

PROPERTY MAINTENANCE

Chapter 692 TREES - PROTECTION DESTRUCTION - INJURY

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PROTECTION - DESTRUCTION - INJURY

SCHEDULE

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WHEREAS pursuant to subsection 135 (1) of the *Municipal Act, 2001*, c. 25, as amended, the Council of The Corporation of the City of Kitchener may prohibit or regulate the destruction or injuring of trees;

WHEREAS pursuant to subsection 135 (7) of the *Municipal Act, 2001*, c. 25, a by-law passed under subsection 135 (1) may require that a permit be obtained to injure or destroy trees and the City of Kitchener may impose fees for the permit, the circumstances under which a permit may be issued, and the conditions to such a permit;

AND WHEREAS, it may be desirable to permit limited tree cutting on larger parcels of land in advance of a development application being permitted under section 41 of the *Planning Act*, R.S.O. 1990, c. P.13;

AND WHEREAS the City of Kitchener deems it desirable to prohibit the injury or destruction of trees for the purposes of:

1. minimizing the destruction or injuring of trees;
2. regulating and controlling the removal, maintenance and protection of trees;
3. protecting, promoting and enhancing the aesthetic value of trees;
4. sustaining a healthy natural environment; and
5. contributing to the human health and quality of life of all persons who work, live or play in the City of Kitchener, through the maintenance of tree cover, while recognizing the private land rights of its citizens.

**Article 1
INTERPRETATION**

692.1.1 Arborist - defined

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

692.1.2 City - defined

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

692.1.3 Conservation Authority - defined

“Conservation Authority” means the Grand River Conservation Authority.

692.1.4 Diameter breast height - defined

“diameter breast height” (DBH) means:

- (a) the diameter of a trunk of a tree including the bark measured at 1.37 metres above the highest point on the tree where the ground meets its trunk; and
- (b) where there are multiple trunks, the total diameters of the multiple trunks of a tree including the bark measured at 1.37 metres above the highest point on the tree where the ground meets one of those trunks.

692.1.5 Dead - defined

“dead” means a tree that has no living tissue as determined by an arborist.

692.1.6 Director - defined

“Director” means the Director of Planning for the City, or his/her designate.

692.1.7 Director of Enforcement - defined

“Director of Enforcement” means the Director of Enforcement for the City.

692.1.8 Drip line - defined

“drip line” means an imaginary line running directly beneath the outermost branches of an individual tree or of the trees forming the perimeter of the woodland.

692.1.9 Dying - defined

“dying” means a tree that is infected by a lethal pathogen or where 70 percent or more of its crown is dead as determined by an arborist.

692.1.10 Emergency work - defined

“emergency work” means work required to be done immediately in order to prevent imminent danger including tree maintenance work necessary due to natural events (i.e. ice storm, high winds, lightning), as well as tree maintenance work associated with emergency drain, utility and building repairs.

692.1.11 Good arboricultural practice - defined

“good arboricultural practice” means the proper implementation of renewal and maintenance activities known to be appropriate for individual trees in and around urban areas to minimize detrimental impacts on urban forest values and includes pruning of trees to remove dead limbs, maintain structural stability and balance, or to encourage their natural form, provided that such pruning is limited to the appropriate removal of not more than one third of the live branches or limbs of a tree, but does not include pruning specifically to increase light or space.

692.1.12 Hazardous

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

692.1.13 Injure/injury - defined

“injure/injury” means injuring or destroying a tree by: removing, cutting, girdling, or smothering of the tree or roots; interfering with the water supply; setting fire to a tree; applying chemicals on, around, or near the tree; compaction or re-grading within the drip line of a tree.

692.1.14 Land - defined

“land” includes all property within the City.

692.1.15 Officer - defined

“officer” means any person designated by this or any other by-law or resolution of the City to issue permits, impose conditions and to enforce the permits.

692.1.16 Owner - defined

“owner” means the person having the right, title, interest or equity in the land, or his or her agent authorized in writing, and includes the owner of either property where the base of a tree straddles a property line and the owner of a property that is physically impacted by the roots or crown of a tree.

692.1.17 Permit - defined

“permit” means a permit to injure a tree issued by the Director.

692.1.18 Person - defined

“person” includes a company, a corporation, a partnership, an individual, a public utility and a person as defined in subsection 29 (1) of the *Interpretation Act*, R.S.O. 1990, c. I.11, as amended.

692.1.19 Site - defined

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

692.1.20 Tree - defined

“tree” means any species of woody perennial plant, including its root system, which has reached or can reach a height of at least 4.5 metres at physiological maturity, provided that where multiple stems grow from the same root system, the number of trees shall be the number of stems that can be counted at a point of measurement 1.37 metres from the ground.

692.1.21 Woodlands - defined

“woodlands” means woodlands as defined in the *Forestry Act* that are one hectare or more in area with at least:

- (a) 1,000 trees of any size per hectare;
- (b) 750 trees measuring over five centimetres in diameter, per hectare;
- (c) 500 trees measuring over 12 centimetres in diameter, per hectare; or
- (d) 250 trees measuring over 20 centimetres in diameter, per hectare,

but does not include:

- (a) a cultivated fruit or nut orchard;
- (b) a tree nursery; or
- (c) a plantation established for the purposes of producing Christmas trees.

For these purposes, all measurements of trees are to be taken at 1.37 metres from the ground.

**Article 2
GENERAL PROHIBITIONS**

692.2.1 Injury to trees - prohibited - without permit

No person shall injure or cause or permit the injury of a tree or trees within the City without a permit.

**Article 3
STATUTORY EXEMPTIONS**

692.3.1 Municipal - local board - activities

Article 2 does not apply to activities or matters undertaken by a municipality or a local board of a municipality.

692.3.2 Crown forest - licence

Article 2 does not apply to activities or matters undertaken under a licence issued under the *Crown Forest Sustainability Act, 1994*.

692.3.3 Surveyor - engaged in practice

Article 2 does not apply to the injuring 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.

692.3.4 Planning Act - approval

Article 2 does not apply to the injuring of trees in accordance with a condition to the approval of a site plan, a plan of subdivision, consent or development permit under section 41, 51, 53 or 70.2 respectively, of the *Planning Act*, R.S.O. 1990, c. P.13 or as a requirement of a site plan agreement or subdivision agreement entered into under those sections.

692.3.5 Electricity transmitter - distributor

Article 2 does not apply to the injuring of trees by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998*, c. 15, Schedule 'A', for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section.

692.3.6 Pit or quarry - permit

Article 2 does not apply to the injuring 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*.

692.3.7 Pit or quarry - enlargement - lawful

Article 2 does not apply to the injuring of trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land:

- (a) that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act; and
- (b) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act*, R.S.O. 1990, c. P.13.

**Article 4
SPECIFIC EXEMPTIONS**

692.4.1 Land less than 1 acre

In addition to Article 3, the provisions of this Chapter do not apply to the removal of a tree or trees situated on land less than 0.405 hectares in size.

692.4.2 Dead - diseased - hazardous trees - certified

In addition to Article 3, the provisions of this Chapter do not apply to the removal of a dead, diseased or hazardous tree when certified as such by an individual designated or approved by the Director.

692.4.3 Damaged - destroyed trees - certified

In addition to Article 3, the provisions of this Chapter do not apply to the removal of a damaged or destroyed tree, when certified as such by an individual designated or approved by the Director, where the removal is in the interest of public safety, health or general welfare following any man-made or natural disasters, storms, high winds, floods, fires, snowfall or freezes.

692.4.4 Tree - within 5 metres of occupied building

In addition to Article 3, the provisions of this Chapter do not apply to the removal of trees located within 5 metres of an occupied building.

692.4.5 Tree - within building envelope - permit issued

In addition to Article 3 the provisions of this Chapter do not apply to the removal of trees that are located within a building envelope in respect of which a building permit has been issued pursuant to the *Building Code Act, 1992*.

692.4.6 Small trees

In addition to Article 3, the provisions of this Chapter do not apply to the removal of trees with a DBH less than 10 centimetres.

**Article 5
PLANNING AND DEVELOPMENT PROCESS**

692.5.1 Provisions - part of approval process

The provisions of this Chapter, as amended from time to time, shall form part of the development approval process governed by the *Planning Act*.

692.5.2 Application part of technical information - Planning Act

An application for a permit may be processed concurrently with an application submitted pursuant to the Planning Act and may form part of the technical information requested in order to consider a planning application complete.

692.5.3 Approval pending - no alteration of site permitted

Where there is a planning application involving an approval all trees upon the subject property shall be protected from injury or destruction from any site alteration, until the issuance of a permit and/or the receipt of final approval of any applicable planning applications.

**Article 6
ADMINISTRATION**

692.6.1 Director responsibility

The Director is responsible for the administration of this Chapter and is hereby delegated the authority to receive applications and the required fees and to issue permits and to attach conditions thereto in accordance with this Chapter.

**Article 7
APPLICATION FOR PERMIT**

692.7.1 To Director - information - fee - required

Subject to Articles 2, 3 and 4 respectively, every person that intends to injure a tree personally or through another person is required by this Chapter to apply to the Director for a permit by submitting all of the information necessary to determine compliance with this Chapter and paying the fee prescribed.

692.7.2 Deemed incomplete - conditions set out

An application for a permit shall be deemed incomplete, and no permit shall be issued if:

- (a) the application has not been completed in full;
- (b) the owner has not signed the application and submitted the original signature as part of the application;
- (c) the owner's agent, if applicable, being the party who will be undertaking the works or whom is responsible for the injuring of trees has not signed the application and submitted the original signature as part of the application; or
- (d) the application fee has not been paid.

692.7.3 Additional information - as requested - time limitation

Where, in the determination of the Director, additional information is necessary to evaluate the application, the Director may require the applicant to submit such additional information within a specified period of time. If the requested information is not submitted within the specified period of time, the application may be refused.

692.7.4 Director - authority to confer with others

Following receipt of an application, the Director may confer with such persons and agencies as he/she considers necessary for the proper review of the application, whether or not a permit should be issued, and any condition thereto.

692.7.5 Permit refused - in writing - reconsideration

Where the Director refuses to issue a permit, the applicant shall be informed in writing of the refusal by the Director. The Director may reconsider the application if additional information or documentation required by the Director is submitted by the applicant.

Article 8

REQUIREMENTS FOR PERMIT ISSUANCE

692.8.1 Permit - issue requirements met

Following receipt of an application, the Director may issue a permit for injuring trees where the Director is satisfied that the applicant has complied or will comply with all requirements of this Chapter.

692.8.2 Extended permits - granted

Following receipt of an application, the Director may issue a permit for injuring trees where the Director is satisfied that all required external permits have been granted to the applicant.

692.8.3 Good forestry practices - conditions

Following receipt of an application, the Director may issue a permit for injuring trees where the Director is satisfied that the proposed injuring of trees is in accordance with good forestry practices, and:

- (a) will not interfere with natural drainage processes;
- (b) will not result in soil erosion, slope instability or siltation in a watercourse;
- (c) will not have a significant impact on any healthy vegetation community within, and adjacent to the subject site;
- (d) will not have a significant impact on fish or wildlife habitat within, and adjacent to the subject site;
- (e) will not be in contravention of the *Species at Risk Act, 2002* the *Endangered Species Act, 2007* or the *Migratory Birds Convention Act, 1994*; or
- (f) is consistent with an approved tree preservation plan.

**Article 9
PERMIT CONDITIONS**

692.9.1 Set out

A permit may be subject to conditions imposed by the Director, which may include requirements for:

- (a) the submission of landscaping or restoration plans and associated maintenance plans;
- (b) requiring that replacement trees be planted;
- (c) the undertaking of tree cutting work only under the supervision of an arborist;
- (d) as to the manner and timing in which injury is to occur; or
- (e) as to the species, size, number and location of trees to be injured.

692.9.2 Planting as replacement - imposed - further conditions

Where the planting of replacement trees has been imposed as a condition, the Director may impose further conditions, including, but not limited to:

- (a) the species, size, number and location of the replacement trees;
- (b) the submission of landscaping or restoration plans and associated maintenance plans; or
- (c) the submission of a written undertaking signed by the owner stating the replacement planning will be carried out.

692.9.3 Planting - replacement - not possible - other remedy

Where the planting of replacement trees is not possible on the subject site, the Director may impose conditions requiring that:

- (a) replacement trees be planted on other suitable land; or
- (b) an amount be paid equalling 120 per cent of the cost for planting replacement trees and maintaining the trees for a period of two years, such amount to be applied to promoting the conservation and sustainable use of trees and woodlands.

**Article 10
RENEWAL OR TRANSFER OF PERMIT**

692.10.1 Permit - duration

Any permit issued pursuant to this Chapter shall be valid for a period of ninety calendar days from the date of issuance

692.10.2 Renewal - extension - requirements - fee

An owner shall apply to renew a permit where the work authorized will not be complete prior to the expiration of the permit. A permit may be extended where an application to renew is filed at least thirty calendar days before the date of expiry upon making of a written request to the Director accompanied by a payment of one-half of the original permit fee, provided that the proposed work which was the subject of the permit, has not been revised.

692.10.3 Land ownership - transfer - conditions

If registered ownership of the site for which a permit has been issued is transferred while the permit remains in effect and outstanding, the new owner shall, prior to the closing of the transfer:

- (a) provide the City with its written undertaking to comply with the permit and any conditions under which the permit was issued; and
- (b) failing which the permit shall be deemed to be cancelled as of the date of the transfer.

**Article 11
REVOCATION OF PERMIT**

692.11.1 Reasons - set out

A permit may be revoked by the Director under any of the following circumstances:

- (a) if it was issued on mistaken, misleading, false, or incorrect information;
- (b) if it was issued in error;
- (c) if the owner requests, in writing, that it be revoked; or
- (d) if an owner fails to comply with any provision of the permit or this Chapter.

692.11.2 Operation ceased immediately

When a permit is revoked, the owner shall immediately cease all operations being conducted under the authority of the revoked permit.

**Article 12
ORDERS**

692.12.1 Compliance required

Any person to whom an order is issued pursuant to this Chapter shall comply with the terms of such order, within the time set out therein.

692.12.2 Contravention - order issued work ceased immediately

Where an owner or any other person is in contravention of the Chapter, or any term or condition of a permit issued under this Chapter, the Director may make an order directing that the owner or such person to cease any or all work immediately.

692.12.3 Contravention - order complete - previously approved

Where a permit has been issued and an owner is in contravention of this Chapter or any term or condition issued under this Chapter, the Director may issue an order directing the owner, within the time set out in the order, to take such steps as are necessary so that the work which was the subject of the permit is completed in accordance with the approved permit, plans, documents and other information upon which the permit was issued under this Chapter and in accordance with the terms and conditions of the permit.

**Article 13
ENFORCEMENT**

692.13.1 Director of Enforcement - authority

The Director of Enforcement shall be responsible for overseeing the enforcement of this Chapter.

692.13.2 Inspection - entry upon land - at any reasonable time

The Director and the Director of Enforcement and his/her designates may, at any reasonable time, enter and inspect any land to determine whether this Chapter, order, a condition to a permit issued pursuant to this Chapter, or a court order pursuant to section 431 of the *Municipal Act, 2001*, c. 25 is being complied with.

692.13.3 Inspection - methods permitted

A person performing an inspection pursuant to this Chapter 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.

692.13.4 Inspection - hindering - obstruction - prohibited

No person shall hinder or obstruct or attempt to hinder or obstruct any person who is carrying out an inspection pursuant to this Chapter, and any person who so obstructs an officer is guilty of an offence pursuant to this Chapter.

**Article 14
PENALTIES**

692.14.1 Fine - for contravention - person

Any person other than a corporation who contravenes any provision of this Chapter, the terms or conditions of any permit, or an order issued under this Chapter, is guilty of an offence and is liable:

- (a) on a first conviction, to a fine not exceeding \$25,000; and
- (b) on any subsequent conviction, to a fine not exceeding \$50,000.

692.14.2 Fine - for contravention - corporation

A corporation that contravenes any provision of this Chapter, the terms or conditions of any permit, or an order issued under this Chapter, is guilty of an offence and is liable:

- (a) on a first conviction, to a fine not exceeding \$50,000; and
- (b) on any subsequent conviction, to a fine not exceeding \$100,000.

692.14.3 Fines - exclusive of costs

The fines set out in Sections 692.14.1 and 692.14.2 are exclusive of costs and are collectible pursuant to the *Provincial Offences Act*.

**Article 15
VALIDITY OF BY-LAW**

692.15.1 Validity

In the event a court of competent jurisdiction declares any Section or part of this Chapter invalid, the remainder of this Chapter shall continue in force and effect.

692.15.2 Severability

It is hereby declared that each and every of the foregoing Sections of this Chapter is severable and that, if any provisions of this Chapter should for any reason be declared invalid by any court, it is the intention and desire of Council that each and every of the then remaining provisions hereof shall remain in full force and effect.

692.16.1 PROTECTION - DESTRUCTION - INJURY 692.17.1

**Article 16
SCHEDULES**

692.16.1 Set out - form part of Chapter

The following Schedules attached to this Chapter form and are part of this Chapter:

- (a) Schedule 'A' - Information required for a complete application.

**Article 17
EFFECT**

692.17.1 Effective date

This Chapter shall take effect and come into force upon its final passing.
By-law 2010-042, 8 March, 2010.

PROTECTION - DESTRUCTION - INJURY

SCHEDULE

**Schedule 'A' - Information Required
for a Complete Application**

1. Receipt of prescribed fees;
2. Name, address and telephone number of all owners;
3. Name, address and telephone number of the authorized qualified professional of the owner;
4. Signature or authorization of all owners;
5. Municipal address of property (if assigned);
6. Legal description of property;
7. A detailed plan or survey of the subject site clearly identifying:
 - (a) property boundaries;
 - (b) location and dimensions of existing and proposed buildings;
 - (c) location and dimensions of roadways, driveways and parking areas;
 - (d) any and all significant features of the lands including but not limited to rivers, streams, steep slopes (greater than 20 per cent), wetlands or environmentally regulated areas;
 - (e) location and dimensions of the trees proposed to be injured and/or retained;
 - (f) in the instance where the base of a tree to be injured straddles a property line, the written consent of the affected adjacent property owner to the proposed injury shall be obtained.

AND (if required)

8. A General Vegetation Overview, Detailed Vegetation Plan or Tree Preservation/Enhancement Plan prepared and signed by a qualified professional in accordance with the City of Kitchener Tree Management Policy No. I-1160.

By-law 2010-042, 8 March, 2010; Schedule 'A'.