

The Corporation of the City of Richmond Hill

Tree Preservation By-Law No. XX-25

A By-law to Prohibit or Regulate the Injuring or Destruction of Trees on Private Property in the City of Richmond Hill

Whereas section 135 of the *Municipal Act, 2001* S.O. 2001, c.25, as amended (“Municipal Act”), authorizes a local municipality to prohibit or regulate the destruction or injuring of Trees, subject to certain exemptions from the by-law;

And Whereas the Council of the Corporation of the City of Richmond Hill deems it necessary and expedient to enact a by-law to prohibit or regulate the destruction or injuring of Trees on private property in the City of Richmond Hill;

Now therefore the Council of The Corporation of the City of Richmond Hill enacts as follows:

1. That this By-law No. XX-25 be effective upon enactment and that by-law no. 41-07 be repealed.

David West
Mayor

Stephen M.A. Huycke
City Clerk

ARTICLE 1 - INTERPRETATION

1.1 Short Title

This by-law may be referred to as the “Tree Preservation By-law”.

1.2 Definitions

In this by-law, the following words shall have the following meanings:

- a) **“Administrative Penalty By-law”** means the Corporation’s Administrative Penalty By-law No. 69-16, as amended or superseded, establishing a system of administrative penalties;
- b) **“Application”** means an Application for a Permit;
- c) **“Arborist”** means an expert in the care and maintenance of Trees and includes at least one of the following:
 - (i) an arborist qualified by the Ministry of Training, Colleges and Universities;
 - (ii) a certified arborist qualified by the Certification Board of the International Society of Arboriculture;
 - (iii) a consulting arborist registered with the American Society of Consulting Arborists;
 - (iv) an arborist with an applicable college diploma with a minimum of two (2) courses directly related to arboriculture plus a minimum of two (2) years of practical full-time experience in the arboriculture field;
 - (v) an arborist with an applicable university degree with a minimum of four courses directly related to arboriculture plus a minimum of one (1) year of practical full-time experience in the arboriculture field; or
 - (vi) a person with other similar qualifications as approved by the Commissioner;
- d) **“Arborist Report”** means a technical report prepared by an Arborist which identifies the surveyed location, common and scientific species name, Tree Protection Zone (TPZ), diameter at breast height (DBH), height and condition of the Tree, and:
 - (i) provides the justification for any proposed destruction of the Tree, and/or

- provides justification and impacts for any proposed injury of the Tree;
- (ii) describes Tree protection measures or other mitigating activities to be implemented;
 - (iii) includes a map of the subject property that clearly shows the location of each Tree assessed in the Arborist Report; and
 - (iv) Where multiple trees are assessed in the arborist report, provides an inventory table as part of the Arborist Report.
- e) **“Boundary Tree”** means a Tree whose trunk is growing on or crosses the property line between adjoining lands;
 - f) **“Commissioner”** means the Commissioner of Planning and Building Services of the Corporation or a successor office as the case may be;
 - g) **“Corporation”** means the Corporation of the City of Richmond Hill;
 - h) **“Council”** means the Council of the Corporation;
 - i) **“Cultivated Orchard”** means land where fruit Trees are grown and maintained for the purpose of harvesting of their fruit;
 - j) **“Dead Tree”** means a Tree that has no live tissue or is determined to have less than 10% live tissue to the satisfaction of the Corporation;
 - k) **“Diameter at Breast Height (DBH)”** means the diameter of the trunk of a Tree at a point of measurement 1.4 meters above grade. DBH of multi-trunk Trees shall be measured as indicated in Schedule ‘A’ to this Chapter. Where a Tree has been cut down and the remaining stump is less than 1.4 metres in height, the DBH shall be the extrapolated diameter at 1.4 metres above the ground as set out in Schedule ‘A’ to this Chapter;
 - l) **“Destroy”** means to kill a Tree by cutting, burning, uprooting, chemical application, or other means;
 - m) **“Dying Tree”** means a Tree that has between 50% and 90% live tissue as determined by an Arborist to the satisfaction of the Corporation. This includes the branches, canopy, trunk, and roots.;
 - n) **“Emergency work”** means work required to be done immediately in order to prevent imminent danger as determined by the Commissioner, including Tree work necessary to mitigate risk due to natural events (i.e. storms, high winds, lightning), as well as Tree work associated with emergency infrastructure, utility

and building repairs as determined by the Commissioner;

- o) **“Exemption Permit”** means a Permit to Injure or Destroy a Dead, Dying or Hazardous Tree;
- p) **“Good Arboricultural Practices”** means the proper implementation of removal, renewal and maintenance activities known to be appropriate for an individual Tree to minimize detrimental impacts to the Tree;
- q) **“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 detrimental impacts to forest values including significant ecosystems, important fish and wildlife habitat, soil and water quality and quantity, forest productivity and health and the aesthetics and recreational opportunities of the landscape;
- r) **“Hazardous”** means a Tree or portion of a Tree that is destabilized or structurally compromised to an extent that it is likely to lead to a loss, personal injury, property damage, or disruption of activities and/or has a risk rating of High or Extreme, as determined by a Qualified Tree Risk Assessor (TRAQ).;
- s) **“Injure” or “Injury”** means to harm, damage, impair or not protect a Tree in accordance with proper arboricultural practices and the City of Richmond Hill Standards and Specifications Manual, entirely or in part, and/or any acts which will harm a Tree’s health or damage a Tree in any manner. Removal of more than 20% of the live tissue of a Tree within a twelve (12) month period or any encroachment into the Tree Protection Zone is considered an injury to a Tree;
- t) **“Municipal By-law Enforcement Officer”** means an individual appointed for the purpose of enforcing the provisions of this by-law or all of the by-laws of the Corporation;
- u) **“Owner”** means the person having the right, title, interest or equity in the land, or their agent authorized in writing;
- v) **“Penalty Notice”** means a notice given to a Person pursuant to Part 4 of the Corporation’s Administrative Penalty Bylaw as amended;
- w) **“Permit”** means a Permit to Injure or Destroy a Tree issued by the Tree Preservation By-law Officer and includes an Exemption Permit and Retrospective Permit;
- x) **“Permit Application Fee”** means the prescribed fee as set out in the Tariff of

Fees By-law;

- y) **“Person”** means an individual, association, organization, corporation or partnership and includes an agent or employee of any of them.
- z) **“Pruning”** means the removal of a Tree branch or branches from a living Tree by cutting at a point outside the branch collar following Good Arboricultural Practices but does not include the removal of more than 20% of a Tree’s live tissue in a twelve (12) month period, including but not limited to the leaf bearing crown, branches, trunk and roots. Pruning may be undertaken for the purposes of providing clearance for utility lines, buildings, pedestrians, or vehicles or eliminating dead, hazardous or diseased wood.
- aa) **“Qualified Tree Risk Assessor”** means an Arborist that has obtained the Tree Risk Assessment Qualification (TRAQ) from the Certification Board of the International Society of Arboriculture. TRAQ is a professional qualification program designed to train Arborists in a specialized field of arboriculture related to Tree risk.
- bb) **“Registered Professional Forester (RPF)”** means an individual recognized by the Ontario Professional Foresters Association as a Registered Professional Forester.
- cc) **“Replacement Tree”** means any Tree that is planted as a condition of a Permit issued under this by-law.
- dd) **“Retrospective Permit”** means a Permit that is issued after the injury or destruction of a Tree as commenced or is completed.
- ee) **“Tariff of Fees By-law”** means the Corporation’s by-law authorizing fees or charges enacted pursuant to Section 391 of the *Municipal Act, 2001*;
- ff) **“Tree”** means any perennial woody plant, which has reached or can reach a height of at least 4.5 meters at physiological maturity and includes a Replacement Tree.
- gg) **“Tree Farm”** means land where Trees are grown and maintained for sale.
- hh) **“Tree Preservation By-law Officer”** means an individual appointed by the Commissioner for the administration and enforcement of this by-law and includes any by-law enforcement officer appointed to enforce all the Corporation’s by-laws.
- ii) **“Tree Protection Zone (TPZ)”** means an area surrounding a Tree that is designated for protection with the goal of minimizing the damage to the Tree’s

critical root system within which no activity is permitted to occur, including but not limited to grade changes, excavation, installation of hardscapes, and storage of materials, construction vehicles or tools.

- jj) **“Woodlot”** means a Treed area that is connected and not defined by property lines, that is at least 0.2 hectares and no greater than 1.0 hectare in area with at least:
 - (i) 200 Trees of any size, per 0.2 hectare;
 - (ii) 150 Trees, measuring over five (5) centimetres DBH, per 0.2 hectare;
 - (iii) 100 Trees, measuring over twelve (12) centimetres DBH, per 0.2 hectare;
or
 - (iv) 50 Trees, measuring over twenty (20) centimetres DBH, per 0.2 hectare.
- kk) **“York Region Forest Conservation By-law”** means the by-law enacted by the Regional Municipality of York to prohibit and regulate the destruction or injuring of Trees in designated woodlands within the Region of York made pursuant to Section 135(2) of the *Municipal Act, 2001*; and
- ll) **“Written Compliance Order”** means an order requiring a Person to do work to correct a contravention of this by-law.

ARTICLE 2 - APPLICATION

2.1 Application – Non-Application

This by-law applies to all Trees on lands within the City of Richmond Hill, save an except as set out in Section 2.2 below.

2.2 Non-Application

This by-law does not apply to:

- a) Trees on lands under the jurisdiction of the Corporation;
- b) Trees within any woodland governed by the York Region Forest Conservation By-law; or
- c) Trees to be injured or destroyed in connection with any of the following activities:
 - (i) activities or matters undertaken by a municipality or local board of a

- municipality, including the City or a local board of the City;
- (ii) activities or matters undertaken under a licence issued under the *Crown Forest Sustainability Act, 1994*;
 - (iii) the injuring or destruction of trees 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;
 - (iv) the injuring or destruction of trees imposed after December 31, 2002 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* or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;
 - (v) the injuring or destruction of trees 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;
 - (vi) the injuring or destruction of trees by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998*, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
 - (vii) the injuring or destruction of trees undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*; or
 - (viii) the injuring or destruction of trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land,
 - 1. that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act, and
 - 2. on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act*.

ARTICLE 3 - ADMINISTRATION

3.1 Administration authority – delegated to Commissioner

The Commissioner is responsible for the administration of this by-law and is authorized to:

- a) prescribe the form for an Application; and
- b) review decisions made by the Tree Preservation By-law Officer to refuse or revoke Permits in accordance with Article 7.

3.2 Tree Preservation By-Law Officer- delegation – authority

A Tree Preservation By-law Officer is authorized to:

- a) administer, review, refuse to issue Permits, including attaching conditions thereto;
- b) to revoke Permits;
- c) conduct inspections of property pursuant to the exercise of their delegated authority under this By-law; and
- d) enforce the provisions of this By-law;

3.3 .Municipal By-law Enforcement Officers

A Municipal By-law Officer is authorized to enforce the provisions of this by-law and for the purpose of such enforcement may exercise any of the powers and perform any of the duties set out in this By-law

ARTICLE 4 - PERMIT REQUIREMENTS

4.1 Permit – required

Save and except as set out in this Article, no Person shall, without first obtaining a Permit, Injure, Destroy, or permit or cause to be Injured or Destroyed, any Tree or Replacement Tree.

4.2 Exemption Permit required – Dead, Dying, Hazardous and Woodlot Trees

An Exemption Permit may be granted upon submission of the following documents, which must be satisfactory to the Tree Preservation By-law Officer:

- a) in the case of a Tree believed to be a Dead Tree, photographic evidence;
- b) in the case of a Tree believed to be a Dying Tree, an Arborist Report prepared by a certified Arborist;
- c) in the case of a Tree believed to be a Hazardous Tree, a Tree Risk Assessment report prepared by a Qualified Tree Risk Assessor; and
- d) in the case of a Tree within a Woodlot, a Managed Forest Plan prepared by a

Registered Professional Forester, provided that the destruction of Trees is in accordance with Good Forestry Practices and the recommendations outlined in the Managed Forest Plan.

4.3 Retrospective Permit: Emergency Work – required

A Retrospective Permit is required for the injury or destruction of Trees for Emergency Work. An Arborist Report prepared by a certified Arborist outlining the justification for the emergency work and photographs of the Tree(s) prior to removal is required to accompany a Retrospective Permit Application

4.4 Permit Not Required

No Permit is required to Injure or Destroy any Tree that is:

- a) within buildings or a structure, a solarium, rooftop garden, an interior courtyard having a soil depth of less than 1.5 metres above a built substructure, and a nursery; or
- b) in a Tree farm that is being actively managed and harvested for the purposes for which they were planted; or
- c) in a Cultivated Orchard.

4.5 Pruning- permit not required

Notwithstanding the requirement to obtain a Permit to Injure or Destroy a Tree, no Permit is required for Pruning a Tree if no more than 20% of the Tree's live tissue will be removed in any twelve month period using Good Arboricultural Practices.

4.6 Permit, or Exemption Permit issued – compliance with conditions

Where a Permit or Exemption permit has been issued under this by-law, no person shall Injure, Destroy, or permit or cause to be Injured or Destroyed, a Tree within the City of Richmond Hill unless they do so in accordance with the conditions of the Permit or Exemption Permit and any other supporting documentation relevant to the issuance of the Permit or Exemption Permit.

ARTICLE 5 - APPLICATION REQUIREMENTS

5.1 Application – for permit

An Owner who wishes to apply for a Permit shall submit to the Tree Preservation By-law Officer an Application on the form prescribed by the Commissioner that includes, at minimum, the following:

- a) the name, address, telephone number, and email address of the Owner and the agent (if applicable);
- b) the non-refundable Permit Application Fee;
- c) the purpose for which the Permit is required;
- d) an acknowledgement that the Tree is not a Boundary Tree, or if it is a Boundary Tree, consent from the Owner of the adjacent lands;
- e) an acknowledgement that the Tree Preservation By-law Officer or their designate may need to enter onto the Owner's lands for the purpose of determining whether to issue the Permit, as set out in Section 6.1 below; and
- f) for an Exemption Permit, the required documentation referred to in Section 4.2; and
- g) for a Retrospective Permit, an Arborist Report outlining the justification for the Emergency Work and photographs of the Tree(s) prior to removal.

5.2 Offence – false or misleading information

It is an offence under this by-law to submit false or misleading information in support of a Permit Application.

ARTICLE 6 - ISSUANCE OF PERMIT

6.1 Permit Consideration

Following receipt of an Application, the Tree Preservation By-law Officer shall determine whether or not to issue a Permit, and whether any conditions will be imposed on a Permit, by:

- a) considering criteria, including but not limited to, the following:
 - (i) the species of the Tree;
 - (ii) the condition of the Tree;
 - (iii) the location of the Tree;
 - (iv) the size of the Tree;
 - (v) the protection of ecological systems and their functions, including the

protection of native flora and fauna;

- (vi) erosion, sedimentation of watercourses, and flood control;
 - (vii) impacts to surrounding properties; and
 - (viii) the cultural heritage value of the Tree.
- b) conferring with such Persons as they consider necessary for the proper review of the Application; and
 - c) entering and inspecting the lands upon which the Tree is located as they consider necessary.

6.2 Permit Approved – subject to conditions

The Tree Preservation By-law Officer may impose conditions on the issuance of a Permit, which may include requirements for:

- a) the submission of a planting plan or restoration plan including recommended species and associated maintenance;
- b) where planting Replacement Trees is not possible on the site or the Owner does not wish to do so, a requirement to pay cash in lieu of such planting in the amount to be calculated by multiplying the number of Replacement Trees by the current Tree replacement fee in the Tariff of Fees By-law;
- c) where planting of Replacement Trees is proposed, the collection of a security deposit in an amount equal to the number of proposed Replacement Trees required multiplied by the current Tree replacement fee in the Tariff of Fees By-law;
- d) undertaking the Tree cutting work only under the supervision of an Arborist;
- e) undertaking work within a Tree Protection Zone only under the supervision of an Arborist.

6.3 Permit Not Approved

The issuance of a permit shall not be approved where:

- a) the Application requirements of this by-law have not been fulfilled, the information provided on the Application is false or incorrect and/or the Application is otherwise not to the satisfaction of the Tree Preservation By-law Officer;
- b) an application for subdivision approval or consent related to lands on which the

Tree is located has been submitted to the Corporation and has not received draft approval or provisional consent;

- c) a rezoning application, an application for site plan approval, or an application to amend the official plan related to the lands on which the Tree is located has been submitted to the Corporation and has not received final approval;
- d) an application for site alteration permit related to the lands on which the Tree is located has been submitted to the Corporation and has not received final approval;
- e) the Tree is an endangered species as defined in the *Endangered Species Act* or the *Species at Risk Act, 2002*;
- f) approval would be in contravention of the *Migratory Birds Act, 1994*;
- g) issuance of a permit pursuant to any by-law of the Regional Municipality of York prohibiting or regulating the destruction or injuring of trees in designated woodlands made pursuant to Section 135(2) of the *Municipal Act, 2001*; or
- h) approval is inconsistent with a Tree preservation plan approved by the Corporation.

6.4 Permit issued – expiry date

Every Permit issued shall expire twelve (12) months after issuance.

6.5 Permit issued – expiry date, extended

Notwithstanding the expiry date referred to in Section 6.4, the Tree Preservation By-law Officer may extend the expiration date of a Permit. In considering whether or not to grant a request to extend a permit, the Tree Preservation By-law Officer shall take into account to what extent the work authorized by the Permit has occurred, and to what extent the conditions of the Permit have been adhered to and in no case shall the Tree Preservation By-law Officer extend a Permit so that the Permit remains in effect for more than two (2) years from the original date of its issuance.

6.6 Permit issued – posted conspicuously

Following issuance of a Permit, the Permit shall be immediately posted by the Owner in a conspicuous place on the subject property and the Permit shall remain posted until the work is complete.

6.7 Permit Revoked – by Commissioner

The Tree Preservation By-law Officer may revoke a Permit issued pursuant to this by-law if it was issued based on false or misleading information.

ARTICLE 7 - REVIEW OF DECISION ON PERMIT

7.1 Notice of Decision on Permit

After a decision is made by the Tree Preservation By-law Officer to refuse to issue or to revoke a Permit, written notice of that decision shall be given by email to the Owner, advising the Owner of the decision with respect to the Application or Permit. The written notice to be given shall:

- a) set out the grounds for the decision; and
- b) give reasonable particulars of the grounds.

7.2 Review of Decision on Permit

An Owner who has been refused the issuance of a Permit or whose Permit has been revoked may request a review of the refusal or revocation to the Commissioner within 15 days of the decision having been given by email by providing a written request with reasons for the review, in person, by email, or by registered mail, to the Commissioner.

For greater clarity, such a review does not include a review of any condition imposed on a Permit pursuant to this By-law.

7.3 Decision of the Commissioner shall be final

If the Owner does not provide a written request for a review of a decision on a Permit within 15 days of the decision having been given by email, the decision shall be final.

7.4 Review of materials received

Following a review of the materials received, the Commissioner may uphold, reverse or vary the original decision, and/or may subject the Permit to conditions as they deem appropriate. The Commissioner's decision on a review is final and binding.

7.5 Review not act as a stay

A review made under this Article does not act as a stay of any decision made by the Commissioner or their delegate under this By-law, which shall take effect on the day it is served or deemed served and shall continue to be effective until a decision indicating otherwise has been rendered.

ARTICLE 8 - WORK ORDERS AND REMEDIATION

8.1 Written Compliance Order

Where a Person is in contravention with any of the provisions of this By-law, a Tree Preservation By-law Officer may issue a Written Compliance Order to the Person to

discontinue the contravention and bring the nonconformance into conformity.

8.2 Contents of Written Compliance Order

The Written Compliance Order shall set out the reasonable particulars of the contravention adequate to identify the contravention, the location of the land on which the contravention occurred, and the date by which there must be compliance with the Written Compliance Order. The Written Compliance Order may also provide that if the Owner fails to correct the contravention, the Corporation may perform the work to correct the contravention, at the expense of the Person.

8.3 Service of Work Order

A Written Compliance Order may be served by:

- a) personal service upon an Person;
- b) prepaid registered mail sent to the last known address of the Person, or as shown on the most recent records of the Corporation; or
- c) by email to the last known email address of the Person.

8.4 Deemed Receipt of Order

A Written Compliance Order is deemed to be received by a Person:

- a) in the case of personal service as in this Article;
- b) in the case of email, the service shall be deemed to have been made on the day of sending unless, the document was sent after 5 p.m., in which case service shall be deemed to have been made on the following day; and,
- c) in the case of mail, on the 5th day after it is mailed.

8.5 Person to Comply

A Person who has been served with a Written Compliance Order shall comply with the requirements of the Written Compliance Order.

8.6 Failure to Comply - Remedial Work Done by Corporation

If a Person in receipt of a Written Compliance Order fails to correct the contravention referred to in the Work Order by the date specified in the Work Order, the Corporation, in addition to all other remedies it may have, may enter onto the Person's property to do all work necessary to correct the contravention.

8.7 Exercise of Remedial Work

The Corporation's power to undertake remedial work to correct a contravention may be exercised by the Commissioner, or any Person under their direction.

8.8 Recovery of Corporation's Costs of the Work

The Corporation's actual costs incurred in conducting the work associated with the Written Compliance Order, including any administration fees as set out in the Tariff of Fees By-law, shall be deemed to be a debt to the Corporation and may be collected by action or added to the tax roll and collected in the same manner as municipal taxes.

ARTICLE 9 - ENFORCEMENT AND INSPECTION

9.1 Powers of Entry

A Tree Preservation By-law Officer may enter on a property within the City at any reasonable time with proper identification for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- a) the provisions of this By-law;
- b) a Written Compliance Order issued under this By-law; or
- c) carry out remedial actions required in a Written Compliance Order that has not been complied with.

9.2 Powers of Inspection

For the purposes of an inspection carried out pursuant to Section 9.2, a Tree Preservation By-law 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

purpose of inspection.

9.3 Hindering or Obstructing

No person shall hinder or obstruct, or attempt to hinder or obstruct, a Tree Preservation By-law Officer, or any Person under their direction, who is exercising a power or performing a duty under this By-law.

ARTICLE 10 - OFFENCES AND PENALTIES

10.1 Offence

Any person who contravenes any provision of this By-law or an order issued pursuant to this By-law is guilty of an offence. Pursuant to subsection 429(2)(a) of the Municipal Act all contraventions of this By-law or orders issued under this By-law are designated as multiple offences and continuing offences. 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 the by-law. For greater clarity when multiple Trees are Injured or Destroyed the Injury or Destruction of each Tree is a separate offence. When the same Tree is Injured multiple times, each incident is a separate offence.

10.2 Continuing Offence

Where a Property is found to have been in contravention of any provision of this By-law, and the contravention has not been corrected, the contravention of the provision shall be deemed to be a continuing offence for each day that the contravention remains uncorrected.

10.3 Fines- for contravention

On conviction of an offence under this By-law a person is liable to a fine in accordance with subsection 429 of the Municipal Act and the following rules made pursuant to subsection 429 of the Municipal Act:

- a) The maximum fine for an offence shall be \$100,000.00;
- b) In the case of a continuing offence, for each day or part of a day that the offence continues, the maximum daily fine shall be determined as set out in subsection (a) above. However, despite subsection (a) above, the total of all daily fines for the offence is not limited to \$100,000.00; and
- c) In the case of a multiple offence, for each offence included in the multiple offence, the maximum fine shall be determined as set out in subsection (a) above. However, despite subsection (a) above, the total of all fines for each

included offence is not limited to \$100,000.00

10.4 Special Fines – No Maximum

On conviction of an offence under this By-law a person is liable to a special fine in accordance with subsection 429(2)(d) of the Municipal Act. The amount of the special fine will be the maximum fine as provided for in the By-law to which may be added the amount of economic advantage or gain that the person has obtained or can obtain from the contravention of the By-law and/or order issued pursuant to this By-law. Pursuant to subsection 429(3)(1) of the Municipal Act a special fine may exceed \$100,000.00.

10.5 Presumption – Owner

If a contravention of this By-law or an order is issued pursuant to this By-law, the contravention is presumed to have been committed by the Owner of the property on which the contravention has occurred unless otherwise proven by the Owner.

10.6 Administrative Monetary Penalties

- (a) In lieu of laying a charge under the Provincial Offences Act for a breach of any provision of this By-law, a Tree Preservation By-law Officer or Municipal By-law Enforcement Officer may issue a Penalty Notice to the Person who has contravened this By-law in accordance with the service requirements of the Corporation's Administrative Penalty By-law. For greater certainty, the Tree Preservation By-law Officer or Municipal By-law Enforcement Officer has the discretion to either proceed by way of an administrative penalty or a charge pursuant to the Provincial Offences Act, if an administrative penalty is issued to a Person for the breach, no charge shall be laid against that same Person for the same breach.
- (b) A Person served with a Penalty Notice shall be liable to pay to the Corporation an administrative penalty in the amount specified in Schedule "A" of the Administrative Penalty By-law. An administrative penalty for a contravention of this By-law that is not paid within 15 days after the day it becomes due and payable, constitutes a debt of the Person to the Corporation and may be added to a municipal tax roll and collected in the same manner as municipal taxes for which all Owners are responsible to pay.
- (c) A Person who is issued a Penalty Notice shall be subject to the procedures as provided for in the Administrative Penalty By-law.

ARTICLE 11 - GENERAL

11.1 Severability

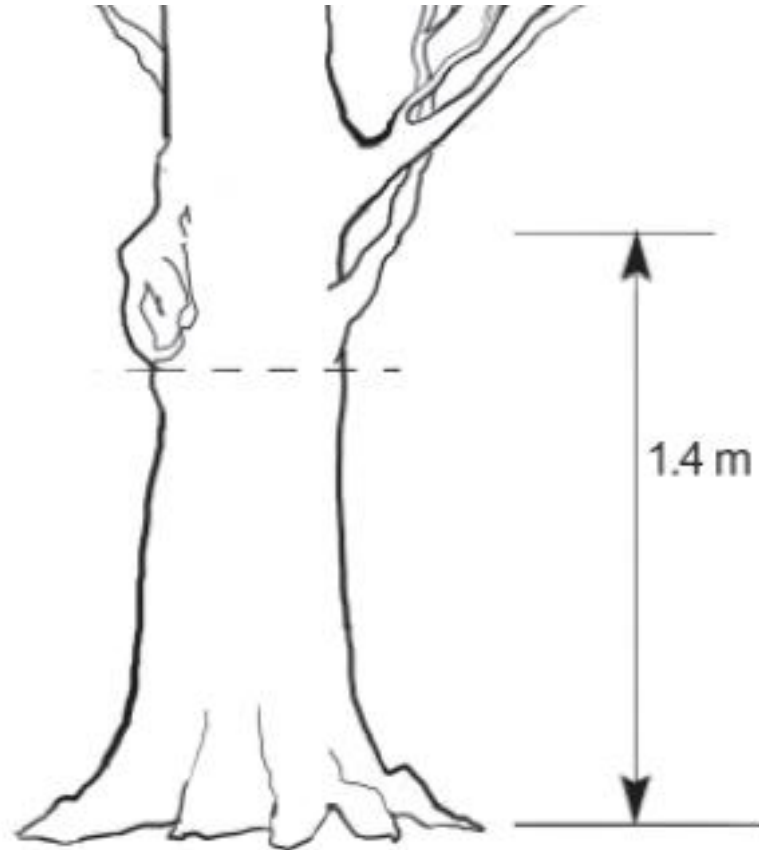
If a court of competent jurisdiction declares any provision, or any part of a provision of

this By-law to be invalid or to be of no force and effect, it is the intention of the Council in enacting this By-law, that each and every other provision of this By-law authorized by law, be applied and enforced in accordance with its terms, to the extent possible, according to law.

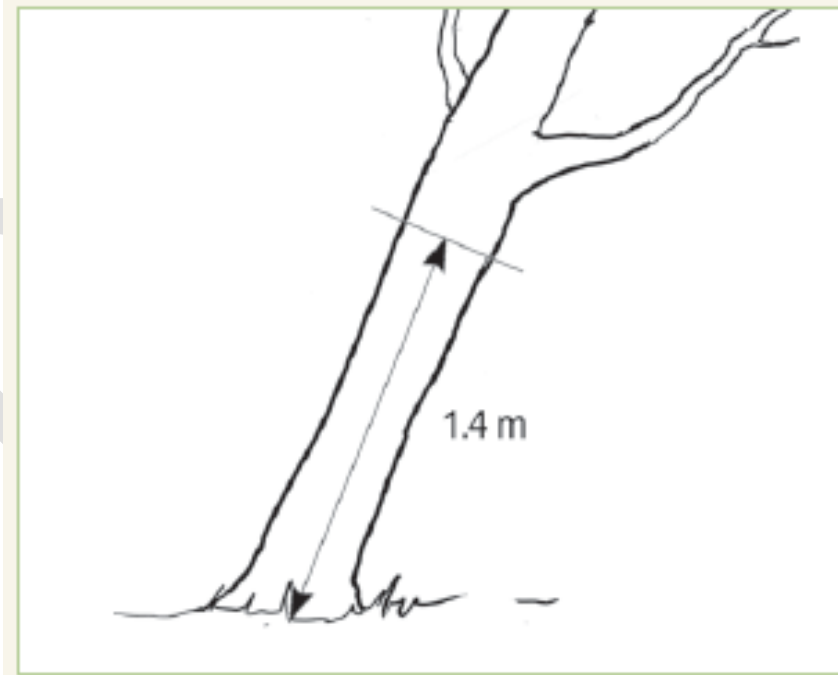
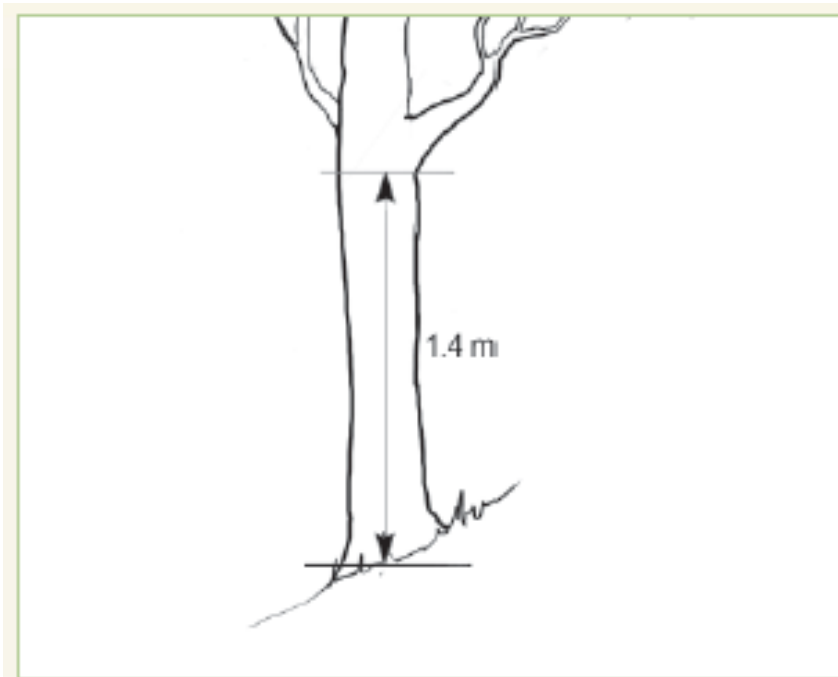
DRAFT

Schedule 'A' - Measurement of **DBH**

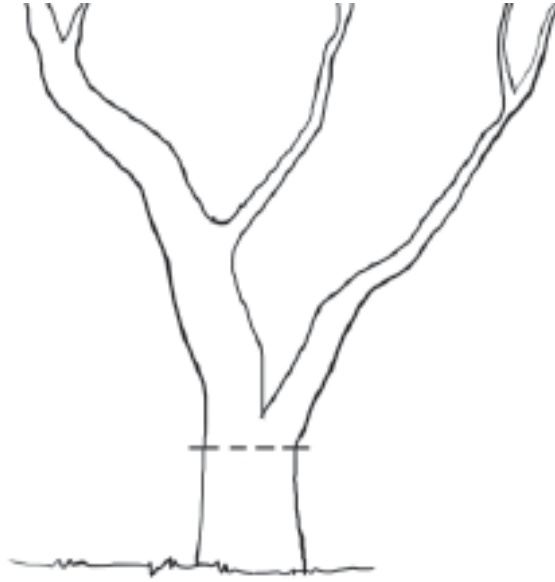
1. **Tree has branches or bumps which interfere with DBH measurement.** Measure DBH below the branch or bump.



2. **Vertically growing tree is on a slope or leaning tree.** Measure diameter 1.4 m from the ground at the midpoint of the trunk parallel with the slope of the trunk.



3. **Tree forks below DBH or near DBH.** The measurement is recorded at the narrowest part of the main stem below the fork.



4. **Tree splits into several trunks close to ground level.** Measure DBH of each trunk separately, using the principles shown in categories 1-3 above. Square the DBH of all trunks. The DBH for the tree is found by taking the square root of the sum of all of the squared trunk DBHs.

