



PROVINCE OF QUEBEC
TOWN OF KIRKLAND

BY-LAW NO. : GEN-2021-52

**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:	April 6, 2021
Filing of draft by-law:	April 6, 2021
Adoption of by-law:	May 3, 2021
Publication:	May 7, 2021
Coming into effect:	May 7, 2021

- 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 pursuant to section 356 of the *Cities and Towns Act* (CQLR, c. C-19), notice of motion of this by-law was given and a draft of this by-law was filed at the regular sitting of the Municipal Council held on April 6, 2021;
- WHEREAS copy of this by-law was made available to the public;
- WHEREAS the preamble forms an integral part of this by-law;

THE MUNICIPAL COUNCIL ORDERS AND DECREES AS FOLLOWS:

CHAPTER I – PRELIMINARY PROVISIONS

ARTICLE 1

This by-law 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 and replacement of ash trees as well as management of ash wood.

This by-law applies to any immovable used or intended to be used for residential, commercial, industrial or institutional purposes.

ARTICLE 2

In this by-law, the following words mean:

- “**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 and Environment departments of the Town of Kirkland and any other person authorized by the municipal council;
- “**immovable**”: an immovable as defined in the Civil Code of Quebec;
- “**treatment**”: treatment of the ash tree with an insecticide, the TreeAzin, which must be injected at the base of the trunk of an ash tree and administered by an arborist that has the necessary certification;
- “**Town**”: Town of Kirkland.

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 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 one hundred and eighty (180) 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 felling certificate.

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

ARTICLE 6

An ash tree felling certificate 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 urban 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 certificate.

ARTICLE 7

Any ash tree on private property, whether infested or not, that is felled shall be replaced with a tree either:

- a) through the Town's annual program for the proactive replacement of high-risk ash trees, at the fee required by the Town and subject to availability;
- b) by obtaining a replacement tree from a nursery.

The replacement tree shall meet the following requirements:

- a) it shall be a minimum of 3.5 cm (35 mm) in diameter measured 1.3 meters above the ground;
- b) it shall not be one of the prohibited species listed in Schedule "A";
- c) it shall meet the other requirements of the Town's urban planning regulations, if applicable.

The replacement of the ash tree may not be combined with any other tree related program of the Town.

Any owner who claims that they do not have sufficient space to replace all of the ash trees felled with another tree must demonstrate this. The decision to accept or decline a lesser quantity of replacement trees for the ash trees felled shall be determined by the competent authority.

CHAPTER IV – INSPECTION AND TREATMENT OF ASH TREES**ARTICLE 8**

In order to detect the presence or absence of an emerald ash borer infestation, the owner of an ash tree may request an inspection of the tree by the Town.

ARTICLE 9

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.

The owner of the infested ash tree may only treat the tree during the period recommended by the supplier of the ash tree treatment product, generally from early June to late August.

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

ARTICLE 10

The owner of an ash tree may submit a subsidy application to the Town following the treatment or felling and replacement of an ash tree in accordance with the present by-law. When applying for the subsidy, the owner must agree to the terms and conditions set out in the subsidy application form.

The maximum total subsidy for which an ash owner is eligible is five hundred dollars (\$500) per ash tree, regardless of the work performed on the ash tree.

The payment of the subsidy is at the Town's sole discretion and is subject to the availability of funds.

Where the subsidy application is for the felling and replacement of an ash tree, the subsidy will only be paid upon receipt by the Town of proof of the felling and replacement. Where the application is for a treatment, the subsidy will be paid upon receipt by the Town of the invoice for the treatment.

No subsidy shall be awarded for the removal of an ash tree that is less than ten (10) centimeters in diameter measured at 1.3 meters above the ground.

CHAPTER V – ASH RESIDUE MANAGEMENT**ARTICLE 11**

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 twenty (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 deposit site where ash wood is accepted;
- b) branches or parts of the trunk with a diameter exceeding twenty (20) centimeters shall be transported to a deposit site where ash wood is accepted within fifteen (15) days following the felling or pruning.

CHAPTER VI – APPLICATION**ARTICLE 12**

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 13

The competent authority may, by means of a notice, require the property owner to comply with articles 4, 9 and 11 of this by-law and advise him to fell an ash tree, treat it, or to manage ash residue 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 14

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

ARTICLE 15

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.

CHAPTER VIII – REPEALING AND FINAL PROVISIONS

ARTICLE 16

By-law 2015-51-1 entitled: By-law repealing and replacing by-law no. 2015-51 concerning the fight against the spread of the emerald ash borer on the territory of the town of Kirkland is repealed.

ARTICLE 17

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

(Michel Gibson)

Mayor

(Annie Riendeau)

Town Clerk

SCHEDULE A

Prohibited species

- Silver Maple. *Acer saccharinum*
- Poplar. *Populus spp*
- Willow. *Salix spp*
- Catalpa. *Catalpa spp.*
- Ash Tree. *Fraxinus spp.*
- Manitoba Maple. *Acer negundo.*
- Japanese Maple. *Acer palmatum*
- Weeping White Mulberry. *Morus alba 'pendula'*
- Cedars. *Thuja spp.*
- Hydrangea. *Hydrangea*
- Common Lilac. *Syringa vulgaris*
- Buckthorn. *Rhamnus cathartica*
- Any small variety or shrub lower than seven (7) meters high at maturity