

PROPERTY MAINTENANCE

Chapter 1015 TREES - PRIVATE PROPERTY PROTECTION

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**Article 1
INTERPRETATION**

1015.1.1 Applicant - defined

“applicant” means the owner who submits an application for a permit under this Chapter.

1015.1.2 Application - defined

“application” means an application for a permit to injure or destroy a tree as set out in Article 6 of this Chapter.

1015.1.3 Arborist - defined

“arborist” means an expert in the care and maintenance of trees and includes an arborist qualified by the Ministry of Training, Colleges and Universities, a forest technician or forestry technologist with an applicable college diploma and a minimum of two years urban forestry experience, a certified arborist qualified by the Certification Board of the International Society of Arboriculture, a consulting arborist registered with the American Society of Consulting Arborists, a Registered Professional Forester designated pursuant to the *Professional Foresters Act, 2000*, S.O. 2000, c. 18, as amended, or a person with other similar qualifications as approved by the Commissioner.

1015.1.4 Arborist’s report - defined

“arborist’s report” means a technical report prepared by an arborist or professional forester which identifies the surveyed location, species, size and condition of the tree, provides the reasons for any proposed injuring or destruction of the tree, and describes tree protection measures or other mitigating activities to be implemented.

1015.1.5 Commissioner - defined

“Commissioner” means the Commissioner of Parks, Recreation and Culture for the Municipality or his or her designate.

1015.1.6 Council - defined

“Council” means the Council of The Corporation of the Town of Richmond Hill.

1015.1.7 Cultivated orchard - defined

“cultivated orchard” means land where fruit trees are grown and maintained for the harvesting of their fruit.

1015.1.8 DBH - defined

“DBH” means the diameter of the trunk of a tree at a point of measurement 1.4 metres (4.6 feet) above the ground. DBH of multi-trunk trees shall be measured as indicated in Schedule ‘A’ to this Chapter. Where a tree has been cut down and the remaining stump is less than 1.4 metres (4.6 feet) in height, the DBH shall be the extrapolated diameter at 1.4 metres (4.6 feet) above the ground as set out in Schedule ‘B’ to this Chapter.

1015.1.9 Destroy - defined

“destroy” means to kill by cutting, burning, uprooting, chemical application or other means.

1015.1.10 Emergency work - defined

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

1015.1.11 Hazardous - defined

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

1015.1.12 Injure/Injury - defined

“injure/injury” means to harm, damage, impair or not protect a tree in accordance with the Parks, Recreation and Culture Details and Specifications, entirely or in part, and/or any acts which will harm a tree’s health or damage a tree in any manner.

1015.1.13 Municipality - defined

“Municipality” means The Corporation of the Town of Richmond Hill.

1015.1.14 Owner - defined

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

1015.1.15 Permit - defined

“permit” means a permit to injure or destroy a tree issued by the Commissioner.

1015.1.16 Permit application fee - defined

“permit application fee” means the prescribed fee as set out in Chapter 684 of the Town of Richmond Hill Municipal Code.

1015.1.17 Person - defined

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

1015.1.18 Pruning - defined

“pruning” means the removal of a tree branch or branches from a living tree by cutting at a point outside the branch collar, but does not include the removal of more than one quarter of a tree’s leaf-bearing crown. Pruning may be undertaken for the purposes of thinning the crown of a tree to increase light penetration and air movement, providing clearance for utility lines, buildings, pedestrians or vehicles or eliminating dead, hazardous or diseased wood.

1015.1.19 Registered Professional Forester - defined

“Registered Professional Forester” means a member of the Ontario Professional Foresters Association entitled to use the designation “Registered Professional Forester” under the *Professional Foresters Act, 2000*.

1015.1.20 Regional Municipality - defined

“Regional Municipality” means the Regional Municipality of York.

1015.1.21 Tree - defined

“tree” means any perennial woody plant, which has reached or can reach a height of at least 4.5 metres (14.76 feet) at physiological maturity.

1015.1.22 Tree farm - defined

“tree farm” means land where trees are grown and maintained for sale.

1015.1.23 Tree Inventory and Preservation Plan - defined

“Tree Inventory and Preservation Plan” means a plan imposed as a condition of development or redevelopment approval pursuant to sections 41, 51, or 53 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, which determines trees to be preserved through an assessment process which identifies trees, shrubs and other specific areas of natural habitat and their ecological function or importance and determines the impacts of any proposed development on the trees, shrubs, and other specific areas of natural habitat and their ecological function or importance and such plan shall determine mitigation measures and measures to protect and manage trees to be preserved (such measures not limited to protective barriers and/or hoarding) and proper practices to remove trees to be destroyed.

1015.1.24 Tree Preservation By-law Officer - defined

“Tree Preservation By-law Officer” means an individual appointed by the Commissioner for the administration and enforcement of this Chapter and includes a by-law enforcement officer of the Town, and such individual is hereby designated to be an officer pursuant to subsection 135 (11) of the *Municipal Act, 2001*, c. 23.

1015.1.25 Woodland - defined

“woodland” means a treed area as defined by the *Forestry Act* that is 1.0 hectare (2.47 acres) in area or more.

1015.1.26 Woodlot - defined

“woodlot” means a woodland of at least 0.2 hectares (0.49 acres) and no greater than 1.0 hectare (2.47 acres) in area.

1015.1.27 York Region Forest Conservation By-law - defined

“York Region Forest Conservation By-law” means By-law No. TR-0004-2005-036 of the Regional Municipality of York, as amended.

**Article 2
PERMIT REQUIRED**

1015.2.1 Permit - required

Unless otherwise exempted by this Chapter, no person shall injure, destroy, or permit or cause to be injured or destroyed, a tree in the Municipality having a trunk diameter of more than 20 centimetres (3.93 inches) DBH without a permit.

1015.2.2 Permit issued - compliance with conditions

Where a permit has been issued under this Chapter, no person shall injure, destroy, or permit or cause to be injured or destroyed, a tree in the Municipality unless they do so in accordance with the conditions of the permit and any other supporting documentation relevant to the issuance of the permit.

**Article 3
EXEMPTIONS**

1015.3.1 Permit not required - trees within woodlots

Notwithstanding Article 2 of this Chapter, a permit is not required for the injury or destruction of trees within woodlands that are governed by the York Region Forest Conservation By-law.

1015.3.2 Permit not required - trees within buildings or structures

Notwithstanding Article 2 of this Chapter, a permit is not required for the injury or destruction of a tree within a building or structure, a solarium, rooftop garden, an interior courtyard having a soil depth of less than 1.5 metres (4.92 feet) above a built substructure, nursery and a fruit tree that provides fruit for human consumption.

1015.3.3 Permit not required - tree in a tree farm

Notwithstanding Article 2 of this Chapter, a permit is not required for the injury or destruction of a tree in a tree farm that is being actively managed and harvested for the purposes for which it was planted.

1015.3.4 Permit not required - tree in cultivated orchard

Notwithstanding Article 2 of this Chapter, a permit is not required for the injury or destruction of a tree in a cultivated orchard.

1015.3.5 Permit not required - dead - diseased - hazardous tree

Notwithstanding Article 2 of this Chapter, a permit is not required for the removal of a dead, diseased or hazardous tree, or a portion of such a tree, where a certificate confirming the need for removal has been issued by an arborist and submitted to the Commissioner.

1015.3.6 Permit not required - emergency work

Notwithstanding Article 2 of this Chapter, a permit is not required for the injury or destruction of trees for emergency work.

1015.3.7 Permit not required - pruning

Notwithstanding Article 2 of this Chapter, a permit is not required for pruning.

1015.3.8 Permit not required - work by permitted authority

Notwithstanding Article 2 of this Chapter, a permit is not required for activities or matters undertaken by a municipality or a local board thereof.

1015.3.9 Permit not required - licence issued under Act

Notwithstanding Article 2 of this Chapter, a permit is not required for activities or matters authorized under a licence issued under the *Crown Forest Sustainability Act, 1994*.

1015.3.10 Permit not required - surveying

Notwithstanding Article 2 of this Chapter, a permit is not required for the injuring or destruction of trees by a person licensed under the *Surveyors Act, R.S.O. 1990, c. S.29*, as amended, to engage in the practice of cadastral surveying or his or her agent, while making a survey.

1015.3.11 Permit not required - matters under Planning Act

Notwithstanding Article 2 of this Chapter, a permit is not required for the injuring or destruction of trees imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under section 41, 51 or 53, respectively, of the *Planning Act, R.S.O. 1990, c. P.13* or as a requirement of a site plan agreement or subdivision agreement entered into under those sections (including the injury or destruction of a tree in compliance with a tree preservation plan).

1015.3.12 Permit not required - condition of development permit

Notwithstanding Article 2 of this Chapter, a permit is not required for 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*, R.S.O. 1990, c. P.13 or as a requirement of an agreement entered into under the regulation.

1015.3.13 Permit not required - transmitter - distributor - electricity

Notwithstanding Article 2 of this Chapter, a permit is not required for the injuring or destruction of trees by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998*, c. 15, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section.

1015.3.14 Permit not required - pit or quarry licence

Notwithstanding Article 2 of this Chapter, a permit is not required for 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*.

1015.3.15 Permit not required - pit or quarry land

Notwithstanding Article 2 of this Chapter, a permit is not required for the injuring or destruction of trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land,

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

1015.3.16 Permit not required - trees on Town streets

This Chapter shall not apply to trees to which Chapter 821 of the Town of Richmond Hill Municipal Code applies.

**Article 4
ADMINISTRATION**

1015.4.1 Administration authority - delegated to Commissioner

The Commissioner is responsible for the administration of this Chapter and is hereby delegated the authority to receive certificates, applications and required fees, and to issue or refuse to issue permits, including conditions thereto, in accordance with this Chapter.

1015.4.2 Plant Protection Act - Commissioner's power of entry

The Commissioner or Tree By-law Preservation Officer, once designated as an inspector by the President of the Canadian Food Inspection Agency, for the purposes of the *Plant Protection Act*, S.C. 1990, c. 22, has the authority to inspect for the presence of pests and to take action including the removal of trees on all public and private property, in accordance with that Act.

1015.4.3 Tree Preservation By-law Officer - delegation - authority

A Tree Preservation By-law Officer as defined in Section 1015.1.24 is hereby delegated the authority to enforce this Chapter, administer, review and refuse or issue permits, including conditions thereto, in accordance with this Chapter and conduct inspections of property pursuant to the exercise of their delegated authority under this Chapter.

Article 5

CERTIFICATE REQUIREMENTS

1015.5.1 Certificate of arborist - required

Notwithstanding Section 1015.3.5, and subject to Sections 1015.3.6 and 1015.5.2, no person shall injure or remove a dead, diseased or hazardous tree within the Municipality without first submitting to the Commissioner for approval, a certificate prepared by an arborist or professional forester confirming that the tree is dead, diseased or hazardous.

1015.5.2 Certificate of arborist provided - time limit

Notwithstanding Section 1015.3.6, the owner shall within seventy-two hours of the completion of any emergency work submit to the Commissioner, a certificate prepared by an arborist or professional forester confirming the need, nature and extent of the emergency work performed together with photographs depicting the condition of the tree removed immediately prior to its removal.

Article 6

APPLICATION REQUIREMENTS

1015.6.1 Application - for permit

An owner who wishes to injure or destroy a tree shall submit to the Commissioner an application on the prescribed form and shall provide the following:

- (a) the name, address and telephone number of the applicant;
- (b) the non-refundable permit application fee;
- (c) the purpose for which the permit is required; and
- (d) an arborist's report.

1015.6.2 Offence - false or misleading information

It is an offence under this Chapter to submit false or misleading information in support of a permit application.

1015.6.3 Application fee - Commissioner authorized to waive

The Commissioner is authorized to waive the permit application fee for owners living below the low-income cut-off as determined by Statistics Canada.

**Article 7
ISSUE OF PERMIT**

1015.7.1 Permit approval - process

Following receipt of an application, the Commissioner shall:

- (a) make decisions as to whether or not a permit will be issued, and whether any conditions will be imposed on a permit, by considering criteria, including but not limited to, the following:
 - (i) the species of the tree,
 - (ii) the condition of the tree,
 - (iii) the location of the tree,
 - (iv) the protection of ecological systems and their functions, including the protection of native flora and fauna,
 - (v) erosion, sedimentation of watercourses, and flood control,
 - (vi) impacts to surrounding properties, including loss of shade, vistas or privacy, and
 - (vii) the cultural heritage value of the tree;
- (b) confer with such persons and agencies as he or she considers necessary for the proper review of the application to determine whether or not a permit should be issued and any conditions thereto;
- (c) enter and inspect the lands upon which the tree is located as he or she considers necessary and the submission of the application shall be deemed permission to enter.

1015.7.2 Permit not approved - requirements not fulfilled

The issuance of a permit shall not be approved where the application requirements of this Chapter have not been fulfilled.

1015.7.3 Permit not approved - subdivision not yet draft approved

The issuance of a permit shall not be approved where an application for subdivision approval or consent related to lands on which the tree is located has been submitted to the Municipality and has not received draft approval or provisional consent.

1015.7.4 Permit not approved - planning application not approved

The issuance of a permit shall not be approved where a rezoning application, an application for site plan approval, or an application to amend the official plan related to the lands on which the tree is located has been submitted to the Municipality and has not received final approval. By-law 41-07, 19 March, 2007.

1015.7.5 Permit not approved - tree is endangered species

The issuance of a permit shall not be approved where the tree is an extirpated, threatened or endangered species as defined pursuant to the *Endangered Species Act, 2007*, or the *Species at Risk Act, 2002*. By-law 78-10, 28 June, 2010.

1015.7.6 Permit not approved - contravention of Act

The issuance of a permit shall not be approved where approval would be in contravention of the *Migratory Birds Act, 1994*.

1015.7.7 Permit not approved - permit required by York Region

The issuance of a permit shall not be approved where issuance of a permit pursuant to the York Region Forest Conservation By-law, or its successor, is required.

1015.7.8 Permit not approved - inconsistent with plan

The issuance of a permit shall not be approved where approval is inconsistent with an approved tree preservation plan.

1015.7.9 Permit approved - subject to conditions

A permit to injure or destroy a tree may be subject to conditions imposed by the Commissioner, which may include requirements for:

- (a) the submission of landscaping or restoration plans and associated maintenance plans;
- (b) the replacement plantings at another suitable location, or a cash in lieu payment (in an amount equal to 120 percent of the cost of replanting and maintaining the trees for a period of two years), where restoration planting is not physically possible on the site for which the permit is being issued;
- (c) the submission of a written undertaking and release to ensure that replacement plantings are carried out and maintained in

accordance with landscaping and restoration plans approved by the Commissioner;

- (d) the undertaking of tree cutting work only under the supervision of an arborist.

1015.7.10 Permit issued - expiry date

Every permit issued shall expire twelve months after issuance.

1015.7.11 Permit issued - expiry date - extended

Notwithstanding Section 1015.7.10, the Commissioner may extend the expiration date of a permit. In considering whether or not to grant a request to extend a permit, the Commissioner shall take into account to what extent the work authorized by the permit has occurred, and to what extent the conditions of the permit have been adhered to and in no case shall the Commissioner extend a permit so that the permit remains in effect for more than two years from the original date of its issuance.

1015.7.12 Permit issued - posted conspicuously

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

1015.7.13 Permit revoked - by Commissioner

The Commissioner may revoke a permit issued pursuant to this Chapter if it was issued based on false or misleading information.

**Article 8
SEVERABILITY**

1015.8.1 Validity

If a court of competent jurisdiction declares any provision, or any part of a provision of this Chapter to be invalid or to be of no force and effect, it is the intention of the Council in enacting this Chapter, that each and every other provision of this Chapter authorized by law, be applied and enforced in accordance with its terms, to the extent possible, according to law.

**Article 9
ENFORCEMENT**

1015.9.1 Enforcement - inspection by officer

Pursuant to subsection 436 (1) of the *Municipal Act, 2001*, c. 23, a Tree Preservation By-law Officer may, at any reasonable time, enter and inspect any land to determine whether this Chapter, a direction or order under this Chapter, or an order made pursuant to subsection 431 of the *Municipal Act, 2001*, c. 23 is being complied with. Pursuant to section 438 of the *Municipal Act, 2001*, c. 23 a Tree By-law Preservation Officer may

undertake inspections pursuant to orders issued pursuant to section 438 of the *Municipal Act, 2001*, c. 23.

1015.9.2 Inspection - powers

For the purpose of an inspection carried out pursuant to Section 1015.9.1 a Tree Preservation By-law Officer may: require the production for inspection of documents or things relevant to the inspection; inspect and remove documents or things relevant to the inspection for the purpose of making copies and extracts; require information from any person concerning a matter related to the inspection; and alone or in conjunction with a person possessing special expert knowledge make examinations or take tests, samples or photographs necessary for the purposes of the inspection.

1015.9.3 Contravention of Chapter - order issued

If a Tree By-law Preservation Officer is satisfied that a contravention of this Chapter has occurred, he or she may make an order: requiring the person who contravened this Chapter or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity; and/or do work to correct the contravention.

1015.9.4 Contravention - offences

Any person who contravenes any provision of this Chapter or an order issued pursuant to Section 1015.9.3 is guilty of an offence. Pursuant to subsection 429 (2) (a) of the *Municipal Act, 2001*, c. 23 all contraventions of this Chapter or orders issued under Section 1015.9.3 are designated as multiple offences and continuing offences. A multiple offence is an offence in respect of two or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of a by-law/Chapter. For greater certainty when multiple trees are injured or destroyed the injury or destruction of each tree is a separate offence. By-law 41-07, 19 March, 2007.

1015.9.5 Fines - for contravention

On conviction of an offence under this Chapter a person is liable to a fine in accordance with subsection 429 of the *Municipal Act, 2001*, c. 23 and the following rules made pursuant to subsection 429 of the *Municipal Act, 2001*, c. 23:

- (a) the minimum fine for any offence is \$500 and a maximum fine shall not exceed \$100,000. However, a maximum fine may exceed \$100,000;
- (b) in the case of a continuing offence, for each day or part of a day that the offence continues, the minimum fine shall be \$500 and the maximum fine shall not exceed \$10,000. However, despite Section 1015.9.5 (a), the total of all daily fines for the offence is not limited to \$100,000;

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- (c) in the case of a multiple offence, for each offence included in the multiple offence, the minimum fine shall be \$500 and the maximum fine shall not exceed \$10,000. However, despite Section 1015.9.5 (a), the total of all fines for each included offence is not limited to \$100,000. By-law 41-07, 19 March, 2007; By-law 78-10, 28 June, 2010.

1015.9.6 Special fines - no maximum

On conviction of an offence under this Chapter a person is liable to a special fine in accordance with subsection 429 (2) (d) of the *Municipal Act, 2001*, c. 23. The amount of the special fine will be the minimum fine as provided for in Section 1015.9.5 to which may be added the amount of economic advantage or gain that the person has obtained or can obtain from the contravention of the by-law/Chapter and/or order issued pursuant to Section 1015.9.3. Pursuant to subsection 429 (3) (1) of the *Municipal Act, 2001*, c. 23 a special fine may exceed \$100,000.

1015.9.7 Conviction of an offence - additional remedy

Where a person is convicted of an offence under this Chapter, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may order the person to plant or replant trees in such manner and within such a period of time as the court considers appropriate, including any arboricultural treatment necessary to re-establish the tree or have the tree re-established.

1015.9.8 Presumption - owner

If a contravention of this Chapter or an order issued pursuant to Section 1015.9.3 occurs the contravention is presumed to have been committed by the owner of the property on which the contravention has occurred unless otherwise proven by the owner.

Article 10 ENACTMENT

1015.10.1 Effective date

This Chapter shall come into force and take effect on the day of the final passing thereof. By-law 41-07, 19 March, 2007.