

BY-LAW NO. 2020-XXX

TREE PROTECTION BY-LAW

A by-law of the City of Ottawa respecting the protection of municipal trees and municipal natural areas in the City of Ottawa and trees on private property in the urban area of the City of Ottawa, and to repeal By-laws 2009-200 and 2006-279.

WHEREAS the Council of the City of Ottawa has approved a strategic Urban Forest Management Plan with a goal to maintain and grow Ottawa's urban forest;

AND WHEREAS the protection of trees is key to realizing the objectives and principles of Ottawa's Urban Forest Management Plan and Ottawa's tree canopy cover goals and tree policies outlined in the City's Official Plan;

AND WHEREAS 135 of the *Municipal Act* provides that a municipality may prohibit or regulate the destruction or injury of trees;

THEREFORE, the Council of the City of Ottawa enacts as follows:

**PART I
DEFINITIONS, INTERPRETATION AND GENERAL**

DEFINITIONS

1. In this by-law:

“adjacent tree” means a tree, of which the trunk is growing on a property sharing a boundary with the subject site;

“agricultural operation” means an agricultural, aquacultural, horticultural or silvicultural operation that is carried out with the expectation of gain or reward;

“applicant” means the person who submits an application to the City for a tree permit or a distinctive tree permit, as applicable;

“arborist” means an expert in the care and maintenance of trees and includes an arborist qualified by the Ontario Ministry of Training, Colleges and Universities, a certified arborist with the International Society of Arboriculture, a consulting arborist registered with the American Society of Consulting Arborists, a Registered Professional Forester or a person with other similar qualifications as approved by the General Manager;

“**boundary tree**” means a tree, of which any part of the trunk is growing across one or more property lines;

“**building permit**” means a building permit issued pursuant to the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended;

“**caliper**” means the above ground diameter or a distinct part of a nursery stock stem;

“**camp**” means to stay overnight and erect a structure, hut or tent for the purpose of providing shelter;

“**cash value**” means the monetary value of a replacement tree as determined by the General Manager;

“**compensation value**” means the monetary value, plus all applicable taxes, of the tree determined to be injured or destroyed or to be replaced, and to be calculated by the City in accordance with the Council of Tree and Landscape Appraisers (CTLA) Plant Appraisal Guide, or at a value determined by the General Manager and in effect at the time the injury took place, based on the tree as it existed prior to being injured or destroyed, further to Schedule “B”;

“**City**” means the municipal corporation of the City of Ottawa or the geographic area of the City of Ottawa as the context requires;

“**condominium**” means a corporation created upon registration of a declaration and description under the provisions of the *Condominium Act, 1998*, S.O. 1998, c. 19;

“**Consent to Enter Permit**” means written approval through which the General Manager gives permission for use of a municipal natural area;

“**critical root zone**” means the area of land within a radius of ten (10) cm from the trunk of a tree for every one (1) cm of trunk diameter;

“**DBH**” or “**diameter at breast height**” means the measurement of the width of a trunk of a tree at a height of one hundred and thirty (130) cm from the ground;

“**destroy**” means to remove, cut down or in any other way damage a tree to such an extent that the tree cannot recover and it is deemed necessary to remove or cut down the tree, and “destruction” has a corresponding meaning;

“**distinctive tree**” means any tree located on private property with a DBH of 50 cm or greater;

“distinctive tree permit” means a permit issued by the General Manager authorizing the injury or destruction of a distinctive tree in accordance with this by-law;

“farming business” means a farming business within the meaning of the federal *Income Tax Act*, RSC 1985, c. 1 (5th Supp);

“forest access road” means a permanent road that provides access for service, emergency, and other vehicles through municipal conservation forests;

“General Manager” means the General Manager of the Public Works & Environmental Services Department or the General Manager of the Planning, Infrastructure and Economic Development Department of the City of Ottawa, or their designate, except as otherwise specified in this by-law;

“good arboricultural practice” means the proper planting and care of trees in accordance with the standards set by the International Society of Arboriculture;

“good forestry practices” means the proper implementation of harvest, renewal and maintenance activities known to be appropriate for the forest and environmental conditions under which they are being applied and that minimize detriments to forest values including significant ecosystems, important fish and wildlife habitat, soil and water quality and quantity, forest productivity and health and aesthetics and recreational opportunities of the landscape;

“highway” means a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct, or trestle, any part of which is intended for, or used by, the general public for the passage of vehicles and includes the area between the lateral property lines thereof;

“infill development” means low rise residential development that is not subject to site plan control, plan of subdivision, or plan of condominium;

“injure” means to do any act that will harm a tree’s health in any manner, including failure to protect in accordance with standards set by the General Manager, and “injury” has a corresponding meaning;

“License of Occupation Agreement” means a written agreement through which the Director of Corporate Real Estate Office, on behalf of the City of Ottawa gives permission to a person for use of municipal property;

“motor vehicle” means a motor vehicle as defined in the *Highway Traffic Act*, R.S.O. 1990, c. H.8;

“motorized snow vehicle” means a motorized snow vehicle as defined in the *Motorized Snow Vehicles Act*, R.S.O. 1990, c. M.44;

“Municipal Act” means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;

“multi-residential development” means land used for residential purposes that has seven or more self-contained units under a single ownership;

“municipal conservation forest” means a large City-owned landscape of contiguous forest in the rural area;

“municipal law enforcement officer” means a person appointed by Council to enforce the provisions of this by-law and who may be referred to as an Inspector or Officer;

“municipal natural area” means municipal property designated as a natural environment area, urban natural feature, rural natural feature, significant wetland or major open space in the City of Ottawa Official Plan and includes a municipal conservation forest, municipal greenspace and community woodland;

“municipal property” means any City-owned land and includes, but is not limited to, lands designated as municipal natural areas, parks and highways;

“municipal tree” means any tree, including a boundary tree, that is located completely or partially on municipal property;

“normal farm practice” means a practice that,

- (a) 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
- (b) makes use of innovative technology in a manner consistent with proper advanced farm management practices;

“off-road vehicle” means an off-road vehicle as defined in the *Off-Road Vehicles Act*, R.S.O. 1990, c. O.4;

“owner” means the registered owner on title of the land or the agent of the registered owner duly authorized by the registered owner in writing;

“park” means a playground, playing field, ball diamond, sports field, beach, recreation centre, community building, facility, square, garden, water, pedestrian walkway or any other area owned, leased or used by the

City and devoted to active or passive recreation and includes any lane or walkway or public parking area leading thereto;

“**person**” means any individual, association, firm, partnership, corporation, agent or trustee and the heirs, executors or other legal representatives of a person to whom the context can apply according to law;

“**Planning Act**” means the *Planning Act*, R.S.O. 1990, c. P.13, as amended;

“**plant**” means any specimen, whether living or dead, of any species of flower, shrub or tree and includes any seed, spore, pollen or tissue culture of any such flower, shrub or tree;

“**plant nursery**” means the use of lands, buildings or structures, or portions thereof, where plants are grown for the purpose of retail or wholesale trade and which may include the accessory sale of soil, planting materials, fertilizers, garden equipment, ornaments and similar material;

“**protect**” means to prevent the injury or destruction of a tree;

“**protected tree**” means any tree indicated in this by-law as requiring an approval, a tree permit or a distinctive tree permit for its injury or destruction, and includes a retained tree;

“**replacement tree**” means the nursery stock used to replace a tree, being deciduous nursery stock with a minimum caliper of fifty (50) mm measured no less than fifteen (15) cm above ground level, or coniferous nursery stock no less than two hundred (200) cm in height as measured from ground level to midway between the tip of the leader and the uppermost whorl, or as otherwise approved by the General Manager;

“**retained tree**” means a tree that has been identified for retention and protection in an approved Tree Conservation Report or Tree Information Report and includes a tree for which an approval, a tree permit, or a distinctive tree permit has not been requested;

“**rural area**” means the lands shown on Schedule “A”, Rural Policy Plan, of the City’s Official Plan, as amended, or any successor schedule thereto;

“**Stop Work Order**” means an order issued pursuant to this by-law to stop the injury or destruction of trees;

“**trail**” means hiking trails, walking paths, snowshoeing paths, cross country ski trails and bicycle trails;

“tree” means any species of woody perennial plant, including its root system, which has reached or can reach a minimum height of four hundred and fifty (450) cm at physiological maturity;

“tree conservation report” means a report prepared by an arborist that contains information as required by Schedule “E”;

“tree information report” means a report prepared by an arborist that contains information as required by Schedule “C”;

“tree paint” means a specialized paint that is applied to a cut surface of a tree after pruning or that is used to mark trees for removal;

“tree permit” means a permit issued by the General Manager authorizing the injury or destruction of a tree in accordance with this by-law;

“urban area” means the lands shown on Schedule “B”, Urban Policy Plan, of the City’s Official Plan, as amended, or any successor schedule thereto and those lands within the hatched areas as shown on Schedule “A” inclusive to this by-law;

“waste” means paper, bottles, broken glass, cans, rags, garbage, any plant matter, animal carcass, rubbish, debris, or refuse.

INTERPRETATION

2. (1) This by-law includes Schedules “A” to “E” inclusive annexed hereto, and the Schedules are hereby declared to form part of this by-law.
- (2) Reference to items in the plural include the singular, as applicable, unless used with a number modifying the term.
- (3) In this by-law, the word “centimetre” shall be represented by the abbreviation “cm”, the word “millimetre” shall be represented by the abbreviation “mm”, and the word “hectare” shall be represented by the abbreviation “ha”.
- (4) If any section, subsection, paragraph, or part thereof is declared by any Court to be bad, illegal or ultra vires, such section, subsection, paragraph or part thereof shall be deemed to be severable and all parts of this by-law are declared to be separate and independent and enacted as such.

GENERAL

3. Unless otherwise specified, this by-law applies to all lands within the geographical limits of the City of Ottawa.
4. Any permit issued under this by-law is non-transferable.

5. The holder of any permit issued under this by-law shall comply with all applicable federal and provincial legislation and regulations and all applicable municipal by-laws.
6. Where a boundary tree straddles City property and private property, the tree shall be considered a municipal tree and the provisions of Part II of this by-law shall apply.

PART II TREES ON MUNICIPAL PROPERTY

SCOPE

7. The provisions of this Part shall apply to municipal trees.
8. For the purposes of this Part, “General Manager” means the General Manager of Public Works and Environmental Services.

TREE PLANTING

9. No person shall plant a tree or install associated infrastructure on municipal property without the written approval of the General Manager.
10. The General Manager may approve the planting of a tree on municipal property subject to conditions as determined by the General Manager.

TREE PROTECTION

11. Unless authorized by the General Manager, no person shall:
 - (1) injure or destroy the trunk, branches or roots of a municipal tree;
 - (2) affix a poster, notice or sign to a municipal tree;
 - (3) affix any guy line or other fastening or fixture to a municipal tree;
 - (4) apply tree paint to a municipal tree;
 - (5) remove branches, trim or alter any municipal tree; or
 - (6) perform any operation or activity within the critical root zone of a municipal tree that may result in injury or destruction of a tree.

12. No person shall carry out work within the critical root zone of a municipal tree that may result in injury or destruction to a municipal tree, including, but not limited to, grade changes and soil compaction.
13. Despite Section 12, work within the critical root zone of a municipal tree is permitted where the General Manager has issued written approval for such work.
14. An applicant for approval pursuant to Section 13 shall provide the following information to the General Manager:
 - (1) the nature of the work to be carried out;
 - (2) the location of the work;
 - (3) the name of the person(s) undertaking the work;
 - (4) the proposed method of carrying out the work; and
 - (5) any additional information as requested by the General Manager.
15. The General Manager may require the person who has requested written approval pursuant to Section 13 to agree in writing to the following conditions prior to the commencement of the work:
 - (1) in the event of injury to any municipal tree as determined by the General Manager, to reimburse the City for the cost of treatment for the municipal tree or to cause the tree to be repaired by a qualified arborist and bear the cost of repairs and labour;
 - (2) in the event that the municipal tree is irreparably injured as determined by the General Manager, to reimburse the City for the cost of removal and replacement of the municipal tree and pay the City the compensation value of the injured municipal tree and the cash value of a replacement tree pursuant to Schedule "B" of this by-law, or other provisions deemed appropriate by the General Manager;
 - (3) to implement the tree protection measures outlined in Part VI of this by-law where applicable;
 - (4) where excavation is requested within the critical root zone of a municipal tree, to utilize tunneling or boring or other excavation methods, as approved by the General Manager; and
 - (5) such other conditions deemed appropriate by the General Manager to protect the municipal tree.

16. No person shall fail to comply with the conditions of an approval issued by the General Manager pursuant to Section 15.

TREE REMOVAL BY CITY

17. The General Manager may approve the removal from municipal property by the City of,
- (1) a dead tree;
 - (2) a tree that poses an immediate threat to public health and safety;
 - (3) a diseased, dying, decayed or broken tree;
 - (4) a tree that is causing, or likely to cause in the future, serious damage to private property where other mitigation measures are unlikely to prevent future damage; or
 - (5) a tree that, in the opinion of the General Manager, requires removal.

TREE REMOVAL BY OTHER PERSONS

18. No person shall destroy a municipal tree.
19. Despite Section 18, the destruction of a municipal tree is permitted where the General Manager has issued a tree permit allowing for such destruction.
20. An applicant for a tree permit pursuant to Section 19 shall provide the following information in an application to the General Manager:
- (1) the name, address and contact information of the applicant;
 - (2) the name, address and contact information of the arborist hired by the applicant to complete the tree information report;
 - (3) the name, address and contact information of the contractor undertaking the work as set out in the approved tree information report, if known;
 - (4) the municipal address of the private property adjacent to the location upon which the municipal tree is proposed to be destroyed;
 - (5) the purpose for which the permit is required;

- (6) a tree information report consistent with the City's guidelines as prescribed in Schedule "C";
 - (7) tree protection measures identified for retained trees, if any, as per Part VI of this by-law;
 - (8) a schedule for the proposed works, including the start and end dates and the construction period;
 - (9) the fee prescribed in Schedule "D"; and
 - (10) such other information as deemed necessary by the General Manager.
21. The General Manager shall review the complete tree permit application and may,
- (1) issue a tree permit;
 - (2) issue a tree permit with conditions; or
 - (3) refuse to issue a tree permit.
22. The General Manager may impose conditions on a tree permit including but not limited to the following conditions:
- (1) any condition in accordance with good arboricultural practice;
 - (2) any condition recommended by an arborist;
 - (3) to implement the tree protection measures for all municipal trees in proximity to the work area, where applicable, as outlined in Part VI of this by-law, or as approved by the General Manager;
 - (4) destruction to be carried out by or under the supervision of an arborist;
 - (5) the manner and timing of the destruction; or
 - (6) a requirement to plant replacement trees and pay the compensation value for the destroyed tree in accordance with Schedule "B".
23. The General Manager may approve the removal of a tree from municipal property for the purpose of construction at the expense of the applicant, provided that the applicant:
- (1) obtains all required permits for construction;

- (2) confirms that the applicant has minimum liability insurance pursuant to Part VII, Section 79;
 - (3) agrees to implement the tree protection measures pursuant to Part VI of this By-law for all municipal trees to be retained in proximity to the work area or as approved by the General Manager;
 - (4) agrees in writing to bear the cost of the removal of the municipal tree determined to be injured; and
 - (5) agrees in writing to pay the City the compensation value of the municipal tree that was removed and the cash value of the replacement tree pursuant to Schedule "B" of this by-law, or other provisions deemed appropriate by the General Manager.
24. The General Manager may approve the removal of a municipal tree from a highway where the municipal tree by its very existence denies an owner of a property abutting a highway access to such owner's property provided that the owner of the property abutting the highway has requested the removal of the municipal tree and has provided evidence to the General Manager that no practical or economical option for access is possible, and has agreed to pay the City the compensation value of the municipal tree to be removed and the cash value of a replacement tree.
25. No permit holder shall fail to post the tree permit on the private property adjacent to the location of the tree to be removed:
- (1) in a prominent location so as to be clearly visible to the public;
 - (2) for a period of not less than seven (7) days prior to any action being undertaken in accordance with the tree permit on the site; and
 - (3) for a period of not less than seven (7) days following any action taken in accordance with the tree permit.
26. Any tree planted or growing on municipal property contrary to the provisions hereof or contrary to access rights provided by any other municipal by-law may be removed by the General Manager without notice or recompense.

**PART III
PROTECTION OF MUNICIPAL NATURAL AREAS**

SCOPE

27. The provisions of this Part shall apply to municipal natural areas in the City.

ASSET PROTECTION

28. No person shall, in a municipal natural area, unless approved by the General Manager:
- (1) injure or destroy any plant;
 - (2) leave or deposit any waste, except in a receptacle provided for that purpose;
 - (3) discharge, dump or leave any construction material, earth, dirt, rock, snow, stone, or other material;
 - (4) wash, clean, polish, service, maintain or, with the exception of any emergency, repair any motorized vehicle;
 - (5) enter onto a municipal natural area where it is signed to prohibit or restrict admission to the public, motor vehicles or off-road vehicles;
 - (6) plant any plant, hedge, tree, shrub or garden;
 - (7) construct or place any fence, building, retaining wall or other structure of any kind;
 - (8) keep any composting receptacle or compost pile;
 - (9) place any string, wire, chain, rope or similar material; or
 - (10) do anything that may harm or damage the municipal natural area, or the plants or trees within it.

CONSENT TO ENTER PERMITS

29. No person shall, without a valid consent to enter permit, in a municipal natural area:
- (1) camp or erect any tent or other structure;

- (2) set or maintain any open air fire as provided for in the Open Air Fire By-law;
 - (3) conduct scientific research;
 - (4) conduct any organized game, sport, training or activity, with the exception of lawful hunting or fishing activities;
 - (5) operate a motor vehicle or off-road vehicle anywhere within a municipal natural area, with the exception of forest access roads; or
 - (6) undertake any maintenance activities or alter existing grounds or facilities.
30. No person shall operate a motorized snow vehicle in a municipal natural area unless that person is a current member of a club with a valid License of Occupation agreement.

APPLICATION FOR A CONSENT TO ENTER PERMIT

31. A written application for a consent to enter permit shall be made to the General Manager at least fifteen (15) days prior to the intended date of entry.
32. The consent to enter permit application shall include:
- (1) the name, address, and contact information of the applicant;
 - (2) the purpose of entry onto a municipal natural area;
 - (3) the lot and concession of the location of the activity;
 - (4) the time frame, including the commencement date and end date; and
 - (5) such other information as may be required by the General Manager.

CONDITIONS FOR ISSUANCE OF A CONSENT TO ENTER PERMIT

33. Upon receipt of an application for a consent to enter permit, the General Manager may issue a consent to enter permit provided that the person,
- (1) is eighteen years of age or older;
 - (2) agrees to use the natural area only for the activity specified on the consent to enter permit;

- (3) agrees to follow the incident reporting procedures outlined in the consent to enter permit in the event of an incident, including contacting City staff and police, paramedic or fire services, as appropriate; and
 - (4) agrees to comply with any other conditions of the consent to enter permit issued by the General Manager pursuant to Section 35.
34. Where a License of Occupation Agreement applies to an activity, a consent to enter permit is not required.
35. The General Manager may attach such additional conditions to the consent to enter permit as deemed necessary to ensure public safety, to protect City property or to maintain the enjoyment of the municipal natural area for the public.
36. A consent to enter permit issued by the General Manager is valid only on the date or dates and for the specified activity shown on the consent to enter permit.
37. No holder of a consent to enter permit shall fail to comply with all applicable federal and provincial legislation and regulations and all applicable municipal by-laws.
38. No holder of a consent to enter permit shall fail to comply with the conditions of issuance of the consent to enter permit.

PART IV

TREES ON PRIVATE PROPERTY GREATER THAN ONE HECTARE IN AREA

SCOPE

39. The provisions of this Part shall apply to trees with a DBH of 10 cm or greater, on privately-owned property that is within the urban area of the City and that is:
- (1) greater than one (1) hectare in area; or
 - (2) equal to or less than one (1) hectare in area and subject to one of the following applications:
 - (i) a site plan control application pursuant to Section 41 of the Planning Act;
 - (ii) a plan of subdivision application pursuant to Section 51 of the Planning Act; or

(iii) a plan of condominium application pursuant to Section 51 of the Planning Act.

40. Despite Section 39, the provisions of this Part shall not apply to trees on properties greater than one hectare with existing condominiums or multi-residential developments.
41. For the purposes of this Part, General Manager means the General Manager of Planning, Infrastructure and Economic Development.

PROHIBITION

42. No person shall injure or destroy or permit the injury or destruction of a tree.
43. Despite Section 42, the injury or destruction of a tree is permitted where the General Manager has issued a tree permit allowing for such injury or destruction, and where the injury or destruction is conducted in accordance with the conditions of the tree permit.
44. No person shall fail to protect a tree:
- (1) in accordance with the protection measures identified in Part VI of this by-law; or
 - (2) in the case of a tree that has been identified for protection in a tree permit, in accordance with the conditions of that permit and the protection measures identified in Part VI of this by-law.

APPLICATION FOR TREE PERMIT

45. Any person who intends to injure or destroy a tree under this Part shall submit to the General Manager an application for a tree permit.
46. An applicant for a tree permit pursuant to Section 45 shall provide the following information in an application to the General Manager:
- (1) the name, address and contact information of the owner;
 - (2) the name, address and contact information of the applicant, if different from the owner and the owner's written consent to the application;
 - (3) the name, address and contact information of the arborist hired by the owner or applicant to complete the tree conservation report;
 - (4) the name, address and contact information of the contractor undertaking the proposed tree work;
 - (5) the municipal address and legal description of the land, upon which the trees are proposed to be injured or destroyed;
 - (6) the purpose for which the permit is required;

- (7) a tree conservation report in hard copy and digital copy consistent with the City's Guidelines as prescribed in Schedule "E";
- (8) tree protection measures identified for retained trees as per Part VI of this by-law;
- (9) a schedule for the proposed works, including the start and end dates and the construction period;
- (10) confirmation of any other applications affecting the land, upon which the trees are to be injured or destroyed;
- (11) confirmation of minimum liability insurance pursuant to Part VII;
- (12) the fee prescribed in Schedule "D"; and
- (13) such other information as the General Manager deems necessary.

47. For a boundary tree, in addition to the requirements of Section 46, the applicant shall provide to the General Manager the written consent of the other property owner or owners to the application.
48. Despite Section 46, the General Manager may waive any of the requirements listed in Section 46 where the General Manager determines that the requirements do not apply.

PERMIT ISSUANCE

49. The General Manager shall review the tree permit application and may,
- (1) issue a tree permit;
 - (2) issue a tree permit with conditions; or
 - (3) refuse to issue a tree permit.

ISSUANCE OF APPROVALS

50. The General Manager may issue a tree permit to injure or destroy trees where the tree conservation report demonstrates, to the satisfaction of the General Manager that,
- (1) it is necessary to remove dead, diseased or severely injured trees or branches for safety reasons;
 - (2) the trees are causing or are likely to cause structural damage to loadbearing structures or roof structures;
 - (3) the injury or destruction is required in order to remediate contaminated soil;
 - (4) the trees are to be relocated and the trees will be sufficiently prepared for relocation;
 - (5) the injury or destruction is required for trees specifically identified on plans approved by the Local Planning Appeals Tribunal, City Council or a final and binding decision of the Committee of Adjustment;

- (6) the injury or destruction is necessary to install, provide or maintain utilities, water or sanitary wastewater infrastructure required for the construction or use of a building or structure;
- (7) there is no reasonable alternative to the injury or destruction;
- (8) the injury or destruction is consistent with good forestry practices;
- (9) other circumstances deemed appropriate by the General Manager exist.

51. The General Manager may impose conditions on a tree permit including but not limited to the following conditions:

- (1) any condition in accordance with good arboricultural practice;
- (2) any condition recommended by an arborist;
- (3) measures to be implemented to protect the retained trees during construction, where applicable, as per Part VI of this by-law;
- (4) a requirement that destruction be carried out by or under the supervision of an arborist;
- (5) specifications relating to the manner and timing of the injury or destruction of the tree or trees; or
- (6) a requirement to plant replacement trees in accordance with Section 52.

52. Where a tree permit requires, as a condition, the planting of a replacement tree, the General Manager may impose the following requirements with respect to the replacement tree:

- (1) the number of replacement trees which shall be the greater of the number of replacement trees specified in the permit or the number of trees to be planted in accordance with the subdivision, condominium or site plan approval;
- (2) the species, size and location of the replacement tree(s);
- (3) the timing for the planting of the replacement tree(s);
- (4) the maintenance and care of the replacement tree(s) including the deposit of security in the form of a letter of credit, cash or certified cheque in an amount to be determined by the General Manager to guarantee, for a specified period of time, the cost of maintaining or replacing the replacement tree(s);
- (5) an equivalent fee to be paid in lieu of planting a replacement tree as shown in Schedule "B" of this by-law; and
- (6) other provisions deemed appropriate by the General Manager.

REVOCATION OF A TREE PERMIT

53. The General Manager may revoke a tree permit if,

- (1) the tree permit was issued on mistaken, misleading, false or incorrect information;
- (2) the tree permit was issued in error;
- (3) the owner or permit holder requests, in writing, that it be revoked;
- (4) the owner or permit holder fails to comply with the conditions under which the approval was issued; or
- (5) the owner or permit holder fails to comply with any provision of the approved tree conservation report or this by-law.

54. No person shall knowingly furnish false information for the purposes of obtaining a tree permit.

**PART V
DISTINCTIVE TREES ON PRIVATE PROPERTIES ONE HECTARE OR LESS IN
AREA**

SCOPE

55. The provisions of this Part shall apply to distinctive trees on the following properties within the urban area of the City:

- (1) a property that is one hectare or less in area; or
- (2) a property greater than one hectare with an existing condominium or multi-residential development.

56. Despite Section 55, the provisions of this Part shall not apply to properties subject to one of the following applications:

- (1) a site plan control application pursuant to Section 41 of the Planning Act;
- (2) a plan of subdivision application pursuant to Section 51 of the Planning Act; or
- (3) a plan of condominium application pursuant to Section 51 of the Planning Act.

PROHIBITION

57. No person shall injure or destroy or permit the injury or destruction of a distinctive tree.

58. Despite Section 57, the injury or destruction of a distinctive tree is permitted where the General Manager has issued a distinctive tree permit allowing for such injury or destruction, and where the injury or destruction is carried out in accordance with the conditions of the distinctive tree permit.

59. No person shall fail to protect a distinctive tree:

- (1) in accordance with the protection measures identified in Part VI of this by-law; or
- (2) in the case of a distinctive tree that has been identified for protection in a distinctive tree permit, in accordance with the conditions of that permit and the protection measures identified in Part VI of this by-law.

APPLICATION FOR DISTINCTIVE TREE PERMIT

60. Any person who intends to injure or destroy a distinctive tree shall submit to the General Manager an application for a distinctive tree permit.
61. An applicant for a distinctive tree permit pursuant to Section 60 shall provide the following information in the application to the General Manager:
 - (1) the name, address and contact information of the owner;
 - (2) the name, address and contact information of the applicant, if different from the owner and the owner's written consent to the application;
 - (3) the name, address and contact information of the arborist hired by the owner or applicant to complete the tree information report;
 - (4) the name, address and contact information of the contractor undertaking the proposed tree work;
 - (5) the municipal address and legal description of the land, upon which the distinctive tree or trees are to be injured or destroyed;
 - (6) confirmation by the arborist of the location of the distinctive tree(s) on the property;
 - (7) the purpose for which the distinctive tree permit is required;
 - (8) a tree information report consistent with the guidelines prescribed in Schedule "C" that supports the application for injury or destruction;
 - (9) tree protection measures identified for retained trees as per Part VI of this by-law;
 - (10) a schedule for the proposed works, including the start and end dates and the construction period;
 - (11) confirmation of any other applications affecting the land, upon which the trees are to be injured or destroyed;
 - (12) confirmation of minimum liability insurance pursuant to Part VII;
 - (13) the fee prescribed in Schedule "D"; and
 - (14) such other information as the General Manager deems necessary.
62. Where a building permit application for infill development or a Committee of Adjustment application is made within the urban area, the owner or applicant shall submit a Tree Information Report with the required tree information shown on the grading plan and the plan for the site, as

prescribed in Schedule “C”, in addition to the information contained in Section 61.

63. For a boundary tree, in addition to the requirements of Section 61, the applicant for any permit or approval under this by-law must provide the written consent of the other property owner or owners to the application.
64. Despite Section 61, the General Manager may waive any of the requirements listed in Section 61 where the General Manager determines that the requirements do not apply.

APPROVAL OF A DISTINCTIVE TREE PERMIT

65. The General Manager shall review the application for a distinctive tree permit and may,
 - (1) issue a distinctive tree permit;
 - (2) issue a distinctive tree permit with conditions; or
 - (3) refuse to issue a distinctive tree permit.

ISSUANCE OF A DISTINCTIVE TREE PERMIT

66. The General Manager may approve the issuance of a distinctive tree permit where the application demonstrates to the satisfaction the General Manager that,
 - (1) it is necessary to remove a dead, diseased or severely injured distinctive tree or branches for safety reasons;
 - (2) the distinctive tree is causing or is likely to cause structural damage to existing load-bearing structures or roof structures;
 - (3) the injury or destruction of the distinctive tree is required in order to remediate contaminated soil;
 - (4) the injury or destruction of the distinctive tree is specifically identified on plans approved by the Local Planning Appeals Tribunal, Council or a final and binding decision of the Committee of Adjustment;
 - (5) the applicant has undertaken to implement satisfactory landscaping, replanting of trees or tree preservation;
 - (6) there is no reasonable alternative to the injury or destruction; or
 - (7) other circumstances deemed appropriate by the General Manager exist.

CONDITIONS

67. The General Manager may impose conditions on a distinctive tree permit including but not limited to the following conditions:

- (1) any condition in accordance with good arboricultural practice;
- (2) any condition recommended by an arborist;
- (3) measures to be implemented to protect the retained trees during construction, where applicable, as per Part VI of this by-law;
- (4) a requirement that the injury or destruction be carried out by or under the supervision of an arborist;
- (5) specifications relating to the manner and timing of the injury or destruction of the tree or trees; or
- (6) a requirement to plant replacement trees in accordance with Section 68

COMPENSATION

68. Where a distinctive tree permit requires as a condition the planting of a replacement tree, the General Manager may impose the following conditions with respect to the replacement tree:

- (1) the number, species, size and location of replacement trees;
- (2) the timing for the planting of the replacement tree(s);
- (3) specify an equivalent fee to be paid in lieu of planting replacement trees pursuant to Schedule "B" of this by-law; and
- (4) other provisions deemed appropriate by the General Manager.

NOTICE

69. No permit holder shall fail to post the distinctive tree permit on the subject property,

- (1) in a prominent location so as to be clearly visible to the public; and
- (2) for a period of not less than seven (7) days prior to any action being undertaken in accordance with the distinctive tree permit on the site; and
- (3) for a period of not less than seven (7) days following any action taken in accordance with the distinctive tree permit.

REVOCAION OF A DISTINCTIVE TREE PERMIT

70. The General Manager may revoke a distinctive tree permit where,

- (1) the permit was issued on mistaken, misleading, false or incorrect information;
- (2) the permit was issued in error;
- (3) the owner or permit holder requests, in writing, that it be revoked; or
- (4) the owner or permit holder fails to comply with any condition of the distinctive tree permit or this by-law.

71. No person shall knowingly furnish false information for the purposes of obtaining a distinctive tree permit.

PART VI TREE PROTECTION

SCOPE

72. The provisions of this Part shall apply to all protected trees.
73. No person shall fail to protect a protected tree unless an approval, a tree permit or a distinctive tree permit has been issued by the General Manager in accordance with this by-law.
74. Where a tree is a protected tree, no person shall fail to implement the following tree protection measures, unless otherwise authorized by the General Manager:
- (1) prior to any work activity, tree protection fencing must be installed around the outer edge of the critical root zone, or as per the approved Tree Conservation Report or Tree Information Report, as applicable, and remain in place until the work is complete;
 - (2) tree protection fencing shall be at least 1.2 metres in height and installed in such a way that the fence cannot be altered; and
 - (3) such other measures as required by the General Manager to protect the tree.
75. Despite Subsection 74(1), if the General Manager determines the fenced tree protection area must be reduced to facilitate construction, mitigation measures shall be prescribed by an arborist and may include, but are not limited to;
- (1) the placement of plywood, wood chips or steel plating over the roots;
 - (2) the proper pruning and care for roots where they are encountered; and
 - (3) the use of tunneling or boring when excavating.

76. Within the critical root zone of a protected tree, unless otherwise approved by the General Manager, no person shall:
- (1) place any material or equipment, including outhouses;
 - (2) raise or lower the existing grade; or
 - (3) extend any hard surface or significantly change landscaping.

77. Unless otherwise approved by the General Manager, no person shall:
- (1) attach any signs, notices or posters to a tree, except as required by this by-law;
 - (2) damage the root system, trunk or branches of a tree; or
 - (3) direct exhaust fumes from equipment toward a tree canopy.

PART VII INDEMNIFICATION AND INSURANCE

78. An applicant for a permit or other approval under this by-law shall agree to indemnify and save harmless the City from any and all claims, demands, causes of action, losses, costs or damages that the City may suffer, incur or be liable for resulting from the issuance of a permit or approval under this by-law or from the performance or non-performance of the applicant under this by-law, whether with or without negligence on the part of the applicant, or the applicant's employees, directors, contractors and agents.
79. If the applicant for a permit is a contractor or commercial developer, minimum liability insurance is,
- (1) commercial general liability insurance subject to a limit of not less than \$2,000,000 inclusive per occurrence for bodily injury, death, or damage to property, including loss of use thereof, or negligent acts or omissions by the contractor; and
 - (2) such insurance shall name the City of Ottawa as an additional insured and shall include an endorsement to provide the City of Ottawa with thirty (30) days' notice of cancellation.
80. If the applicant for a permit is not a contractor or commercial developer, minimum liability insurance is liability insurance subject to a limit of not less than \$1,000,000 inclusive per occurrence for bodily injury, death, or damage to property, including loss of use thereof.

**PART VIII
BY-LAW EXEMPTIONS**

STATUTORY EXEMPTIONS

81. This by-law shall not apply in the following circumstances:
- (1) activities or matters are undertaken by the City or a local board of the City;
 - (2) activities or matters are undertaken by a license issued under the *Crown Forest Sustainability Act, 1994*, S.O. 1994, c. 25, as amended;
 - (3) trees are injured or destroyed by a person licensed under the *Surveyors Act*, R.S.O. 1990, c. S.29, as amended, to engage in the practice of cadastral surveying, or his or her agent while making a survey;
 - (4) the injury or destruction of trees is imposed after December 31, 2002 as a condition of approval of a site plan, a plan of subdivision, or a consent, under Sections 41, 51 or 53 respectively, of the *Planning Act* or as a requirement of an agreement of a site plan agreement or subdivision agreement entered into under those sections;
 - (5) the injuring or destruction of trees is imposed after December 31, 2002 as a condition to a development permit authorized by regulation made under Section 70.2 of the *Planning Act* or as a requirement of an agreement entered into under the regulation;
 - (6) 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, Sch. A., as amended, for the purpose of constructing and maintaining a transmission system or a distribution system, as defined in that Act;
 - (7) the injury or destruction of trees is undertaken on land described in a license for a pit or quarry or a permit for a wayside pit or a wayside quarry issued under the *Aggregate Resources Act*, R.S.O. 1990, c. A.8, as amended; or
 - (8) the injury or destruction of trees is 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*.

GENERAL EXEMPTIONS FOR PRIVATE TREES, PARTS IV AND V OF THIS BY-LAW

82. A tree permit or a distinctive tree permit is not required in the following circumstances where,
- (1) pruning is necessary to maintain the health and condition of the tree and is carried out in accordance with good arboricultural practices;
 - (2) the tree is dead as confirmed by an arborist;
 - (3) the tree is located within a building, a solarium, a rooftop garden or an interior courtyard;
 - (4) the tree to be destroyed is located within an actively managed, cultivated orchard, tree farm or plant nursery and is harvested for the purposes for which the tree was planted;
 - (5) the injury or destruction is required as part of the regular operation of an existing cemetery or golf course;
 - (6) the tree is an immediate threat to public health and safety; or
 - (7) the injury or destruction is a normal farm practice carried out as part of an agricultural operation by a farming business.

**PART IX
ENFORCEMENT**

ENFORCEMENT BY MUNICIPAL LAW ENFORCEMENT OFFICER

83. This by-law shall be enforced by a Municipal Law Enforcement Officer.
84. A Municipal Law Enforcement Officer may, at any reasonable time, enter and inspect any land to determine if this by-law or an order issued under this by-law has been complied with provided that the power of entry does not allow the Municipal Law Enforcement Officer to enter into any building on the land.
85. A Municipal Law Enforcement Officer may, in carrying out an inspection pursuant to Section 84, be accompanied by the General Manager, or designate, and any other person possessing expert or special knowledge necessary to assist the Municipal Law Enforcement Officer with their enforcement activities and may make examinations or take tests or samples necessary for the purposes of inspection.
86. A Municipal Law Enforcement Officer may require the production for inspection of the Tree Conservation Report or the Tree Information Report, as applicable, or other documents or things relevant to the inspection, and inspect and remove such reports, documents or things for the purpose of making copies or extracts.

87. A receipt shall be provided for any report, document or thing removed under Section 86 and the report, document or thing shall be promptly returned after the copies or extracts are made.
88. A Municipal Law Enforcement Officer may take photographs necessary for the purpose of the inspection.
89. No person or permit holder shall hinder or obstruct or attempt to hinder or obstruct the Municipal Law Enforcement Officer in the discharge of duties under this by-law.

STOP WORK ORDERS

90. Where the General Manager is satisfied that a contravention of this by-law has occurred, the General Manager may issue a stop work order requiring the person who contravened the by-law or that caused or permitted a contravention of the bylaw to cease the contravening activity.
91. The stop work order shall set out reasonable particulars of the contravention adequate to identify the contravention, the location of the contravention and the date by which there must be compliance with the stop work order.
92. No person or permit holder shall fail to comply with a stop work order issued by the General Manger pursuant to Section 90.
93. A stop work order issued under Section 90 may be served personally by the Municipal Law Enforcement Officer, may be sent by email, 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.
94. Where a stop work order under this by-law is served personally by the Municipal Law Enforcement Officer, it shall be deemed to have been served on the date of delivery to the person or persons named.
95. The posting of the stop work order on the affected lands shall be deemed to be sufficient service of the stop work order on the person or corporation to whom the stop work order is directed on the date it is posted.
96. Where a stop work order issued under this by-law is sent by registered mail, it shall be sent to the last known address of,
- (1) the applicant;
 - (2) the owner; or

- (3) the person or company retained to undertake the injury or destruction of the tree,

and shall be deemed to have been served on the fifth day after the stop work order is mailed.

OFFENCES AND PENALTIES

97. Every person who contravenes any provision of this bylaw is guilty of an offence.
98. Any person who hinders or obstructs a person lawfully carrying out the enforcement of this by-law is guilty of an offence.
99. A person who is convicted of an offence under this by-law is liable to:
 - (1) a minimum fine of \$500 and a maximum fine of \$100,000 as provided for in subsection 429(3) paragraph 1 of the Municipal Act; and
 - (2) a special fine that may exceed \$100,000, as provided for in subsection 429(3), paragraph 1 of the Municipal Act.
100. Despite Section 97, every person who contravenes a stop work order that is issued pursuant to Section 90 of this by-law is guilty of a continuing offence as provided for in subsection 429(2), paragraph (a) of the Municipal Act, and is liable, for each day or part of a day that the offence continues, to a minimum fine of \$500 and a maximum fine of \$10,000, and the total of all daily fines for the offence is not limited to \$100,000 as provided for in subsection 429(3), paragraph 2 of the Municipal Act.
101. When a person has been convicted of an offence under this by-law, the Ontario Court of Justice and any court of competent jurisdiction thereafter may, in addition to any penalty imposed on the person convicted, issue an order,
 - (1) prohibiting the continuation or repetition of the offence by the person convicted; and
 - (2) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

**PART X
ADMINISTRATION**

FORMER BY-LAWS REPEALED

102. The Urban Tree Conservation By-law 2009-200, as amended, and the Municipal Trees and Natural Areas Protection By-law 2006-279, as amended are hereby repealed.

TRANSITION

103. The repeal of the by-laws pursuant to Section 102 shall not affect any offence committed against the provisions of the repealed by-laws or any penalty incurred in respect thereof or any investigative procedure, including but not limited to any prosecution thereunder.

BY-LAW IN FORCE

104. This by-law shall come into force and take effect on May 1, 2020.

SHORT TITLE

105. This by-law shall be known as the "Tree Protection By-law".

ENACTED AND PASSED this X day of XXX, 2020.

CITY CLERK MAYOR