

Development

Chapter 370 Tree Conservation

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Article 1 Short Title

370.1.1 Short Title

This Chapter may be cited as the “Tree Conservation Chapter.” In the text of the Chapter, it is referred to as “this Chapter.”

Article 2 Definitions

370.2.1 Applicant - defined

“applicant” means the owner, or an owner’s authorized agent, who applies for a permit.

370.2.2 Arborist - defined

“arborist” means a person who has graduated from an accredited college or university with a diploma or degree in forestry, urban forestry, arboriculture or equivalent course of study and who holds at least one of the following professional qualifications:

- a) certified either by the Ontario Training and Adjustment Board or the International Society of Arboriculture; or
- b) member of the Ontario Professional Foresters Association entitled to use the designation “Registered Professional Forester (R.P.F.)” under the *Professional Foresters Act*, 2000, S.O. 2000, c.18.

370.2.3 Arborist Report - defined

“Arborist Report” means a technical report prepared or certified by an Arborist containing the information described in Article 5.

370.2.4 Authorized agent - defined

“authorized agent” means an arborist, authorized in writing by an owner to make an application for a permit to injure or destroy a tree.

370.2.5 City - defined

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

370.2.6 Council - defined

“Council” means the Council of The Corporation of the City of Orillia.

370.2.7 DBH - defined

“DBH” means “diameter at breast height” and refers to the diameter of the trunk of a tree measured at a point 1.37 metres (4.5 ft.) above the ground at the base of the tree. Notwithstanding the foregoing, if a tree has been destroyed or injured and its trunk can no longer be measured at 1.37 metres above the ground at the base of the tree, but the remains of the trunk or stump can be found, an Officer may for enforcement purposes measure the diameter of that part of the tree still remaining after the destruction or injury

of the tree as near as is reasonably practicable to the point of measurement. The measurement so taken shall be presumed to be proof of the DBH, which presumption may be rebutted by evidence to the contrary on a balance of probabilities.

370.2.8 Destroy - defined

“destroy” means the removal of a tree or harm resulting in the irreversible injury or death or ruin of a tree, whether by accident or design, by directly or indirectly cutting, burning, girdling, uprooting, puncturing, chemical application, interfering with a trees’ water supply, compacting, regrading, resurfacing within a trees’ dripline or any other means, and the term “destruction” shall have a corresponding meaning.

370.2.9 Dripline - defined

“dripline” means the area directly located under the outer circumference of the tree canopy.

370.2.10 Emergency work - defined

“emergency work” means work required to be carried out in order to terminate an immediate danger to life or property, and includes the destruction or injuring of trees required because of the state of the trees resulting from natural events including lightning, wind, hail, or extreme snow event or unforeseen causes including automobile accidents.

370.2.11 General Manager - defined

“General Manager” means the City’s General Manager of Development Services and Engineering, or designate.

370.2.12 Good arboricultural practice - defined

“good arboricultural practice” means tree planting, maintenance pruning and removal performed in accordance with the standards and best management practices of the International Society of Arboriculture for the proper implementation of maintenance, renewal and removal activities for individual trees in and around urban areas to minimize detrimental impacts on urban forest values.

370.2.13 Heritage tree - defined

“heritage tree” means a tree that has received designation under Part IV of the *Ontario Heritage Act*, 2005, S.O. 2006, c.6.

370.2.14 Imminently hazardous tree - defined

“imminently hazardous tree” means a destabilized or structurally compromised tree that is in imminent danger of causing damage or injury to life or property.

370.2.15 Injure - defined

“injure” means harm, damage, or impair a tree, whether by accident or design, and includes harm, damage or impairment by directly or indirectly cutting, burning, girdling, puncturing, chemical application, interfering with a tree’s water supply, removing branches or bark, or compacting, regrading or resurfacing within a trees’ dripline, and the term “injury” shall have a corresponding meaning.

370.2.16 Lot - defined

“lot” means a parcel or tract of land, the title of which is legally conveyable as a separate parcel.

370.2.17 Maintenance pruning - defined

“maintenance pruning” means the pruning or removal of tree branches including for the purposes of removing dead limbs, maintaining structural stability, balance and natural form, where the manner or method of cutting and the location of cuts are in accordance with good arboricultural practices, and without lasting damage or harm to a tree which has or is likely to have the effect of inhibiting or terminating its growth.

370.2.18 Nursery - defined

“nursery” means a lot on which the principal use is the growing of plants, shrubs and trees for sale to the public.

370.2.19 Officer - defined

“Officer” means a Municipal By-law Enforcement Officer, or any other person appointed by by-law to enforce this Chapter.

370.2.20 Orchard - defined

“orchard” means a lot on which the principal use is the growing of fruit for sale to the public.

370.2.21 Owner - defined

“owner” means the registered owner of the lot where a tree is located and, in the case of a condominium, shall mean the condominium corporation or a person authorized to act on behalf of the corporation.

370.2.22 Permit - defined

“permit” means a permit issued by the General Manager to destroy or injure a tree pursuant to this Chapter.

370.2.23 Person - defined

“person” includes an individual, sole proprietorship, partnership, limited partnership, trust, corporation, and an individual in his or her capacity as a trustee, executor, administrator, or other legal representative.

370.2.24 Silvicultural - defined

“silvicultural” means the theory and practice of controlling forest establishment, composition, growth and quality of forests to achieve the objectives of management.

370.2.25 Site Alteration By-law - defined

“Site Alteration By-law” means the City’s Municipal Code Chapter 373 - Site Alteration.

370.2.26 Terminally diseased - defined

“terminally diseased” means advanced and irreversible decline in tree health that has resulted in the majority of crown die back or failure, due to severe insect infestation or infection by a pathogen.

370.2.27 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.

370.2.28 Tree canopy - defined

“tree canopy” is the surface area covered by the layer of leaves, branches, and stems of trees that cover the ground when viewed from above.

370.2.29 Tree Planting Program - defined

“Tree Planting Program” means a program managed by the City reserved for the purpose of planting trees within the City.

Article 3 General Provisions

370.3.1 Permit - required

Except as provided in this Chapter, no person shall, within the geographic limits of the City, destroy, injure, or cause or permit to be destroyed or injured any tree with a DBH greater than 5 centimetres without first obtaining a permit.

370.3.2 Terms and conditions of permit - compliance

No person shall contravene the terms or conditions of a permit, or cause or permit the contravention of the terms or conditions of a permit.

370.3.3 Order - compliance

No person shall fail to comply with an Order issued under this Chapter.

370.3.4 Remove or deface Order - prohibited

No person shall remove or deface an Order that has been posted under this Chapter.

Article 4 Exemptions

370.3.1 Permit exemptions - general

Section 370.3.1 does not apply to:

- a) the destruction or injuring of trees located on any lot that is 0.5 hectare or less in area;
- b) maintenance pruning of trees;

- c) the destruction or injuring of trees located within a building or structure, rooftop garden, solarium, or an interior courtyard;
- d) the destruction or injuring of trees located within an actively managed, cultivated nursery, tree farm, or orchard, and harvested for the purposes for which the trees were planted;
- e) the destruction or injuring of trees that are subject of an Order issued by a Property Standards Officer pursuant to Section 15.2(2) of the *Building Code Act*;
- f) activities or matters undertaken by the provincial or federal government or their agents;
- g) activities or matters undertaken by the Orillia Power Corporation or Orillia Power Generation Corporation, or their agents;
- h) Ash trees that have become infected with the Emerald Ash Borer;
- i) a tree that is destroyed or injured as part of emergency work;
- j) a dead, terminally diseased, or imminently hazardous tree when certified in writing as such by an Arborist as defined in the Chapter, provided such documentation has been submitted along with supporting photographs to the General Manager.

370.4.2 Statutory exemptions

This Chapter does not apply to:

- a) activities undertaken by the City or local board acting on behalf of the City;
- b) activities or matters undertaken under a licence issued under the *Crown Forest Sustainability Act, 1994*;
- c) the destruction or 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;
- d) the destruction or injuring 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;
- e) the destruction or injuring 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;

- f) the destruction or injuring of trees by a transmitter or distributor, as defined in section 2 of the *Electricity Act* for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
- g) the destruction or 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* or
- h) the destruction or injuring of trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land that has not been designated under the *Aggregate Resources Act* or a predecessor of the Act, and, on which a pit or quarry is a permitted land use under a by-law passed under Section 34 of the *Planning Act*.

Article 5 Permits

370.5.1 Permit Application

1. An owner, or his/her authorized agent, may apply for a permit to injure or destroy a tree on a lot owned by him/her.
2. The application shall include the following information and material:
 - a) The municipal address of the lot where each of the trees to be destroyed or injured are located;
 - b) The name and contact information, including telephone number and e-mail address, of the owner of the lot;
 - c) The name and contact information, including telephone number and e-mail address, of the authorized agent of the owner of the lot, if applicable;
 - d) The written consent of the owner of the lot where each of the trees to be injured or destroyed are located if the person who is applying for the permit is not the owner of the lot;
 - e) Where the trunk of a tree to be destroyed or injured straddles the boundary of one or more properties, the written consent of the other property owner or owners to the application;
 - f) An Arborist Report containing the following information:

- i. A diagram and itemized list (or plan of survey) showing:
 - 1) The location, species, DBH and overall tree risk rating of each tree to be destroyed or injured;
 - 2) A justification for the destruction or injury of each tree; and
 - 3) The location, species and DBH for each tree to be retained.
 - ii. Confirmation that endangered, threatened or special concern tree species as defined in the *Endangered Species Act*, R.S.O. 1990, c.E.15, or the *Species at Risk Act*, S.C. 2002, c. 29 are not present;
 - g) Consent by the owner of the lot for the General Manager, or any person acting under the General Manager's instructions, to enter and inspect the lot and trees to determine whether or not a permit should be issued; and
 - h) Payment of any fees required in accordance with the City's Municipal Code Chapter 450 - User Fees - Development Services and Engineering.
3. Where, in the discretion of the General Manager additional information is necessary to evaluate the application, the General Manager may require the applicant to submit such additional information within a specified period of time.
4. Where the applicant has failed to submit the documentation required, or has failed to complete the application fully within twelve months of the date that the application was submitted to the City, the General Manager may deem the application to be abandoned and the City will retain all application fees submitted.

370.5.2 Issuance of Permits

1. When deciding whether to issue a permit, the General Manager may consider the following criteria:
- a) The condition of the tree to be destroyed or injured;
 - b) The location of the tree to be destroyed or injured;
 - c) The reason(s) for the proposed destruction or injuring of the tree;
 - d) The preservation of retained trees on the lot;
 - e) The protection and preservation of ecological systems and their functions, including the protection and preservation of native flora and fauna;

- f) Erosion, flood control and sedimentation of watercourses;
 - g) Interference with natural drainage processes; and
 - h) Consistency with the cities Tree Canopy and Natural Vegetation Policy (2.3.1.3).
2. A permit shall not be issued by the General Manager where:
- a) An application required under this Chapter has not been submitted in full or the required fee has not been paid;
 - b) An Arborist Report has not been submitted or, in the opinion of the General Manager is not satisfactory;
 - c) The permit would result in the destruction or injuring of a tree that is an endangered, threatened or special concern tree species as defined in the *Endangered Species Act*, R.S.O. 1990, c.E.15, or the *Species at Risk Act*, S.C. 2002, c. 29;
 - d) The permit would result in the destruction or injuring of a tree that is designated as a heritage tree, unless the City's Municipal Heritage Committee has approved the destruction or injuring of the tree;
 - e) The permit is not in keeping with the general purpose and intent of this Chapter.
3. The General Manager may issue a permit subject to conditions including but not limited to, any one or more of the following:
- a) That the destruction or injuring of each tree only be carried out by or under the supervision of an arborist;
 - b) That specified measures be implemented to mitigate the direct and indirect effects of the destruction or injuring on other nearby trees, land, water bodies or natural areas;
 - c) Any other condition that the General Manager considers reasonable to implement the intent of this Chapter.

370.5.3 The Permit

1. Following receipt of a complete application, the General Manager may issue a permit for destroying or injuring trees, identifying the trees to be destroyed or injured.

2. Any permit issued will expire within twelve months of the date it was issued.
3. The permit is, and remains, the property of the City and it may not be transferred without the written consent of the City.
4. Following the issuance of the permit, the owner shall immediately post a copy in a conspicuous place on the lot where the tree to be destroyed or injured is located at least five days prior to the destruction or injuring of the tree, and shall ensure that it remains posted until the destruction or injuring or other related activities are complete.
5. Where the General Manager refuses to issue a permit, the applicant shall be informed in writing (in hardcopy or by email).
6. The General Manager may revoke a permit at any time, for any one or more of the following reasons:
 - a) the permit was issued on mistaken, misleading, false or incorrect information;
 - b) the permit was issued in error;
 - c) the applicant has failed to comply with any condition attached to the permit;
 - d) the applicant has failed to comply with any provision of this Chapter; or
 - e) the applicant requests in writing that the permit be revoked.

370.5.4 Developments Subject to a Development Agreement

1. Any person wanting to remove any tree on a City road allowance having a DBH greater than 5 centimetres for a development that is subject to a Development Agreement, shall provide a proposal prepared or certified by an Arborist which includes the information described in Section 5.1(2)(f).
2. Costs associated with the removal of trees from City road allowances for a development that is subject to a Development Agreement shall be the responsibility of the developer.
3. Should a tree(s), having a DBH greater than 5 centimetres be required to be removed, the developer shall pay \$350 per replacement tree, subject to a maximum of \$35,000, to the Tree Planting Program.

Article 6 Enforcement

370.6.1 Authority - Enforcement

The provisions of this Chapter may be enforced by an Officer.

370.6.2 Entry and Inspection

An Officer may, at any reasonable time, without a warrant, enter and inspect any land to determine whether or not this Chapter, an Order under this Chapter, a condition of a permit, or a Court Order made under the *Municipal Act* is being complied with. An Officer may, in carrying out an inspection, be accompanied by an assisting person or persons. For the purpose of such inspection, an Officer may:

- a) require the production for inspection of documents of 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 including his or her name and address; 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.

For the purpose of exercising the power of entry, the person exercising the power shall comply with the provisions of the *Municipal Act* including any requirements of Sections 435 (Conditions Governing Powers of Entry) and 437 (Restriction Re: Dwellings) of the said Act.

370.6.3 Samples

If a sample is taken under subsection 373.6.2(d) of this Chapter, the sample shall be divided into two parts, and one part shall be delivered to the person from whom the sample is taken, if the person so requests at the time the sample is taken and provides the necessary facilities. If a sample is taken and has not been divided into two parts, a copy of any report on the sample shall be given to the person from whom the sample was taken. Additionally, a receipt shall be provided for any document or thing removed under subsection 373.6.2(d) of this Chapter and the document or thing shall be promptly returned after the copies or extracts are made.

370.6.4 Copies or extracts of documents and things

Copies of or extracts from documents and things removed under this part and certified as being true copies of or extracts from the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the originals.

370.6.5 Hinder or obstruct

No person shall hinder or obstruct, or attempt to hinder or obstruct, any Officer exercising a power or performing a duty under this Chapter, or any person lawfully acting in aid of such an Officer. Without limiting the generality of the meaning of “hinder” or “obstruct”, a person shall be deemed to have obstructed or hindered an Officer in the execution of their duties if he or she:

- a) provides false information to an Officer; or,
- b) is alleged on reasonable and probable grounds to have contravened any of the provisions of this Chapter, and fails to identify themselves to an Officer upon request.

370.6.6 Rebuttable presumption - identification

In a prosecution for a contravention of this Chapter, evidence of identification shall be presumed to be correct and accurate, unless rebutted by evidence to the contrary.

370.6.7 Order to Discontinue Activity

Where an Officer is satisfied that a person has contravened any provision of this Chapter, the Officer may issue an Order requiring the person to stop the contravention. The Order shall set out the information contained in Schedule “A” including the municipal address or the legal description of the land, the reasonable particulars of the contravention adequate to identify the contravention, and the date by which there must be compliance with the Order.

370.6.8 Service

- a) An Order issued under this Article may be served personally or served by sending it by regular mail to the last known address of:
 - i. The owner of the property on which the contravention occurred;
and
 - ii. The person to whom the Order is directed.
- b) Where service of an Order is made by regular mail, service shall be deemed to have been made five (5) days after the Order is mailed.
- c) Where service cannot be carried out under Section 370.6.8(a) of this Chapter, the Officer shall place a placard containing the terms of the Order in a conspicuous place on the affected lands and the placing of the placard shall be deemed to be sufficient service of the Order on the person or persons to whom the Order is directed.

370.6.9 Fine - contravention - general

Every person who contravenes any of the provisions of this Chapter, contravenes the terms and conditions of a permit or an Order issued pursuant to this Chapter, or every

director or officer of a corporation who knowingly concurs in the contravention by a corporation, upon conviction, is guilty of an offence and is liable to:

- a) on a first offence, to a fine not more than \$10,000.00 or \$1,000 per tree, whichever is greater; and,
- b) on a second offence and each subsequent offence, to a fine of not more than \$25,000.00 or, \$2,500 per tree, whichever is greater.

370.6.10 Fine - contravention - part 1 offence

Despite Section 370.6.9, every person who is issued a Part 1 offence notice or summons and is convicted of an offence under this Chapter is liable to a maximum fine as provided for in the *Provincial Offences Act*.

370.6.11 Court Order - upon conviction

In addition to any other remedy and to any penalty imposed by this Chapter, any person who is convicted of an offence under this Chapter may be ordered by the court in which the conviction has been entered and any court of competent jurisdiction thereafter, to rehabilitate the land or to plant or replant trees in such a manner and within such period as the court considers appropriate, including any silvicultural treatment necessary to re-establish the trees.

370.6.12 Power to Remedy

Where a person fails to do a matter or thing as directed or required by a court of competent jurisdiction pursuant to this Chapter or the *Municipal Act*, the City, by its employees, officers or agents may, at any reasonable time, without a warrant, enter upon the property of the owner without further notice and do the matter or thing immediately. Such matter or thing is to be at the expense of the person and the owner, and may be collected in the same manner as property taxes.

Article 7 Interpretation

370.7.1 Words - plural - singular

In this Chapter, references to items in the plural include the singular, as applicable, unless used with a number modifying them.

370.7.2 Headings

Headings are inserted for convenience of reference purposes only, form no part of this Chapter and shall not affect in any way the meaning or interpretation of the provisions of this Chapter.

370.7.3 Amended references

Any references to a statute, regulation, by-law or other legislation or statutory instrument in this Chapter shall include such statute, regulation, by-law or other

legislation or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor legislation thereto.

370.7.4 Schedules

All schedules to this Chapter shall form part of this Chapter.

Article 8 Conflicts

370.8.1 Most restrictive - prevails

If there is a conflict between this Chapter and a by-law passed under the *Forestry Act*, the provision that is most restrictive of the injuring or destruction of trees prevails.

370.8.2 Responsibility and compliance - other by-law or legislation

Nothing in this Chapter shall exempt any person from complying with the requirements of any by-law in force or from obtaining any licence, permission, permit, authority or approval required under any by-law or legislation.

Article 9 Validity and Severability

370.9.1 Validity and severability

Every provision of this Chapter is declared to be severable from the remainder of the Chapter and if any provision of this Chapter shall be declared invalid by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder.

Article 10 Effective Date

370.10.1 Effective date

This Chapter shall come into force and take effect as of the date of the final passing of the enabling by-law.

Adopting By-law: By-law 2021-50, 7 June 2021.

By-law Amendments: By-law 2023-095, 25 September 2023.

Schedule "A" to Chapter 370**Stop Work Order****(Pursuant to Chapter 370 of the City of Orillia Municipal Code - Tree Conservation)**

You are hereby directed and ordered to forthwith stop, halt, cease, and desist from any and all works associated with the destruction or injuring of trees from those lands comprising:

Municipal address/legal description of the property:

Owner/individual responsible for destruction or injuring of trees:

Description of infraction:

Date of inspection: _____

Effective order date: _____ to _____

Signature of officer: _____ Date: _____

(Contact Information, Phone Number)