

**CITY OF HAMILTON**

**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Planning Division**

<b>TO:</b> Chair and Members Planning Committee	<b>WARD(S) AFFECTED:</b> CITY WIDE
<b>COMMITTEE DATE:</b> December 3, 2013	
<b>SUBJECT/REPORT NO:</b> A Draft Woodland Conservation By-law for Private Property Within the Urban Area (City Wide) (PD02229(d))	
<b>SUBMITTED BY:</b> Joe-Anne Priel Acting General Manager Planning and Economic Development Department	<b>PREPARED BY:</b> Cathy Plosz (905) 546-2424 Ext. 1231
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That the draft Urban Woodland Conservation By-law, attached as Appendix “B” to Report PD02229(d), to regulate all woodlands 0.2 ha (0.5 acre) or more in size in the Urban Area, be brought forward for public review and comment;
- (b) That the draft By-law, attached as Appendix “C” to Report PD02229(d), to amend the existing Tree Cutting By-laws for the Regional Municipality of Hamilton-Wentworth, the Town of Ancaster, Town of Dundas, and City of Stoney Creek be brought forward for public review and comment;
- (c) That a Public Meeting be held at a Planning Committee Meeting early in 2014 to receive comments on the By-laws, attached as Appendices “B” and “C” to Report PD02229(d);

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- (d) That the costs for one additional FTE, with expertise in forestry or arboriculture to implement and administer the Urban Woodland Conservation By-law, be referred to the 2014 Budget process;
- (e) That staff be directed to prepare a work plan and report back to Planning Committee on a Woodland Protection Strategy, which works together with the new By-law, to recommend non-regulatory tools and programs to protect and enhance trees and woodlands in the Urban and Rural Areas of Hamilton.

**EXECUTIVE SUMMARY**

As a result of a Motion at the General Issues Committee (GIC) on January 14, 2013, Planning staff has been directed to report back to Planning Committee on options for a draft Urban Woodland Conservation By-law. The purpose of this Report is to outline the options that staff considered when drafting the new draft By-law, and to present a new Urban Woodland Conservation By-law. Staff is also seeking Council approval to bring this draft By-law forward for public review and comment at a Planning Committee Meeting early in 2014.

In 2012 and 2013, two woodlands within the Urban Area were cut down. In response to the recognition that trees and woodlands in the Urban Area may not be adequately protected, the General Issues Committee (GIC) passed a Motion on January 14, 2013, which directed:

- (a) That staff report back to the Planning Committee on options for a draft Urban Woodland Conservation By-law, specifically addressing current urban woodland clear-cutting;
- (b) That staff consult with the Agriculture and Rural Advisory Committee and the Ontario Federation of Agriculture on options to protect woodlands in Rural Hamilton, taking into account the traditional interests of farmers who already manage their woodlands in a proper fashion, but noting that other Rural landowners may be engaging in woodland clear-cutting; and,
- (c) That the Planning Committee be directed to hold a Public Meeting on this matter.

The recommended option is for a new Urban Woodland Conservation By-law, which would regulate woodlands 0.2 ha (0.5 acre) or greater in size in the Urban Area.

A draft Hamilton Urban Woodland Conservation By-law with this scope has been prepared and is attached as Appendix "B". If the draft By-law is enacted, areas such as Waterdown, Binbrook, and the former City of Hamilton will have additional protection for woodlands. Landowners who wish to remove trees in regulated woodlands must apply for a permit, which can be approved or denied by the City. The proposed By-law would

not regulate trees that are not part of an “urban woodland” as defined in the By-law. The By-law lays out the process to obtain a permit, conditions to be considered when issuing permits, and the process to appeal a decision on a permit. It also establishes penalties for violations, and describes the powers of Municipal By-law Enforcement Officers when enforcing the By-law.

The current Regional Woodland Conservation By-law would continue to apply to the Rural Area. There would be no change for individual trees in the Rural Area (i.e. they would not be regulated). In the Urban Area, the existing By-laws (Ancaster, Dundas, and Stoney Creek) would continue to be in force. However, the existing By-laws will have to be amended to make it clear which would apply in the case of overlap between them and the new By-law. This amending By-law is attached as Appendix “C”.

Staff recommends that public consultation to receive input on these draft By-laws occur at a Planning Committee Meeting early in 2014. As directed in the January 13, 2013, Motion at GIC, staff consulted with the Agriculture and Rural Affairs Advisory Committee (ARAAC) on August 19, 2013. The ARAAC requested that they be provided with the draft By-law for their information. Further consultation will occur with ARAAC in 2014.

If the new By-law is enacted, staff recommends that a Tree and Woodland Protection Strategy be prepared, which would work with the By-laws to protect and enhance tree cover within the City of Hamilton, including:

- Programs to restore or manage forests;
- Financial incentives, such as tax relief or grants to landowners who manage and maintain significant natural areas on their land in a natural state;
- Conservation easements to protect forested portions of a landowner’s property; and,
- Landowner stewardship, education, and awareness programs, including public-private partnerships to plant trees, and active promotion of tree planting and preservation.

This Strategy would be prepared for the entire City (Rural and Urban Areas), and would gather input from the community on how best to protect and enhance trees and woodlands.

***Alternatives for Consideration - See Page 16.***

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)**

**Financial:** The proposed new Urban Woodland Conservation By-law (see Appendix “B”) requires landowners to get a permit from the City to remove trees in regulated woodlands. Permits allow City staff to work with the landowner, to preserve as many trees as possible. They also allow the City to approve or deny tree removal.

However, although the proposed new By-law will require extra staff time to process additional permits, staff does not recommend fees for permits. Residents were opposed to permit fees during the public consultation for the 2009 By-law, and fees may discourage some residents from notifying the City. If fees are required by the City, staff recommends they be minimal (i.e. not based on cost-recovery).

**Staffing:** To provide an indication of the existing level of activity, approximately 12 permits are processed per year for the existing Town of Ancaster By-law, 12 Notices of Intent to Cut for the Region of Hamilton-Wentworth By-law, and 2 permits for Dundas, for a total of 26 permits per year. This total includes permits for both the Urban and Rural Areas. These permits are processed by the existing one full-time employee (FTE) in Municipal Law Enforcement.

Although it is not known how many additional permits would be submitted if the new By-law is approved, it is reasonable to expect that permit numbers may double in number. Since there is no more capacity for the existing full time employee to take on additional work, staff recommends that one new FTE be added to Municipal Law Enforcement. This employee should have expertise in forestry or arboriculture, and would be responsible for implementing the new and existing Tree Cutting By-laws, responding to inquiries and complaints, issuing permits, and enforcement.

**Legal:** The new draft By-law (see Appendix “B”) has been prepared under the Municipal Act. This By-law, if approved, would require that the existing By-laws, which regulate trees on private property for the former Town of Ancaster, City of Stoney Creek, Region of Hamilton-Wentworth, and Town of Dundas, be amended. This amendment is needed to clarify which By-law will apply in the case of overlapping regulations. The existing By-laws for the former municipalities would remain in effect. The amending By-law is attached as Appendix “C”.

**HISTORICAL BACKGROUND** (Chronology of events)

What By-laws are Currently in Effect?

Since amalgamation, the City of Hamilton has been responsible for enforcing four Tree Cutting By-laws (Ancaster, Dundas, Region of Hamilton-Wentworth, and Stoney Creek).

These By-laws differ in where they apply. For example, in the cases of Ancaster, Stoney Creek, and the Region, the By-laws apply to the entire municipalities. In contrast, the Dundas By-law protected individual trees and woodlands within the Niagara Escarpment Plan Development Control Area, and in specific heritage districts defined in the By-law.

The By-laws also differ in which trees and woodlands they regulate. The Regional By-law regulates woodlands 0.8 ha (2 acres) or more in size, while the Ancaster By-law regulates woodlands 0.2 ha (0.5 acre or more) and individual heritage trees 45 centimetres diameter at breast height or greater.

The By-laws have different exemptions and enforcement processes. For example, the Regional By-law requires a Notice of Intent to Cut, which is simply a notification to the City that the landowner intends to harvest trees in his/her woodland. It requires no approval from the City, and staff is not able to deny a Notice of Intent to Cut. This differs from a permit (Ancaster, Dundas, and Stoney Creek By-laws), which requires City approval before trees can be removed. The Ancaster By-law requires no fee, but the Stoney Creek By-law charges a permit fee based on the number of trees to be removed.

A summary of the scope of the existing Tree Cutting By-laws for private property is shown in Appendix "A".

The 2009 Draft Private Tree and Woodland Conservation By-law:

In 2002, the Planning and Economic Development Department and the Community Services Department prepared Report PD02229/CS02106, which explored the need for a Tree Cutting By-law to regulate trees on privately-owned property, and outlined staff resource requirements if a By-law for the amalgamated City of Hamilton was approved.

In 2004, Planning and Economic Development Department staff prepared Report PD02229(a), which outlined the options for developing a Tree Cutting By-law for private property in Hamilton. The Report indicated that a new By-law was needed to consolidate the existing Tree Cutting By-laws of the former regional and local municipalities, which were out-of-date. At that time, Council approved hiring one full-time employee to administer and enforce the existing By-laws from the former

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regional and local municipalities. Council also directed staff to prepare a new By-law, with the scope outlined in Report PD02229(a), and to conduct public consultation.

In May 2005, staff released a draft By-law for public review. There was a strong response from both urban and rural residents. Staff considered the comments and revised the By-law accordingly. The second version of the By-law was presented to the Economic Development and Planning Committee in Report PD02229(b), in June 2008, as the basis for another round of public consultation.

Four Public “Open Houses” were held in the fall of 2008 to receive public and agency input on the draft By-law. Comments were also received from residents and agencies by telephone and e-mail.

In October 2009, after extensive public consultation and revisions, staff presented a draft Private Tree and Woodland Conservation By-law in Report PD02229(c) to regulate trees on private property in both Rural and Urban Hamilton. The draft By-law regulated larger woodlands (1 ha or 2.5 acres or more in size) in Rural and Urban Areas. In the Urban Area, the draft By-law also regulated smaller woodlands (greater than 0.2 ha (0.5 acres) and less than 1 ha (2.5 acres) in size), and individual trees 40 centimetres diameter at breast height or more.

However, based on the public presentations at Planning Committee, it was apparent that some in the community remained concerned about the By-law. In the end, Planning Committee received the presentation, and the By-law was not adopted. Since this time, the By-laws that were enacted by the former municipalities (Region of Hamilton-Wentworth, Dundas, Ancaster, and Stoney Creek) remained in effect.

Why is the By-law Being Revisited?

There are many pressures on trees in Hamilton, and recently two woodlands within the Urban Area were cut for development in Wards 7 and 8. There have also been a number of small-scale tree cutting incidents in the Urban Area. This has resulted in the need to reconsider a new Tree Cutting By-law for Hamilton.

These incidents have exposed a number of issues with the existing Tree Cutting By-laws, including:

- The permit process differs between the By-laws and could be made stronger;
- There are gaps in the geographic areas protected by the Municipal Act By-laws, resulting in loss of urban woodlands in certain areas; and,
- Some of the definitions in the By-laws could be made more specific and clear.

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In response, GIC passed a Motion on January 14, 2013, which directed:

- (a) That staff report back to the Planning Committee on options for a draft Urban Woodland Conservation By-law, specifically addressing current urban woodland clear-cutting;
- (b) That staff consult with the Agriculture and Rural Advisory Committee and the Ontario Federation of Agriculture on options to protect woodlands in Rural Hamilton, taking into account the traditional interests of farmers who already manage their woodlands in a proper fashion, but noting that other rural landowners may be engaging in woodland clear-cutting; and,
- (c) That the Planning Committee be directed to hold a Public Meeting on this matter.

**POLICY IMPLICATIONS/LEGISLATED REQUIREMENTS**

If a new draft By-law is enacted for the Urban Area, the existing lower tier By-laws (Ancaster, Dundas, Region of Hamilton-Wentworth, and Stoney Creek) will be amended, but will remain in effect. The local municipal By-laws were passed under the Municipal Act, which allows a municipality to regulate the destruction of individual trees and small woodlands. The Regional By-law was passed under the Forestry Act, and applies to Urban and Rural Areas. It is important to retain the Regional By-law because it protects the extensive forest cover, Environmentally Significant Areas, and Provincially Significant Wetlands (swamps) in Rural Hamilton. Threats to these forests include rural businesses, quarries, and poor forest management practices (over-harvesting and high-grading). The proposed new By-law for the Urban Area would be passed under the Municipal Act. To see the effects of how the new By-law would work with the existing municipal By-laws (i.e. what would be regulated), please refer to Appendix "D".

A new Urban Woodland Conservation By-law would support the goals of the Provincial Policy Statement and the Niagara Escarpment Plan to protect the biodiversity of natural heritage systems. It is a tool that will assist the City in ensuring that there are no negative impacts on significant woodlands, valley lands, wetlands, and wildlife habitat. The Hamilton Urban Official Plans requires that the City maintain and update the Private Tree and Woodland Conservation By-law and protect tree cover on new development sites (Chapter C - City Wide Systems and Designations, Policy C.2.11, Tree and Woodland Protection). The proposed new By-law will also contribute to Vision 2020 goals to improve natural areas and corridors, and improve water and air quality. Finally, the By-law would contribute to the Environmental Stewardship goals in the Corporate Strategic Plan by ensuring that natural resources are protected and enhanced.

**RELEVANT CONSULTATION**

In preparing this Report, Planning staff consulted with Legal Services and Municipal Law Enforcement staff.

The draft new Urban Woodland Conservation By-law is based on the 2009 Tree and Woodland Conservation By-law, but with a reduced scope. The 2009 By-law underwent extensive public and stakeholder input, including other City staff (Forestry, Public Works, Development Planning, Parks and Open Space, Legal Services, and Municipal By-law Enforcement), stakeholders (Conservation Authorities, the Hamilton-Halton Homebuilders' Association), the Agriculture and Rural Affairs Advisory Committee, and residents.

Since extensive public consultation occurred for the 2009 By-law, there will be one Public Meeting to receive input on the proposed new Urban Woodland Conservation By-law (see Appendix "B"). This Public Meeting will occur at a future Planning Committee Meeting, early in 2014.

Staff also consulted with ARAAC at their August 19, 2013, meeting. The ARAAC indicated that they would be interested in reviewing the draft By-law. Staff will provide the draft By-law to the ARAAC and the Ontario Federation of Agriculture for their information.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

When exploring the options for a new Tree Cutting By-law, staff considered the following:

- What does the City want to achieve with the new By-law?
- What should the scope of the new By-law be?
- What geographic area should it apply to?
- How do we define a woodland?
- If the new By-law applies only to the Urban Area, how will woodlands in the Rural Area be protected? How will urban and rural woodland protection work together?
- What are the resource implications of enforcing a Tree Cutting By-law? Should permits be required? Should there be permit fees?



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- What is the best way to enhance protection for urban woodlands? How can a new By-law work together with non-regulatory tools such as education and awareness, landowner stewardship, habitat restoration projects, and tax incentives?

These questions and options for a new By-law are discussed below.

What does the City want to achieve with the By-law?

Based on the GIC Motion, staff understands that Council wishes to:

- Increase the protection of urban woodlands in the Urban Area;
- Focus on woodland protection and not on protecting individual trees at this time; and,
- Address gaps in the existing By-laws.

Scope of the By-law:

The GIC Motion was specific in directing staff to explore options for a By-law which regulated urban woodlands only. There was no direction to include protection for individual trees in the new By-law.

Many municipalities (e.g. Toronto, Mississauga, Oakville, Kitchener) include protection for both woodlands and individual trees in their Urban Tree Cutting By-laws. This reflects the importance that City residents place on trees in downtown areas, parks, and along streets.

However, there is some existing protection for individual trees in the Ancaster and Dundas By-laws, and staff recommends that this protection continue to ensure that the intent of these By-laws, to preserve tree cover, is carried forward.

Size of Woodlands to be Regulated:

GIC directed staff to prepare a By-law which regulates tree cutting in woodlands on private property in the Urban Area. The By-law could be written to protect urban woodlands of any specified size.

Tree Cutting By-laws under the Municipal Act typically regulate woodlands between 0.2 ha (0.5 acres) and 1 ha (2.5 acres) in size.

To provide the highest level of protection, staff recommends that the By-law regulate the smallest size woodlands possible under the Municipal Act, which is 0.2 ha. The existing

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Town of Ancaster Tree Cutting By-law regulates woodlands 0.2 has (0.5 acre) or more in size, and it has been successful in protecting tree cover in Ancaster.

This option is recommended because it would protect the smaller woodlands remaining in the Urban Area, and it most closely reflects the direction provided to staff in the GIC Motion.

Permits:

For Tree Cutting By-laws passed under the Municipal Act, a municipality may require that a permit be approved before injuring or destroying trees. A permit will provide the City with useful information, such as how many trees are to be removed, species and condition of trees, and reason for removal. Staff would carefully consider this data before making a decision on whether the permit and tree removal would be permitted.

The existing Tree Cutting By-laws in Hamilton vary in their requirements for a permit. The Stoney Creek, Ancaster, and Dundas By-laws all require a permit. In contrast, the Regional Woodland Conservation By-law requires a Notice of Intent to Cut, which is not a permit. City staff has found the Notice of Intent to Cut process to be ineffective.

Because a permit gives the City the ability to approve or deny an application for tree removal, it is recommended that permits be required under the new By-law. The permit process also allows the City to attach conditions for tree removal to the permit, such as the manner or timing of tree removal, replanting requirements, or ensuring that sensitive natural features on site are not damaged.

If permits are to be used, the City needs to consider whether it will require fees. Currently, only the Stoney Creek By-law requires fees. The advantage of having a permit fee is that it provides a mechanism to recover some of the staff costs for enforcing the By-law.

If fees are chosen, there are options to reduce their impact on residents, such as charging a fee based on how many trees are to be removed (e.g. Stoney Creek By-law). For example, the fee would increase with the number of trees to be removed.

However, during the 2009 public consultation, it was clear that residents were opposed to permit fees, and it is possible that fees will discourage some residents from applying for a permit. For these reasons, staff recommends that no fee be charged for permits under the new By-law.

Exemptions:

Exemptions allow an individual or agency to remove trees in woodland regulated by a By-law in certain specific circumstances, without a permit. Examples include a surveyor

conducting a survey, a municipality removing trees for an infrastructure project, or removal of trees adjacent to an existing building or structure. Many of these exemptions allow public bodies to remove trees as part of carrying out their mandate. There are standard exemptions in the Municipal Act that many municipalities include in their Tree Cutting By-laws, such as:

- “(a) Activities or matters undertaken by a municipality or a local board of a municipality;*
- (b) Activities or matters undertaken under a licence issued under the Crown Forest Sustainability Act, 1994;*
- (c) 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;*
- (d) 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 Sections 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 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;*
- (f) 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;*
- (g) 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,*
- (h) The injuring or destruction of trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land:
  - (i) That has not been designated under the Aggregate Resources Act or a predecessor of that Act; and,*
  - (ii) On which a pit or quarry is a permitted land use under a By-law passed under Section 34 of the Planning Act, 2001, c. 25, s. 135 (12); 2002, c. 17, Sched. A, s. 27 (3, 4).”**

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Since these are standard exemptions, staff recommends including them in the new By-law. Other exemptions can be included, such as allowing the removal of hazardous trees, or trees that are growing close (within 3 metres) to a building.

How will the existing and the new By-laws work together?

The existing By-laws vary in the types of trees and woodlands that they regulate (see Appendix "A"). These By-laws were enacted before amalgamation and reflect the priorities of each former municipality. In particular, the Ancaster By-law is comprehensive and protects individual trees, so it goes beyond the scope of the draft By-law. The Regional By-law regulates woodlands in the Rural Area.

There are two options related to the existing By-laws. First, the existing By-laws can be left in effect, but amended to state that, in the case of differences between the draft and existing By-laws, the By-law which is most restrictive applies. Administratively, this is the simplest way of dealing with the issue.

Second, the existing By-laws could be amended to remove the sections which overlap, so that only the new draft By-law would apply to woodlands. Staff conducted a review of the existing By-laws to determine whether this approach would result in any loss of tree protection. Since staff is concerned that this could result in inadvertent loss of some of the existing protection to trees, this option is not recommended.

Staff recommends that the existing municipal By-laws for Dundas, Stoney Creek, Region of Hamilton-Wentworth, and Ancaster remain in effect to ensure that the tree protection identified by these communities before amalgamation continues. A small amendment could be made to each By-law to clarify which By-law would apply in the case of conflict between the existing and new By-laws.

**Preferred Option:**

Staff recommends an Urban Woodland Conservation By-law, which regulates woodlands 0.2 ha (0.5 acres) or more in size in the Urban Area. This option best addresses the concern of the General Issues Committee in its January 2013 Motion. The By-law will protect smaller woodlands across the Urban Area, and still permits residents to manage the individual trees on their property.

To move forward with protecting urban woodlands, staff has drafted an Urban Woodland Conservation By-law with this recommended scope. This draft By-law is attached as Appendix "B" for review by Planning Committee. To clarify the relationship between the existing By-laws and the new By-law, staff has also prepared a draft By-law (see Appendix "C") to amend the existing By-laws.

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The draft Urban Woodland Conservation By-law is based on the 2009 Tree and Woodland Conservation By-law tabled by Planning Committee in October 2009. The draft By-law:

- Regulates woodlands 0.2 ha or greater in size in the Urban Area (as defined in the Urban Hamilton Official Plan);
- Requires that permits be obtained from the City before tree removal can occur;
- Describes the process to obtain a permit, conditions to be considered when issuing permits, and the process to appeal a decision on a permit; and,
- Establishes penalties for violating the By-law.

The By-law contains exemptions, including:

- Activities undertaken by the City, local board, or Conservation Authority;
- Removing trees, in accordance with an approved Tree Protection Plan for a Site Plan, Plan of Subdivision, Consent, or Plan of Condominium;
- Removal of trees by public utilities, surveyors, and quarries;
- Removal of hazardous trees, and in the interest of public safety;
- Tree removal using good forestry practices;
- Removal of trees necessary under an approved Building Permit; and,
- Removal of a tree in a woodland located within 3m of an occupied building.

The draft Hamilton Urban Woodland Conservation By-law is an improvement over the existing By-laws, because it:

- Regulates small woodlands across the entire Urban Area so there is uniform protection of urban woodlands;
- Requires that permits be obtained for tree removal and gives the City the authority to approve or deny permits;
- Considers the ecological value of the woodland, by allowing the City the opportunity to deny a permit if tree removal is proposed within a Core Area in the City's Natural Heritage System in the Urban Hamilton Official Plan;

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- Protects tree species which are federally, provincially, or locally rare;
- Describes a specific, clear process for approving and denying permits, and an appeal process, in the event that a landowner wishes to appeal a permit decision;
- Allows the City to issue a stop work order, if staff believe a violation is occurring; and,
- Specifies that the City can attach conditions to a permit approval, including requiring compensation plantings on the applicant's land, specifying the timing of tree removal, and ensuring that the site is not damaged during tree harvest.

Staff has prepared a draft Hamilton Urban Woodland Conservation By-law (see Appendix "B"). Staff is seeking instruction from Planning Committee to obtain public input on this draft By-law by holding a Public Meeting at a future Planning Committee meeting early in 2014.

**Other Issues:**

**Rural Woodland Protection:**

If the City adopts a new Urban Tree Cutting By-law, it will be important to retain protection for woodlands in the Rural Area. Since many of the City's most significant natural areas are in the Rural Area, and there are some land uses which may conflict with tree protection (such as rural businesses, golf courses, and quarries), staff recommends continued protection for woodlands in the Rural Area. It is important that regulatory protection remain for rural woodlands.

To address the protection of rural woodlands, and to receive feedback on the proposed new Urban Woodland Conservation By-law, staff has consulted with the Agricultural and Rural Affairs Advisory Committee and the Ontario Federation of Agriculture, as directed in the January 2013 GIC Motion:

That staff consults with the Agriculture and Rural Advisory Committee and the Ontario Federation of Agriculture on options to protect woodlands in Rural Hamilton, taking into account the traditional interests of farmers who already manage their woodlands in a proper fashion, but noting that other rural landowners may be engaging in woodland clear-cutting.

Development Planning staff attended the Agriculture and Rural Affairs Advisory Committee (ARAAC) Meeting on August 19, 2013, to discuss the proposed new Urban By-law. The ARAAC did not raise any concerns, but requested the draft By-law for information. The ARAAC member who represents the Ontario Federation of Agriculture (OFA) offered to circulate the draft By-law to OFA members.

Staff recommends that the ARAAC and OFA be consulted in the future, as part of preparing a comprehensive Woodland Protection Strategy, as described below.

Protecting Individual Trees in the Urban Area:

During the public consultation for the 2009 By-law, urban residents expressed an interest in protecting and enhancing mature individual trees, particularly in Downtown areas. Residents valued mature trees, and felt they added to the beauty and ecosystem health of the City. Also, staff research has found that the larger urban centres (Mississauga, Oakville, Kitchener, Brampton, Markham, and Toronto) regulate both woodlands and individual trees in their private Tree Cutting By-laws. For example, the City of Mississauga regulates trees 15 centimetres (6 inches) diameter at breast height (dbh) or more, the City of Kitchener regulates trees greater than 10 centimetres (4 inches) dbh, the Town of Oakville's By-law protects trees 20 centimetres (8 inches) dbh or more, and the City of Toronto regulates trees 30 centimetres (12 inches) dbh or more.

The draft By-law will retain the current protection of individual trees in some areas, as the existing By-laws for Ancaster and Dundas protected individual trees. However, individual trees in other Urban Areas, such as Waterdown, Binbrook, Stoney Creek, and Downtown Hamilton, would not be protected.

At this time, regulating individual trees is beyond the scope of the GIC Motion. However, staff recommends that protection for individual trees in the Urban Area be considered in the future, as it was apparent during the 2009 By-law consultation that many urban residents valued urban trees and wanted them protected.

Woodland Protection Strategy:

A new Urban Woodland Conservation By-law should be used, together with other non-regulatory tools, to protect and enhance the tree cover which makes Hamilton a beautiful City. The City of Hamilton could prepare a Woodland Protection Strategy, which includes methods to encourage the protection and enhancement of woodlands. Regulatory approaches, such as Tree Cutting By-laws, provide the necessary legislation to protect trees by discouraging tree destruction and providing the City with recourse if a violation occurs. However, the regulatory approach should be combined with other tools to provide the best protection to Hamilton's trees and woodlands.

If the draft By-law is enacted, a Woodland Protection Strategy could then be prepared, which examines other means of protecting and enhancing woodlands, including:

- Restoration and management of forests;

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- Financial incentives, such as tax relief or grants to landowners who manage and maintain significant natural areas on their land in a natural state;
- Conservation easements to protect forested portions of a landowner's property; and,
- Landowner stewardship, education, and awareness programs, including public-private partnerships to plant trees, and active promotion of tree planting and preservation.

This Strategy would be prepared for the entire City (Rural and Urban Areas), and would gather input from the community on how to best protect and enhance trees and woodlands.

**PUBLIC CONSULTATION:**

In its Motion, GIC identified the need to conduct a Public Meeting. Extensive public consultation was completed prior to the 2009 Private Tree and Woodland Conservation By-law. The draft Hamilton Urban Woodland Conservation By-law (see Appendix "B") is based on the 2009 By-law, with a reduced scope to include only woodlands within the Urban Area. Notice of a future Public Meeting at the Planning Committee, to receive input on the proposed new Urban Woodland Conservation By-law, will be advertised. This will provide an opportunity for public input to be considered when Planning Committee reviews the attached draft By-laws.

**ALTERNATIVES FOR CONSIDERATION**

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Financial:

Staff recommends that permits be required to cut trees under the draft By-law. This requirement will allow City staff to refuse to approve a permit if the proposed tree removal does not comply with the By-law.

Three of the four existing By-laws in Hamilton (Dundas, Ancaster, Region of Hamilton-Wentworth) do not require a permit fee.

The advantage of having a permit fee is that it provides a mechanism to recover some of the staff costs for enforcing the By-law. However, during the 2009 public consultation, residents were opposed to permit fees, and it is possible that fees will discourage some residents from obtaining a permit.



Staffing:

To provide an indication of the existing level of activity, approximately 12 permits are processed per year for the existing Town of Ancaster By-law, 12 Notices of Intent to Cut for the Regional Hamilton-Wentworth By-law, and 2 permits for Dundas. These permits are currently processed using one full-time employee. If the number of permits doubles as a result of the new By-law, bringing the total number of annual permits to 52, one new full-time employee must be added to Municipal Law Enforcement. There is currently one FTE to administer and enforce the existing four Tree Cutting By-laws. Enforcement of the new By-law will involve:

- Processing permits (reviewing permit applications, conducting site visits, issuing permits);
- Answering inquiries about the new and existing By-laws;
- Receiving, responding to, and documenting complaints;
- Organizing Appeal Hearings for those who contest permit conditions or denials;
- Conducting pre-cut and post-cut site inspections (verifying work has been done according to permit conditions); and,
- Periodically enforcing violations, collecting evidence, and appearing in court.

Since there is no more capacity to place additional workload on the existing FTE, staff recommends that the costs of one new FTE, with expertise in forestry or arboriculture, be reviewed in the 2014 Budget process.

Legal:

The Urban Woodland Conservation By-law, if approved, would require that the existing By-laws, which regulate trees on private property for the former Town of Ancaster, City of Stoney Creek, Region of Hamilton-Wentworth, and Town of Dundas, be amended to indicate which By-law prevails when regulations overlap. By retaining the existing By-laws, their intent and content can be carried forward to work together with the new Urban Woodland Conservation By-law. The amending By-law is attached as Appendix "C". To see the implications of how the new By-law and the existing municipal By-laws will work together, and which trees and woodlands will be protected, please see Appendix "D".

Another option is to delete the sections of the existing By-laws which relate to woodlands. This approach may be cleaner, as it would likely reduce confusion due to the overlap in woodland regulations in the new and existing By-laws. However, care would have to be taken when deleting sections of the existing By-laws so other sections of the By-laws are not affected.

Policy:

A new Urban Woodland Conservation By-law would support the goals of the Provincial Policy Statement and the Niagara Escarpment Plan to protect the biodiversity of natural heritage systems by ensuring that there are no negative impacts on significant woodlands, valley lands, wetlands, and wildlife habitat. The Hamilton Rural and Urban Official Plans require that the City maintain and update the Private Tree and Woodland Conservation By-law, and protect tree cover on new development sites (Chapter C - City Wide Systems and Designations, Policy C.2.11, Tree and Woodland Protection). The proposed new By-law will also contribute to Vision 2020 goals to improve natural areas and corridors, and improve water and air quality. Finally, the By-law would contribute to the Environmental Stewardship goals in the Corporate Strategic Plan by ensuring that natural resources are protected and enhanced.

**ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN:**

**Strategic Priority #1:**

A Prosperous & Healthy Community

*WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.*

**Strategic Objective:**

- 1.5 Support the development and implementation of neighbourhood and City Wide strategies that will improve the health and well-being of residents.
- 1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

**APPENDICES / SCHEDULES**

- Appendix “A”: Existing Tree Cutting By-law Summary
- Appendix “B”: Draft Hamilton Urban Woodland Conservation By-law
- Appendix “C”: Draft Amending By-law for the Existing Tree Cutting By-laws
- Appendix “D”: Application and Effect of the New and Existing Tree Cutting By-laws

:CP

Attachs. (4)

**Appendix A: A Summary of the Existing Tree Cutting By-laws for Private Property in Hamilton:**

<u>By-law</u>	<u>Scope</u>	<u>Permit Required</u>	<u>Exemptions</u>
Town of Ancaster (2000-118) - enacted in 2000.	<p>Applies to public and private lands.</p> <p>Applies to woodlands of 0.2 ha (0.5 acre) in size or more within the Urban Area.</p> <p>Applies to Hamilton Conservation Authority owned and managed lands.</p> <p>Applies to individual heritage trees (dbh of 45 cm or more).</p>	<p>Permit required.</p> <p>No fee.</p> <p>Permit application form submitted 30 days before cutting to occur.</p> <p>Town may require arborist report - officer may inspect.</p> <p>Permit expires after 60 days.</p>	<p>Does not apply to trees destroyed for utility and transportation projects, hazardous trees, or trees destroyed in compliance with an approved Tree Preservation Plan for development sites.</p>
Town of Dundas (4513-99) - enacted in 1999.	<p>Applies to trees of a minimum diameter (0.15m dbh) within Schedule areas, front and side yards, within 6m of road allowance in rear yard of corner lot in Cross-Melville Heritage District, in Open Space Zones, and in Environmentally Significant Areas.</p>	<p>Permit required.</p> <p>No fee.</p>	<p>Exemptions for trees destroyed using good forestry practices, or according to an approved Tree Preservation Plan for a development site.</p>
Region of Hamilton-Wentworth (R00-054) - enacted in 2000.	<p>Applies to private lands only.</p> <p>Applies to woodlots 2 acres (0.81 ha) or more in size across the Region.</p>	<p>Permit (Notice of Intent to Cut) required for destruction of trees.</p> <p>No fee.</p>	<p>Exemptions for trees destroyed using good forestry practice, or according to an approved Tree Preservation</p>

			Plan for a development site, or for landowner's own use.
Stoney Creek (4401-96) - enacted in 1996.	Applies to all woodlots 0.5 ha or more in size and privately owned lands within the Niagara Escarpment Development Control Area.	<p>Permit required.</p> <p>Permit application form and pay fee - permit expires after 30 days.</p> <p><u>Fees:</u> One tree per calendar year - no fee; 2 to 10 trees per year - \$25; 11 to 20 trees - \$50; more than 20 trees - \$100.</p>	Exemptions for trees destroyed using good forestry practices, diseased, hazardous trees, bonafide farmers, and with a minimum DBH.

**Authority:** Item [REDACTED]  
Planning Committee  
Report: 13-[REDACTED] (PD02229(d))  
CM: [REDACTED]

**Bill No.** [REDACTED]

**CITY OF HAMILTON**

**BY-LAW NO.** [REDACTED]

**To Promote the Conservation and Sustainable Use of Woodlands on Private Property within the Urban Boundary of the City of Hamilton**

**WHEREAS** Council desires to promote the conservation and sustainable use of woodlands on private property within the urban boundary of the City of Hamilton;

**AND WHEREAS** Sections 8, 9, and 10 of the Municipal Act, 2001 authorize the City of Hamilton to pass By-laws necessary or desirable for municipal purposes, and in particular, Paragraph 5 of Subsection 10(2) authorizes By-laws respecting the economic, social, and environmental well-being of the municipality;

**AND WHEREAS** Subsection 135(1) of the Municipal Act, 2001 provides that the City may prohibit or regulate the destruction or injuring of trees;

**AND WHEREAS** Subsection 135(7) of the Municipal Act, 2001 provides that the City may require that a Permit be obtained to injure or destroy trees and impose conditions to a Permit, including conditions relating to the manner in which destruction occurs and the qualifications of a person authorized to injure or destroy trees;

**AND WHEREAS** Section 425 of the Municipal Act, 2001 authorizes the City of Hamilton to pass By-laws providing that a person who contravenes a By-law of the City of Hamilton passed under that Act is guilty of an offence;

**AND WHEREAS** the Municipal Act, 2001 further authorizes the City of Hamilton, 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 City of Hamilton enacts as follows:

**Definitions:**

1. In this By-law:

"arborist" means a person who is a certified arborist under the International Society of Arboriculture;

"basal area" means:

- (a) the area of the cross-section of a trunk of a tree, including the bark measured at the diameter breast height as square metres per hectare; and,
- (b) where there are multiple trunks, the total area of the cross-sections of the multiple trunks of a tree, including the bark, measured at the diameter breast height as square metres per hectare;

"business day" means 8:30 a.m. to 4:30 p.m. on any day on which the City of Hamilton's administration buildings are open for business;

"City" means the geographical area of the City of Hamilton or the municipal corporation as the context requires;

"Council" means the Council of the City of Hamilton;

"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;

"Director" means the Director, By-law and Parking Services Division, for the City of Hamilton, and any successor or his or her designate;

"discontinuity" means a break in a woodland, which includes, but is not limited to, highways and roads, railway rights-of-way, lands, paths, golf course fairways, utility lines, or natural open spaces;

“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;

“farm” means the premises where a person who has a current and valid farming business registration number under the Farm Registration and Farm Organization Funding Act, 1993 operates that farming business;

“Forest Management Prescription” means a course of woodland management, prepared by a Registered Professional Forester, for a particular woodland after specific assessments and evaluations of the woodland have been made by him or her;

“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 detriments 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;

“landscape architect” means a person who is a full member in good standing of the Ontario Association of Landscape Architects;

“local board” means a municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities, excluding a school board and a conservation authority;

“Municipal Law Enforcement Officer” means the Director or a person appointed by Council or by the Director for the enforcement or administration of this By-law, and includes a person employed by the City of Hamilton whose duties are to enforce or administer this By-law;

“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 the written authorization from the Director to injure or destroy any tree in a woodland;

“person” includes, but is not limited to, an individual, sole proprietorship, partnership, association, or corporation;

“Planning Committee” means the City of Hamilton’s Planning Committee or any successor Committee;

“Registered Professional Forester” means a person who is registered as a professional forester under the Professional Foresters Act, 2000;

“Sensitive Natural Areas” include, but are not restricted to:

- (a) Environmentally Significant Areas, as identified by the City of Hamilton in its Official Plans;
- (b) Provincial or Regional Life Science Areas of Natural and Scientific Interest (“ANSI”), as identified by the Ontario Ministry of Natural Resources;
- (c) Wetlands, as identified by the Ontario Ministry of Natural Resources or a Conservation Authority;
- (d) Habitat of Threatened, Endangered, Special Concern, or Locally Rare Species, as identified by the City of Hamilton, the Ontario Ministry of Natural Resources, or the Species at Risk Act (Canada), and available through the City’s Natural Heritage Planner;
- (e) Significant Wildlife Habitat, as identified by the City of Hamilton, the Ontario Ministry of Natural Resources, or a Conservation Authority, and available through the City’s Natural Heritage Planner;
- (f) Significant Woodlands, as identified by the City of Hamilton in its Official Plans;
- (g) Significant Valley Lands, as identified by the City of Hamilton, the Ontario Ministry of Natural Resources, or a Conservation Authority, and available through the City’s Natural Heritage Planner; and,
- (h) Core Areas within the Natural Heritage System, as identified in the City of Hamilton in its Official Plans.

“tree” means a self-supporting woody perennial plant which has reached or can reach a height of least 3 metres at physiological maturity;

“Tree Protection Plan” means a plan, reviewed and approved by a Municipal Law Enforcement Officer, prepared by an arborist, landscape architect, or Registered Professional Forester, in accordance with the City



of Hamilton's Tree Protection Guidelines, which protects and preserves trees on private property where development or disturbance of the natural forest cover for the purposes of building construction and/or land division will be occurring; and,

"woodland" means land measured to the drip line and including any discontinuity equal to or less than 30 metres in width with at least:

- (a) 1,000 trees of any size, per hectare, calculated in proportion to the actual area of the woodland;
- (b) 750 trees, with a diameter breast height of over 5 centimetres per hectare, calculated in proportion to the actual area of the woodland;
- (c) 500 trees, with a diameter breast height of over 12 centimetres per hectare, calculated in proportion to the actual area of the woodland; or,
- (d) 250 trees, with a diameter breast height of over 20 centimetres per hectare, calculated in proportion to the actual area of the woodland;

But does not include:

- (e) a cultivated fruit or nut orchard;
- (f) a tree nursery;
- (g) a plantation established for the purposes of producing Christmas trees and which is being actively managed and harvested for this purpose with trees being sold as Christmas trees within the preceding 10 years;
- (h) a narrow linear strip of trees that defines a laneway or a boundary between fields; or,
- (i) a plantation established and continuously managed for the sole purpose of complete removal at rotation, in accordance with a Forest Management Prescription.

**Application:**

2. This By-law applies to trees in a woodland equal to or greater than 0.2 hectares located within the urban boundary of the City, as defined in the Official Plans for the City.

**General Prohibitions:**

3. Except as otherwise permitted under Sections 5, 6 or 7 of this By-law, no person through their own actions or through the actions of any other person shall injure or destroy any tree in a woodland, or permit the destruction or injury of any tree in a woodland.
4. No person through their own actions or through the actions of any other person shall:
  - (a) fail to comply with a notice, order, or Permit under this By-law; or,
  - (b) remove or deface any order posted under this By-law.

**Exemptions - Not Requiring Permit:**

5. Despite Section 2, this By-law does not apply to:
  - (a) activities or matters undertaken by the City, a local board, or a Conservation Authority;
  - (b) activities or matters undertaken, in accordance with a licence issued under the Crown Forestry Sustainability Act, 1994;
  - (c) the injuring or destruction of a tree in a woodland 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 injuring or destruction of a tree in a woodland, in accordance with an approved Tree Protection Plan, submitted with an application for a Site Plan, a Plan of Subdivision, or a Consent under Sections 41, 51, or 53 of the Planning Act, or as a requirement of a Site Plan Agreement or Subdivision Agreement entered into under those Sections;
  - (e) the injuring or destruction of a tree in a woodland, in accordance with an approved Tree Protection Plan, submitted with an application for a Condominium Plan under the Condominium Act, 1998;
  - (f) the injuring or destruction of a tree in a woodland 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;

- (g) the injuring or destruction of a tree in a woodland by any provider of a public utility, as that term is defined in Subsection 1(1) of the Municipal Act, 2001, for the purpose of constructing and maintaining the public utility;
- (h) the injuring or destruction of a tree in a woodland 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;
- (i) the injuring or destruction of a tree in a woodland undertaken on land in order to lawfully establish and operate or enlarge a pit or quarry on land,
  - (i) that has not been designated under the Aggregate Resources Act or a predecessor of that Act; and,
  - (ii) on which a pit or quarry is a permitted land use under a By-law passed under Section 34 of the Planning Act;
- (j) the injuring or destruction of a tree in a woodland which is a hazard to any person, building or structure;
- (k) the injuring or destruction of a tree in a woodland in the interest of public safety;
- (l) the pruning of a tree in a woodland, in accordance with good arboricultural practice to maintain the tree's health;
- (m) the injuring or destruction of a tree in a woodland with its trunk or trunks entirely located within 3 metres of the outer edge of an existing occupied building; or,
- (n) the injuring or destruction of a tree in a woodland necessary for the erection of a building, structure, or thing in respect of which a Building Permit under the Building Code Act, 1992 has been issued.

**Permit Process:**

**Applications:**

6. An owner may injure or destroy their tree in a woodland, or permit the injuring or destruction of their tree in a woodland, provided that they comply with a Permit obtained from the Director to do so.

7. An owner shall apply for a Permit under Section 6 by submitting to the Director a completed Permit application form as prescribed by the Director, and any application fee.
8. Before issuing a Permit for the injuring or destruction of trees in a woodland, the Director may require that:
  - (a) the owner submit a Forest Management Prescription; and,
  - (b) the trees to be injured or destroyed are marked with paint, in accordance with the Forest Management Prescription.
9. No Permit shall be issued for the injuring or destruction of trees in a woodland unless:
  - (a) the Permit application form has been completed and submitted to the Director;
  - (b) any application fee has been submitted to the Director; and,
  - (c) no substantially similar Permit application has been previously refused, in whole or in part:
    - (i) by the Director, under Sections 11 or 12; or,
    - (ii) by Council, under Section 24.
10. The Director may issue a Permit for the injuring or destruction of trees in a woodland where he or she is satisfied that:
  - (a) the proposed injuring or destruction of the trees is in accordance with good forestry practices, and:
    - (i) the trees have been damaged by disease, insects, wind, ice, fire, lightning, or other natural causes, to the extent that the health of the trees is likely to further deteriorate;
    - (ii) the trees should be cut or removed to prevent disease or insects from spreading to other trees; or,
    - (iii) the trees have been marked to be cut back or removed as part of a Forest Management Prescription; or,
  - (b) The proposed injuring or destruction of the trees is necessary to protect the health or safety of the public.

11. The Director shall refuse to issue a Permit for the injuring or destruction of trees in a woodland where:
  - (a) a Sensitive Natural Area will not be adequately protected or preserved, as determined in consultation with the relevant Conservation Authority; or,
  - (b) stream or wetland functions, including flood or erosion control or drainage processes, will be negatively impacted, as determined in consultation with the relevant Conservation Authority.
  
12. The Director may refuse to issue a Permit for the injuring or destruction of trees in a woodland where:
  - (a) the trees are healthy;
  - (b) a tree species which is nationally, provincially or locally rare, threatened, endangered, or special concern will be impacted;
  - (c) the total basal area of trees in the woodland will be reduced to below 20 square metres per hectare on trees greater than 10 centimetres dbh, calculated in proportion to the actual area of the woodland; or,
  - (d) the number of trees in the woodland will be reduced to below the minimum number of trees necessary to constitute a woodland.
  
13. Where the Director issues a Permit, he or she may impose conditions on the Permit, including, but not limited to, conditions:
  - (a) requiring that replacement trees be planted on the land where the injuring or destruction of the trees is to take place or, if that is not possible, on other land owned by the owner;
  - (b) requiring security be deposited with the City to ensure compliance with this By-law;
  - (c) as to the manner and timing in which injury or destruction is to occur;
  - (d) as to the species, size, number, and location of trees to be destroyed or injured; or,

- (e) specifying that damage to residual stems and the site shall not exceed the acceptable minimum standards contained in the Silvicultural Guide for Managing Southern Ontario Forests (OMNR 2000), as amended from time-to-time.
14. Where the planting of replacement trees has been imposed as a condition under Section 13, the Director may impose further conditions on the Permit, including, but not limited to, conditions:
- (a) as to the species, size, number, and location of the replacement trees;
  - (b) requiring the submission of a replanting plan, satisfactory to the Director;
  - (c) requiring the submission of a written undertaking signed by the owner stating the replacement planting will be carried out; or,
  - (d) requiring that the replacement trees be planted and maintained, to the satisfaction of the Director.
15. Where the planting of replacement trees is not possible on land owned by the owner, the Director may impose conditions on the Permit requiring that an amount be paid to the City, such amount not to exceed the cost of replanting and maintaining for a period of 2 years the trees to be injured or destroyed.
16. Where the Director refuses to issue a Permit, a notice shall:
- (a) be sent to the owner who applied for the Permit;
  - (b) be delivered personally, or by sending it by prepaid registered mail to the last known address of the owner on file with the City;
  - (c) include the date of refusal; and,
  - (d) include the grounds for the Director's refusal.
- Service by registered mail shall be deemed to have taken place 5 business days after the date of mailing.
17. (a) A Permit issued under this By-law shall be in the name of the owner, and shall expire 1 year after its issuance;

- (b) Despite subsection 17(a), where the owner gives the Director a written and signed request to extend the Permit before the expiration date, the Director may approve an extension of up to 1 additional year.
18. No Permit issued under this By-law is transferable without the prior written consent of the Director, and, where such consent has not been given, a Permit is deemed to be revoked upon the transfer of ownership of the land to which it applies.

**Appeals:**

19. An owner who does not agree with conditions imposed under Sections 13, 14, or 15, or who receives a notice of refusal under Section 16, may request an appeal to the Planning Committee.
20. An appeal request by an owner under Section 19 shall be made in writing, accompanied by the applicable fee, and delivered to the Legislative Coordinator of the Planning Committee within 20 days of the date the Permit is issued with conditions under Sections 13, 14, or 15, or of the date contained in the notice of refusal under Section 16. The owner shall also include the grounds for their appeal request.
21. Where an appeal request meeting the requirements of Section 20 has been delivered to the Legislative Coordinator of the Planning Committee, the appeal shall be scheduled before the Planning Committee, and notice of the appeal date shall be given to the owner. The notice of the appeal date shall include:
- (a) a statement of the time, date, and purpose of the appeal; and,
  - (b) a statement that if the owner does not attend the appeal, the Planning Committee may proceed in the absence of the owner, and the owner shall not be entitled to further notice in the proceeding.
22. The notice of the appeal date may be given by delivering it personally or by sending it by prepaid registered mail to the last known address of the owner. Delivery by registered mail shall be deemed to have taken place five business days after the date of mailing.
23. The Planning Committee recommends to Council that a Permit be refused or issued, or that a condition be confirmed, rescinded, varied, or imposed on a Permit, and in doing so, shall consider:
- (a) the Director's report with respect to the Permit application;

- (b) special circumstances or conditions applying to the land where the trees are located;
  - (c) whether strict application of the provisions of this By-law in the context of the special circumstances applying to the trees would result in practical difficulties or unnecessary and unusual hardship for the owner, inconsistent with the general intent and purpose of this By-law; and,
  - (d) whether such special circumstances or conditions are pre-existing and not created by the owner.
24. Council, after considering the recommendation of the Planning Committee, may refuse or issue a Permit, or confirm, rescind, vary, or impose a condition on a Permit, all without an appeal hearing, having regard to the matters considered by the Planning Committee, this By-law, and other applicable law.
25. After Council has made a decision in respect of the recommendation of the Planning Committee, notice of that decision shall be sent to the owner by personal delivery or by registered mail to the last known address of the owner on file with the City.
26. Where the decision of Council is to issue a Permit, the Director shall issue the Permit on the terms directed by Council.

**Administration and Enforcement:**

**General:**

27. The Director is authorized to administer and enforce this By-law including but not limited to:
- (a) arranging for:
    - (i) the assistance or work of City staff, City agents, or the assistance of police officers;
    - (ii) the making of orders or other requirements and the imposition of conditions, as authorized under this By-law;
    - (iii) the obtaining of court orders or warrants, as may be required;



- (iv) the commencement of such actions on behalf of the City to recover costs or restrain contravention of this By-law, as deemed necessary; and,
  - (b) prescribing the format and content of any forms or other documents required under this By-law.
28. The Director may assign Municipal Law Enforcement Officers to enforce this By-law, and Municipal Law Enforcement Officers so assigned or appointed by Council to enforce this By-law shall have the authority to:
- (a) carry out inspections;
  - (b) make orders or other requirements, as authorized under this By-law; and,
  - (c) give immediate effect to any orders or other requirements made under this By-law.
29. The Director may assign duties or delegate tasks under this By-law to be carried out in the Director's absence or otherwise.

**Fees:**

30. All fees referred to in this By-law shall be as set out in the City's User Fees and Charges By-law, or as otherwise set and approved by Council from time-to-time.

**Entry and Inspections:**

31. A Municipal Law Enforcement 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:
- (a) this By-law;
  - (b) a direction or order made under this By-law;
  - (c) a condition of a Permit issued under this By-law; or,
  - (d) an order made under s. 431 of the Municipal Act, 2001.

32. A Municipal Law Enforcement Officer may, for the purposes of the inspection under Section 31 and in accordance with the conditions set out in Section 436 of the Municipal Act, 2001:
- (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, in writing, or otherwise, as required by the Municipal Law Enforcement Officer, from any person concerning a matter related to the inspection; or,
  - (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.
33. A Municipal Law Enforcement 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, where he or she has been prevented or is likely to be prevented from carrying out an inspection under Sections 31 and 32.

**Orders:**

34. If a Municipal Law Enforcement 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.
35. An order under Section 34 shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which the contravention occurred; and,
  - (b) the date or dates by which there must be compliance with the order, which may be of immediate effect should the Municipal Law Enforcement Officer determine that the circumstances warrant.

36. If a Municipal Law Enforcement 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 do work to correct the contravention.
37. An order under Section 36 shall set out:
  - (a) reasonable particulars of the contravention adequate to identify the contravention and the location of property on which the contravention occurred;
  - (b) the work to be completed;
  - (c) the date or dates by which the work must be completed; and,
  - (d) notice that if the order is not complied with, then the work may be done at the expense of the owner.
38. Delivery of an order to discontinue a contravening activity made under Section 34, or an order to do work made under Section 36, may be given personally or by registered mail to the last known address of:
  - (a) the owner;
  - (b) such other persons affected by the order as a Municipal Law Enforcement Officer determines.

Delivery by registered mail shall be deemed to have taken place five business days after the date of mailing.
39. In addition to delivery, in accordance with Section 38, an order to discontinue contravening activity made under Section 34, or an order to do work made under Section 36, may be delivered by a Municipal Law Enforcement Officer by placing a placard containing the order in a conspicuous place on the property where the contravention occurred.
40. Where delivery cannot be given in accordance with Section 38, sufficient delivery is deemed to have taken place when given in accordance with Section 39.
41. Where a time frame is set out in an order for carrying out any action, a Municipal Law Enforcement Officer may extend the time for compliance beyond the established time frame, provided such extension is required and is acceptable to the Municipal Law Enforcement Officer.

**City Carrying Out Work:**

42. Where a person does not comply with a direction or a requirement, including an order, under this By-law to do a matter or thing, the Director, with such assistance by others as may be required, may carry out such direction or requirement at the person's expense.
43. Where the costs of doing a matter or thing under Section 42 are estimated to be:
  - (a) less than \$10,000, the Director may proceed without further approval, and in accordance with the City's Procurement Policy; or,
  - (b) \$10,000 or more, the Director may proceed with approval of an authorized person or of Council, and in accordance with the City's Procurement Policy.
44. The City may recover the costs of doing a matter or thing under Section 42 by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes, and such costs shall include an interest rate of 15 per cent commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full. The amount of the City's costs, including interest to the date payment is made in full, constitutes a lien upon the land, upon the registration of a notice of lien upon the land.

**Penalties:**

45. 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:
  - (a) on a first conviction, to a fine of not more \$10,000 or a fine of \$1,000 per tree, whichever is greater; and,
  - (b) on any subsequent conviction, to a fine of not more than \$25,000 or a fine of \$2,500 per tree, whichever is greater.
46. Despite Section 45, where the person convicted is a corporation,
  - (a) the maximum fines in Subsection 45(a) are \$50,000 or \$5,000 per tree; and,
  - (b) the maximum fines in Subsection 45(b) are \$100,000 or \$10,000 per tree.

47. 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:
- (a) prohibiting the continuation or repetition of the offence by the person convicted;
  - (b) requiring the person convicted to correct the contravention in the manner and with the period that the court considers appropriate.

**General Provisions:**

48. This By-law may be referred to as the Urban Woodland Conservation By-law or the Hamilton Urban Woodland Conservation By-law.
49. If a court of competent jurisdiction declares any Subsection, Section, or part of this By-law invalid, it is the intention of Council that the remainder of the By-law shall continue to be in force.
50. (a) The provisions of this By-law apply in addition to the provisions contained in any other applicable By-laws of the City or applicable provincial or federal statutes or regulations.
- (b) In the event of a conflict between this By-law and any other applicable By-law of the City:
- (i) 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,
  - (ii) where none of the conflicting provisions provides for public health or safety, then the provision which is most protective of trees prevails.
51. This By-law comes into force on the date of its passing.

**PASSED** this [REDACTED] day of [REDACTED], 2013.

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R. Bratina  
MAYOR

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R. Caterini  
CLERK

**Authority:** Item [REDACTED]  
Planning Committee  
Report: 13-[REDACTED] (PD02229(d))  
CM: [REDACTED]

**Bill No.** [REDACTED]

**CITY OF HAMILTON**  
**BY-LAW NO.** [REDACTED]

**To Amend: By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law No. 4513-99, the Town of Dundas Tree Protection By-law; By-law 4401-96, the City of Stoney Creek Tree By-law; By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth Conservation By-law**

**WHEREAS** Council wishes to amend By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law No. 4513-99, the Town of Dundas Tree Protection By-law; By-law No. 4401-96, the City of Stoney Creek Tree By-law; and By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth Woodland Conservation By-law;

**AND WHEREAS** the City of Hamilton Act, 1999 did incorporate, as of January 1, 2001, the municipality "City of Hamilton";

**AND WHEREAS** the City of Hamilton is successor to the following former area municipalities: The Corporation of the Town of Ancaster, The Corporation of the Town of Dundas, The Corporation of the Town of Flamborough, The Corporation of the Township of Glanbrook, The Corporation of the City of Hamilton, and The Corporation of the City of Stoney Creek; and the successor the former Regional Municipality of Hamilton Wentworth;

**AND WHEREAS** the City of Hamilton Act, 1999 provides that the By-laws of the former area municipalities and the former Regional Municipality of Hamilton-Wentworth remain in force, in respect of the part of the municipal area to which they applied on December 31, 2000, until they expire or are repealed or amended to provide otherwise.

**NOW THEREFORE** the Council of the City of Hamilton enacts as follows:

**By-law No. 2000-118, the Town of Ancaster Tree Protection By-law:**

1. Section 3.3 of By-law No. 2000-118 of the Town of Ancaster Tree Protection By-law is deleted and replaced with the following new Section 3.3:

### **3.3 COMPLIANCE WITH OTHER STATUTES AND BY-LAWS**

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

3.3.2 In the event of a conflict between this By-law and any other applicable By-law of the City of Hamilton:

- (i) 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,
- (ii) where none of the conflicting provisions provides for public health or safety, then the provision which is most protective of trees prevails.

#### **By-law No. 4513-99, the Town of Dundas Tree Protection By-law:**

2. Section 3 of By-law No. 4513-99 of the Town of Dundas is amended by adding the following new Sub-section 3(g):

- (g) (i) The provisions of this By-law apply in addition to the provisions contained in any other applicable By-laws of the City of Hamilton or applicable provincial or federal statutes or regulations.
- (ii) In the event of a conflict between this By-law and any other applicable By-law of the City of Hamilton:
  - 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,
  - 2. where none of the conflicting provisions provides for public health or safety, then the provision which is most protective of trees prevails.

#### **By-law No. 4401-96, the City of Stoney Creek Tree By-law:**

3. Section 4 of By-law No. 4401-99 of the City of Stoney Creek is deleted and replaced by the following new Section 4:

- 4. (a) The provisions of this By-law apply in addition to the provisions contained in any other applicable By-laws of the City of Hamilton or applicable provincial or federal statutes or regulations.

- (b) In the event of a conflict between this By-law and any other applicable By-law of the City of Hamilton:
  - (i) 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,
  - (ii) where none of the conflicting provisions provides for public health or safety, then the provision which is most protective of trees prevails.

**By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth:**

- 4. Section 2 of By-law No. R00-054 of the Regional Municipality of Hamilton-Wentworth is amended by adding the following new Sub-section 2(3):
  - (3) (a) The provisions of this By-law apply in addition to the provisions contained in any other applicable By-laws of the City of Hamilton or applicable provincial or federal statutes or regulations.
  - (b) In the event of a conflict between this By-law and any other applicable By-law of the City of Hamilton:
    - (i) 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,
    - (ii) where none of the conflicting provisions provides for public health or safety, then the provision which is most protective of trees prevails.
- 5. This By-law comes into force on the date of its passing.

**PASSED** this [REDACTED] day of [REDACTED], 2013.

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R. Bratina  
MAYOR

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R. Caterini  
CLERK



**Appendix D: What Trees and Woodlands will be Regulated if New Urban Woodland Conservation By-law is Adopted?**

<u>Former Municipality</u>	<u>By-laws in Effect</u>	<u>Effect of New By-law (what will be regulated when new By-law is adopted)</u>
Town of Ancaster	<ol style="list-style-type: none"> <li>1. Town of Ancaster.</li> <li>2. Regional Woodland Conservation By-law.</li> <li>3. New Urban Woodland Conservation By-law.</li> </ol>	<p>In the urban area, regulations apply to:</p> <ul style="list-style-type: none"> <li>- woodlands 0.2 ha (0.5 acres) in size or more.</li> <li>- individual heritage trees with dbh of 45 cm or more.</li> </ul> <p>In the rural area, regulations apply to woodlands 0.81 ha (2 acres) or more in size.</p> <p><i>(No changes to existing regulations in Ancaster).</i></p>
Town of Dundas	<ol style="list-style-type: none"> <li>1. Town of Dundas.</li> <li>2. Region of Hamilton-Wentworth.</li> <li>3. New Urban Woodland Conservation By-law.</li> </ol>	<p>In the urban area, regulations apply to:</p> <ul style="list-style-type: none"> <li>- trees with a minimum diameter (15 cm dbh) within Schedule areas, front and side yards, within 6m of road allowance in rear yard of corner lot in Cross-Melville Heritage District, in Open Space Zones, and in Environmentally Significant Areas.</li> <li>- woodlands 0.2 ha (0.5 acres) in size or more.</li> </ul> <p>In the rural area, regulations apply to woodlands 0.81 ha (2 acres) or more in size.</p>
City of Hamilton	<ol style="list-style-type: none"> <li>1. New Urban Woodland Conservation By-law.</li> <li>2. Regional Woodland Conservation By-law.</li> </ol>	<p>In the urban area, regulations apply to woodlands 0.2 ha (0.5 acres) in size or more.</p> <p>In the rural area, regulations apply to woodlands 0.81 ha (2 acres) or more in size.</p>

<b><u>Former Municipality</u></b>	<b><u>By-laws in Effect</u></b>	<b><u>Effect of New By-law (what will be regulated when new By-law is adopted)</u></b>
Township of Glanbrook	<ol style="list-style-type: none"> <li>1. Regional Woodland Conservation By-law.</li> <li>2. New Urban Woodland Conservation By-law.</li> </ol>	<p>In the urban area, regulations apply to woodlands 0.2 ha (0.5 acres) in size or more.</p> <p>In the rural area, regulations apply to woodlands 0.81 ha (2 acres) or more in size.</p>
Town of Flamborough	<ol style="list-style-type: none"> <li>1. Regional Woodland Conservation By-law.</li> <li>2. New Urban Woodland Conservation By-law.</li> </ol>	<p>In the urban area, regulations apply to woodlands 0.2 ha (0.5 acres) in size or more.</p> <p>In the rural area, regulations apply to woodlands 0.81 ha (2 acres) or more in size.</p>
City of Stoney Creek	<ol style="list-style-type: none"> <li>1. Regional Woodland Conservation By-law.</li> <li>2. Stoney Creek By-law.</li> <li>3. New Urban Woodland Conservation By-law.</li> </ol>	<p>In the urban area, applies to woodlands 0.2 ha (0.5 acres) in size or more.</p> <p>In the rural area, applies to woodlands 0.5 ha (1.2 acres) in size or more.</p>
Region of Hamilton-Wentworth	<ol style="list-style-type: none"> <li>1. Regional Woodland Conservation By-law.</li> <li>2. New Urban Woodland Conservation By-law.</li> </ol>	<p>No change. Would continue to regulate woodlands 0.81 ha (2 acres) or more in size in the rural area.</p> <p>In the urban area, applies to woodlands 0.2 ha (0.5 acres) in size or more.</p>