

# Community Parks, Recreation and Culture Report CPRC2023-15

**To:** Committee of the Whole Council  
**Date:** November 7, 2023  
**Subject:** Tree Preservation Update and Draft Tree Protection By-law  
**Origin:** Community Parks, Recreation and Culture – Parks Branch

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## Recommendations

1. That Community Parks, Recreation and Culture Report CPRC2023-15, dated November 7, 2023, entitled “Tree Preservation Update and Draft Tree Protection By-law” be received; and
2. That Council direct staff to proceed with public consultations related to the Draft Tree Protection By-law presented to Council and as identified in this report; and
3. That staff report back to Council on the public consultation results and next steps for the Draft Tree Protection By-law; and
4. That Council endorse the Tree Compensation standards for new development consistent with the Parks Development Standards and the Thinking Green Development Standards.

## Purpose

This report provides background information and details regarding presentation of a Draft Tree Protection By-law which includes financial implications to create, administer and enforce a By-law.

## Background

At the May 1, 2018, Council meeting of the Town-wide Zoning By-law review process, gaps were identified within the Municipality’s ability to protect natural heritage areas and significant tree canopies on private property. Council identified the ecological, aesthetic,

and financial value of trees. At this meeting, a motion was received that Town staff prepare a report to Council presenting options for a Tree Protection By-law and consider Municipal best practices and innovative approaches to the preservation of our natural heritage.

On October 13, 2021, at the Special Meeting of Council, Parks staff presented preliminary information regarding tree preservation, property standards, tree assessment methods including preliminary best practices within York Region lower tier municipalities. The intent of this presentation was to provide Council with information on the Town's current approach to tree preservation/protection, background information on private tree By-laws including terminology and to provide a forum to discuss preliminary findings.

### **Draft Tree Protection By-law with a goal to maintain EG as over 80% Green**

Since the completion of the York-Durham Sewage System (YDSS) in 2016, the Town's recently constructed growth targets have resulted in increased pressures on tree canopy and health which include the following:

- Increased tree removals within private lands identified for future growth.
- No legal protection of private trees outside of the Lake Simcoe Region Conservation Authority (LSRCA) regulated or York Region Forest By-law areas.
- Negative impacts to natural heritage systems and woodlot health have increased with developments encroaching closer to environmental areas.
- Tree compensation requires a robust legal mechanism to ensure a sustainable tree canopy is maintained through planting replacements or monetary payment.

Implementation of tree maintenance programs are required to ensure the success of the Town's growing urban tree inventory. The Town's tree inventory has tripled from approximately 7485 (Davey Resource Group Inventory, 2013) to an estimated 26,200.

Currently, the Town of East Gwillimbury does not have a Tree Protection By-law in place.

## **Analysis**

### **Draft By-law Seeking Resident Consultation**

The Draft By-law presented in this report is a starting point for public consultation with Town residents. Town staff will be seeking resident input and feedback for potential modifications to the By-law where practical. Town staff are committed to an extended

review period to ensure the Draft By-law is fair and ensures residents can continue to maintain their property while maintaining EG as Green with a healthy tree canopy.

### **Draft By-law based on Industry Best Practice**

Of the nine lower-tier municipalities within York Region, a total of five including Aurora, Newmarket, Richmond Hill, Markham, and Vaughan have implemented private tree protection By-laws. Municipalities that do not currently have private tree By-laws include King Township, Stouffville, Georgina and East Gwillimbury.

The proposed Draft Tree Protection By-law (**Attachment #1**) was completed using a comparative analysis of best practices. A total of 12 Ontario municipalities which included the five York Region lower-tier Municipalities that enacted private Tree By-laws and several municipalities outside of York Region were referenced.

### **Draft Review and Input provided by Environmental Advisory Committee of Council and Integration with the Draft Environmental Strategy**

A draft of the Tree Protection By-law was provided to the Environmental Advisory Committee of Council for review and input. The Environmental Advisory Committee of Council was a strong supporter of the creation and implementation of a Tree Protection By-law. In addition, the Draft By-law was reviewed by the Town Environmental Initiatives Program Manager and the proposed Draft By-law integrates with the recently presented Draft Environmental Strategy.

### **Legal and By-law Staff Review of the Draft Tree Protection By-law**

Staff have provided the Draft Tree Protection By-law to both Legal and By-law Services for due diligence review, implementation, and enforcement respectively.

### **Protecting Trees Along with York Region's Forest Conservation By-law**

York Region's Forest Conservation By-law 2013-68 applies to private properties within the Town. Under the Region's By-law, landowners require a permit before they can remove trees from a woodland or woodlot greater than 0.2 hectares (0.5 acres), as defined in the By-law.

Trees on private properties within East Gwillimbury provide significant canopy cover and contribute to maintaining the York Regional goal of 40% forest cover in the region.

The Town's proposed Private Tree Protection By-law aims to close the gap with properties that meet the 0.2-hectare minimum property size, but do not meet the woodland or woodlot definition threshold and therefore would not be covered by the Regions By-law.

## **Balancing Fairness and Private Property Owners Rights**

The goal of the Draft By-law is to make best efforts to maintain East Gwillimbury as Green and not to impede the maintenance and peaceful enjoyment of residents' private property. The Draft By-law seeks to reduce or eliminate significant healthy tree removal from a property and overall, a significant decrease in the healthy tree canopy for the Town. The Draft By-law supports residents' maintaining their property with maintenance related exemptions from the Draft By-law including:

- I. Dead, Dying or Diseased Trees, as defined in this By-law.
- II. Hazard Trees, as defined in this By-law.
- III. Invasive species trees as identified in Schedule A of this By-law. Town staff shall assist property owners with identifying endangered species.
- IV. Any tree with a diameter of less than 20cm DBH (Diameter at Breast Height).
- V. Is required as a result of Emergency Work, as defined in this By-law.
- VI. Is required under an Order under any Property Standards By-law of the Town.
- VII. Requires the Pruning, Maintenance or removal of branches or limbs, where the branches or limbs interfere with existing utility conductors, buildings or structures, provided such activities shall be carried out in accordance with Good Arboricultural Practice.
- VI. Is a tree in a nursery or cultivated orchard, provided that it is a tree devoted to the nursery or orchard business and maintained for sale or propagation of trees or fruits for sale.

### **Impacted Land Sizes**

Staff completed a GIS analysis in Q4 2022 to analyze the geographic extent and approximate percentage of land area within East Gwillimbury to which the By-law could be applied. The proposed Tree Protection By-law will focus on lands greater than >0.2 ha. (0.5 Acres). The Analysis of affected lands below:

- Total area of East Gwillimbury: 24,761 hectares. (100%)
- Total area of private properties >0.2ha = 21,626 ha. (87%)

A total of 87% (21,262 ha) of land area in the Town of East Gwillimbury will be affected by either the York Region Tree By-law, or the proposed Town of East Gwillimbury Draft Tree Protection By-law.

The remaining 13% (3,135 ha.) of land area within East Gwillimbury would not be subject to the proposed By-law, as it is either public property (i.e., Municipal, Regional, Provincial, or LSRCA) and/or does not meet the 0.2ha minimum threshold. The majority of these lands would include properties within urbanized areas such as subdivisions.

### Forest Management Exemptions

The proposed draft By-law intends to balance a landowners' right to manage their properties, while also serving to protect and maintain existing canopy cover across the Town. Exemptions to the By-law exist, some of which require the submission and approval of an 'exemption permit,' including activities related to 'Normal Farming Practices' and for landowner's personal use.

Exemption permits may still have terms or conditions attached to them, including but not limited to the requirement of an Arborist report, forest management plan, compensation planting, and/or cash-in-lieu compensation as each exemption request and its associated potential impacts will need to be assessed on a case-by-case basis.

### Arborist Reports and Permit Fees

The proposed draft By-law intends to limit costs that would be borne by each landowner who would be obligated to apply for a tree removal permit. Arborist reports would only be required for the removal of five healthy trees (trees without exemption) or greater. Town staff would assess up to four individual trees per permit and would eliminate the financial burden on landowners to complete an Arborist report on this small quantity of trees.

Permit fees would be based on an average staff time and materials recovery basis that would reflect the size of the application from start to finish. These costs would be evaluated and compared with other lower-tier municipalities' costs to ensure fairness.

### **Tree Compensation with the Development Planning Process consistent with Thinking Green Development Standards**

Forests provide a wide variety of public health, economic, social, and environmental services. In May 2021, York Region published the State of the Forests, Reporting Progress on Tree Canopy and Woodland Cover Report. East Gwillimbury has the third highest tree canopy percentage (37.4%) in York Region. With increased development, tree canopy services are becoming more essential as growth continues.

With each Site Plan and Plan of Sub-Division submission to the Town the following is required and reviewed including a detailed tree inventory for the area of development, tree protection and preservation plans including any endangered species and compensation for any trees removed based on the Town standards. Currently, each municipality uses and manages removal offsetting and compensation funds in different

ways. The Town of East Gwillimbury currently uses the practice of Total Aggregate DBH (Diameter at Breast Height) replacement to calculate tree replacements or financial compensation.

- Removal of 70cm DBH Tree = Replacement of 10 Trees @ 70mm Caliper
- Removal of 70cm DBH Tree = Cost of 10 Trees @ \$650.00ea. (\$6,500.00)

This is a common and simple method to aggregate caliper-based approaches which tends to be more widely used for development projects.

Staff will continue to include tree compensation standards with the Parks Development Standards and the Thinking Green Development Standards to ensure compensation is provided with each new development. Any funds collected under this compensation program are used to offset new tree planting within the Town. Staff will be bringing forward a By-law for Council approval to establish an interest-bearing reserve for these funds.

## Financial Implications

Staff will require internal resources to develop a full Tree Protection By-law program which includes the following:

- Permit application process, implementation and inspection procedures, software tracking and approvals, managing contravention, complaints and files, webpage, updates and communications materials including social media content, public education and outreach.
- Managing the Town's tree planting program.
- Support from the Finance department to account for permit fees and tree compensation funds.

One Full Time staff is required, with Forestry/arboriculture educational background and practical experience for implementing and managing a By-law. Responsibilities would include landowner inquiries, processing permit applications, inspection and site visits, tree risk/health assessments, acting as a subject matter expert in court.

In addition to implementing the By-law, this position will also oversee the Town's boulevard tree planting program, maintenance/pruning schedules, updating GIS tree inventory, forestry service requests from residents, and tree protection plans related to development of site plan reviews.

### Estimate Operating Costs

- Operating costs including salary, benefits and equipment are estimated at \$125,000 annually.

### One Time Asset Costs

- One time asset costs, including the purchase of a Forestry enforcement vehicle, are estimated at \$75,000. Operating costs for a vehicle would include ongoing maintenance provided by Fleet Operations and an annual provision for replacement at the end of the useful life for the vehicle.

It is also anticipated that support will be required from Legal and By-law branches to enforce stop work orders and representing the Town when taking legal action against landowners who are in noncompliance of the Draft Tree Protection By-law. Further information is required on previous case law examples for time and costs associated with court prosecutions.

## Need For Public Consultation

This report is presented in public session.

In Q1-2022, Parks staff presented a draft Tree By-law to the East Gwillimbury Environmental Advisory Committee for their review and comment. Feedback was received on April 8, 2022, and updates to the draft By-law were completed and presented back in December 2022.

Staff will undergo a comprehensive Communications Strategy in Q1 2024. This will include Public Information Sessions and a public survey to obtain resident feedback on the proposed draft By-law.

Town staff will plan a report back to Council in the Spring of 2024 after a thorough public consultation process. Staff will work with Corporate Communications to ensure residents are informed of the public outreach through the website and social media.

Staff will provide the Development industry with a circulated draft of the Tree Protection By-law to obtain comments.

## Alignment to Strategic Plan

Responsible Growth

Environmental Stewardship

### **Strategic Priorities:**

“Ensure development occurs in an intentional, sustainable fashion, with a focus on preserving the Town’s cultural heritage and environmental features.”

“Support the stewardship, preservation, conservation, and enhancement of the natural environmental of East Gwillimbury.”

“Develop and implement policies that supports environmental sustainability and best practices.”

“Develop and implement programs and policies that support climate change adaptation, mitigation, and resiliency.”

### **Key Deliverables:**

“Strengthen EG’s tree preservation and protection program.”

## **Conclusion**

Staff seeks Council approval to proceed with the public consultation process for the Draft Tree Protection By-law and endorsement for the Tree Compensation Standards for new development consistent with the Parks Development Standards and Thinking Green Development Standards.

## **Appendices**

Attachment #1 - Draft Private Tree Protection By-law

## **Approval**

### **Report Authors:**

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**This report was reviewed and recommended by:**

Aaron Karmazyn  
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**This report was approved by:**

Mark Valcic  
Chief Administrative Officer  
Office of the CAO



## THE CORPORATION OF THE TOWN OF EAST GWILLIMBURY

### BY-LAW NUMBER 2020-XXX Tree Protection By-law

#### A By-law to Prohibit or Regulate the Injuring or Destruction of Trees on Private Property in the Town of East Gwillimbury

WHEREAS section 8(1) of the Municipal Act, 2001, 5.0. 2001, c. 25, as amended (“Municipal Act, 2001”) provides that the powers of a municipality under any act shall be interpreted broadly so as to confer broad authority on a municipality to enable it to govern its affairs as it considers appropriate; *(Mississauga; pg. 1)*

AND WHEREAS section 11(2)5 of the Municipal Act, 2001 provides that a local municipality may adopt by-laws for the economic, social and environmental well-being of the municipality; *(Mississauga; pg. 1)*

AND WHEREAS section 11(3)5 of the Municipal Act, 2001 provides that a local municipality may pass a by-law in the areas of culture, parks, recreation and heritage; *(Mississauga; pg. 1)*

AND WHEREAS without limiting the broad municipal powers, section 135 and sections 139 to 141 of the Municipal Act, 2001 provide municipalities with further authority to regulate and prohibit the destruction or injuring of trees; *(Mississauga; pg. 1)*

AND WHEREAS section 429(1) of the Municipal Act, 2001 provides that a municipality may establish a system of fines for a by-law passed under this Act; *(Mississauga; pg. 1)*

AND WHEREAS section 436 of the Municipal Act, 2001 provides that a municipality may pass by-laws providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine compliance with a by-law or an order made pursuant to the by-law; *(Mississauga; pg. 1)*

AND WHEREAS section 444 of the Municipal Act, 2001 provides that a municipality may make an order to require a Person to discontinue contravening a by-law and to do the work required to correct the contravention; *(Mississauga; pg. 1)*

AND WHEREAS section 445 of the Municipal Act, 2001 provides that a municipality may make an order requiring a Person who contravened a by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention; *(Mississauga; pg. 1)*

AND WHEREAS section 446 of the Municipal Act, 2001 provides that a municipality may proceed to do things at a Person’s expense which that Person is otherwise required to do under a by-law but has failed to do and the costs incurred by a municipality may be recovered by adding the costs to the tax roll and collecting them in the same manner as property taxes; *(Mississauga; pg. 1)*

AND WHEREAS Council may also require that a Permit be obtained for the injury or destruction of trees within the Town of East Gwillimbury, and may prescribe the fees for the Permit, then circumstances under which a Permit may be issued, and the conditions to such a Permit; *(Kingston; pg.1)*

AND WHEREAS the Council of The Corporation of the Town of East Gwillimbury recognizes the ecological and aesthetic value of trees and is desirous of managing the Injury and Destruction of Trees. *(Mississauga; pg.1)*

## **SECTION 1.0** — DEFINITIONS

In this by-law, the following definitions apply:

**“Administrator”** means the individual employed by the Town of East Gwillimbury who is responsible for the administration of this by-law; *(Markham, pg.3, sec.1)*

**“Agricultural Operation”** means an agricultural, aquacultural, horticultural or silvicultural operation that is carried out with the expectation of gain or reward; *(Ottawa, pg.2, sec.1)*

**“Applicant”** means the person who submits an application to the Town of East Gwillimbury for a tree permit or a distinctive tree permit, as applicable; *(Ottawa, pg.2, sec.1)*

**“Arborist report”** means a report prepared and signed by an arborist, which includes details on the species, size, health, location of a Tree to be Destroyed, Injured or removed, and an assessment of the structural integrity of the subject Tree using the “Tree Risk Assessment, Best Management Practices”, Companion publication to ANSI 300 part 9, standard practices, ISA, as may be amended or replaced; *(Oakville, pg.2, sec.1)*

**“Dead”, “Dying” or “Diseased Tree”** means a tree with no living tissue, a tree where seventy (70) percent or more of its crown is dead or a tree infected by a lethal pathogen, as certified by a Qualified Person; *(Markham, pg.3, sec.2)*

**“Designated Official”** means an individual appointed by the Town to enforce the provisions of this By-Law, and includes a municipal by-law enforcement officer; *(Kingston, pg.3, sec.1)*

**“Destroy” or “Destruction”** means to cause directly or indirectly, the removal, ruin, uprooting or death of a Tree whether by accident or by design, and includes the removal, ruin, uprooting or death of a Tree caused by any one or more of the following activities:

- (a) removing, cutting, girdling, or smothering of the Tree or roots;
- (b) interfering with the water supply;
- (c) setting fire to a Tree;
- (d) the application of chemicals on, around, or near the Tree;
- (e) compaction or re-grading within the tree protection zone up to any existing paved surfaces;
- (f) damage caused by new development or construction related activities including driveways;
- (g) storing any materials within a tree protection zone; or
- (h) neglect. *(Mississauga, pg.2, sec.1)*

**“Emergency Work”** means any work required to be carried out immediately in order to prevent imminent danger to life, health or property from natural events (including lightning, wind, hail or an extreme snow event) or unforeseen circumstances (i.e. automobile accidents), and includes

work of an urgent nature which can be associated with drain repairs, utility repairs or structural repairs to a building, and work required to prevent soil erosion, slipping of soil or damage to Trees; *(Kingston, pg.4, sec.1)*

**“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 meters above the existing grade of the ground adjoining its base or, where there are multiple stems to a Tree, means the total of diameter of all stems at a point 1.37 meters above the existing grade, or alternate methods approved by the Designated Official; *(Oakville, pg.2, sec.1)*

**“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 increase light or space; *(Markham, pg.3, sec.1)*

**“Government Body”** means the Town of East Gwillimbury, Regional Municipality of York, a Conservation Authority established under provincial legislation and any Ministry or agent of the Federal or Provincial government; *(Mississauga, pg.3, sec.1)*

**“Hazard Tree”** means a Tree that is severely damaged to the extent that it poses an immediate safety threat to Persons or property; *(Kingston, pg.5, sec.1)*

**“Hoarding”** means a fence or similar structure used to enclose a portion of a property to protect an existing Tree(s) or other vegetation; *(Mississauga, pg.1, sec.1)*

**“Injure”** or **“Injury”** means to cause, directly or indirectly, whether by accident or design, lasting damage or harm to a Tree, and includes any damage or harm to a Tree caused by one or more of the following activities:

- (a) removing, cutting, girdling, or smothering of the Tree or roots;
- (b) interfering with the water supply;
- (c) setting fire to a Tree;
- (d) the application of chemicals on, around, or near the Tree;
- (e) compaction or re-grading within the tree protection zone up to any existing paved surfaces;
- (f) damage caused by new development or construction related activities including driveways;
- (g) storing any materials within a tree protection zone; or
- (h) neglect. *(Mississauga, pg.3, sec.1)*

**“Lot”** means a parcel of land having specific boundaries which is capable of legal transfer; *(Mississauga, pg.3, sec.1)*

**“Maintenance”** includes all work or operations related to trimming, Pruning, spraying, injecting, fertilizing, treating, cabling and bracing a Tree in accordance with Good Arboricultural Practice; *(Markham — pg.4, sec.2)*

**“Normal Farm Practice”** means a practice, as defined in the Farming and Food Production Protection Act, 1998, SO 1998, c. 1, that is conducted in a manner consistent with proper and

acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances or a practice which makes use of innovative technology in a manner consistent with proper advanced farm management practices; *(Kingston, pg.5, sec.1)*

**“Nursery”** means property on which the principal business of selling plants, shrubs, and Trees occurs; *(Mississauga, pg.3, sec.1)*

**“Permit”** means a Permit issued under this by-law to Injure or Destroy a Tree on private property within the Town; *(Mississauga, pg.3, sec.1)*

**“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; *(Mississauga, pg.3, sec.1)*

**“Personal Use”** means the utilization of a Tree, Trees or Tree sections Destroyed or Injured and collected solely for the Owner’s use (e.g., fuel wood) and includes the accessory sale of no more than three (3) Cords of wood within a consecutive period of twelve (12) months; *(Kingston, pg.6, sec.1)*

**“Private Property”** means any property not owned by the Town; *(Vaughan, pg.2, sec.1)*

**“Pruning”** means the removal, as appropriate, of not more than one-third of the live branches or limbs of a tree in accordance with Good Arboricultural Practice; *(Kingston, pg.6, sec.1)*

**“Qualified Person”** means an individual with qualifications and/or credentials related to a field of study and who is therefore appropriate for conducting a study and/or providing an expert opinion that has been required by the Town. The qualifications and credentials of the Qualified Person must be to the satisfaction of the Town, or where appropriate, may be defined by relevant legislation, regulations and standards; *(Kingston, pg.6, sec.1)*

**“Replacement Tree(s)”** means a tree(s) that is required under this by-law to replace an existing Tree that is approved for Destruction; *(Mississauga, pg.4, sec.1)*

**“Replacement Tree Planting Fund”** means the fund set aside for the purpose of planting Trees in locations within the Town other than the Lot where a Tree has been Injured or Destroyed; *(Mississauga, pg.4, sec.1)*

**“Town”** means The Corporation of the Town of East Gwillimbury, or where the context requires the geographical jurisdiction of the Town of East Gwillimbury; *(Mississauga, pg.2, sec.1)*

**“Tree”** means any species of woody perennial plant, including its root system, which has reached or can reach a height of at least 4.5 metres at physiological maturity; *(Kingston, pg.7, sec.7 & Markham, pg.5, sec.1)*

**“Tree Permit”** means the formal written approval from the Administrator to Destroy or Injure Trees, with or without conditions; *(Kingston, pg.7, sec.1)*

**“Order”** means an order issued pursuant to this by-law to stop the Injury or Destruction of Tree(s); *(Ottawa, pg.4, sec.1)*

“**Owner**” means the registered Owner of a Lot, and his or her respective successors and assigns, or his or her agent; *(Mississauga, pg.3, sec. 1)*

“**Woodland**” means land at least 1 hectare in area and with at least

- (a) 1000 trees, of any size, per hectare;
  - (b) 750 trees measuring over five (5) centimetres DBH per hectare;
  - (c) 500 trees measuring over twelve (12) centimetres DBH per hectare; or
  - (d) 250 trees measuring over twenty (20) centimetres DBH per hectare;
- but does not include a nursery, a cultivated fruit or nut orchard, or a plantation established for the purpose of producing Christmas trees or nursery stock; *(York Region, pg.3, sec.1)*

“**Woodlot**” means land at least 0.2 hectare in area and no greater than 1 hectare in area, with at least:

- (a) 200 trees of any size, per 0.2 hectare;
- (b) 150 trees, measuring over five (5) centimetres DBH, per 0.2 hectare;
- (c) 100 trees, measuring over twelve (12) centimetres DBH, per 0.2 hectare; or
- (d) 50 trees, measuring over twenty (20) centimetres DBH, per 0.2 hectare; but does not include a cultivated fruit or nut orchard, or a plantation established and maintained for the purpose of producing Christmas trees or nursery stock. *(York Region, pg.3, sec.1)*

## **SECTION 2.0** — APPLICATION

- 2.1 This by-law shall apply to all Private Properties 0.2 hectares in size or more within the geographic limits of the Town.
- 2.2 Despite subsection 2.1, the provisions of this by-law do not apply to any Woodland with an area of 1.0 ha or greater or to any Woodlot with an area of 0.2 ha up to 1.0 ha within the Town, in accordance with Regional Municipality of York Forest Conservation Bylaw 2013-68. *(Markham, pg.6, sec.3.2)*

## **SECTION 3.0** — ADMINISTRATION

- 3.1 The Administrator of this by-law is responsible for the administration of this by-law and is hereby delegated the authority to review applications for Permits, issue Permits, refuse Permits and include conditions of Permits. *(Markham, pg.7, sec.5.1)*

## **SECTION 4.0** — ENFORCEMENT

- 4.1 For the purposes of conducting an inspection to determine compliance with this by-law, an Order, a Permit or any condition of a Permit, the Designated Official may, upon producing the appropriate identification, at any reasonable time, enter and inspect any private lands or property, to determine whether the provisions of this by-law, an Order issued under this by-law, or a Permit or condition of a Permit issued under this by-law, have been complied with. *(Markham, pg.7, sec.5.2)*
- 4.2 No person shall obstruct the Administrator or a Designated Official who is carrying out an inspection pursuant to this by-law. Any person who obstructs the Administrator or Designated Official is guilty of an offence. *(Markham, pg.7, sec.5.4)*

## **SECTION 5.0** — EXEMPTIONS

5.1 Despite Section 2 of this by-law, this by-law does not apply to the following:

- (a) any trees within a street or property owned by the Town;  
*(Richmond Hill, pg.5, sec.3, sub sec. (3.1))*
- (b) the Injury or Destruction of a Tree(s) as part of Emergency Work;  
*(Kingston, pg.10, sec.5, sub sec.(l))*
- (c) the Pruning or Maintenance of any Tree carried out in accordance with Good Arboricultural Practice; *(Markham, pg.7, sec.4.1, sub sec.(d))*
- (d) the Injury or Destruction of, or where specifically noted in the following clauses, the Maintenance of any Tree that:
  - I. is a Dead, Dying or Diseased Tree, as defined in this by-law;
  - II. is a Hazard Tree, as defined in this by-law;
  - III. is an invasive species tree as identified in Schedule A of this By-Law. Town staff shall assist property owners with identifying endangered species.
  - IV. is a tree with a diameter of less than 20cm DBH (Diameter at Breast Height).
  - V. is required as a result of Emergency Work, as defined in this by-law;
  - VI. is required under an Order under any Property Standards By-law of the Town;
  - VII. requires the Pruning, Maintenance or removal of branches or limbs, where the branches or limbs interfere with existing utility conductors, buildings or structures, provided such activities shall be carried out in accordance with Good Arboricultural Practice;
  - VI. is a tree in a nursery or cultivated orchard, provided that it is a tree devoted to the nursery or orchard business and maintained for sale or propagation of trees or fruits for sale;
- (f) the Injury or Destruction of a Tree(s) that are causing, or are likely to cause, structural damage of load-bearing walls or other structures as determined by a Qualified Person;  
*(Kingston, pg.10, sec.5, sub sec.(m))*
- (g) the tree is located within a building, a solarium, a rooftop garden or an interior courtyard;  
*(Ottawa, pg.11, sec.25, sub sec.(c))*
- (h) where an Owner is required to comply with the requirements of a Province of Ontario forest management plan that specifically encompasses the Owner's Lot.  
*(Mississauga, pg.5, sec.6.3, sub sec.(n))*
- (i) as a result of activities or matters undertaken by a Governmental Body or a school board for the construction of a school building or part thereof;  
*(Mississauga, pg.4, sec.6.3, sub sec.(d))*
- (j) activities or matters are undertaken by a license issued under the Crown Forest Sustainability Act, 1994, S.O. 1994, c. 25, as amended; *(Ottawa, pg.11, sec.26, sub sec.(c))*
- (k) the Injury or Destruction of any Tree located within a waste disposal site as defined in Part V of the Environmental Protection Act, R.S.O. 1990, c. E.19, as amended; *(Markham, pg.6, sec.6.1, sub sec.(b))*

- (l) Trees are Injured or Destroyed by a Person licensed under the Surveyors Act, R.S.O. 1990, c. S.29, to engage in the practice of cadastral surveying, or his or her agent while making a survey;  
*(Ottawa, pg.11, sec.26, sub sec.(d))*
- (m) Trees are Injured or Destroyed by a transmitter or distributor, as those terms are defined in section 2 of the Electricity Act, 1998, S.O. 1998, C. 15, Sched. A, for the purpose of constructing or maintaining a transmission system or distribution system, as defined in the Electricity Act, 1998, as amended; *(Ottawa, pg.11, sec.26, sub sec.(e))*
- (o) The Injury or Destruction of a Tree(s) undertaken on land described in a license for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the Aggregate Resources Act, R.S.O. 1990, c. A.8; *(Kingston, pg.9, sec.5, sub sec.(f))*
- (p) The Injury or Destruction of a Tree(s) undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land that:
  - I. that has not been designated under the Aggregate Resources Act, R.S.O. 1990, c. A.8, or a predecessor of that Act, and
  - II. on which a pit or quarry is a permitted land use under a by-law passed under Section 34 of the Planning Act, R.S.O. 1990, c. P.13; *(Kingston, pg.9, sec.5, sub sec.(g) – I & II)*
- (q) The Injury or Destruction of a Tree(s) that are protected under the Endangered Species Act, 2007, S.O. 2007, c. 6, for which the landowner has obtained approval from the Ontario Ministry of Natural Resources and Forestry to remove the Tree(s); *(Kingston, pg.9, sec.5, sub sec.(q))*

## **SECTION 6.0 – EXEMPTION PERMIT**

- 6.1 In order to be considered for an exemption to Section 2.1 for the prescribed activities listed below (a-c), the applicant must apply for an exemption permit at least 30 days prior to the anticipated commencement of harvest, destruction, or injury of trees by submitting:
- I. A completed exemption permit application form, and,
  - II. The applicable fee as set out in Schedule **XX.XX**
- (Norfolk County, pg.10, sec.4, sub sec.(a))*

The following activities may be considered for an exemption permit:

- (a) The Injury or Destruction of a Tree(s) in accordance with Normal Farm Practice conducted by an Agricultural Operation for its own agricultural purposes;  
*(Kingston, pg.11, sec.5, sub sec.(t))*
  - (b) the Injury or Destruction of Tree(s) for the Owner's Personal Use, provided that no more than ten (10) Cords of wood are to be removed within a consecutive period of twelve (12) months;
- 6.1.1 When granting a Permit for an exemption, the Administrator may include terms or conditions, including but not limited to a qualified arborist report, replacement plantings and/or cash in lieu compensation. *(Norfolk County, pg.11, sec.4, sub sec.(m))*



## **SECTION 7.0** — PROHIBITIONS

7.1 no Person shall Injure or Destroy a Tree or cause the Injury or Destruction of a Tree:

- (a) Unless exempted by Section 5 of this by-law, or *(Kingston, pg.9, sec.3, sub sec.(a))*
- (b) Unless in possession of a Tree Permit issued under this By-Law and in accordance with its terms and conditions *(Kingston, pg.9, sec.3, sub sec.(b))*
- (c) *Unless in possession of an Exemption Permit issued under this By-Law and in accordance with its terms and conditions*

7.2 no Person shall:

- (a) Contravene the terms or conditions of a Tree Permit issued under this by-Law, or *(Kingston, pg.9, sec.4, sub sec.(a))*
- (b) Fail to comply with an Order issued under this by-Law. *(Kingston, pg.9, sec.4, sub sec.(b))*

## **SECTION 8.0** — PERMIT

### **8.1 PERMIT APPLICATION REQUIREMENTS**

8.1.1 Except where otherwise stated in this by-law:

- (a) an Owner who intends either himself, herself or through an authorized representative or agent to Injure or Destroy a Tree, where a Permit to do so is required, shall submit a permit application to the Designated Official in the form provided by the Town and the prescribed permit fee set out in the Town, with the exception of: *(Markham, pg.8, sec.7.1, sub sec.(a))*
  - I. not-for-profit organizations or individual(s) facing financial hardship as deemed by the Town's Designated Official who are eligible for a waiver of the fee;
  - II. Trees identified as dead, infested with Emerald Ash borer (EAB), or infested with Asian Long-Horned Beetle (ALHB), and approved by the Designated Official, or
  - III. Trees identified as a Hazard tree (s) and approved by the Designated Official;  
*(Oakville, pg.6, sec.7.1, sub sec.(b) - I, II, & III)*
- (b) where a Tree to be Destroyed is or may be exempt under section 5.0 of this by-law, the Owner shall obtain the prior written confirmation of the Designated Official that the tree is exempt and there shall be no requirement for a permit and no permit fee payable for such confirmation; *(Markham, pg.8, sec.7.1, sub sec.(b))*
- (c) a report by a Qualified Person in support of a permit application may be required by the Designated Official as a condition of approval, but is not required as part of the initial permit application, *(Markham, pg.9, sec.7.1, sub sec.(d))*
- (d) where any part of a Tree is located on an adjacent property, a permit application shall include the written permission of the adjacent property owner; *(Markham, pg.9, sec.7.1, sub sec.(e))*

- (e) an Owner of lands used for a cemetery, golf course, or similar commercial or institutional use, may file an application for a Permit for approval of a tree management plan and in support of a permit application shall submit a tree management plan, prepared by a Qualified Person, in accordance with Good Arboricultural Practice, which at a minimum shall itemize the existing number, species, location and condition of all Trees on the lands and the proposed management schedule related to Pruning, Maintenance, Destruction and removal requirements for a period of years; *(Markham, pg.9, sec.7.1, sub sec.(f))*
- (f) a permit application may be submitted in person, electronically through the Town's website or by pre-paid first-class mail to the Clerk and must be received by the Clerk at least thirty (30) days prior to the planned Injury or Destruction of any Tree. *(Markham, pg.9, sec.7.1, sub sec.(g))*

## 8.2 ISSUANCE OF A PERMIT

8.2.1 The following provisions apply to the issuance of Permits:

- (a) Following receipt of a permit application, the Administrator, or any person acting under the Administrator's instructions, may inspect the lands and Tree(s) to determine whether or not a Permit should be issued; *(Markham, pg.9, sec.7.2, sub sec.(a))*
- (b) The Administrator may issue a Permit to Injure or Destroy a tree where the Administrator is satisfied that:
  - I. the application satisfies the requirements of this by-law;
  - II. the application is to permit the establishment or extension of a building or structure which requires the Tree(s) to be removed for the proposed works authorized under a municipal building permit and there is no reasonable alternative to the injury or destruction of the tree(s);
  - III. the Tree is causing structural damage to load bearing structures, drains or buildings. *(Markham, pg.9, sec.7.2, sub sec.(b) - I, II, & III)*
- (c) The Administrator may issue a Permit for a tree management plan sought under clause 8.1.1 (e) where the Administrator is satisfied that:
  - I. the application satisfies the requirements of this by-law;
  - II. the proposed schedule for the injury or destruction of trees as set out in the plan represents Good Arboricultural Practice;
  - III. the proposed schedule for the injury or destruction of trees as set out in the plan does not contravene the general intent of this by-law.
- (d) where the Administrator is satisfied that:
  - I. The application satisfies the requirements of this by-law,
  - II. the proposed schedule for the injury or destruction of trees as set out in the plan represents Good Arboricultural Practice; *(Markham, pg.9, sec.7.2, sub sec.(c) – I & II)*
- (e) the Administrator may issue a Permit subject to conditions which may include but are not limited to any one or more of the following:
  - I. the requirement for a Replacement Tree(s),
  - II. satisfactory plans for Tree preservation and planting, and
  - III. Hoarding to be provided around a Tree(s) not subject to Injury or Destruction, and plans indicating the location and type of Hoarding to the satisfaction of the Administrator

*(Mississauga, pg.6, sec.11.1 – I, II, & III)*

- (f) where the planting of a Replacement Tree(s) has been imposed as a condition, the Administrator may require any one or more of the following:
- I. the Replacement Tree(s) rate is based on the Town's Fees By-Law 2015-078 Schedule L,
  - II. the Replacement tree(s) be located on the same Lot in a location, size, and/or species to the satisfaction of the Administrator,
  - III. a planting plan be filed to the satisfaction of the Administrator;
  - IV. a written undertaking by the Owner to carry out the replacement planting;
  - V. monies or a letter of credit in a form satisfactory to the Administrator be delivered to the Administrator to cover the costs of the Replacement Trees, and the Maintenance of the Tree(s) for a period of up to two (2) years; or
  - VI. payment of each Replacement Tree not planted on the Owner's Lot be made into the Town's Replacement Tree Planting Fund as per the Town's Fees By-Law 2015-078 Schedule L.

*(Mississauga, pg.6, sec.11.2 – I to V)*

- (g) A Permit shall be valid for a maximum of one (1) year from the date of issuance.

*(Mississauga, pg.6, sec.12.1)*

### **8.3 REFUSAL OF A PERMIT**

7.3.1 The Administrator may refuse to issue a permit to remove a tree where any one or more of the following applies:

- (a) where the application for a Permit is incomplete; or where an Arborist Report is required or requested by the Administrator or Designated Official in support of the permit application and the report has not been provided; *(Oakville, pg.8, sec.7.6, sub sec.(a))*
- (b) the information received from the Owner is false or incorrect; *(Vaughan, pg.4, sec.9, sub sec.(c))*
- (c) where 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 but has not received final approval; *(Mississauga, pg.7, sec.16, sub sec.(b))*
- (d) where the Tree is an endangered, threatened or special concern 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; *(Mississauga, pg.7, sec.16, sub sec.(c))*
- (e) where the Tree belongs to a Tree species of special concern, as defined in the Species at Risk Act, 2002, S.C. 2002, c. 29, as may be amended or replaced from time to time; *(Mississauga, pg.7, sec.16, sub sec.(d))*
- (f) the Injury or Destruction of a Tree(s) can be avoided, or ought to be avoided, as confirmed by a Qualified Person; *(Kingston, pg.14, sec.10, sub sec.(a))*
- (g) where environmentally sensitive areas, ecological systems, natural landforms or contours will not be adequately protected and preserved; *(Mississauga, pg.7, sec.16, sub sec.(e))*

(h) the Injury or Destruction of a Tree(s) will negatively impact erosion or flood controls; or  
*(Kingston, pg.14, sec.10, sub sec.(d))*

(i) where significant vistas will not be adequately protected and preserved.  
*(Mississauga, pg.7, sec.16, sub sec.(f))*

8.3.2 If the Administrator refuses to issue a Permit, he or she shall advise the Owner and provide the Owner with written reasons for the refusal. *(Mississauga, pg.7, sec.17)*

#### **8.4 PERMIT REVOCATION**

8.4.1 The Administrator may revoke a Permit at any time, for one (1) or more of the following reasons:

(a) the Permit was issued because of mistaken, false, or incorrect information received from the Owner;

(b) the Owner has failed to comply with any conditions attached to the Permit;

(c) the Owner has failed to comply with any Order issued under this by-law; or

(d) the Owner has failed to comply with any of the provisions in this by-law.  
*(Mississauga, pg.7, sec.18 – a, b, c & d)*

8.4.2 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.

8.4.3 where a Permit holder of a revoked Permit has Injured or Destroyed any Tree under the revoked Permit, the Permit holder may be ordered to replace the Tree at the expense of the Permit holder.

8.4.4 If the Permit holder fails to comply with an Order made under Section 9.1 the Town may replace the Tree and use any securities posted by the Permit holder under the revoked Permit to pay for any costs associated with carrying out the work

8.4.5 If the costs incurred by the Town in carrying out any work under Section 9.0 are greater than the securities posted by the Permit holder under the revoked Permit, any costs not covered by the securities shall be a debt owed by the Permit holder to the Town and the Town may recover the costs of carrying out the work by adding the costs to the tax roll of the property in question and collecting them in the same manner as property taxes.

8.4.6 A Permit is the property of the Town and is not transferable unless otherwise authorized by the Administrator.

#### **SECTION 9.0 — ORDERS**

9.1 Where the Designated Official is satisfied that a contravention of this by-law has occurred, the Designated Official may issue an Order requiring the person who contravened the by-

law, or who caused or permitted the contravention, or the Owner or occupier of the land on which the contravention of the by-law occurred, to discontinue the contravening activity;  
*(Mississauga — pg.8, sec.24.1)*

- (a) The Order shall set out:
- I. the name of the Owner, the municipal address and the legal description of the land or property that is the subject of the contravention;
  - II. reasonable particulars of the contravention;
  - III. what the Owner or any other Person must do to rectify the contravention;
  - IV. 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;
  - V. the date and time by which the Order must be compliance with;
  - VI. information regarding the Town's contact person. *(Markham, pg.11, sec.8.2 – I to VI)*
- 9.2 The Order may require that any Injured or Destroyed Tree be replaced on the property with a Replacement Tree, and further specify the species and location of any Replacement Tree.  
*(Mississauga, pg.8, sec.26.1)*
- 9.3 Where the Designated Official determines that an Injured or Destroyed Tree cannot be replaced on the property, the Designated Official may order that the Replacement Tree be located on Town property in an area to be determined by the Designated Official or that payment in lieu of the Replacement Tree be provided to the Town's Replacement Tree Planting Fund. *(Mississauga, pg.8, sec.26.2)*
- 9.4 An Order issued under Section 8.1 may be served personally by the Designated Official, may be posted in a conspicuous place on the property where the contravention occurred or may be sent by registered mail to the person contravening the by-law.  
*(Ottawa, pg.14, sec.29.1)*
- 9.5 Where an Order under this by-law is served personally by the Designated Official, it shall be deemed to have been served on the date of delivery to the Person or Persons named.  
*(Ottawa, pg.14, sec.29.2)*
- 9.6 The posting of the Order on the affected lands shall be deemed to be sufficient service of the Order on the Person to whom the Order is directed on the date it is posted.  
*(Ottawa, pg.14, sec.29.3)*
- 9.7 Where an Order issued under the by-law is sent by registered mail, it shall be sent to the last known address of:
- (a) the Applicant;
  - (b) the Owner; or
  - (c) the Person or company retained to undertake the Injury or Destruction and shall be deemed to have been served on the fifth day after the Order is mailed.  
*(Ottawa, pg.14, sec.29.4 – a, b, & c)*
- 9.8 If a Person fails to comply with an Order issued pursuant to Section 9.1 of this by-law, the

Town may enter the lands at any reasonable time for the purposes of doing the things described in the Order at the Person's expense *(Kingston, pg.21, sec.24.1)*

- 9.9 If the Town enters on the lands and completes the work, the Town may recover its costs to complete the work from the Person named in the Order by drawing upon the financial security, or by action, or by adding the costs to the tax roll and collecting them in the same manner as property taxes. Costs owing to the Town will accrue at a rate of fifteen (15) percent annually and may also be registered as a lien against the property subject to the Tree Permit. *(Kingston, pg.21, sec.24.2)*

## **SECTION 10.0** — PENALTY

- 10.1 Any person who contravenes any provision of this by-law or an Order issued pursuant to Section 9 of this by-law is guilty of an offence. *(Markham, pg.12, sec.10.1)*
- 10.2 All contraventions of any provision of this by-law or an Order issued under Section 9 of this by-law are designated as multiple offences and continuing offences, pursuant to subsection 429(2) of the Municipal Act, a multiple offence is 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 a by-law and, for greater certainty, when multiple Trees are Injured or Destroyed the Injury or Destruction of each tree is a separate offence *(Markham, pg.12, sec.10.2)*
- 10.3 Any Person who contravenes any provision of this by-law or an order is guilty of an offence and is liable:
- (a) on a first conviction, to a fine of not less than \$250 to no more than \$25,000; and
  - (b) on any subsequent conviction, to a fine of not less than \$500.00 to no more than \$50,000. *(Mississauga, pg.10, sec.39.1 – a & b)*
- 10.4 Notwithstanding section 9.3 where the Person convicted is a corporation, it is liable:
- (a) on a first conviction, to a fine of not less than \$5,000 to not more than \$50,000; and
  - (b) on any subsequent conviction, to a fine of not less than \$10,000 to not more than \$100,000. *(Mississauga, pg.10, sec.39.2 – a & b)*
- 10.5 A special fine may be imposed, in addition to a fine under section 10.3 to 10.4, in circumstances where there is an economic advantage or gain from the contravention of this by-law or an Order under Section 9 of this by-law, and the maximum amount of the special fine may exceed \$100,000. *(Oakville, pg.12, sec.10.3, sub sec. (d))*
- 10.6 If a Person is convicted of an offence for contravening the provisions of this by-law, or an Order under Section 9 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:

- (a) Planting 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. *(Oakville, pg.12, sec.10.4)*

## **SECTION 11** — APPEALS TO COUNCIL

11.1 Where the Administrator refuses to issue a Permit an applicant may within fifteen (15) days of the date of refusal of the Permit appeal to the Licensing Committee of Council by submitting a written request to the Administrator that the appeal of the Permit application be heard by Licensing Committee. *(Markham, pg.12, sec.9.1)*

11.2 Where an applicant has filed an appeal:

- (a) The Administrator shall prepare and forward a report on the appeal of the refusal of the Permit to the next Licensing Committee meeting, setting out the grounds for refusal of the Permit;
- (b) Prior to reporting to the Licensing Committee, the Administrator shall notify the Ward Councilor, any abutting property owners and any other persons who have expressed interest by written request in the application of the date the appeal of the refusal of the Permit will be considered by the Licensing Committee;
- (c) After holding a hearing on the appeal of the refusal of the Permit, the Licensing Committee shall make a recommendation to Council;
- (d) Upon consideration of the recommendation of the Licensing Committee, Council may:
- I. direct the Administrator to refuse the Permit; or
  - II. direct the Administrator to issue a Permit on such conditions as the Council considers appropriate. *(Markham, pg.12, sec.9.2 – a, b, c & d)*

## **SECTION 12** — SEVERABILITY

12.1 If a court or tribunal of competent jurisdiction declares any provision, provisions or part of a provision of this by-law to be illegal or unenforceable for any reason, such provision, provisions or part of a provision shall be severed, and all other provisions of this by-law shall be deemed to be separate and independent therefrom and shall be valid and enforceable to the fullest extent permitted by law. *(Markham, pg.13, sec.11.1)*

## **SECTION 13** — IN FORCE

13.1 This by-law shall come into force and take effect on the date it is passed.

ENACTED and PASSED this \_\_\_day of \_\_\_, 2023.

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Virginia Hackson, Mayor

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Tara Lajevardi, Municipal Clerk

## Schedule A – Invasive Species

Invasive Species as per the Ontario Invasive Plant Council:

- Autumn Olive
- Black Locust
- Buckthorn
- European Black Alder
- Invasive Honeysuckles
- Scots Pine
- Norway Maple
- White Mulberry
- Manitoba Maple

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