



THE CORPORATION OF THE CITY OF WATERLOO

BY-LAW NO. 2014 –

BY-LAW FOR THE PROTECTION OF TREES ON CITY PROPERTY WITHIN THE CITY OF WATERLOO

WHEREAS subsection 11(2)5. of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the “*Municipal Act, 2001*”), authorizes a municipality to pass by-laws respecting the economic, social and environmental well-being of the municipality;

AND WHEREAS subsection 135(1) of the *Municipal Act, 2001*, provides that a local municipality may prohibit or regulate the destruction or injuring of trees;

AND WHEREAS subsection 135(7) of the *Municipal Act, 2001* provides that a municipality may by by-law require that a permit be obtained to injure or destroy trees and may impose conditions to a permit, including conditions relating to the manner in which destruction occurs and the qualification of persons authorized to injure or destroy trees;

AND WHEREAS section 429 of the *Municipal Act, 2001* authorizes a municipality to establish a system of fines for offences under a By-law of the municipality passed under the *Municipal Act, 2001*;

THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE CITY OF WATERLOO ENACTS AS FOLLOWS:

1. Definitions

- 1.1. For the purposes of this By-law, the following terms shall have the following corresponding meaning:
 - (a) “City” means The Corporation of the City of Waterloo;
 - (b) “City Property” means property owned by the City;
 - (c) “Council” means the elected municipal council for the City;

- (d) "Diameter at Breast Height" or "DBH" means the diameter of a tree measured at 4.3 feet (1.3 metres) above the highest point on the ground, or where a tree has been removed or damaged, means the diameter of a tree measured at the best available location of the tree or the stump of the tree;
- (e) "Director" means the Director of Environment and Parks for the City, or his/her designate, or means the person exercising the duties of the Director of Environment and Parks;
- (f) "Fees and Charges By-law" means a by-law of the City passed under section 391 of the *Municipal Act, 2001*, with respect to the imposition of fees and charges for services or activities provided or done by or on behalf of the City;
- (g) "Municipal Law Enforcement Officer" means an individual appointed by the City as a Municipal Law Enforcement Officer pursuant to section 15 of the *Police Services Act*, R.S.O. 1990, c. P. 15, as amended;
- (h) "Person" means an individual, firm, corporation, partnership, association or organization, including a charitable organization;
- (i) "Police Officer" means a Police Officer as defined by the *Police Services Act*, R.S.O. 1990, c. P.15, as amended;
- (j) "Tree on City Property" means any species of woody perennial plant with its trunk located, either wholly or in part, on City Property, which can reach a height of at least 4.5 meters at maturity. A Tree on City Property shall include its associated roots, stems and branches;
- (k) "Utility" shall mean a "public utility" as defined in the *Municipal Act, 2001*.

2. Restrictions and Prohibitions

- 2.1. No Person shall do any of the following, or cause or permit to be done any of the following:
 - (a) cut down, root up or remove any Tree on City Property, or part thereof;
 - (b) deposit, place, store or maintain on any property, any stone, brick, sand, concrete, soil, equipment or other materials, whether liquid or solid, that may impede the free passage of water, air or nutrients to the roots of any Tree on City Property or at any site prepared for the planting of a Tree on City Property;
 - (c) deface, cut, pollard, injure, cause compaction to or otherwise damage or destroy any Tree on City Property, or part thereof;
 - (d) alter or change soil levels, excavate any ditches, tunnels or trenches, or lay any stone, walkway or driveway, if it will likely result in the damage to a Tree on City Property, or part thereof;

- (e) set fire or permit any fire to burn when such fire, or the heat thereof, will damage any portion of a Tree on City Property, or part thereof;
 - (f) damage, destroy or remove any supporting post, stake or guard attached to or around a Tree on City Property;
 - (g) interfere with fences, boxes or other protective devices placed around any Tree on City Property; or,
 - (h) fasten, place, prop or string any sign, bill, notice, wire, rope, nail or any other object, around or through any Tree on City Property or its supports, posts or guards, in any manner.
- 2.2. No Person shall plant, or cause to be planted, a Tree on City Property without the written authorization of the Director, and subject to such terms and conditions as the Director considers appropriate.
- 2.3. No Person working for, or acting on behalf of a Utility, shall remove, prune, injure, or place anything on any Tree on City Property.

3. Exemptions

- 3.1. This By-law does not apply to:
- (a) activities or matters undertaken by a municipality or a local board of a municipality;
 - (b) activities or matters undertaken under a licence issued under the *Crown Forest Sustainability Act, 1994*, S.O. 1994, c. 25;
 - (c) the injuring or destruction of any Tree on City Property 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;
 - (d) the injuring or destruction of any Tree on City Property imposed as a condition to the approval of a site plan, a plan of subdivision or a consent under section 41, 51 or 53, 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;
 - (e) the injuring or destruction of any Tree on City Property imposed 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;
 - (f) the injuring or destruction of any Tree on City Property 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, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;

- (g) the injuring or destruction of any Tree on City Property 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*, R.S.O. 1990, c. A.8; or
- (h) the injuring or destruction of any Tree on City Property 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*.

4. Removal of Tree on City Property

- 4.1. Trees on City Property shall be removed by authorized City staff or contractors authorized by the Director where the Director is of the opinion the removal is necessary for the protection and safety of the public.
- 4.2. Prior to the removal of a Tree on City Property larger than 15 centimetres in diameter at breast height (DBH), a notice shall be posted on that Tree on City Property by the City at least fourteen (14) days prior to removal.
- 4.3. The notice referenced in section 4.2 above shall be in the form prescribed by the Director and shall include the following:
 - (a) a heading "Tree Removal Planned";
 - (b) the date of the planned removal; and,
 - (c) the contact information for the Director.
- 4.4. In the event of an emergency, or where the Director is of the opinion that a Tree on City Property poses an immediate threat to the health and safety of Persons or property, the Director may order the removal of any Tree on City Property without notice.

5. Enforcement

- 5.1. A Police Officer or a Municipal Law Enforcement Officer may enter onto any land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
 - (a) this By-law;
 - (b) an order of the City issued under section 6 or 7 of this By-law;
 - (c) a term or condition of a Permit or authorization; or,
 - (d) an order made under section 431 of the *Municipal Act, 2001*.

- 5.2. For the purposes of an inspection, the Police Officer or Municipal Law Enforcement Officer may:
- (a) require the production for inspection of documents or things relevant to the inspection;
 - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - (c) require information from any person concerning a matter related to the inspection; and,
 - (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
- 5.3. No Person shall hinder or obstruct, or attempt to hinder or obstruct, any Person who is exercising a power or performing a duty under this By-law.

6. Work Order

- 6.1. Where the Director or a Municipal Law Enforcement Officer is satisfied that a contravention of this By-law has occurred, the Director or Municipal Law Enforcement Officer may make an order requiring the Person who contravened this 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.
- 6.2. An order under this section shall set out:
- (a) the reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred or is occurring; and,
 - (b) the work to be done and the date by which the work must be done.
- 6.3. An order under this section may require work to be done even though the facts which constitute the contravention of this By-law were present before this By-law making them a contravention came into force.
- 6.4. Any Person who contravenes an order issued under this section is guilty of an offence.

7. Order to Discontinue Activity

- 7.1. Where the Director or a Municipal Law Enforcement Officer is satisfied that a contravention of this By-law has occurred, the Director or the Municipal Law Enforcement Officer may make an order requiring the Person who contravened this 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.

- 7.2. An Order issued under this section shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred or is occurring; and,
 - (b) the date by which there must be compliance with the order.
- 7.3. Any Person who contravenes an order issued under this section is guilty of an offence.

8. Remedial Action

- 8.1. If a Person is ordered to do work under this By-law and that Person defaults in complying with that order, the City may take steps to remediate the contravention, and any damages caused by the contravention, at the expense of the Person directed or required to do the work by the order.
- 8.2. The City may recover the costs of doing any remedial work from the Person directed or required to do the work by action or by adding the costs to the tax roll of that Person and collecting them in the same manner as property taxes, pursuant to section 446 of the *Municipal Act, 2001*.
- 8.3. The costs outlined in this section shall include interest calculated at a rate of fifteen per cent (15%) per annum, calculated for the period commencing on the first day the City incurs the costs and ending on the day the costs, including the interest, are either paid in full or added to the tax roll.

9. Penalties and Offence

- 9.1. Every Person who contravenes any of the provisions of this By-law is guilty of an offence pursuant to section 425 of the *Municipal Act, 2001*, and all contraventions of this By-law are designated as continuing offences.
- 9.2. Every Person, excluding a corporation, who is convicted of an offence is liable to a minimum fine of Two Hundred and Fifty Dollars (\$250) and a maximum fine of Twenty-Five Thousand Dollars (\$25,000.00) for the first offence and a maximum fine of Fifty Thousand Dollars (\$50,000.00) for a subsequent offence.
- 9.3. Every corporation which is convicted of an offence is liable to a minimum fine of Five Hundred Dollars (\$500) and a maximum fine of Fifty Thousand Dollars (\$50,000.00) for the first offence and a maximum fine of One Hundred Thousand Dollars (\$100,000.00) for a subsequent offence.
- 9.4. Notwithstanding sections 9.2 and 9.3 above, every Person convicted of a continuing offence is liable for each day or part of a day that the offence continues, to a fine not exceeding one thousand (\$1,000.00) dollars for each day that the offence continued.

- 9.5. Every Person who contravenes any provision of this By-law, upon conviction, may be liable to a set fine as provided for in *Provincial Offences Act*, R.S.O.,1990, c. P.33.

10. Severability

- 10.1. If a court or tribunal of competent jurisdiction declares any portion of this By-law to be illegal or unenforceable, that portion of this By-law will be considered to be severed from the balance of the By-law, which will continue to operate in full force.

11. Fees and Charges

- 11.1. Council may impose fees and charges to recover its costs in relation to the administration and enforcement of this By-law through the Fees and Charges By-law.

12. Effective Date and Repeal

- 12.1. This By-law will come into force and effect, and by-law No. 99-10 shall be repealed, upon the passing of this By-law by Council.
- 12.2. Where the provisions of any other by-laws are inconsistent with the provisions of this By-law, the provisions of this By-law shall prevail.
- 12.3. Notwithstanding section 12.1 and 12.2, any by-law, or provisions thereof, that are repealed or replaced by this By-law are deemed to continue in full force and effect with respect to any enforcement under Part I of the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended, as well as their set fine schedule as approved by the Chief Justice, until such time as the Chief Justice approves the set fine schedule for this By-law. Where the provisions of those by-laws are inconsistent with the provisions of this By-law, the provisions of this By-law shall prevail.
- 12.4. Notwithstanding section 12.1 and 12.2, the provisions of any by-law that are repealed or replaced by this By-law are deemed to continue in force and effect with respect to any and all permits, orders, appeals or prosecutions issued, filed or commenced under that by-law and any assessment, rate, charge, tax, fee, liability or penalty outstanding may be collected as if such by-law, or provision thereof, had not been repealed or replaced.

13. Interpretation Rules

- 13.1. Headings are inserted for ease of reference only and are not to be used as interpretation aids.

14. Short Title

14.1. This By-law may be cited as the "Protection of Trees on City Property By-law".

Enacted this ____ day of _____, 2014.

Approval	Date	Print Name	Initials
COMSER			
Legal			
Finance			

B. Halloran, Mayor

O. Smith, City Clerk