

BY-LAW NUMBER XXXXX
of the
CITY OF KITCHENER

(being a bylaw to repeal and replace Chapter 690 of the City of Kitchener Municipal Code as it relates to public trees)

WHEREAS it is deemed expedient to repeal Chapter 690 of The City of Kitchener Municipal Code as adopted by By-law 87-293 and to replace it with this by-law;

AND WHEREAS section 135 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended authorizes a municipality to prohibit or regulate the destruction or injuring of trees;

AND WHEREAS pursuant to section 431 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, authorizes, in addition to any other remedy and to any penalty imposed by a by-law passed under subsection 135 (1), the court in which a conviction has been entered to make an order requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate;

AND WHEREAS subsection 62(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended authorizes a municipality, at any reasonable time, to enter upon land lying along any of its highways to inspect trees and conduct tests on trees, and to remove decayed, damaged or dangerous trees or branches of trees if, in the opinion of the Municipality, the trees or branches pose a danger to the health or safety of any person using the highway;

AND WHEREAS subsection 62(2) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended authorizes an employee or agent of a municipality to remove a decayed, damaged or dangerous tree or branch of a tree immediately without notice to the owner of the land upon which the tree is located, if, in the opinion of the employee or agent, the tree or branch poses an immediate danger to the health or safety of any person using the highway;

AND WHEREAS the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, authorizes a municipality, amongst other things, to delegate its authority, to impose fees or charges on persons for services or activities provided or done by or on behalf of it, to provide for inspections and inspection orders, and to make orders to discontinue activity or to do work;

AND WHEREAS the Council for the Corporation of the City of Kitchener deems it

desirable to prohibit the injury or destruction of trees for the purpose of:

1. Minimizing the destruction or injuring of trees;
2. Regulating and controlling the removal, maintenance and protection of trees;
3. Protecting, promoting and enhancing the aesthetic value of trees;
4. Sustaining a healthy natural environment; and,
5. Contributing to the human health and quality of life of all persons who work, live, or play in the City of Kitchener through the maintenance of tree cover.

NOW THEREFORE the Council of the Corporation of the City of Kitchener enacts as follows:

1. Definitions

“administrative penalty by-law” means the Administrative Penalty By-law of the City, as amended from time to time, or any successor thereof.

“arborist” means an expert in the care and maintenance of trees and includes an arborist qualified by the Ministry of Training, Colleges and Universities, a forest technician or forestry technologist with an applicable college diploma and a minimum of two years urban forestry experience, a certified arborist qualified by the Certification Board of the International Society of Arboriculture, a consulting arborist registered with the American Society of Consulting Arborists, a Registered Professional Forester designated pursuant to the *Professional Foresters Act, 2000*, or a person with other similar qualifications as approved by the Director.

“City” means The Corporation of the City of Kitchener.

“City Arborist” means an Arborist acting for the City or any designated person acting under his or her direction;

“City Standards” refers to the specification drawings or programs related to tree care and maintenance created by the City of Kitchener, available on the City’s website and as may be amended from time to time including but not limited to:

- (a) Tree Preservation Detail & Notes
- (b) Standard Tree Planting Detail
- (c) Public Tree Removals and Compensation

“dead tree” refers to a tree or part of a tree that has no significant living tissue as determined by a City Arborist, including trees that may produce shoots but lack the ability to sustain healthy growth or recover.

“deface” includes but is not limited to the painting or carving of words, figures, symbols or any other markings on the bark of a tree;

“Department” means the Infrastructure Services Department of the City of Kitchener.

“designated provision” means any section of this Chapter designated in accordance with Article 7.

“destroy” means to change the structure or condition of a tree such that it cannot reasonably be returned to its original structure or condition;

“diameter breast height” (DBH) means the diameter of a trunk of a tree from the outside bark at a height of 1.37 meters above the existing ground adjoining its base or where there are multiple trunks, means the square root of the sum of each stem diameter squared measured from the outside bark at a height of 1.37 meters.

“Director” means the Director of Parks and Cemeteries for the City, or his/her designate

“Director of Enforcement” means the Director of By-law Enforcement for the City.

“hazardous” means destabilized or structurally compromised to an extent that it presents an imminent danger of causing property damage or injury to life as determined by an arborist.

“injure/injury” means any act that will harm or interfere with the health, structure, or stability of a tree in any manner, which includes but is not limited to:

- (a) the cutting, topping, pruning, pollarding, debarking, defacing, marking, or girdling of trees;
- (b) burning or applying chemicals on, near, or around a tree;
- (c) cutting or breaking tree roots;
- (d) placing in the tree protection zone any materials, vehicles or equipment that impede water, air, or nutrients to the roots of a tree;
- (e) altering a tree’s environment by regrading, soil compaction, or trenching within the tree protection zone;
- (f) affixing materials to a tree;
- (g) transplanting a tree;

- (h) failing to comply with tree protection measures as outlined in the City Standards;
or
- (i) any other damage resulting from neglect or intentional damage.

“land” includes all property within the City.

“officer” means a Municipal Law Enforcement Officer for The Corporation of the City of Kitchener or staff from the Infrastructure Services Department as designated by the Manager, Forestry & Natural Areas Management, or his/her designate.

“person” includes a company, a corporation, a partnership, an individual, a public utility or a person.

“plantable space” refers to areas designated for tree planting that meet spacing, soil volume, and infrastructure clearance requirements as deemed by the City Arborist.

“site” means the area of land containing any tree proposed to be injured.

“tree” means any tree, all or part of which, is located on a City property, now or hereafter growing on property of the City and refers to all parts of the tree including the roots, crown (branches and leaves) and stem (trunk). This includes boundary trees as contemplated in the *Forestry Act*, RSO 1990, Chapter F. 26.

“tree protection zone” is the area around the trunk where roots essential for tree health and stability are located. The tree protection zone is determined based on the measurements indicated in the City Standard Tree Preservation Detail & Notes.

2. INFRASTRUCTURE SERVICES DEPARTMENT

2.1 The Department is hereby authorized to administer, carry out and enforce the provisions of this Chapter and perform all acts and give all consents hereunder that are not required by law to be given by this Council.

2.2 The Department is hereby authorized to do all acts necessary to provide for the planting, care and maintenance of all trees on City property. Care and maintenance includes but is not limited to, without notice to any person, the pruning of trees provided that they are preserved so far as is reasonably possible.

2.3 The Department is hereby authorized to assess, designate, and regulate

plantable spaces on City property. Once a plantable space is designated, only activities that do not compromise its suitability for tree planting, as determined by City Arborists, shall be allowed within the space.

2.4 The Department is hereby authorized to maintain or cause to be maintained, without notice or compensation to any person, any tree located on private property which extends over City property and which, in the Department's opinion, may be hazardous, create an unsafe condition or otherwise interfere with City Standards.

3 PROHIBITIONS

3.1 No person shall:

- (a) injure, cut, top, prune, pollard, debark, deface, mark, girdle, burn or apply chemicals on, near, or around, or otherwise damage or destroy any tree or part thereof;
- (b) damage, remove, or destroy any support structure, including posts, stakes, watering bags or guards attached to or surrounding a tree;
- (c) cut down, uproot, or remove any tree, or part thereof, whether living or dead;
- (d) undertake, cause, or permit any unauthorized activities, within a tree protection zone that contravene the City Standards or any conditions imposed by the City Arborist for the protection of trees on City property;
- (e) raise or lower the grade around a tree in a manner that may endanger the tree's health, or cause damage to its roots or branches;
- (f) alter the grade around a tree where, in the opinion of the Department, such alteration is likely to harm the tree, without specific written permission of the Department;
- (g) interfere with or permit to interfere with fences, structures, barriers, delineated tree protection zones, signage, or any other protective measures around trees on City property;
- (h) attach, lean, or bury any building materials, equipment, or other items against or around a tree, or within the tree protection zone; or
- (i) fasten, tie or attach any fence, wire, lighting, bill, notice or animal to any tree or to any post, stake or guard which supports a tree and any such animal or material may be removed therefrom without notice or recompense to the owner thereof.

4. CONSTRUCTION

4.1 Any contractor, commission, corporation, organization, person, or individual undertaking paving, sidewalk construction, excavation, or any other work on City property shall take all necessary steps to avoid injuring any tree. All work shall comply with applicable City Standards and any lawful direction given by an authorized officer of the Department.

- a) The person(s) responsible for any lot where construction, alteration, disturbance, or demolition is taking place shall ensure protection of all trees on City property within 6.09 metres (20 feet) of the lot or disturbance. If a City tree exceeds 100 cm DBH, the required protection zone shall extend to 10.06 metres (33 feet);
- b) The tree protection zone required under this section must, at a minimum, comply with the City Standard for Tree Preservation Detail & Notes;
- c) No work, including construction, alteration, or demolition, shall begin until tree protection measures are installed in accordance with City Standards and approved by a City Arborist.

5. PLANTING TREES ON CITY PROPERTY

5.1 No person shall plant any tree partially or wholly on City property without the permission of the Department. Any tree planted without permission may be removed without notice or compensation to any person.

5.2 Every tree planted on a boulevard or other City property shall be planted in accordance with the specifications of the City Standards as set out in the Standard Tree Planting Detail and shall be at such distance from the street line as is necessary to keep the underground services on the street free and clear from obstruction.

6. Statutory Exemptions

6.1 Section 3.1 does not apply to activities or matters undertaken:

- (a) By a municipality or a local board of a municipality; or
- (b) under a licence issued under the *Crown Forest Sustainability Act, 1994*

6.2 Section 3.1 does not apply to the injuring of trees:

- (a) by a person licensed under the Surveyors Act to engage in the practice of cadastral surveying or his or her agent, while making a survey.

- (b) in accordance with a condition to the approval of a site plan, a plan of subdivision, consent or development permit under section 41, 51, 53 or 70.2 respectively, of the *Planning Act*, R.S.O. 1990, c. P.13 or as a requirement of a site plan agreement or subdivision agreement entered into under those sections.
- (c) By a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act*, 1998, c. 15, Schedule 'A', for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section.
- (d) 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*; or
- (e) undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land:
 - (i) that has not been designated under the *Aggregate Resources Act* 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.

7. ENFORCEMENT

7.1 Every person who contravenes any provision of this Chapter is guilty of an offence and is liable, upon conviction, to a fine not exceeding Ten Thousand Dollars (\$10,000), exclusive of costs, for each offence, recoverable under the *Provincial Offences Act*.

7.2 Where an Officer is satisfied that a contravention of this bylaw has occurred, the Officer may issue:

- (a) a Notice to Cease Work 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 occurred to discontinue the contravening activity, and/or
- (b) a Notice to Remedy 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 occurred to do work to correct the contravention. which may include but is not limited to:
 - i) Repairing or restoring damaged public trees or tree protection measures;

- ii) Removing unauthorized materials or obstructions impacting a public tree.

7.3 Any Notice issued under section 7.2 shall include:

- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred;
- (b) If work is ordered, a description of the work to be done; and
- (c) the date by which there must be compliance with the Notice

7.4 No person shall fail to comply with a Notice issued under section 7.2.

7.5 Any person who fails to comply with a Notice issued under section 7.2 may be subject to additional penalties as outlined in this bylaw, including fines, cost recovery for remediation, or other enforcement measures.

7.6 Any person who damages a tree:

- (a) shall be responsible to the City for the cost of repairing the tree, including the cost of removing such part thereof which is damaged beyond repair; and
- (b) shall report forthwith such damage to the Department and make suitable arrangements for repairing the tree, including removing such part thereof damaged beyond repair, by forestry personnel of the Department.

7.7 Any person who cuts down, roots up, removes, destroys or damages beyond repair any tree shall be responsible to the City for the cost of removing the tree if it or part thereof remains, plus a compensation for the loss of the tree(s) as outlined in the City's Public Tree Removal and Compensation Program.

- (a) when determining the number of trees for which the City is to be compensated, a single tree is defined as all stems originating from a single point at ground level.

7.8 Articles 3, 4, and 5 of this By-law are hereby designated as parts of this By-law to which the Administrative Penalty By-law applies.

7.9 Any person shall be liable to pay an administrative penalty and any administrative fees in accordance with the Administrative Penalty By-law, upon the issuance of a penalty notice for a contravention of this Chapter.

7.10 The *Provincial Offences Act* continues to apply to the provisions of this by-law in addition to the designated provisions of this by-law.

7.11 Where a person has not paid the administrative penalty within 30 days in accordance with the Administrative Penalty By-law, the City may add the administrative penalty to the tax roll for any property for which the owner or owners are responsible for paying the administrative penalty under Section 7.8.

8. TRANSITION

8.1 The repeal of the former Chapter 690 of The City of Kitchener Municipal Code as amended and by-law 87-293 as amended in section 10.3 hereof do not:

- (a) affect the previous operation of the repealed Chapter and by-laws;
- (b) affect a right, privilege, obligation, or liability that came into existence under the repealed Chapter or by-law;
- (c) affect an offence committed against the repealed Chapter or by-laws or any penalty or punishment incurred in connection with the offence; or
- (d) affect an investigation, proceeding, or remedy in respect of a right, privilege, obligation, or liability described in section 8.1(b), or a penalty or punishment incurred in connection with the offence;

8.2 An investigation, proceeding, or remedy described in section 8.1(d) may be commenced, continued, and enforced as if the Chapter and by-laws had not been repealed or revoked.

8.3 A penalty or punishment described in section 8.1(c) may be imposed as if the Chapter and by-laws had not been repealed or revoked.

9. Interpretation

9.1 Any articles, section headings, or captions used in this by-law are for convenience of reference only and shall not affect its construction or interpretation.

10. Administrative

10.1 Each and every of the provisions of this by-law is severable and if any provision of this by-law should for any reason be declared invalid by any court, it is the intention and desire of this Council that each and every of the then remaining provisions hereof shall remain in full force and effect.

10.2 The Clerk of the City is hereby directed to make this by-law a part of The City of Kitchener Municipal Code by adding it to the Concordance and arranging and numbering it as Chapter 690 so as to fit within the scheme of the Code.

10.3 Except for the purposes of Article 8 of this by-law, By-law 87-293 as amended and the contents of Chapter 690 hereby repealed.

10.4 This by-law shall be known as the "Public Tree By-law".

10.5 This bylaw will come into effect on the day of passing.

PASSED at the Council Chambers in the City of Kitchener this day of , A.D.
2025