



OAKVILLE

THE CORPORATION OF THE TOWN OF OAKVILLE

Private Tree Protection By-Law

BY-LAW NUMBER 2008-156

**A by-law to regulate or prohibit the injury or destruction
of trees on private property within the Town of Oakville**

WHEREAS the Council of the Corporation of the Town of Oakville is authorized by paragraph 5 of subsection 11(2), section 135, 429, 431, and 444 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, to pass by-laws to sustain and promote environmental and social benefits to the community as a whole through the preservation and planting of trees throughout the municipality; to regulate or prohibit the injury or destruction of trees; to require a permit for the removal of trees; to impose conditions on permits; and to provide for a system of fines and other enforcement orders;

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

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

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

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

COUNCIL ENACTS AS FOLLOWS:

DEFINITIONS

1. In this By-Law:

“arborist” means a person who has graduated from an accredited college or university with a diploma or degree in Urban Forestry, Arboriculture or equivalent and satisfies at least one of the following requirements:

- (a) is certified by the Ontario Training and Adjustment Board or the International Society of Arboriculture;
- (b) is currently accepted as a consulting arborist with the American Society of Consulting Arborists;
- (c) is a Registered Professional Forester (RPF) as defined in the *Professional Foresters Act, 2000*, S.O. 2000, c. 18; or
- (d) has comparable qualifications to those set out under clauses (a) to (c) above as approved by the Designated Official;

“arborist report” means a report prepared and signed by an arborist, which includes details on the species, health, structural integrity and location of a tree to be destroyed, injured or removed;

“arborist certificate” means a certificate, estimate/work order or letter signed by an arborist or the Designated Official;

“boundary tree” means a tree whose tree trunk, at ground level, straddles or is bisected by the property line of the lot;

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

“dead” means a tree that has no living tissue, or a tree which is infected by an invasive pest such as Emerald Ash Borer or Asian Long-horned Beetle as confirmed by an arborist certificate;

“Designated Official” means Manager of Forestry and Cemetery Services for the Town of Oakville and the designate or designates of this individual;

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

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

“emergency work” means any work necessary to any tree to protect lives or property and includes, but is not limited to, utility repairs and structural repairs to a building;

“good arboricultural practice” means the proper implementation of removal, renewal and maintenance activities known to be appropriate for individual trees in and around urban areas to minimize detrimental impacts on urban forest values and includes pruning of trees to remove dead limbs, maintain structural stability and balance, or to encourage their natural form, provided that such pruning is limited to the appropriate removal of not more than one-third of the live branches or limbs of a tree, but does not include pruning to specifically to increase light or space;

“greenlands” means as defined in the Halton Region Tree By-Law 121-05, as may be amended or replaced, namely lands within the Greenlands System as identified in the Halton Regional Official Plan;

“hazard” means a tree that is destabilized or structurally compromised such that it poses a potential safety concern to property or life, confirmed by an arborist certificate;

“hoarding” means a fence or similar structure used to enclose a portion of a property to protect existing trees or other vegetation;

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

“multiple offence” means an offence in respect of two or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of this By-Law and for greater certainty, when multiple trees are injured or destroyed, the injury or destruction of each tree is a separate offence;

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

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

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

“permit” means a tree cutting permit issued under this By-Law to injure or destroy a tree on private property within the Town;

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

“pruning” means the appropriate removal of not more than one-third of the live branches or limbs of a tree or more than one-third of the live branches or limbs on a tree as part of a consistent annual pruning program and in accordance with good arboricultural practice;

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

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

“retained tree” means a tree that is to be retained during and after the development of a lot;

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

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

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

SCOPE

2. This By-Law applies to all private property in the Town, but does not apply to woodlands that are governed by the Halton Region Tree By-Law 121-05.

ADMINISTRATION AND ENFORCEMENT

3. The Designated Official shall be responsible for the administration and enforcement of this By-Law.

GENERAL PROHIBITIONS AND EXCEPTIONS

- 4.(1) No person shall injure or destroy any tree classified as an endangered, threatened, or at risk tree species, as defined in the provincial *Endangered Species Act, 2007*, S.O. 2007, c. 6, as may be amended or replaced from time to time, or any tree classified as an endangered or threatened tree species, or a tree species of special concern, as defined in the federal *Species at Risk Act, 2002*, S.C. 2002, c. 29, as may be amended or replaced from time to time.
- (2) No person shall injure or destroy a total of five (5) or more trees, or the fifth or more tree, each with a diameter greater than 20cm and less than 76cm on a lot within one calendar year, without first obtaining a permit pursuant to this By-Law.
- (3) No person shall injure or destroy any tree with a diameter greater than 76cm on a lot within one calendar year without first obtaining a permit pursuant to this By-Law.
5. Subject to the notification process set out in Section 7, a permit is not required to injure or destroy a tree, if:
- (a) the number of trees each with a diameter between 20cm and 76cm being injured or destroyed on a lot within one calendar year is four (4) or less; or
 - (b) the tree is dead; or
 - (c) the tree is a hazard.
6. The provisions of this By-Law do not apply to the injury or destruction of trees:
- (a) with a diameter less than 20cm; or
 - (b) for emergency work; or
 - (c) for the purpose of pruning, maintenance or removal of branches or limbs of any tree where the branches or limbs interfere with existing utility conductors, buildings or structures, provided that such activities shall be carried out, in accordance with good arboricultural practice; or
 - (d) located on rooftop gardens, interior courtyards, or solariums; or

- (e) located on a nursery; or
- (f) by a person licensed under the *Surveyors Act* to engage in the practice of cadastral surveying or his agent while making a survey; or
- (g) for the purpose of satisfying a condition to a development permit authorized by regulation made under section 70.2 of the *Planning Act* or as a requirement of an agreement entered into under the regulation; or
- (h) for the purpose of satisfying a condition to the approval of a site plan, a plan of subdivision, or a consent under sections 41, 51, and 53 of the *Planning Act*, or as a requirement of a site plan or subdivision agreement under those sections of the Act; or
- (i) by a transmitter or distributor as defined in the *Electricity Act, 1998* for the purpose of constructing and maintaining a transmission system or a distribution system, as defined under that Act; or
- (j) to permit the construction of a building or structure, where the removal, injury or destruction is required under a building permit; or
- (k) located within woodlands or greenlands governed by the Halton Region Tree By-Law 121-05; or
- (l) is required under a Property Standards By-Law order; or
- (m) in the sole discretion of the Director of Development Services for the Town of Oakville, as a result of activities or matters undertaken as part of the approved process for the Environmental Implementation and Functional Servicing requirements for the lands in the North Oakville Secondary Plan area other than the lands designated Natural Heritage System.

NOTIFICATION

- 7.(1) Where the number of trees with a diameter between 20cm and 76cm being injured or destroyed on a lot within one calendar year is four (4) or less, the tree is dead, or the tree is a hazard, the owner shall notify the Town by submitting a Notification Form, specified by the Designated Official, at least 24 hours prior to the proposed removal or in the case of a hazard tree, as soon after the removal as may be practicable.
- (2) For dead or hazard tree(s), except trees defined under “emergency work,” an arborist certificate shall be included with the Notification Form. If the Owner is unable to obtain an arborist certificate at no cost, the Owner may contact the Town to obtain an arborist certificate, from the Designated Official, prior to the submission of the Notification Form.

- (3) No fee is required for the submission of the Notification Form. No permit or confirmation of the Notification Form submission shall be issued by the Town.

TREE PERMIT

- 8.(1) A person shall file an application for a tree permit for the injury or destruction of a tree or trees on a lot by submitting the following to the Designated Official:
- (a) a completed application form, specified by the Designated Official;
 - (b) payment of the fee as set out in Schedule “A” is non-refundable, however, not-for-profit organizations or individual(s) facing financial hardship may be eligible for a waiver of the fee;
 - (c) an arborist report may be required by the Designated Official for trees between 20cm and 76cm in diameter to be removed within one calendar year, but is mandatory for trees greater than 76cm in diameter;
 - (d) the written consent of the adjacent property owner if the tree to be injured or destroyed is a boundary tree; and
 - (e) the written consent of the owner of the lot where the subject trees are located if the applicant is not the owner of that lot.
- (2) If an applicant does not provide all the documentation required by the Designated Official within the timeframe as may be specified by the Designated Official, or if the application is one (1) year old and the applicant has not taken any action to provide the Designated Official with all the documentation in the last four (4) months, the applicant shall be deemed to have withdrawn their application and shall not be entitled to any refunds of any payments made. The Designated Official may close the application file when the applicant withdraws or is deemed to have withdrawn the application.
- (3) The Designated Official shall review the application and all the documentation required and may issue a tree permit if:
- (a) the tree is less than 76cm in diameter; or
 - (b) the lot is designated under the *Heritage Act*, and a written report by the Town’s Manager of Heritage Services or their designate, has been provided indicating:
 - (i) the tree is not relevant to the heritage designation of the lot; or
 - (ii) the tree is relevant to the heritage designation of the lot, but the Town’s Heritage Advisory Committee has approved the injury or destruction of the tree;

- (c) the tree is sufficiently diseased; or
 - (d) the injury or destruction of the tree is associated with construction and/or landscaping related activities on the lot that are not associated as part of an approval under the *Planning Act* as per Section 6(i) herein; or
 - (e) the injury or destruction of the tree is otherwise acceptable to the Designated Official.
- (4) The Designated Official may issue a tree permit with conditions, including, but not limited to:
- (a) the requirement for planting of replacement tree(s); and/or
 - (b) satisfactory plans for tree preservation on the lot.
- (5) Where the planting of replacement tree(s) has been imposed as a condition, the Designated Official may require that:
- (a) the replacement tree(s) be located on the same lot in a location, number, size and/or species to the satisfaction of the Designated Official;
 - (b) where replacement trees are not physically possible on the site, the replacement trees be located at another suitable location;
 - (c) a replanting plan be filed to the satisfaction of the Designated Official;
 - (d) a written undertaking by the owner to carry out the replacement planting;
 - (e) monies or a letter of credit in a form satisfactory to the Designated Official be delivered to the Town to cover the costs of the replacement tree(s), and the maintenance of the tree(s) for a period of up to two (2) years; and/or
 - (f) payment for each replacement tree not replanted in accordance with (a) or (b) be made into the Town's Replacement Tree Planting Fund as specified by the Designated Official.
- (6) The Designated Official may refuse to issue a permit to injure or destroy a tree where any one or more of the following applies:
- (a) the Permit application has not been submitted in full, is considered incomplete by the Designated Official, or where an arborist report is required or requested by the Designated Official in support of the permit application and the report has not been provided;
 - (b) an application for rezoning, a consent, a minor variance, a plan of subdivision or a site plan to the land on which the tree is located has been submitted to the Town or Region, but has not received final approval;

- (c) the tree is an endangered, threatened, or at risk tree species, as defined in the provincial *Endangered Species Act, 2007*, S.O. 2007, c. 6, as may be amended or replaced from time to time, or any tree classified as an endangered or threatened tree species, or a tree species of special concern, as defined in the federal *Species at Risk Act, 2002*, S.C. 2002, c. 29, as may be amended or replaced from time to time;
 - (d) the tree is greater than 76cm in diameter; and/or
 - (e) the tree is relevant to the heritage designation of the lot as determined by the Town's Manager of Heritage Services.
- (7) A permit shall be valid for a maximum of one (1) year from the date of issuance.
 - (8) A permit holder shall ensure that the permit is securely posted on the lot from which the trees are to be injured or destroyed, in a location visible from the street for the period during which work is undertaken to injure or destroy a tree.
 - (9) Failure to comply with any provision or condition of a permit or an order issued under this By-Law or any other provision of this By-Law may result in the revocation of the permit by the Designated Official, in addition to any other enforcement proceedings against the permit holder as permitted by law.
 - (10) In addition to subsection (9), the Designated Official may revoke a permit at any time if it was issued because of mistaken, false or incorrect information received from the applicant or owner.
 - (11) The permit holder of a revoked permit shall immediately cease or ensure the immediate cessation of all the activities for which a permit has been issued upon revocation of the permit.

APPEAL

- 9.(1) Where the Designated Official refuses to grant a permit under Section 8(6), the Designated Official shall notify the applicant in writing and provide reasons for the refusal and advise the applicant that they may appeal the Designated Official's decision to Council within 21 days of the date of the notice. The Appeal shall be presented to the Community Services Committee for recommendation to Council.
- (2) The person requesting the appeal shall deliver to the Designated Official:

- (a) a written request with reasons for the appeal; and
 - (b) payment of the appeal fee as provided for in Schedule "A."
- (3) Where an appeal date before the Community Services Committee and/or Council has been fixed and the appellant who has been given notice of the hearing does not attend at the appointed time and place, Community Services Committee and/or Council may proceed in the absence of the appellant and the appellant will not be entitled to any further notice in the proceedings.
- (4) Council may uphold or reverse or vary the Designated Official's decisions and/or may subject the appellant to conditions Council deems appropriate.
- (5) An appeal made under this section does not act as a stay of any orders issued, which shall take effect on the day it is served or deemed served, and shall continue to be effective until Council renders a decision indicating otherwise.

ORDER

10. (1) An order may be issued for any contraventions of this By-Law or a tree permit, including but not limited to an order to cease and desist all work relating to the injury or destruction of trees.
- (2) An order shall set out:
- (a) the name of the owner and the municipal address of the land or property that is the subject of the contravention;
 - (b) reasonable particulars of the contravention;
 - (c) what the owner or any other person must do to rectify the contravention;
 - (d) a statement that if the work is not done in compliance with the order within a specified time period, the Town may have the work done at the expense of the owner or other person;
 - (e) the date and time by which the order must be in compliance with the By-Law; and,
 - (f) information regarding the Town's contact person.
- (3) An order may be served by:
- (a) delivering it personally to the owner and/or the person conducting work on the owner's property;

- (b) sending it by registered mail to the last known address of the owner, which service shall be deemed five (5) days after mailing; or
 - (c) posting it on the owner's property.
- (4) No person shall fail to comply with an order.
- (5) Failure to comply with an order made under Section 10 may result in the Town conducting work on behalf of the owner to comply with the order at the expense of the owner. The cost of such work may be collected in the same manner as taxes.

OFFENCE AND PENALTY

- 11.(1) Every person who contravenes any provision of this By-Law or an order issued under Section 10 is guilty of an offence. In addition, the submission of false information in either the Notification Form required by Section 7 or the application required by Section 8 constitutes an offence.
- (2) All contraventions of this By-Law or orders issued under Section 10 are designated multiple and continuing offences pursuant to section 429(2) of the *Municipal Act, 2001*.
- (3) Upon conviction of an offence under this By-Law a person is liable to a fine as follows:
- (a) the minimum fine for an offence is \$500 and the maximum fine for an offence is \$100,000;
 - (b) in the case of a continuing offence, in addition to the penalty mentioned in clause (a) above, for each day or part of a day that the offence continues, the minimum fine shall be \$500 and the maximum fine shall be \$10,000, and the total of all daily fines for the offence is not limited to \$100,000;
 - (c) in the case of a multiple offence, for each offence included in the multiple offence, the minimum fine shall be \$500.00 and the maximum fine shall be \$10,000, and the total of all fines for each included offence is not limited to \$100,000;
 - (d) a special fine may be imposed, in addition to a fine under clause (a) to (c) above, in circumstances where there is an economic advantage or gain from the contravention of this By-Law or an order under Section 10 of this By-Law, and the maximum amount of the special fine may exceed \$100,000.

- (4) If a person is convicted of an offence for contravening the provisions of this By-Law, or an order issued pursuant to this By-Law, the Court in which the conviction has been entered may order the person to correct the contravention, which may include but is not limited to: planting or replanting such tree(s) in such manner and within such time period as the Court considers appropriate, such as replacement of a comparable species and/or payment of the tree(s) amenity value as determined by the Designated Official.
- (5) Any costs payable or associated with an order of the Court in subsection (4) above, are in addition to, and not in substitution for, the payment of any penalty imposed by the Court for the commission of an offence under this By-Law or any other applicable legislation.

MISCELLANEOUS

- 12. The Schedule attached to this By-Law shall form part of this By-Law.
- 13. By-law 2000-095, as amended, is hereby repealed.
- 14. In the event that any provision or part of this By-Law is found to be invalid or unenforceable for any reason whatsoever, then the particular provision or part thereof shall be deemed to be severed from the remainder of the By-Law and all other provisions or parts thereof shall remain in full force and shall be valid and enforceable to the fullest extent permitted by law.
- 15. This By-Law may be cited as the “Private Tree Protection By-Law.”
- 16. This By-Law comes into force and effect on October 1, 2008.

PASSED this 29th day of September, 2008.

Rob Burton

MAYOR

Cathie L. Best

CLERK

SCHEDULE "A"

Fees

- | | | |
|----|---|----------------------------|
| 1. | 1 to 4 trees between 20cm and 76cm | No Fee (Notification only) |
| 2. | 5 or more trees between 20cm and 76cm
or a 5 th tree between 20cm and 76 cm
in one calendar year | \$200 per tree |
| 3. | Any tree over 76cm | \$500 per tree |
| 4. | Appeals | \$200 |