissected by a corridor or natural feature such as a creek, the area of the woodlot shall be calculated exclusive of the area of the corridor or natural feature.”;

- (d) By-law No. 2000-118 (Ancaster) is further amended by repealing and replacing clause 3.1.2(i) with the following:  
“(i) Heritage Trees on private lands located outside of Woodlands;”;
- (e) By-law No. 2000-118 (Ancaster) is further amended by repealing and replacing clause 5.1.1(ii) with the following:  
“(ii) for the removal of Heritage Trees on private lands within 7.5 metres (25 feet) of the outer edge of an Occupied Building;”;
- (f) By-law No. 2000-118 (Ancaster) is further amended by repealing Sections 2.25, 5.1.2, 9.3.1, 9.3.2, 9.3.3, 9.3.4, 9.3.5 and 9.3.6 in their entirety; and
- (g) In all other respects By-law No. 2000-118 (Ancaster) is hereby confirmed without change.

28(5) By-law No. 4513-99 (Dundas) as may be amended, is hereby further amended by repealing and replacing subsection 3(e) with the following:

“(e) Trees overhanging onto private land from abutting private lands are specifically included under the Control of this By-law.”

29 Further to Section 28, any references to the aforementioned By-laws and schedules in other City policies, signage or By-laws, as amended, antedating the passing and enactment of this By-law, shall be deemed a reference to this By-law.

30 This By-law shall come into force and take effect on the date of its passing and enactment.

**PASSED and ENACTED** this 14<sup>th</sup> day of June, 2006.

  
\_\_\_\_\_  
MAYOR

  
\_\_\_\_\_  
CLERK

**Authority:** Item 15, Economic Development  
and Planning Committee  
Report 010-001 (PDO02229(d))  
CM: January 27, 2010

**Bill No. 013.**

**CITY OF HAMILTON**

**BY-LAW NO. 10-013**

**To Amend: By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law No. 4513-99, the Town of Dundas Tree Protection By-law; By-law 4401-96, the City of Stoney Creek Tree By-law; By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth**

**WHEREAS** Council wishes to amend the appeal processes provided for in: By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law No. 4513-99, the Town of Dundas Tree Protection By-law; By-law No. 4401-96, the City of Stoney Creek Tree By-law; By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth Woodland Conservation By-law;

**AND WHEREAS** the *City of Hamilton Act, 1999* did incorporate, as of January 1st, 2001, the municipality "City of Hamilton";

**AND WHEREAS** the City of Hamilton is successor to the following former area municipalities: The Corporation of the Town of Ancaster, The Corporation of the Town of Dundas, The Corporation of the Town of Flamborough, The Corporation of the Township of Glanbrook, The Corporation of the City of Hamilton, and The Corporation of the City of Stoney Creek; and the successor the former Regional Municipality of Hamilton Wentworth;

**AND WHEREAS** the *City of Hamilton Act, 1999* provides that the by-laws of the former area municipalities and the former Regional Municipality of Hamilton Wentworth remain in force, in respect of the part of the municipal area to which they applied on

December 31, 2000, until they expire or are repealed or amended to provide otherwise;

**NOW THEREFORE** the Council of the City of Hamilton enacts as follows:

**By-law No. 2000-118, the Town of Ancaster Tree Protection By-law**

1. Subsection 9.1 of By-law No. 2000-118 of the Town of Ancaster is deleted and replaced with following new subsection 9.1:

**9.1 APPEALS REGARDING PERMITS**

- 9.1.1 An appeal of the conditions imposed on a Permit or of a Permit refusal shall be conducted as set out in the Appeal Schedule attached to and forming part of this By-law.
2. By-law No. 2000-118 of the Town of Ancaster is amended by adding the Appeal Schedule, attached to this By-law as Schedule A.
3. Subsections 8.2 and 9.2 of By-law No. 2000-118 of the Town of Ancaster are deleted.
4. Sections 3 and 4 of Schedule "G" or By-law No. 2000-118 of the Town of Ancaster referring to an appeal are deleted.

**By-law No. 4513-99, the Town of Dundas Tree Protection By-law**

5. By-law No. 4513-99 of the Town of Dundas is amended by adding following new section 5a after section 5:

**5a. APPEALS**

An appeal of the conditions imposed on a permit or of a permit refusal shall be

conducted as set out in the Appeal Schedule attached to and forming part of this By-law.

6. By-law No. 4513-99 of the Town of Dundas is amended by adding the Appeal Schedule attached to this By-law as Schedule A.

**By-law No. 4401-96, the City of Stoney Creek Tree By-law**

7. Sections 22 and 23 of By-law No. 4401-96 of the City of Stoney Creek are deleted and replaced by the following new section:

**APPEAL TO THE ECONOMIC DEVELOPMENT AND PLANNING COMMITTEE**

22. An appeal of the conditions imposed on a Permit or of a Permit refusal shall be conducted as set out in the Appeal Schedule attached to and forming part of this By-law.
8. By-law No. 4401-96 of the City of Stoney Creek is amended by adding the Appeal Schedule attached to this By-law as Schedule A.
9. Subsections 29(h) and (i) and section 33 and 34 of By-law No. 4401-96 of the City of Stoney Creek are deleted.
10. The third and fourth recitals of Schedule "E" of By-law No. 4401-96 of the City of Stoney Creek referring to an appeal are deleted.

**By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth**

11. Subsections 5(h) to (m) inclusive of By-law No. R00-054 of the Regional Municipality of Hamilton-Wentworth are deleted and replaced with the following new subsection:

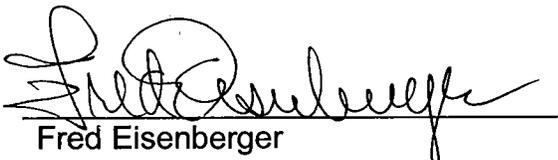
5(h) An appeal of a permit refusal shall be conducted as set out in the Appeal Schedule attached to and forming part of this By-law.

12. By-law No. R00-054 of the Regional Municipality of Hamilton-Wentworth is amended by adding the Appeal Schedule attached to this By-law as Schedule A.

**General**

13. This By-law comes into force on the day it is passed.

**PASSED** this 27<sup>th</sup> day of January, 2010

  
Fred Eisenberger  
Mayor

  
Kevin C. Christenson  
City Clerk

Schedule A

**APPEAL SCHEDULE**

1. For the purposes of this Schedule:  
“**applicant**” means an applicant for a permit under this By-law;  
“**City**” means the City of Hamilton incorporated as of January 1, 2001 under the *City of Hamilton Act, 1999*;  
“**Economic Development and Planning Committee**” means the City of Hamilton’s Economic Development and Planning Committee or any successor committee; and  
“**permit**” means a permit under this By-law.
  
2. An applicant for a permit who does not agree with the conditions imposed in a permit or with the refusal of a permit may appeal by requesting a hearing before the Economic Development and Planning Committee which, in the place of City Council, shall hear the appeal.
  
3. A request for a hearing by an applicant under section 2 shall be in writing, accompanied by the applicable fee and delivered to the Clerk of Economic Development and Planning Committee within 20 days of the date the permit is refused. The applicant shall also include the grounds for their appeal.
  
4. Where a request for a hearing meeting the requirements of section 3 has been delivered to the Clerk of the Economic Development and Planning Committee, the hearing shall be scheduled before the Economic Development and Planning Committee and notice of the hearing date shall be given to the applicant who requested the hearing. The notice of hearing shall include:
  - (a) a statement of the time, date and purpose of the hearing; and
  - (b) a statement that if the applicant does not attend the hearing, the

Economic Development and Planning Committee may proceed in their absence without notice to them.

5. The notice of hearing under section 4 may be given by delivering it personally or by sending it by prepaid registered mail to the last known address of the applicant on file with the City. Service by registered mail shall be deemed to have taken place 5 business days after the date of mailing unless the person to whom it is being given establishes that they, acting in good faith, through absence, accident, illness or other cause beyond their control did not receive the notice of appeal until a later date.
6. The Economic Development and Planning Committee shall hold a hearing pursuant to the *Statutory Powers Procedure Act* at the time, date and place set out in the notice of hearing and the Economic Development and Planning Committee may recommend to Council that a permit be refused or issued or that a condition be confirmed, rescinded, varied or imposed on a permit.
7. The Economic Development and Planning Committee shall have regard to the following matters, where relevant, as may be raised at a hearing:
  - (a) this By-law and other applicable law;
  - (b) circumstances and facts raised by the evidence of the parties; and
  - (c) whether strict application of the provisions of the By-law in the context of the circumstances and facts raised by the evidence of the parties would result in unusual hardship for the applicant or be inconsistent with the general intent and purpose of this By-law.
8. The Economic Development and Planning Committee shall forward a report to City Council on its final decision arising from each hearing or opportunity for a hearing.
9. City Council, after considering a report of the Economic Development and Planning Committee, may refuse or issue a permit or confirm, rescind, vary or

impose a condition on a permit, all without a hearing, having regard to the matters considered by the Economic Development and Planning Committee,

this By-law and other applicable law.

10. After City Council has made a decision in respect of a report of the Economic Development and Planning Committee, notice of that decision shall be sent to the applicant by personal delivery or by registered mail to the last known address of the applicant on file with the City.

**Authority:** Item 11, Planning Committee  
Report: 14-012 (PD02229(f))  
CM: August 15, 2014

**Bill No. 213**

**CITY OF HAMILTON  
BY-LAW NO. 14-213**

**To Amend: By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law No. 4513-99, the Town of Dundas Tree Protection By-law; By-law 4401-96, the City of Stoney Creek Tree By-law; By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth Conservation By-law**

**WHEREAS** Council wishes to amend By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law No. 4513-99, the Town of Dundas Tree Protection By-law; By-law No. 4401-96, the City of Stoney Creek Tree By-law; and By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth Woodland Conservation By-law;

**AND WHEREAS** the City of Hamilton Act, 1999 did incorporate, as of January 1, 2001, the municipality "City of Hamilton";

**AND WHEREAS** the City of Hamilton is successor to the following former area municipalities: The Corporation of the Town of Ancaster, The Corporation of the Town of Dundas, The Corporation of the Town of Flamborough, The Corporation of the Township of Glanbrook, The Corporation of the City of Hamilton, and The Corporation of the City of Stoney Creek; and the successor the former Regional Municipality of Hamilton Wentworth;

**AND WHEREAS** the City of Hamilton Act, 1999 provides that the By-laws of the former area municipalities and the former Regional Municipality of Hamilton-Wentworth remain in force, in respect of the part of the municipal area to which they applied on December 31, 2000, until they expire or are repealed or amended to provide otherwise.

**NOW THEREFORE** the Council of the City of Hamilton enacts as follows:

**By-law No. 2000-118, the Town of Ancaster Tree Protection By-law:**

1. Section 3.3 of By-law No. 2000-118 of the Town of Ancaster Tree Protection By-law is deleted and replaced with the following new Section 3.3:

### **3.3 COMPLIANCE WITH OTHER STATUTES AND BY-LAWS**

- 3.3.1 The provisions of this By-law apply in addition to the provisions contained in any other applicable By-laws of the City of Hamilton or applicable provincial or federal statutes or regulations.
- 3.3.2 In the event of a conflict between this By-law and any other applicable By-law of the City of Hamilton:
- (i) where one or more conflicting provisions provides for public health or safety, then the provision which is most protective of public health or safety prevails; or,
  - (ii) where none of the conflicting provisions provides for public health or safety, then the provision which is most protective of trees prevails.

#### **By-law No. 4513-99, the Town of Dundas Tree Protection By-law:**

2. Section 3 of By-law No. 4513-99 of the Town of Dundas is amended by adding the following new Sub-section 3(g):
- (g) (i) The provisions of this By-law apply in addition to the provisions contained in any other applicable By-laws of the City of Hamilton or applicable provincial or federal statutes or regulations.
  - (ii) In the event of a conflict between this By-law and any other applicable By-law of the City of Hamilton:
    - 1. where one or more conflicting provisions provides for public health or safety, then the provision which is most protective of public health or safety prevails; or,
    - 2. where none of the conflicting provisions provides for public health or safety, then the provision which is most protective of trees prevails.

#### **By-law No. 4401-96, the City of Stoney Creek Tree By-law:**

3. The first Recital of By-law No. 4401-99 of the City of Stoney Creek is amended by deleting the words "and prescribing fees for the permit".
4. Section 4 of By-law No. 4401-99 of the City of Stoney Creek is deleted and replaced by the following new Section 4:

4. (a) The provisions of this By-law apply in addition to the provisions contained in any other applicable By-laws of the City of Hamilton or applicable provincial or federal statutes or regulations.
- (b) In the event of a conflict between this By-law and any other applicable By-law of the City of Hamilton:
  - (i) where one or more conflicting provisions provides for public health or safety, then the provision which is most protective of public health or safety prevails; or,
  - (ii) where none of the conflicting provisions provides for public health or safety, then the provision which is most protective of trees prevails.
5. Section 17 of By-law No. 4401-99 of the City of Stoney Creek is deleted and replaced with the following new section 17:
  17. Where the person injuring or destroying the trees is not the owner, the applicant for a permit under this by-law shall provide proof of public and general liability insurance to the satisfaction of the City Clerk upon submitting the application.
6. Section 36 of By-law No. 4401-99 of the City of Stoney Creek is deleted.
7. Schedule "A" of By-law No. 4401-99 of the City of Stoney Creek is deleted.
8. Schedule "C" of By-law No. 4401-99 of the City of Stoney Creek is amended by deleting the words "and shall pay the required fees as set out in Schedule "A" of this by-law" from the third paragraph.

**By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth:**

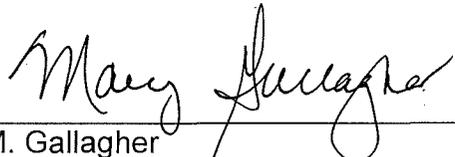
9. Section 2 of By-law No. R00-054 of the Regional Municipality of Hamilton-Wentworth is amended by adding the following new Sub-section 2(3):
  - (3) (a) The provisions of this By-law apply in addition to the provisions contained in any other applicable By-laws of the City of Hamilton or applicable provincial or federal statutes or regulations.
  - (b) In the event of a conflict between this By-law and any other applicable By-law of the City of Hamilton:
    - (i) where one or more conflicting provisions provides for public health or safety, then the provision which is most protective of public health or safety prevails; or,

- (ii) where none of the conflicting provisions provides for public health or safety, then the provision which is most protective of trees prevails.

10. This By-law comes into force on the date of its passing.

**PASSED** this 15<sup>th</sup> day of August, 2014.

  
\_\_\_\_\_  
R. Bratina  
Mayor

  
\_\_\_\_\_  
M. Gallagher  
Acting City Clerk

**Authority:** Item 6, Planning Committee  
Report 17-009 (PED17084)  
CM: May 24, 2017  
Ward: City Wide

**Bill No. 094**

## **CITY OF HAMILTON**

### **BY-LAW NO. 17-094**

**To Amend By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth Woodland Conservation By-law; By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law 4401-96, the City of Stoney Creek Tree By-law; By-law No. 4513-99, the Town of Dundas Tree Protection By-law**

**WHEREAS** Council wishes to amend By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth Woodland Conservation By-law; By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law No. 4401-96, the City of Stoney Creek Tree By-law; and By-law No. 4513-99, the Town of Dundas Tree Protection By-law;

**AND WHEREAS** the *City of Hamilton Act, 1999* did incorporate, as of January 1, 2001, the municipality "City of Hamilton";

**AND WHEREAS** the City of Hamilton is successor to the following former area municipalities: The Corporation of the Town of Ancaster, The Corporation of the Town of Dundas, The Corporation of the Town of Flamborough, The Corporation of the Township of Glanbrook, The Corporation of the City of Hamilton, and The Corporation of the City of Stoney Creek; and the successor to the former Regional Municipality of Hamilton Wentworth;

**AND WHEREAS** the *City of Hamilton Act, 1999* provides that the By-laws of the former area municipalities and the former Regional Municipality of Hamilton-Wentworth remain in force, in respect of the part of the municipal area to which they applied on December 31, 2000, until they expire or are repealed or amended to provide otherwise.

**NOW THEREFORE** the Council of the City of Hamilton enacts as follows:

#### **By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth:**

1. Section 3 of By-law No. R00-054 of the Regional Municipality of Hamilton-Wentworth is deleted and replaced with the following:

## **TREE DESTRUCTION RESTRICTIONS**

3. (1) Except as provided in Section 4, no person shall destroy or permit the destruction by cutting, burning, or other means one or more trees in a woodlands if:
  - (a) one or more of the trees destroyed is of a prescribed species listed in Schedule A and does not equal or exceed the measurements required for that tree species as set out in Schedule A at the point of measurement specified; or
  - (b) the destruction of one or more of the trees has the effect of reducing the number of trees in the woodlands below the number of trees necessary to constitute a woodlands.
- (2) When cutting or removing or permitting the cutting or removing of one or more tree in woodlands, no person shall:
  - (a) unnecessarily damage or injure any tree of a prescribed species that remains standing in the woodlands; or
  - (b) conduct their operations in such a manner that results in excessive damage to the soil, water bodies, wetlands, or other portions of the woodlands.
2. Section 8 of By-law No. R00-054 of the Regional Municipality of Hamilton-Wentworth is deleted and replaced with the following:

### **PENALTY**

- 8.(1)(a) Every person who contravenes any provision of this By-law and every Director or Officer of a corporation who knowingly concurs in the corporation's contravention of the provision is, upon conviction, guilty of an offence and is liable:
  - (i) on a first conviction, to a fine of not more \$10,000 or a fine of \$1,000 per tree injured or destroyed, whichever is greater; and
  - (ii) on any subsequent conviction, to a fine of not more than \$25,000 or a fine of \$2,500 per tree injured or destroyed, whichever is greater.
- (b) Despite paragraph 8(1)(a), where the person convicted is a corporation:

- (i) the maximum fines in subparagraph 8(1)(a)(i) are \$50,000 or \$5,000 per tree injured or destroyed; and
  - (ii) the maximum fines in subparagraph 8(1)(a)(ii) are \$100,000 or \$10,000 per tree injured or destroyed.
- (c) Every person who is convicted of an offence under this By-law may be liable, in addition to the fines established under paragraphs 8(1)(a) or 8(1)(b), to a special fine, which may exceed \$100,000, designed to eliminate or reduce any economic advantage or gain from contravening this By-law or failing to comply with an order made under this By-law.
8. (2) Where a person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, make an order:
- (a) prohibiting the continuation or repetition of the offence by the person convicted;
  - (b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

**By-law No. 2000-118, the Town of Ancaster Tree Protection By-law:**

3. Section 10 of By-law No. 2000-118 of the Town of Ancaster is deleted and replaced with the following:

**SECTION 10: PENALTIES FOR NON-COMPLIANCE WITH BY-LAW**

10.1.1 Every person who contravenes any provision of this By-law and every Director or Officer of a corporation who knowingly concurs in the corporation's contravention of the provision is, upon conviction, guilty of an offence and is liable:

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

10.1.2 Despite paragraph 10.1.1, where the person convicted is a corporation:

- (i) the maximum fines in subparagraph 10.1.1(i) are \$50,000 or \$5,000 per tree injured or destroyed; and
  - (ii) the maximum fines in subparagraph 10.1.1(ii) are \$100,000 or \$10,000 per tree injured or destroyed.
- 10.1.3 Every person who is convicted of an offence under this By-law may be liable, in addition to the fines established under paragraphs 10.1.1 or 10.1.2, to a special fine, which may exceed \$100,000, designed to eliminate or reduce any economic advantage or gain from contravening this By-law or failing to comply with an order made under this By-law.
- 10.2 Where a person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, make an order:
- (a) prohibiting the continuation or repetition of the offence by the person convicted;
  - (b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

**By-law No. 4401-96, the City of Stoney Creek Tree By-law:**

4. Section 37 of By-law No. 4401-96 of the City of Stoney Creek is deleted and replaced with the following:

**PENALTY**

- 37 (a) Every person who contravenes any provision of this By-law and every Director or Officer of a corporation who knowingly concurs in the corporation's contravention of the provision is, upon conviction, guilty of an offence and is liable:
- (i) on a first conviction, to a fine of not more \$10,000 or a fine of \$1,000 per tree injured or destroyed, whichever is greater; and
  - (ii) on any subsequent conviction, to a fine of not more than \$25,000 or a fine of \$2,500 per tree injured or destroyed, whichever is greater.

- (b) Despite paragraph 37(a), where the person convicted is a corporation:
  - (i) the maximum fines in subparagraph 37(a)(i) are \$50,000 or \$5,000 per tree injured or destroyed; and
  - (ii) the maximum fines in subparagraph 37(a)(ii) are \$100,000 or \$10,000 per tree injured or destroyed.
- (c) Every person who is convicted of an offence under this By-law may be liable, in addition to the fines established under paragraphs 37(a) or 37(b), to a special fine, which may exceed \$100,000, designed to eliminate or reduce any economic advantage or gain from contravening this By-law or failing to comply with an order made under this By-law.

5. Section 38 of By-law No. 4401-96 of the City of Stoney Creek is deleted and replaced with the following:

**PROHIBITION ORDER**

38. Where a person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, make an order:
- (a) prohibiting the continuation or repetition of the offence by the person convicted;
  - (b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

**By-law No. 4513-99, the Town of Dundas Tree Protection By-law:**

6. Section 6 of By-law No. 4513-99 of the Town of Dundas is deleted and replaced with the following:

**OFFENCE**

- 6.(1)(a) Every person who contravenes any provision of this By-law and every Director or Officer of a corporation who knowingly concurs in the corporation's contravention of the provision is, upon conviction, guilty of an offence and is liable:

- (i) on a first conviction, to a fine of not more \$10,000 or a fine of \$1,000 per tree injured or destroyed, whichever is greater; and
    - (ii) on any subsequent conviction, to a fine of not more than \$25,000 or a fine of \$2,500 per tree injured or destroyed, whichever is greater.
  - (b) Despite paragraph 6(1)(a), where the person convicted is a corporation:
    - (i) the maximum fines in subparagraph 6(1)(a)(i) are \$50,000 or \$5,000 per tree injured or destroyed; and
    - (ii) the maximum fines in subparagraph 6(1)(a)(ii) are \$100,000 or \$10,000 per tree injured or destroyed.
  - (c) Every person who is convicted of an offence under this By-law may be liable, in addition to the fines established under paragraphs 6(1)(a) or 6(1)(b), to a special fine, which may exceed \$100,000, designed to eliminate or reduce any economic advantage or gain from contravening this By-law or failing to comply with an order made under this By-law.
6. (2) Where a person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, make an order:
- (a) prohibiting the continuation or repetition of the offence by the person convicted;
  - (b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.
7. This By-law comes into force on the day it is passed.

**PASSED** this 24<sup>th</sup> day of May, 2017

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F. Eisenberger  
Mayor

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R. Caterini  
City Clerk