PROVINCE OF QUEBEC
TOWN OF KIRKLAND

BY-LAW NO. : 2015-51

BY-LAW CONCERNING THE FIGHT AGAINST THE SPREAD OF THE EMERALD ASH BORER ON THE TERRITORY OF THE TOWN OF KIRKLAND

ADOPTION PROCEDURE

Notice of motion:	March 2, 2015
Adoption	April 13, 2015
Publication:	April 22, 2015
Coming into force:	April 22, 2015

WHEREAS the emerald ash borer was first found in Canada in 2002, resulting in the loss of 80 million ash trees in North America;

WHEREAS in accordance with section 19 of the *Municipal Powers Act* (CQLR, c. C-47.1), the Town of Kirkland may adopt by-laws on environmental matters;

WHEREAS in accordance with section 113 of An *Act Respecting Land use, Planning and Development*, (CQLR, c. A-19.1), the Town of Kirkland may regulate or restrict by way of by-law the plantation or felling of trees to ensure protection of the forest cover and promote sustainable development of private forest;

WHEREAS that notice of motion of this by-law was given at the regular meeting of the Municipal Council held on March 2, 2015;

WHEREAS that in accordance with section 356 of the *Cities and Towns Act* (CQLR, c. C-19), copy of the proposed draft by-law was given to council members, no later than two juridical days before the sitting at which it is to be approved;

WHEREAS that all the council members present declare that they have read the proposed draft by-law and waive the reading of it;

WHEREAS that the preamble forms an integral part of this draft by-law;

THE MUNICIPAL COUNCIL ORDERS AND DECREES AS FOLLOWS:

CHAPTER I – PRELIMINARY PROVISIONS

ARTICLE 1

This regulation aims to fight against the spread of the emerald ash borer on the territory of the Town of Kirkland through measures that can counter the spread of infestations. These measures concern felling, pruning, treatment of ash trees and management of ash wood.

ARTICLE 2

In this by-law, the following words mean:

"**acceptable method**": any transformation technique for ash residues that completely destroys the emerald ash borer or parts of the wood that can house this insect (e.g. heat treatment, fumigation with methyl bromide or removal and chipping of the part of the ash wood that can contain the emerald ash borer);

"**ash residue**": pieces of ash such as branches or logs, excluding woodchips, that do not exceed 2.5 centimeters on at least two of their sides, resulting from the chipping operation;

"**competent authority**": Public Works and Urban Planning departments of the Town of Kirkland and any other person authorized by the Council;

"**quarantine**": strict isolation imposed to prevent the spread of emerald ash borer.

CHAPTER II – PLANTING

ARTICLE 3

It is forbidden to plant, grow, and cultivate an ash tree from a seed, a seedling or any other method.

CHAPTER III – FELLING AND PRUNING

Section 1 – Felling of ash trees

ARTICLE 4

Any ash tree that is dead or of which 30 % or more of the upper branches are unhealthy shall be felled within sixty (60) days of detecting an irreversible disease or an insect pest that is impossible to control.

ARTICLE 5

A person may not fell an ash tree without having previously obtained a tree cutting permit.

Notwithstanding the preceding paragraph, a permit is not required when the trunk of an ash tree to be felled has a diameter of less than 10 centimeters measured 1.3 meters above the ground.

ARTICLE 6

A permit to fell an ash tree is issued in one of the following situations:

a) the ash tree is dead;

b) the ash tree is affected by an irreversible disease or an insect pest that is impossible to control according to the report of an arborist certified by the *Société internationale d'arboriculture – Québec inc.* or a forest engineer specialized in urban forestry;

c) the ash tree is hazardous to the safety of persons or is likely to cause serious damage to property;

d) the ash tree prevents the execution of a construction project authorized under the applicable planning regulations, with the exception of projects regulated by provisions governing signs, posters and billboards;

e) at the discretion of the Town where, in the opinion of the competent authority, a situation justifies the issuance of a permit.

ARTICLE 7

Notwithstanding the provisions outlined in article 6, it is forbidden between March 15 and October 1, to proceed to fell a tree authorized under a felling permit, unless:

a) the ash tree is dangerous for human safety;

b) the ash tree is likely to cause serious damage to property;

c) the ash tree prevents the execution of a construction project authorized under the applicable planning regulations, with the exception of projects regulated by provisions governing signs, posters and billboards;

d) it is deemed necessary in the opinion of the competent authority.

ARTICLE 8

Notwithstanding the provisions outlined in article 7, in the case of a felling, should a notice of quarantine be issued by the Town during a period when felling is prohibited, the sixty (60) -day deadline provided in article 4 may be extended until October 30 of the year in progress. The owner of the ash tree shall disclose the name, address and telephone number of the contractor who will carry out the felling.

ARTICLE 9

Any ash tree located in the front setback of a private property that is felled, infested or not, shall be replaced by a tree other than an ash, in conformity with the following conditions:

a) the replacement tree shall be obtained through the Town's annual program for the proactive replacement of high-risk ash trees;

b) the replacement tree shall be at least 1.5 meters in height;

c) the replacement tree shall meet the requirements stipulated in the Town planning regulations.

The Town provides replacement trees, subject to availability.

ARTICLE 10

Any ash tree located in the rear setback of a private property that is felled, infested or not, may be replaced by a tree other than an ash, in conformity with the zoning regulations.

Section 2 – Pruning of ash trees

ARTICLE 11

It is forbidden to trim, prune or to have pruned an ash tree between March 15 and October 1, unless:

a) the ash tree is dangerous for human safety;

b) the ash tree is likely to cause serious damage to property;

c) the ash tree prevents the execution of a construction project authorized under the applicable planning regulations, with the exception of projects regulated by provisions governing signs, posters and billboards;

d) it is deemed necessary in the opinion of the competent authority.

CHAPTER IV – TREATMENT OF ASH TREES

ARTICLE 12

Any ash tree that is infested and of which 70 % or more of the upper branches are healthy shall be treated within sixty (60) days of detecting an irreversible disease or an insect pest that is impossible to control.

The owner of the infested ash may proceed to the treatment of the tree only between May 15 and August 31.

The owner shall immediately inform the Town of the presence of any ash tree infested with emerald ash borer on his property.

ARTICLE 13

In the case of a treatment, the owner of the tree may:

a) assign an arborist certified by the *Société internationale d'arboriculture – Québec inc.* or a forest engineer specialized in urban forestry to evaluate the infested ash tree;

b) submit to the Town the report drafted by the assigned arborist or forest engineer, within fifteen (15) days of its completion;

c) authorize the Town to make necessary arrangements for the treatment of the ash tree with the arborist or forest engineer it has assigned; and

d) prepay the Town for the cost of the treatment.

ARTICLE 14

Where the treatment of an ash tree is conducted in accordance with article 13, the owner is eligible to apply for a subsidy, in the form of a refund.

The refund is subject to the following conditions:

a) the owner may receive a 50% refund of costs incurred for the treatment, with the exception of all evaluation fees, up to a maximum of $1,000 per address;

b) the owner may apply for a refund for a maximum of two (2) treatments;

c) the owner shall carry out two (2) subsequent treatments at his own expense to ensure the sustainability of his ash tree;

d) the owner shall enter into an agreement with the Town and accept the terms and conditions set out in the subsidy program.

Payment of the subsidy is at the sole discretion of the Town and is subject to the availability of funds.

ARTICLE 15

Where the treatment of an ash tree is not conducted in accordance with article 13, the owner of the tree shall be able to demonstrate, within fifteen (15) days following the treatment, by means of a recognized document, that his ash tree was treated in accordance with the provisions of this by-law.

Recognized documents considered under this article are invoices for ash tree treatments using a pesticide certified in Canada against emerald ash borer under the *Pest Control Products Act* (S.C. 2002, c. 28), carried out by a company which holds the licenses and certificates required to carry out this work under the *Regulation respecting permits and certificates for the sale and use of pesticides* (CQLR, c. P-9.2, r.2).

CHAPTER V – ASH WASTE MANAGEMENT

ARTICLE 16

Any person who fells or prunes an ash tree shall dispose of ash wood residues as follows:

a) branches or parts of the trunk with a diameter not exceeding 20 centimeters shall be immediately shredded on site into wood chips of less than 2.5 centimeters on at least two sides and be transported to a treatment site authorized for this purpose by the competent authority;

b) branches or parts of the trunk with a diameter exceeding 20 centimeters shall be:

1) <u>Between October 1 and March 15</u>

i. transported to a treatment site authorized for this purpose by the competent authority within fifteen (15) days following the felling or pruning, upon presentation of the authorization form provided by the Public Works Department.

2) <u>Between March 15 and October 1</u>

i. transported to the Town's storage site located at 25 Claude-Jodoin Street, Kirkland, Quebec, H9H 5E6 within fifteen (15) days following the felling or pruning, upon presentation of the authorization form provided by the Public Works Department.

CHAPTER VI – FINAL PROVISIONS

Section 1 – Inspection powers

ARTICLE 17

Any person responsible for the application of this by-law may come onto private property to inspect an ash tree or ash wood found on this property, to verify and to determine the application of this by-law.

ARTICLE 18

The inspector shall point out any ash tree infested with the emerald ash borer and identify the tree by means of the visible logo "A".

ARTICLE 19

Any ash tree located within a radius of 100 meters of an ash tree infested with emerald ash borer is automatically placed under quarantine, within a circular zone with the infested tree as the central point.

ARTICLE 20

The Town sends, to each owner or occupant of a lot located within the quarantine zone, a notice to the effect that any ash tree located on their lot is subject to this by-law.

Upon receipt of said notice, the owner of an ash shall retain the services of an arborist certified by the *Société internationale d'arboriculture – Québec inc.* or a forest engineer specialized in urban forestry to proceed with the whittling of branches of the ash tree suspected to be infested. The results of the analysis shall be submitted to the Town within thirty (30) days following the work.

Section 2 – Default by the owner

ARTICLE 21

The competent authority may, by means of a notice, require the property owner to comply with articles 4, 12 and 16 of this by-law and advise him to fell an ash tree, treat it, or to manage ash waste in a manner consistent with this by-law.

In case of failure of the owner to comply with these articles, the competent authority may proceed with the felling or the treatment of the ash tree in question as well as the management of the ash wood, at the owner's expense. These expenses constitute a prior claim on the immovable on which the competent authority has carried out this work, in the same way and with the same rank as claims described in paragraph 5 of article 2651 of the Quebec Civil Code and are secured by a legal hypothec on the immovable.

CHAPTER VII – OFFENCES AND PENALTIES

ARTICLE 22

Any person who hinders in any way, implementing interventions described in Chapter VI of this by-law, is in violation.

ARTICLE 23

Any person who contravenes this regulation commits an offense and is liable:

a) for a first offence:

   i. to a fine of $500 to $1,000, in the case of a natural person;

   ii. to a fine of $1,000 to $2,000, in the case of a legal person.

b) for each subsequent offence:

i. to a fine of $1,000 to $2,000, in the case of a natural person;

ii. to a fine of $2,000 to $4,000, in the case of a legal person.

COMING INTO FORCE

ARTICLE 24

The present by-law comes into effect in accordance with the law.

(Michel Gibson)
Mayor

(Martine Musau)
Town Clerk