CITY OF ST. CATHARINES

BY-LAW NO. 2017-326

A By-law to Regulate Trees on or Affecting City Property.

WHEREAS The Corporation of the City of St. Catharines considers trees to be a valuable resource that contribute to the environmental, economic and social well-being of the City;

AND WHEREAS The Corporation of the City of St. Catharines deems it desirable to regulate the planting, protection, maintenance and removal of City Trees, trees jointly owned by the City and Private Property Owners, and trees growing on privately owned lands adjacent to City Property;

AND WHEREAS Sections 8, 9 and 11 of the Municipal Act, 2001 authorize a municipality to pass by-laws necessary or desirable for municipal purposes, and in particular, Paragraphs 4, 5, 6 and 8 of Subsection 11(2) authorize by-laws respecting public assets of the municipality, the economic, social and environmental well-being of the municipality, the safety and well-being of persons and the protection of persons and property;

AND WHEREAS Section 135 of the Municipal Act, 2001 authorizes a local municipality to prohibit or regulate the Destruction or Injuring of 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;

AND WHEREAS Section 62(1) of the Municipal Act, 2001 authorizes a municipality, at any reasonable time, to enter upon land lying along any of its Highways to inspect trees and conduct tests on trees, and to remove decayed, damaged or dangerous trees or branches of trees if, in the opinion of the municipality, the trees or branches pose a danger to the health or safety of any person using the Highway;

AND WHEREAS Section 62(2) of the Municipal Act, 2001 authorizes an employee or agent of a municipality to remove a decayed, damaged or dangerous tree or branch of a tree immediately and without notice to the Owner of the land upon which the tree is located, if, in the opinion of the employee or agent, the tree or branch poses an immediate danger to the health or safety of any person using the Highway;

AND WHEREAS Section 391(1) the Municipal Act, 2001 authorizes a municipality, amongst other things, to delegate its authority, to impose fees or charges on persons for services or activities provided or done by or on behalf of it, to provide for inspections and inspection Orders, and to make Orders to discontinue activity or to do work;

NOW THEREFORE the Council of the Corporation of the City of St. Catharines enacts the following:

1. DEFINITIONS

1.1. For the purposes of this by-law the following definitions shall apply:

APPLICANT means the Person who submits an application to the City under this By-law;

BUSINESS DAY means 8:30 a.m. to 4:30 p.m. on any day on which the City of St. Catharines' administration buildings are open for business;

CITY means the geographical area of the City of St. Catharines or the municipal corporation as the context requires;

CITY PROPERTY means any land that is under the jurisdiction and control of the City, including Highways, parks, watercourses, and natural areas;

CITY TREE means any Tree whose Trunk is wholly located on City Property, and includes a Tree that was planted on City Property without permission of the City;

COUNCIL means the Council of The Corporation of the City of St. Catharines;

CROWN means any portion of a Tree containing the majority of the branches and leaves located from the top of the Tree to the lowest permanent Limbs;

DESTROY means the removal of a Tree or Injury resulting in the death or ruin of a Tree by cutting, burning, uprooting, chemical application or other means including irreversible Injury that may result from neglect, accident or design and the term **DESTRUCTION** has a corresponding meaning;

DIRECTOR means the Director of Parks, Recreation and Culture Services for The Corporation of the City of St. Catharines or his or her designate;

DRIP LINE means the outer boundary of an area on the surface of the ground that corresponds to the outer edge of the Crown of a Tree;

GOOD ARBORICULTURAL PRACTICES means Tree planting, pruning and maintenance practices endorsed by the International Society of Arboriculture;

HIGHWAY includes 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 public for the passage of vehicles and people and includes the area between the lateral property lines thereof, and for greater certainty shall include sidewalks, boulevards and the entire right of way;

INJURE means any action which causes, or is likely to cause, physical, biological or chemical damage to a Tree and includes, but is not limited to, intentional or unintentional, harm, damage or impairment caused by physical, biological or chemical damage and the term **INJURY** has a corresponding meaning. **INJURY** includes, but is not limited to:

(i) Pruning, trimming, removing, severing or altering a Tree;
(ii) Relocating or removing a Tree;
(iii) Placing any item on a Tree or within the Drip Line of a Tree which may impede the free passage of water, air, or nutrients to the roots of a Tree;
(iv) Affixing bills, notes, signs, lighting or other items to a Tree;
(v) Defacing, marking, cutting, breaking, or peeling a Tree;
(vi) Performing any work, including excavating, grading, constructing, developing, ditching, tunnelling, trenching, disturbing soil, compacting soil, altering surface treatments within the Drip Line or Tree Protection Zone of a Tree that is not carried out in accordance with any applicable City policies which are in effect from time to time;
(vii) Performing any work on a Tree that is not carried out in accordance with applicable City policies which are in effect from time to time;
(viii) Fastening any object to a Tree or to the stakes or posts that protect a Tree;
(ix) Allowing a toxic substance to come into contact with a Tree;
(x) Setting a fire that affects a Tree;
(xi) Altering or removing anything protecting a Tree including stakes, poles, trunk wraps or watering bags;
(xii) Climbing a Tree.

LIMB means a large branch of a Tree and the term **LIMBS** has a corresponding meaning;

OFFICER includes:

(i) The Director;
(ii) Any Person appointed by Council or by the Director for the enforcement or administration of this By-law;
(iii) Any Person employed by the City whose duties are to enforce or administer this By-law; and
(iv) A Provincial Offences Officer as defined by the *Provincial Offences Act, R.S.O. 1990, c. P. 33.*

ORDER means any Order to discontinue an activity that contravenes this By-law as contemplated by Section 8.1 herein, or any Order to do work to correct a contravention of this By-law issued pursuant to Section 8.3 herein;

OWNER means a Person having any right title, interest, or equity in land including right, title, interest, or equity to the Trees standing on the land;

PERMIT means a Permit issued pursuant to this By-law;

PERSON includes an individual, sole proprietorship, firm, partnership, limited partnership, trust, corporation, association, organization or body corporate, or an individual in his or her capacity as a trustee, executor, public administrator or other legal representative;

POLICY means a Policy respecting Trees which the Director is authorized to issue under this By-law or that is otherwise issued by the City;

PRIVATE PROPERTY means land other than City Property and the term **PRIVATE PROPERTIES** has a corresponding meaning;

PRIVATE TREE means any Tree whose Trunk is wholly located on Private Property;

SECURITY means a payment to the City or an irrevocable letter of credit from a financial institution to specify and lodge a requisite sum of money that the City may draw upon in full to satisfy any Permit condition(s) or other requirements as set out in this By-law where an Applicant fails to do so;

SHARED TREE means a Tree whose Trunk is partly located on City Property and partly located on one or more Private Properties;

TREE means a woody perennial plant or part thereof which has reached, or is expected to reach based on the Manual of Woody Landscape Plants: Their Identification, Ornamental Characteristics, Culture, Propagation and Uses (Michael A. Dirr), a height of at least 3 metres at physiological maturity, and includes the whole and/or parts of the roots, branches, Trunk and Crown;

TREE PROTECTION ZONE means a restricted area around the base of a Tree which serves to protect a Tree and its root zone as established by the Director or another authorized City employee or agent in accordance with any applicable City by-law or Policy;

TREE VALUE means the monetary value of a Tree as determined through the most current methods and procedures established by the International Society of Arboriculture, the Council of Tree and Landscape Appraisers or any other specifications adopted by the City;

TRUNK means that part of the Tree from its point of growth away from its roots up to where it branches out to permanent Limbs and foliage. For greater clarity, where it is obvious that a Limb which originally marked the upper limit of the Trunk has been

removed, that original Limb shall mark the upper limit of the Trunk, notwithstanding the removal of such Limb.

2. APPLICATION

2.1. This by-law shall apply to all land within the limits of the City of St. Catharines.

2.2. The provisions of this By-law apply in addition to the provisions contained in any other applicable By-laws of the City or applicable regional, provincial or federal statutes or regulations.

3. POWERS

3.1. With respect to City Trees, the Director is authorized to, without notice or compensation to any Person:

3.1.1. Plant Trees on City Property;

3.1.2. Select the location, species, size and condition of Trees to be planted on City Property;

3.1.3. Maintain, inspect, treat, transplant, or remove any City Tree;

3.1.4. Remove any object or thing that adversely affects a City Tree;

3.1.5. Refuse a request made by any Person to plant, remove, maintain, inspect, treat or transplant a City Tree;

3.1.6. Delegate the above powers to an employee or agent of the City.

4. PROHIBITIONS

4.1. PROHIBITIONS FOR CITY TREES

4.1.1. No Person shall Injure or Destroy a City Tree, or permit the Injury or Destruction of a City Tree.

4.1.2. No Person shall plant a Tree on City Property, or permit the planting of a Tree on City Property.

4.1.3. Despite Section 4.1.1 and Section 4.1.2 of this By-law, a Person may Injure or Destroy a City Tree, or plant a Tree on City Property, if:

4.1.3.1. A Permit is first obtained from the Director in accordance with this By-law;

4.1.3.2. The work is done in accordance with the conditions of the Permit; and

4.1.3.3. The work is done in accordance with all applicable by-laws, statutes, regulations, standards and policies.

4.2. PROHIBITIONS FOR SHARED TREES

4.2.1. No Person shall Injure or Destroy a Shared Tree, or permit the Injury or Destruction of a Shared Tree.

4.2.2. Despite Section 4.2.1 of this By-law, a Person may Injure or Destroy a Shared Tree, if:

4.2.2.1. Prior written permission is obtained from all Owners of the Shared Tree;

4.2.2.2. A Permit is obtained from the Director in accordance with this By-law before the Injury or Destruction takes place;

4.2.2.3. The work is done in accordance with the conditions of the Permit; and

4.2.2.4. The work is done in accordance with all applicable by-laws, statutes, regulations, standards and policies.

4.2.3. Despite Section 4.2.1 the City may inspect or conduct tests on Shared Trees and remove decayed, damaged or dangerous Shared Trees, or part thereof, as provided for in Section 7.2 and Section 7.3 of this By-law.

4.3. PROHIBITIONS FOR PRIVATE TREES

4.3.1. No Owner of a Private Tree shall:

4.3.1.1. Allow a Private Tree to obstruct the use of any City Property;

4.3.1.2. Allow a Private Tree to pose a danger to City Property or to any Person accessing City Property; or

4.3.1.3. Maintain or fail to maintain a Private Tree in such a condition so as to create an obstruction as described in Section 4.3.1.1 or create a danger as described in Section 4.3.1.2 of this By-law.

4.4. GENERAL PROHIBITIONS

4.4.1. Despite Section 4.1.3 and Section 4.2.2 of this By-law a Permit is not required when the work has been approved as part of an approval issued by the City in accordance with the *Planning Act*.

4.4.2. Despite Section 4.1.3 and Section 4.2.2 of this By-law a Permit is not required when, in the opinion of the Director, a Building Permit has been issued that adequately addresses any issues relating to a Tree which would otherwise be resolved through a Permit.

4.4.3. No Person shall contravene the terms or conditions of a Permit issued pursuant to this By-law.

4.4.4. No Person shall fail to comply with an Order issued pursuant to Section 8 of this By-law.

4.4.5. No Person shall hinder an Officer in the lawful carrying out of his or her duties under this By-law.

5. PERMIT CONDITIONS

5.1. The Director may impose conditions to a Permit as contemplated by Section 4.1.3 and Section 4.2.2 of this By-law, including but not limited to the following:

5.1.1. Any condition consistent with Good Arboricultural Practices;

5.1.2. The manner and timing of the Injury and/or Destruction;

5.1.3. A specified period for which the Permit is valid, after which the Permit will lapse;

5.1.4. That the work be performed by or under the supervision of the City, its agent, or a qualified contractor, at the cost of the Applicant. Any contractor hired by the Applicant is required to provide confirmation of Workplace Safety and Insurance Board and commercial general liability insurance to the satisfaction of the City;

5.1.5. The measures required to protect any Trees that may be impacted by the work;

5.1.6. The provision of any Security necessary to ensure compliance with any conditions imposed;

5.1.7. Where Injury to the Tree is approved, the provision of a Security equal to the Tree Value to be used for replacement Tree planting should the Tree be Destroyed; and

5.1.8. In the case of Destruction, payment to the City for replacement Tree planting which shall be calculated based on the Tree Value.

6. ADMINISTRATION

6.1. The Director is authorized to administer and enforce this By-law including, but not limited to:

6.1.1. Arranging for the:

6.1.1.1. Assistance or work of City staff or City agents;

6.1.1.2. Issuance of Permits and the imposition of conditions on Permits, as authorized under this By-law;

6.1.1.3. Making of Orders, as authorized under this By-law;

6.1.2. Issuing standards and policies with respect to Trees on or affecting City Property which may include but are not limited to criteria to guide the Director in exercising his or her discretion concerning such matters as issuing a Permit and conditions of a Permit under Section 4.1.3 and 4.2.2 of this By-law; and

6.1.3. Prescribing the format and content of any forms, Permits or other documents required under this By-law.

6.2. Officers authorized to enforce this By-law shall have the authority to:

6.2.1. Carry out inspections;

6.2.2. Obtain court Orders or warrants, as may be required;

6.2.3. Commence actions on behalf of the City to recover costs or restrain contravention of this By-law, as deemed necessary;

6.2.4. Make Orders or other requirements, as authorized under this By-law; and

6.2.5. Give immediate effect to any Orders or other requirements made under this By-law.

7. ENTRY AND INSPECTIONS

7.1. An Officer may enter on land at any reasonable time, and in accordance with the conditions set out in Sections 435 and 437 of the Municipal Act, 2001, for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

7.1.1. This By-law;

7.1.2. An Order made pursuant this By-law;

7.1.3. A condition of a Permit granted pursuant to this By-law; or

7.1.4. An Order of the Court prohibiting the continuation or repetition of an offence under this By-law pursuant to Section 431 of the Municipal Act, 2001.

7.2. An Officer may at any reasonable time, enter upon land lying along any Highway, to:

7.2.1. Inspect or conduct tests on Private Trees and Shared Trees;

7.2.2. Remove decayed, damaged or dangerous Private Trees and Shared Trees, or part thereof if, in the opinion of the Officer, the Trees or branches pose a danger to health and safety of any Person using the Highway.

7.3. An Officer may arrange for the removal of a decayed, damaged or dangerous Tree or branch of a Tree immediately and without notice to the Owner of the land upon which the Tree is located if, in the opinion of the Director, the Tree or branch poses an immediate danger to the health or safety of any Person using the Highway.

7.4. An Officer may, for the purposes of an inspection under Section 7.1 or Section 7.2 of this By-law and in accordance with the conditions set out in Section 436 of the Municipal Act, 2001:

7.4.1. Require the production for inspection of documents or things relevant to the inspection;

7.4.2. Inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;

7.4.3. Require information, in writing or otherwise, from any Person concerning a matter related to the inspection;

7.4.4. 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.

7.5. An Officer may undertake an inspection pursuant to an Order issued by a Provincial Judge or Justice of the Peace under Section 438 of the Municipal Act, 2001 in accordance with the conditions set out in that Section.

8. ORDERS

8.1. If an Officer is satisfied that a contravention of this By-law has occurred, he or she may make an Order requiring the Person who contravened the By-law, or who caused or permitted the contravention or the Owner or occupier of the property on which the contravention occurred, to discontinue the contravening activity.

8.2. An Order under Section 8.1 shall set out:

8.2.1. Reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which the contravention occurred; and,

8.2.2. The date or dates by which there must be compliance with the Order, which may be of immediate effect should the Officer determine that the circumstances warrant.

8.3. If an Officer is satisfied that a contravention of this By-law has occurred, he or she may make an Order requiring the Person who contravened the By-law or who caused or permitted the contravention or the Owner or occupier of the property on which the contravention occurred, to correct the contravention.

8.4. An Order under Section 8.3 shall set out:

8.4.1. Reasonable particulars of the contravention adequate to identify the contravention and the location of property on which the contravention occurred;

8.4.2. The work to be completed which may include but is not limited to, requiring any one or more of the following:

8.4.2.1. Removal of any item which may impede the free passage of water, air, or nutrients to the roots of a Tree;

8.4.2.2. Removal of any object fastened to a City Tree or to the stakes or posts that protect a Tree;

8.4.2.3. That any structure protecting a Tree that has been altered or removed be restored to its original condition;

8.4.2.4. That any soil level within the Drip Line of a Tree that has been altered be restored to its original condition;

8.4.2.5. That any excavation of a ditch, tunnel or trench within the Drip Line of a Tree be filled;

8.4.2.6. The removal of any walkway, driveway, or hard surface laid within the Drip Line of a Tree;

8.4.2.7. Payment to the City for the cost associated with the rehabilitation or replacement of any Tree which has been Injured or Destroyed as determined by the Director in accordance with any applicable Policy;

8.4.3. The date or dates by which the Order must be complied with; and,

8.4.4. Any other requirements, which may include but are not limited to the provision of Securities and insurance, at the discretion of the Officer acting reasonably.

8.4.5. Notice that if the Order is not complied with, then the work may be completed by the City at the expense of the Person ordered to do the work.

8.5. Service of an Order made under Section 8.1 or Section 8.3 may be given personally or by registered mail to the last known address of:

8.5.1. The Person ordered to do the work; and

8.5.2. Such other Persons affected by the Order as an Officer determines.

8.5.3. Service by registered mail shall be deemed to have taken place five (5) Business Days after the date of mailing.

8.6. In addition to service in accordance with Section 8.5, an Order made under Section 8.1 or Section 8.3 may be served by an Officer by placing a placard containing the Order in a conspicuous place on the property where the contravention occurred.

9. REMEDIAL ACTION

9.1. Where a Person does not comply with an Order made pursuant to this By-law, an Officer, with such assistance by others as may be required, may carry out such direction or requirement at the expense of the Person directed or required to do the work by the Order.

9.2. 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.

10. OFFENCES AND PENALTIES

10.1. Every Person who contravenes any provision of this By-law, and every director or officer of a Corporation who knowingly concurs in the contravention of this By-law by the Corporation is, upon conviction, guilty of an offence and is liable:

10.1.1. On a first offence, to a fine of not more $10,000 or a fine of $1,000 per Tree, whichever is greater; and

10.1.2. On any subsequent offence, to a fine of not more than $25,000 or a fine of $2,500 per Tree, whichever is greater.

10.2. Despite Section 10.1, if a corporation is convicted of an offence,

10.2.1. On a first offence the maximum penalty imposed on the corporation is $50,000 or $5,000 per Tree; and

10.2.2. On subsequent offence the maximum penalty imposed on the corporation is $100,000 or $10,000 per Tree.

10.3. Every Person who is convicted of an offence under this By-law may be liable, in addition to the fines established under Sections 10.1 and 10.2, to a special fine, which may exceed $100,000, designed to eliminate or reduce any economic advantage or gain from contravening this By-law or failing to comply with an Order made under this By-law.

10.4. Where a Person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, make an Order:

10.4.1. Prohibiting the continuation or repetition of the offence by the Person convicted;

10.4.2. Requiring the Person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

10.5. The Injury or Destruction of each Tree is one offence in a series of multiple offences.

10.6. Costs imposed by the City for the rehabilitation or replacement of a Tree pursuant to an Order issued under this By-law are in addition to and not in substitution for the payment of any penalty imposed by a court of law for the commission of an offence under this By-law of any other applicable legislation.

11. CONFLICT

11.1. In the event of a conflict between this By-law and any other applicable By-law, statute or regulations:

11.1.1. Where one or more conflicting provisions provides for public health or safety, then the provision which is most protective of public health or safety prevails; or

11.1.2. Where none of the conflicting provisions provides for public health or safety, then the provision which is most protective of Trees prevails.

12. EXEMPTIONS

12.1. This by-law does not apply to:

12.1.1. Activities or matters undertaken by a municipality or a local board of a municipality;

12.1.2. Activities or matters undertaken under a licence issued under the *Crown Forest Sustainability Act, 1994*;

12.1.3. 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;

12.1.4. 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;

12.1.5. 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;

12.1.6. 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;

12.1.7. 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

12.1.8. The Injuring or Destruction of Trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land,

12.1.8.1. That has not been designated under the *Aggregate Resources Act* or a predecessor of that Act, and

12.1.8.2. On which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act*. 2001, c. 25, s. 135 (12); 2002, c. 17, Sched. A, s. 27 (3, 4).

12.1.9. The pruning of City Trees by any public utility as necessary to comply with safety regulations and to maintain safe operation of its facilities provided that the pruning is carried out in accordance with Good Arboricultural Practices.

12.1.10. Where removal or pruning of a City Tree is determined to be necessary by emergency personnel responding to an emergency situation. Emergency personnel shall notify the Director of the emergency and work completed on the City Tree as soon as possible.

13. SEVERABILITY

13.1. Each provision of this By-law is independent of all other provisions, and if any provision is declared invalid for any reason by a court of competent jurisdiction, all other provisions of this by-law remain valid and enforceable.

14. REFERENCES TO LEGISLATION

14.1. All references to Acts of the Legislature, Regulations and By-laws include applicable amendments, including an implied reference to successor Acts, Regulations and By-laws.

15. TRANSITIONAL RULES

15.1. After the date of the passing of this By-law, By-law No. 70-57, as amended, shall apply only to those Trees for which an Order or permissions have been issued prior to the date of passing of this by-law, and then only to such Trees until such time as the work required by such Order or permission has been completed or any enforcement proceedings with respect to such Order or permissions carried out by the municipality have been concluded.

16. DATE OF EFFECT

16.1. This By-law comes into force and takes effect on June 1, 2018.

Read and passed this 13th day of November 2017.

CLERK

DEPUTY MAYOR