

Authority: Item 4, Planning Committee
Report 23-008 (PED23115)
CM: May 24, 2023
Ward: City Wide

Bill No. 087

CITY OF HAMILTON

BY-LAW NO. 23-087

To Amend By-law R00-054, the Regional Municipality of Hamilton-Wentworth Conservation By-law (as amended by By-law 10-013, By-law 14-213, and By-law 17-094)

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 of 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force in respect of the part of the municipal area to which they applied on December 31, 2000, until they expire or are repealed or amended to provide otherwise;

AND WHEREAS the City of Hamilton has declared a Climate Change Emergency and trees play an important role in the adaptation and mitigation of Climate Change;

AND WHEREAS the City of Hamilton’s Rural Official Plan and the Urban Official Plan recognizes the importance of trees and woodlands to the health and quality of life in our communities and encourages the protection and restoration of trees and forests;

AND WHEREAS through the public consultation on the draft Urban Forest Strategy, the residents of Hamilton indicated that better protection for private trees, especially during development, was considered very important and that the City of Hamilton should do more to protect individual trees or groupings of trees;

AND WHEREAS it is important to protect trees within future development areas until such time as Secondary Plans including the identification of Natural Heritage Systems have been prepared and adopted by Council;

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.

AND WHEREAS this By-law amends By-law No. R00-054;

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

1. That the amendments in this By-law include any necessary grammatical, numbering and lettering changes;
2. That By-law R00-054 be amended to add the following recitals after the third AND WHEREAS clause:

AND WHEREAS Sections 8, 9 and 10 of the *Municipal Act, 2001*, SO 2001, c.25, as amended (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

3. That Section 1 of By-law R00-054 be amended to add the following definitions in alphabetical order:

"Director" means the Director, Municipal Law Enforcement, for the City of Hamilton, and any successor or his or her designate;

"Occupied Building" means a permanent structure used or intended to be used for the shelter, accommodation or enclosure of persons for residential, business, institutional or recreational purposes. For the purposes of this Bylaw, an attached garage shall be deemed to be part of an Occupied Building.

4. That the definition of “woodland” in Section 1 of By-law R00-054, as amended, be amended to include the following:

“For the purposes of this By-law, the boundary of the woodland shall be defined by the ecological limit of the woodland and not by private property boundaries and shall include the area up to the drip line of the woodland and any corridors measuring up to 30 metres in width. Where a potential woodland is dissected by a corridor or natural feature such as a creek, the area of the woodland shall be calculated exclusive of the area of the corridor or natural feature.”

5. That By-law R00-054 be amended by repealing section 2 and replacing it with the following:

2. (1) This by-law applies only to woodlands that are equal to or greater than 0.81 hectares (2 acres) within the geographic boundaries of the Regional Municipality of Hamilton-Wentworth under the Regional Municipality of Hamilton-Wentworth Act, R.S.O. 1990 c.R.12

(2) In addition to Subsection 2(1) of this By-law, for those lands identified in Schedules “C1”, “C2” and “C3” to this By-law, this By-law shall apply to:

(a) Trees with a diameter breast height equal to or greater than 20 centimetres, except such trees that are:

- (i) Located within 7.5 metres (25 feet) of the outer edge of an Occupied Building, existing at the date of passage of this By-law, and do not form part of a woodland; or,
- (ii) Siberian Elms (*Ulmus pumila*), Norway Maples (*Acer platanoides*), Tree of Heaven (*Ailanthus altissima*), or Manitoba Maples (*Acer negundo*) and the destruction of one or more of the trees does not have the effect of reducing the number of trees in a woodland below the number of trees necessary to constitute a woodland.

(3) 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.

(4) 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.

6. That Subsection 3(1) of By-law R00-054 be amended by adding the words “or individual trees defined in Subsection 2 (2)” after the words “trees in a woodland” such that Subsection 3(1) will read “Except as provided in Section 4, no person shall destroy or permit the destruction by cutting, burning, or other means one or more trees in a woodland or individual trees defined in Subsection 2(2) if.”
7. That Subsection 3(2) of By-law R00-054 be amended by adding the words “or individual trees defined in Subsection 2(2)” after the words “...trees in woodlands” such that Subsection 3.(2) will read as “When cutting or removing or permitting the cutting or removing or one or more trees in woodlands or trees defined in Subsection 2(2)...”
8. That subsection 5.(1) of By-law R00-054 be amended by adding the words “or where individual trees that are defined in Subsection 2 (2) are located” after the words “where woodlands are located” such that Subsection 5.(1) will read as “...of the land where woodlands are located or individual trees that are defined in Subsection 2(2) are located...”
9. That subsection 6.(1) of By-law R00-054 be amended by adding the words “or individual trees that are defined in Subsection 2(2)” after the words “trees from woodlands” such that Subsection 6.(1) will read as “...trees from woodlands or individual trees that are defined in Subsection 2(2)...”
10. That Section 9 be renumbered to Section 12 and the following new Sections 9, 10 and 11 be added to By-law R00-054;

ORDERS

9. (1) If a by-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;
- (2) An order under subsection 9 (1) 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 by-law enforcement officer determine that the circumstances warrant.
- (3) If a by-law enforcement 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;

- (4) An order under subsection 9(3) 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.
- (5) Delivery of an order to discontinue a contravening activity made under subsection 9(1), or an order to do work made under subsection 9(3), 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 by-law enforcement officer determines; and,
 - (c) Delivery by registered mail shall be deemed to have taken place five business days after the date of mailing.
- (6) In addition to delivery, in accordance with subsection 9(5), an order to discontinue contravening activity made under subsection 9(1), or an order to do work made under subsection 9(3), may be delivered by a by-law enforcement officer by placing a placard containing the order in a conspicuous place on the property where the contravention occurred;
- (7) Where delivery cannot be given in accordance with subsection 9(5), sufficient delivery is deemed to have taken place when given in accordance with subsection 9(6);
- (8) Where a time frame is set out in an order for carrying out any action, a by-law enforcement officer may extend the time for compliance beyond the established time frame, provided such extension is required and is acceptable to the by-law enforcement officer;

CITY CARRYING OUT WORK

10. (1) 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;

(2) Where the costs of doing a matter or thing under subsection 10 (1) 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.

(3) The City may recover the costs of doing a matter or thing under subsection 10(1) by action or by adding the costs to the tax roll and collecting them 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;

ADMINISTRATION AND ENFORCEMENT

11. (1) 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.

(2) The Director may assign by-law enforcement officers to enforce this By-law, and by-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.

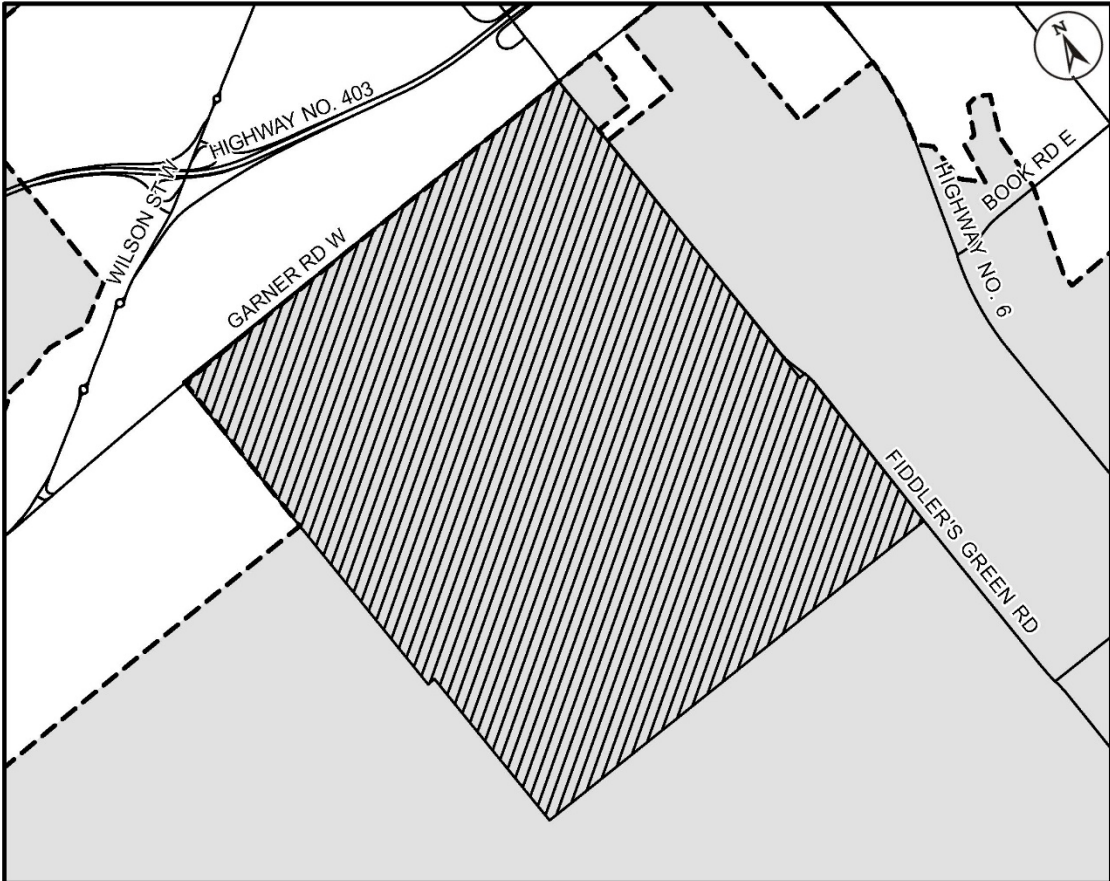
(3) The Director may assign duties or delegate tasks under this By-law to be carried out in the Director's absence or otherwise.

11. That Schedules "A1", "A2" and "A3" to this By-law be added as Schedules "C1", "C2" and "C3" to By-law R00-054;
12. That in all other respects, By-law R00-054 is confirmed; and,
13. That the provisions of this By-law shall become effective on the date approved by City Council.

PASSED this 24th day of May, 2023

A. Horwath
Mayor

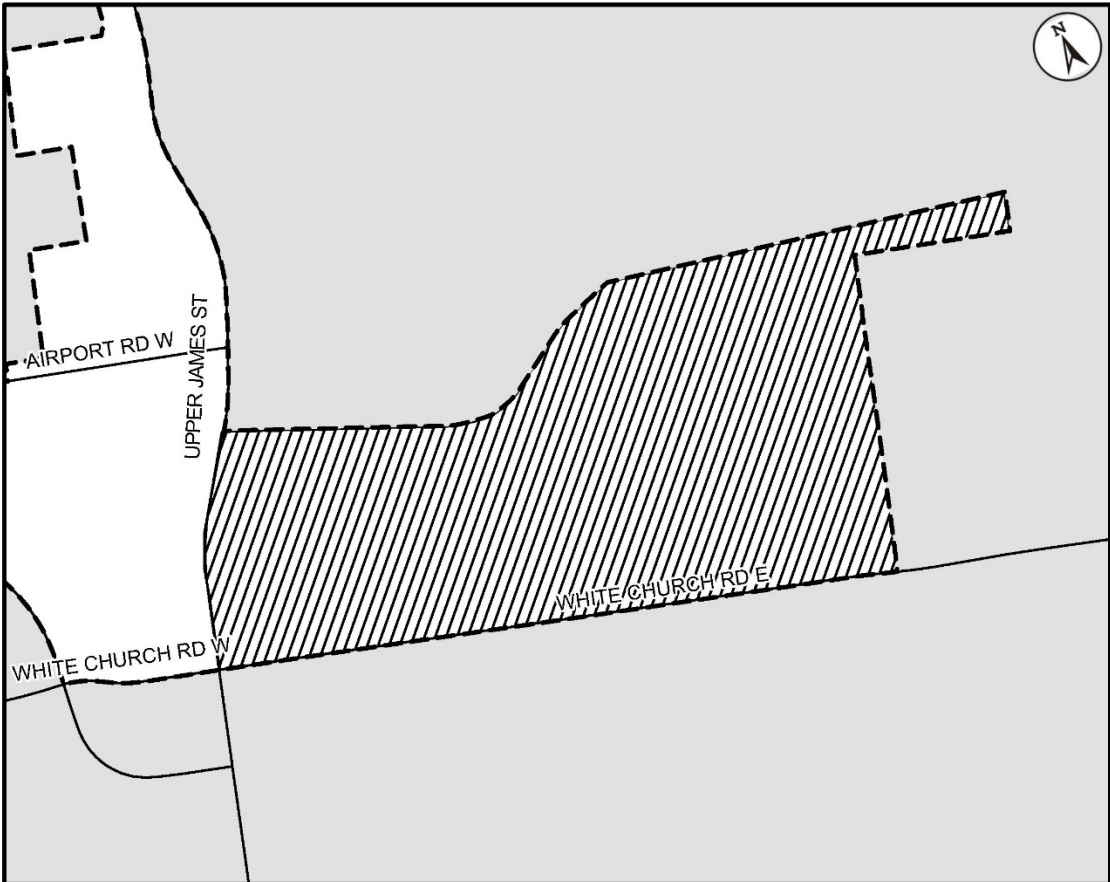
A. Holland
City Clerk



This is Schedule "A1" to By-law No. 23- Passed the day of, 2023	----- Mayor ----- Clerk
--	--------------------------------------

<h2>Schedule "A1"</h2> <p>Map forming Part of By-law No. 23-_____</p> <p>to Amend By-law No. R00-054</p>	<p>Subject Property</p> <ul style="list-style-type: none"> Lands Removed from the Greenbelt Plan Area Rural Area Urban Boundary
---	--

Scale: N.T.S.	File Name/Number: Tree By-law	
Date: April 24, 2023	Planner/Technician: SR/NB	
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT		

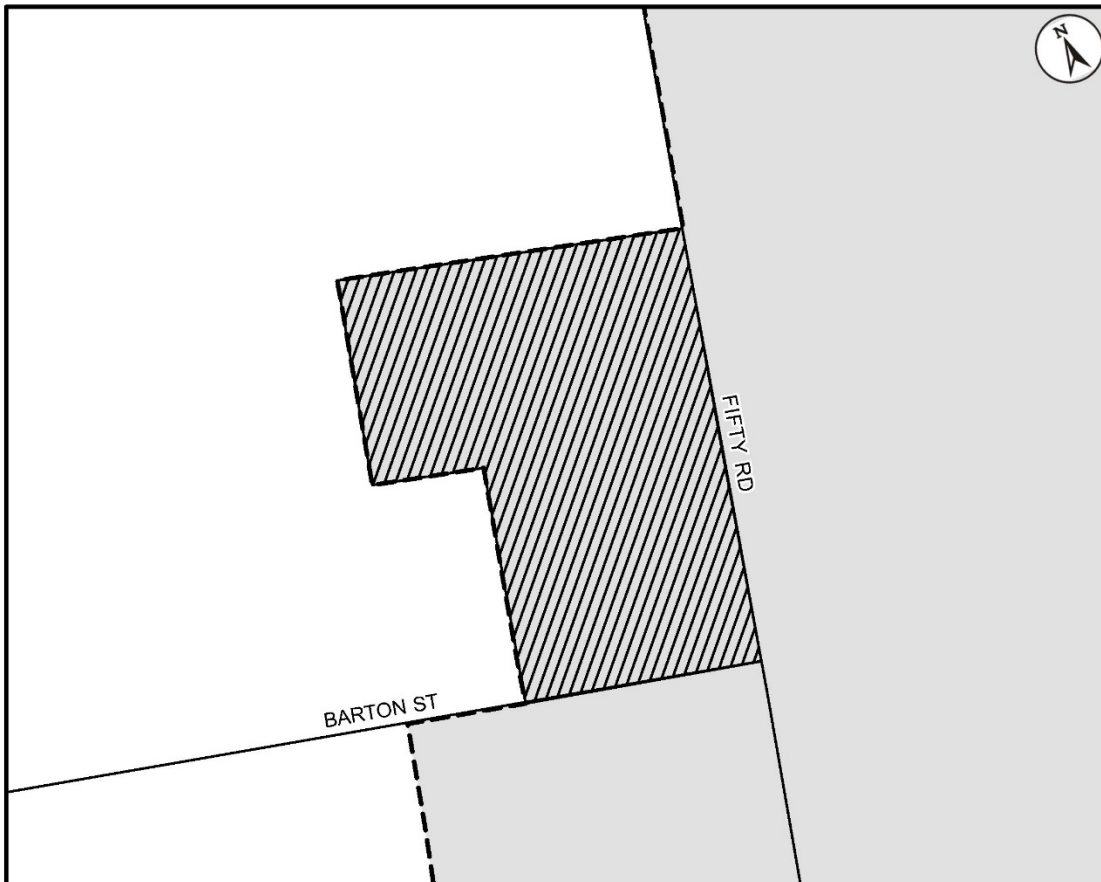


This is Schedule "A2" to By-law No. 23- Passed the day of, 2023	----- Mayor ----- Clerk
--	--------------------------------------

<h2>Schedule "A2"</h2> <p>Map forming Part of By-law No. 23-_____</p> <p>to Amend By-law No. 14-212</p>	<p>Subject Property</p> <ul style="list-style-type: none"> Lands Subject to additional Provision for trees, not part of a Woodland Rural Area Urban Boundary
--	---

Scale: N.T.S	File Name/Number: Tree By-law	
Date: April 24, 2023	Planner/Technician: SR/NB	
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT		

Schedule "A3" to By-law 23-087



This is Schedule "A3" to By-law No. 23- Passed the day of, 2023	----- Mayor ----- Clerk
--	--------------------------------------

<h2>Schedule "A3"</h2> <p>Map forming Part of By-law No. 23-_____</p> <p>to Amend By-law No. R00-054</p>	<p>Subject Property</p> <ul style="list-style-type: none"> Lands Removed from the Greenbelt Plan Area Rural Area Urban Boundary
--	--

Scale: N.T.S	File Name/Number: Tree By-law	
Date: April 24, 2023	Planner/Technician: SR/NB	
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT		