

The Corporation of the City of Kawartha Lakes

By-Law 2022-

Being a by-law to protect and enhance the tree canopy in City ownership

Recitals

1. Subsection 10(2) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended (the “Municipal Act, 2001”) permits a single-tier municipality to pass by-laws respecting the economic, social and environmental well-being of the municipality, including respecting climate change.
2. Subsection 135(1) of the Municipal Act, 2001 permits a local municipality to enact by-laws to prohibit or regulate the destruction or injuring of trees.
3. Subsection 135(7) of the Municipal Act, 2001 provides that the by-law may require that a permit be obtained to injure or destroy trees and may impose conditions to a permit, including conditions relating to the manner in which destruction occurs and the qualifications of persons authorized to injure or destroy trees.
4. Subsection 270(1) of the Municipal Act, 2001 requires a municipality to adopt and maintain policies with respect to the manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality.

Accordingly, the Council of The Corporation of the City of Kawartha Lakes enacts this By-law 2022- .

Section 1.00: Definitions and Interpretation

1.01 Definitions:

“Applicant” is a Person who makes an application for a permit pursuant to this by-law.

“City”: means The Corporation of the City of Kawartha Lakes or the geographic area of the City of Kawartha Lakes, as the context requires.

“City Arborist”: means the Supervisor, Parks and Recreation, or their designate, including agent.

“City Owned Tree”: means a tree with its trunk entirely or partly on property owned by the City.

“City Owned Mature Tree”: means a tree on property owned by the City, being 5 inches or greater in diameter, measured at 4.5 feet from the ground.

“Injure”: means damage to a Tree that, in the City Arborist’s determination, could inhibit or terminate its growth.

“Person” does not include the City, including its employees acting in the course of City business. The term includes reference to an individual or a corporation.

“Regular Business Day”: Is any day between Monday and Friday, inclusive of those days, and between 8:30 am and 4:30 pm. This does not include Saturdays, Sundays, statutory holidays in the Province of Ontario, and City office closures during the last week of December and first week of January.

“Threatened or Endangered Trees”: means those species of trees listed as threatened, endangered or special concern and listed in Ontario Regulation 230/08 to the Ontario Endangered Species Act, 2007, S.O. 2007, c.6, as amended and replaced, and includes but is not limited to the butternut tree.

“Tree Protection Plan”: A plan detailing tree protection on the entirety of the property, prepared in conjunction with an arborist or in consultation with an arborist, and for construction drawings. Tree Protection Plans must be legible, prepared at a usable metric scale and include all the following information:

- Show all existing buildings, structures, hard surfaces and all existing mature trees (crown, including the crowns of trees with trunks on adjacent property where the crown overhangs the property boundary line so as to be partially on the property in question).
- Show the area of protection as retaining the vast majority of mature trees, and being protected by adequate tree protection barriers (silt fencing or snow fencing).
- Show the area for construction as including all proposed changes on the property, including all proposed structures, services, hard surfaces and grade changes
- Indicate vehicular access and construction staging areas. Areas proposed for temporary stockpiling of fill shall be fenced with sediment control
- Indicate trees to be removed / injured
- Indicate location of all City Owned Mature Trees
- Indicate location of all Threatened or Endangered Trees
- Indicate location of Environmental Protection Zone, per the applicable Zoning By-law, on the property
- Include a comprehensive legend

1.02 Interpretation Rules:

- (a) The Schedules attached to this by-law form part of the by-law, and are enforceable as such.

- (b) The words “include” and “including” are not to be read as limiting the meaning of a word or term to the phrases or descriptions that follow.

Section 2.00: Application

2.01 Application: This By-law applies only to City-owned property, including but not limited to:

- (a) Road allowances, including shoreline road allowances, both improved and unimproved for vehicular travel; and
- (b) Vacant City-owned property, such as water access blocks.

2.02 Non-Application: This By-law does not apply to:

- (a) activities undertaken on property in private ownership;
- (b) activities undertaken by the City;
- (c) activities undertaken pursuant to the Drainage Act;
- (d) maintenance activities of utility companies and telecommunication companies;
- (e) trees removed by a utility company or telecommunication company pursuant to municipal consent issued by the Engineering Department of the City;
- (f) trees removed pursuant to entrance permits issued by the Public Works Department of the City;
- (g) activities undertaken by a Conservation Authority;
- (h) activities undertaken by the Province of Ontario; or
- (i) activities undertaken by the City under a licence issued under the Crown Forest Sustainability Act, 1994.

Section 3.00: Destroying and Injuring City-Owned Trees Prohibited

3.01 No Person may Destroy or Injure a City-Owned Tree except pursuant to a Permit, and consistent with the terms of said Permit.

3.02 Permit Application; Form and Content – Application Fees: Any Person who wishes to Injure, Destroy or remove a City-Owned Tree for the purpose of road construction or utility access on a City-owned road allowance shall submit an application to the City Arborist on the form set out on the City’s webpage and shall provide the following to the satisfaction of the City Arborist:

- (a) The name, address and telephone number of the applicant;
- (b) A non-refundable application fee of \$1,000, which fee is to be included into the Fees and Charges By-law 2018-234 and indexed annually, according to that By-law;
- (c) A payment of \$1,700 per City-Owned Mature Tree to be removed, which fee is to be included into the Fees and Charges By-law 2018-234;
- (d) The purpose for which the permit is required;
- (e) A map, sketch or otherwise, sufficient to outline the property to be affected in question;
- (f) A confirmation of the zoning of the property to be affected;
- (g) A Tree Protection Plan satisfactory to the City Arborist; and
- (h) An Environmental Impact Study to the satisfaction of the City, including but not limited to determination of whether or not the habitat of any Species at Risk per the Ontario Species at Risk Act will be affected.
- (i) In the case of a proposed road to be constructed, this Environmental Impact Study will be conducted per an Environmental Assessment analysis of the proposal per the Ontario Environmental Assessment Act.

3.03 The City Arborist may refuse to accept an Application or may deny an Application unless the City Arborist is satisfied that:

- (a) the Application is for the purpose of the construction of a road, in order to open up properties owned by the Applicant for development, or for the purpose of installation of a telecommunications or utility distribution line, and not for the purpose of improving sightlines to a water body (in which case, the Applicant will be directed to make application to the Land Management Team for the purchase of the portion of shoreline road allowance adjacent to their property), and not for the purpose of personal use of a City-owned shoreline block of land owned for the purpose of public access to the water;
- (b) the Application is complete and legible;
- (c) an individual Applicant is not a minor;
- (d) the Application is by or on behalf of all Owners;

- (e) a corporate Applicant is incorporated pursuant to the laws of Ontario and is in good standing;
- (f) the Application is accompanied by payment in full of any fee established by Council;
- (g) the approval is not contrary to any recommendation of the City on any related Environmental Assessment;
- (h) the approval is not contrary to the Migratory Birds Act;
- (i) the approval is not contrary to the Endangered Species Act;
- (j) the approval is not contrary to the Conservation Authorities Act;
- (k) In the case of road construction to an existing lot of record, and not in the case of telecommunications or utility distribution, the approval does not permit cutting of trees on land zoned for Environmental Protection, including but not limited to lands within the Oak Ridges Moraine Conservation Plan area.
- (l) In the case of road construction to an existing lot of record, and not in the case of telecommunications or utility distribution, the proposal has received written confirmation from the Planning Department that the proposed road construction and resulting development may present a logical extension to the City's road network and growth in accordance with good planning principles, subject to environmental and timing considerations being addressed.

- 3.04** Applications for the purpose of improving sight lines to a water body will be denied.
- 3.05** Applications for tree removal on vacant open space water access blocks will be denied.
- 3.06** Applications for tree removal for any purpose other than for road construction to open up properties owned by the Applicant for development, or for installation of a telecommunication, green energy or utility transmission line, will be denied.
- 3.07** In addition to conditions otherwise imposed pursuant to this By-law, the City Arborist may, at any time and from time to time, impose conditions to a Permit as the City Arborist determines are necessary to maintain the general intent and purpose of this By-law.
- 3.08** The City Arborist may issue a Permit to an Applicant if the City Arborist is satisfied that the Application complies with sections 3.02 - 3.06. The City Arborist may otherwise refuse to issue a Permit.
- 3.09** If the City Arborist issues a Permit with conditions pursuant to section 3.10 or refuses to issue a Permit pursuant to section 3.03 - 3.06, the City

Arborist will give the Applicant a Permit Decision Notice that includes the following information:

- (a) where a Permit is issued with conditions pursuant to section 3.10, particulars of the conditions;
- (b) where a Permit is refused, particulars of the reasons for refusing to issue the Permit.

3.10 Conditions Applicable to all Permits: Each of the following is a condition of obtaining and continuing to hold a Permit:

- (a) The injury, destruction or removal of a City Owned Tree shall be carried out by or under the supervision of an arborist;
- (b) Compliance with good arboricultural practices (timing of cutting will be in accordance with the Migratory Birds Conservation Act);
- (c) No cutting, digging or heavy machinery will be permitted within the Drip Line of City Owned Trees to be protected;
- (d) Tree protection barriers must remain in place and in good condition during demolition, construction and/or site disturbance, including landscaping;
- (e) the Permittee is not to cut – or allow anyone to cut – any City Owned Tree that is Threatened or Endangered pursuant to the Endangered Species Act, 2007, S.O. 2007, c.6, as amended and replaced, without first getting the necessary permits and approvals from the Ministry of Natural Resources and Forestry;
- (f) the Permittee is not to cut – or allow anyone to cut – any City Owned Tree located within the Environmental Protection zone of the applicable City Zoning By-law, which includes but is not limited to lands within the Oak Ridges Moraine Conservation Plan area (this provision does not apply to utility or telecommunication providers);
- (g) the Permittee is not to cut – or allow anyone to cut – any City Owned Tree located within an area regulated by a Conservation Authority without the applicable permit from the Conservation Authority;
- (h) the Permittee provides to the City Arborist such information as the City Arborist may from time to time require in relation to this By-law;
- (i) the Permittee complies with all applicable law respecting the subject matter of the Permit including this By-law; and
- (j) the Permittee notifies the City Arborist in writing of any change to the information provided in an Application within three days of the change.

3.11 Permit Revocation: Where the City Arborist has reason to believe that a

Permittee has not complied with this By-law, the City Arborist may give to the Permittee a Permit Revocation Notice that includes the following information:

- (a) a statement that the Permit is revoked; and
- (b) particulars of the reasons for which the Permit is revoked.

3.12 Offences and Fines: Each Person that contravenes section 3.01 or 3.02 of this By-law is guilty of an offence and, upon conviction, is liable to a fine of:

- (a) not less than double the costs that would have been payable pursuant to a Permit, being \$3,000 plus \$3,400 per City Owned Tree damaged, injured or removed/cut down without a Permit or not in accordance with the terms of a Permit. This fine is a special fine per section 429 of the Municipal Act, 2001, in that it is designed to prevent economic incentive to contravene the By-law. The offence is designated as a multiple offence per section 429 of the Municipal Act, 2001.

3.13 Offences and Fines – Corporation: Each officer and director of a corporation that knowingly concurs in the contravention of sections 3.01 or 3.02 of this by-law is guilty of an offence and liable upon conviction to the minimum fines set out in section 3.12(a) of this by-law.

Section 4.00: Notice

4.01 Any notice to be given to a Person other than the City is sufficiently given:

- (a) when given verbally to the Person;
- (b) when hand delivered in writing to the Person;
- (c) on the fifth day after it is sent by regular lettermail to the Person's last known address; or
- (d) when sent to the Person by e-mail to the Person's last known address.

A Person's last known lettermail or e-mail address are those provided by the Applicant to the City pursuant to this By-law.

4.02 Any notice to be given to the City is sufficiently given:

- (a) on the fifth Regular Business Day after it is sent by regular lettermail to "Forestry Division, City of Kawartha Lakes Parks Recreation & Culture, 50 Wolfe Street, Lindsay ON K9V 2J2 ; or
- (b) when sent by e-mail on a Regular Business Day to "treebylaw@kawarthalakes.ca".

Section 5.00: Administration and Effective Date

- 5.01 **Administration of the By-law:** The City Arborist and the Director of Community Services are responsible for administration of this by-law for the purposes of issuing, revoking or denying Permits, and the Municipal Law Enforcement Office is responsible for enforcement of the offence sections of this by-law.
- 5.02 **Financial Administration of the By-law:** The Finance Division will place the proceeds of the payment per section 3.02(c) of this by-law into the Tree Canopy Reserve. The Provincial Offences Office and Finance Division will place the portion of fine recovery net of provincial payment into the Tree Canopy Reserve.
- 5.03 **Effective Date:** This By-law shall come into force on July 19, 2022.

By-law read a first, second and third time, and finally passed, this [redacted] day of [redacted], 2022.

Andy Letham, Mayor

Cathie Ritchie, City Clerk