

# The Corporation of the City of Kawartha Lakes

## By-Law 2024-

### **Being a by-law to protect and enhance the healthy tree canopy in private ownership in proximity to shorelines, in areas designated for environmental protection, and on property greater than 0.5 hectares in size**

#### **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 removal, destruction or injuring of healthy 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 2024-      .**

#### **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.

“Drip Line” means the area located directly under the outer circumference of the tree branches for a particular tree.

“Environmental Officer” means the person holding that title and in employ with the City.

“Injure” means damage to a Tree that, in the City Arborist’s determination, is a healthy tree and the damage could inhibit or terminate its growth. This does not include trimming or pruning up to 30% of the crown of a tree in accordance with good arborocultural practice.

“Lot” means a separately-conveyable piece of property.

“Mature Sapling” means either deciduous trees of a minimum of 6 feet in height and minimum 70 mm in caliper or coniferous trees of a minimum of 8 feet in height. The estimated average cost of the supply and installation of trees meeting these criteria in 2022: \$425/tree.

“Mature Tree” means a tree 5 inches or greater in diameter, measured at 4.5 feet from the ground. If a tree has been cut down such that identification is impossible, “Mature Tree” means a tree 5 inches or greater in diameter measured at its base.

“Municipal Law Enforcement and Licensing” means that Division of the City of Kawartha Lakes tasked with enforcement of the by-laws of the City, and “Municipal Law Enforcement Officer” means those employees within that Division, appointed for the purpose of enforcing the by-laws of the City.

“Navigable Waterway” means a lake, pond, river, stream, or any other area which is permanently covered by water but does not include a human-made drainage or irrigation channel, lands that are seasonally covered by water or lands which may be subject to intermittent flooding. The bed of a Navigable Waterway is in most cases in the ownership of the Province of Ontario or the Federal Government (Parks Canada, and managed by the Trent Severn Waterway Commission). The waterway should be traversable by canoe.

“Normal Farming Practice” has the same meaning as set out in the Ontario *Farming and Food Production Protection Act, 1998, S.O. 1998, c.1.*

“Person” 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 Canopy Reserve” means that financial reserve established by the City for the protection and enhancement of tree and vegetative cover (i.e. hedgerows) within the geographic confines of the City of Kawartha Lakes.

“Tree Protection Plan” A plan detailing tree protection on the entirety of the property. 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 location of all Mature Trees
- Indicate location of any unhealthy trees, as determined by a certified Arborist
- Indicate trees to be removed / injured, including timing of removal/ injury
- Indicate trees to be replaced, including species, size, location, and timing of the replacements
- Indicate location of all Threatened or Endangered Trees
- Indicate location of Environmental Protection Zone, per the applicable Zoning By-law, on the property
- Indicate boundary of 30 metre setback from a Navigable Waterway, as defined in section 2.01, 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 to land in private ownership within the geographical boundaries of the City of Kawartha Lakes.

- (a) In addition to and without limiting the generality of the foregoing, this By-law applies to situations in which the injuring or destruction of trees is pursuant to contemplated development of land (site plan application, application to subdivide land by subdivision or a consent to sever pursuant to sections 41, 51 or 53, respectively, of the Planning Act). In cases of a concurrent Planning Act application, the site plan agreement or subdivision agreement entered into under those sections will be consistent with and subject to this by-law.
- (b) In addition to and without limiting the generality of the foregoing, this By-law also applies to any tree cutting that occurs outside the contemplated development of land (site plan application, application to subdivide land by subdivision or a consent to sever pursuant to sections 41, 51 or 53, respectively, of the Planning Act), when the tree(s) to be removed is/are within 30 metres measured over a horizontal distance inland from the high water mark of a Navigable Waterway.
- (c) In addition to and without limiting the generality of the foregoing, this By-law also applies to tree cutting within any land in private ownership that is in an area designated by the City of Kawartha Lakes Official Plan 2012 as being used for “environmental protection”, whether within the context of a development application or not.
- (d) In addition to and without limiting the generality of the foregoing, this By-law also applies to any tree cutting on land in which mature trees will be injured or destroyed on a lot of record that is greater than 0.5 hectares in size.

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

- (a) activities undertaken on land owned by the City;
- (b) activities undertaken pursuant to the Drainage Act;
- (c) agricultural activities or activities undertaken as an incidental part of a Normal Farming Practice on lands zoned for agricultural use in the applicable zoning by-law, or on lands with an established legal non-conforming agricultural use, including hobby farms;
- (d) 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 or as a result of insects, disease or wildlife;
- (e) the removal of trees for non-commercial personal use by a landowner for residential heating;
  - (f) the removal of trees for septic installation or repair within 30 metres of a shoreline of a Navigable Waterway;
  - (g) the removal of trees that, due to their proximity to a building or structure, will pose a hazard to that building or structure;
  - (h) activities of utility companies and telecommunication companies;
  - (i) activities undertaken by a Conservation Authority;
  - (j) activities undertaken by the Province of Ontario;
  - (k) forestry activities undertaken under a licence issued under the Crown Forest Sustainability Act, 1994, or with an approved managed forest plan per the Managed Forest Tax Incentive Program administered by the Ministry of Natural Resources and Forestry;
  - (l) the injuring or destruction of trees undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the Aggregate Resources Act;
  - (m) cemetery operations;
  - (n) the operations of a golf club or tree orchard, Christmas tree farm or nursery business;
  - (o) affordable housing developments initiated by the Kawartha Lakes Haliburton Housing Corporation or Habitat for Humanity

### **Section 3.00: Destroying and Injuring Healthy Trees Prohibited**

- 3.01** No Person may Destroy or Injure a Mature Tree within 30 metres measured over a horizontal distance inland from the high water mark of a navigable waterway, or within any area designated "Environmental Protection" in the Official Plan adopted by the City of Kawartha Lakes in 2012, or on any Lot greater than 0.5 hectares in size, except pursuant to a Permit, and consistent with the terms of said Permit.
- 3.02 Permit Application; Form and Content – Permit Fees:** Any Person who wishes to Injure, Destroy or remove a Mature Tree that is located on their property and within 30 metres - measured over a horizontal distance inland from the high water mark - of a navigable waterway, or on any Lot greater than 0.5 hectares in size, shall submit an application to the

Environmental Officer on the form set out on the City's webpage and shall provide the following to the satisfaction of the Environmental Officer:

- 1.1. The name, address, email address, and telephone number of the applicant;
- 1.2. Any concurrent Planning Act Application (site plan application, a plan of subdivision or a consent to sever property pursuant to section 41, 51 or 53, respectively, of the Planning Act):
- 1.3. A payment of \$1,700 per healthy Mature Tree to be removed and not replaced with 4 Mature Saplings to the satisfaction of the City Arborist in the case of tree removal from a Lot greater than 0.5 hectares in size, or \$425 per healthy Mature Tree to be removed and not replaced with 1 Mature Sapling to the satisfaction of the City Arborist otherwise. Both fees are to be included into the Fees and Charges By-law 2018-234 and indexed annually;
  - 1.3.1. Fee waivers are available to "high need households" as defined under Ontario Regulation 370/11 to the Housing Services Act, 2011, upon receipt of sufficient proof of income;
- 1.4. A map, sketch or otherwise, sufficient to outline the property to be affected in question;
- 1.5. A confirmation of the zoning of the property to be affected; and
- 1.6. A Tree Protection Plan satisfactory to the City Arborist.

**3.03** The Environmental Officer may refuse to accept an Application or may deny an Application unless the Environmental Officer is satisfied that:

- (a) the Application is complete and legible;
- (b) an individual Applicant is not a minor;
- (c) the Application is by or on behalf of all Owners;
- (d) a corporate Applicant is incorporated pursuant to the laws of Ontario and is in good standing;
- (e) the Application is accompanied by payment in full of any fee established by Council;
- (g) the approval is not contrary to the Migratory Birds Act;
- (h) the approval is not contrary to the Endangered Species Act;

(i) the approval is not contrary to the Conservation Authorities Act;

(k) the approval does not permit cutting of trees on land designated for Environmental Protection, including but not limited to lands within a woodlot, a provincially significant wetland or the Oak Ridges Moraine Conservation Plan area.

**3.04** In addition to conditions otherwise imposed pursuant to this By-law, the Environmental Officer or City Arborist may, at any time and from time to time, impose conditions to a Permit as the Environmental Officer or City Arborist determines are necessary to maintain the general intent and purpose of this By-law.

**3.05** The Environmental Officer may issue a Permit to an Applicant if the City Arborist is satisfied that the Application complies with sections 3.02 & 3.03. The Environmental Officer may otherwise refuse to issue a Permit.

**3.06** If the Environmental Officer issues a Permit with conditions pursuant to section 3.07 or refuses to issue a Permit pursuant to section 3.03 - 3.05, the Environmental Officer will give the Applicant a Permit Decision Notice that includes the following information:

(a) where a Permit is issued with conditions pursuant to section 3.07, particulars of the conditions;

(b) where a Permit is refused, particulars of the reasons for refusing to issue the Permit.

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

(a) Compliance with good arboricultural practices (timing of cutting will be in accordance with the Migratory Birds Conservation Act);

(b) No cutting, digging or heavy machinery will be permitted within the Drip Line of trees to be protected;

(c) Tree protection barriers must remain in place and in good condition during demolition, construction and/or site disturbance, including landscaping;

(d) the Permittee is not to cut – or allow anyone to cut – any Mature 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;

(e) the Permittee is not to cut – or allow anyone to cut – any Mature 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, nor does it apply to the destruction of a tree that constitutes a hazard in the opinion of the City Arborist);

- (f) the Permittee shall ensure that the Permit is posted on the Lot on which the Mature Trees are to be Injured or Destroyed. The Permit shall be posted on a location that is visible from the adjacent street edge for the entire period of time during which the Trees are being Injured or Destroyed, and for one week thereafter.
- g) the Permittee provides to the Environmental Officer and/or City Arborist such information as the City Arborist and/or Environmental Officer may from time to time require in relation to this By-law;
- (h) the Permittee complies with all applicable law respecting the subject matter of the Permit including this By-law; and
- (i) the Permittee notifies the Environmental Officer in writing of any change to the information provided in an Application within three days of the change.

**3.08 Permit Revocation:** Where the Environmental Officer has reason to believe that a Permittee has not complied with this By-law, the Environmental Officer 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.

Alternatively, the Environmental Officer may give to the Permittee a **Notice to Comply** that provides a period in which the Permittee is to come into compliance with this By-law and the particulars of how the Permittee will come into compliance.

**3.10 Completion of Replacement Plantings:** Where the Applicant commits to replacement of Mature Tree(s) Destroyed or Injured with Mature Sapling(s), as set out in the Application and Tree Protection Plan thereto and to the satisfaction of the City Arborist (“Replacement Saplings”),

The Applicant will contact the City Arborist for an inspection following planting of the Replacement Sapling(s). Subject to and following the City Arborists’ attendance and confirmation that the plantings are to their satisfaction and in conformity with the approved Tree Protection Plan, the City Arborist will confirm their determination in writing.

1.6.1.1.1. Where the City Arborist is not satisfied that the plantings are to their satisfaction and in conformity with the Tree Management Plan,



1.6.1.1.1.1. The Environmental Officer will issue a Notice to Comply, which Notice will set out a minimum 30 day period in which action is to be taken in accordance with the Notice, in order to satisfactorily complete the replantings;

1.6.1.1.1.2. Alternatively, the Environmental Officer will issue a Notice to make Payment in accordance with sections 3.02(b)(1) and 3.11, which Notice will set out a minimum 30 day period in which payment is to be made, and the amount of the payment owing in accordance with this section.

**3.11 Offences and Fines:** Each Person that contravenes section 3.01, 3.02, 3.10 or 5.03 of this By-law, or fails to comply with the terms of a Notice to Comply issued pursuant to section 3.08 or Order to Comply issued pursuant to section 5.03(a) 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 no less than \$850 per Mature Tree damaged, injured or removed/cut down without a Permit or not in accordance with the terms of a Permit for tree removal on a Lot up to 0.5 hectares in size or \$2,550 otherwise (note costs are 2023 costs and subject to inflation). 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.
- (b) Or, in the case that paragraph 3.11(a) is inapplicable in the circumstances, such as in the case of a contravention of section 5.03 or otherwise: The minimum fine for an offence is \$500 and the maximum fine for an offence is \$100,000.

**3.12 Offences and Fines – Corporation:** Each officer and director of a corporation that knowingly concurs in the contravention of sections 3.01, 3.02, 3.10 or 5.03 of this by-law, or fails to comply with the terms of a Notice to Comply issued pursuant to section 3.08 of this by-law, is guilty of an offence and liable upon conviction to the minimum fines set out in section 3.11 of this by-law.

**3.13 Multiple Offences:** The conviction of a person for the contravention or breach of any provision of this by-law shall not operate as a bar to the prosecution against the same person for any subsequent or continued breach or contravention of any provision of this by-law. Each day that the offence continues shall be deemed a separate and distinct offence. The offence is designated as a multiple offence per section 429 of the Municipal Act, 2001.

## **Section 4.00: Notice or Order**

**4.01** Any notice or order 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 (except in the case of notice of entry, in which case electronic mail does not constitute sufficient notice).

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 "Environmental Officer, City Hall, 26 Francis Street, Lindsay ON K9V 5R8 ; or
- (b) when sent by e-mail on a Regular Business Day to "treebylaw@kawarthalakes.ca".

## **Section 5.00: Enforcement Powers**

**5.01** A Municipal Law Enforcement Officer may enter on privately-owned lands at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- (a) a provision of this By-law;
- (b) the terms and conditions of a Permit; and
- (c) a direction or an Order under this By-law.

**5.02** A Municipal Law Enforcement Officer may, for the purpose of an inspection:

- (a) require the production for inspection of documents or things relevant to the inspection, including but not limited to government-issued photo identification or a Permit;
- (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
- (c) require information from any person concerning a matter related to the inspection;

(d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection;

(e) order the Permittee to take and supply at the Permittee's expense such tests and samples as are specified; and

(f) enter upon any property for the purposes of conducting an inspection to ensure compliance.

**5.03** No person shall hinder or obstruct an Environmental Officer, City Arborist or Municipal Law Enforcement Officer from performing any of their duties as provided for in this By-law.

## **Section 6.00: Administration and Effective Date**

**6.01 Administration of the By-law:** The Environmental Officer 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 and Licensing Office is responsible for enforcement of the offence sections of this by-law.

**6.02 Financial Administration of the By-law:** The Environmental Officer is responsible for intaking payments per section 3.02(b). The Environmental Officer will notify the Finance Division of the payment per section 3.02(b). The Finance Division will place these proceeds into the Tree Canopy Reserve and earmark the funds for tree canopy or creation in shoreline areas or environmentally-protected areas.

(a) **Upon conviction of an offence pursuant to this by-law, and payment of a fine per sections 3.11 or 3.12,** the Provincial Offences Office will notify the Finance Division of fine recovery net of provincial payment, and the Finance Division will place this amount into the Tree Canopy Reserve and earmark the funds for tree canopy or creation in shoreline areas or environmentally-protected areas.

**6.03 Effective Date:** This By-law shall come into force on July 1, 2025.

By-law read a first, second and third time, and finally passed, this      day of     , 2024.

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Doug Elmslie, Mayor

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Cathie Ritchie, City Clerk

