



THE CORPORATION OF THE CITY OF MISSISSAUGA

TREE PERMIT BY-LAW NUMBER 474-05

WHEREAS sections 135 to 141 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended ("*Municipal Act*") provide authority to local municipalities to regulate and prohibit with respect to trees;

AND WHEREAS section 427 of the *Municipal Act* authorizes a municipality to direct that in default of any work being done by a person required to do the work under a by-law, the work be done at the person's expense and the cost collected in like manner as taxes;

AND WHEREAS the Council of The Corporation of the City of Mississauga ("Council") recognizes the ecological and aesthetic value of trees and is desirous of managing the injury and destruction of trees;

NOW THEREFORE the Council of The Corporation of the City of Mississauga ENACTS as follows:

PART I: DEFINITIONS

1. In this By-law,

"arborist" means a person with a diploma or degree involving arboriculture from an accredited college or university, a Registered Professional Forester, an accredited Certified Arborist under the International Society of Arboriculture or with a demonstrated history of tree preservation experience;

"arborist report" means a report prepared by an arborist which provides details on the species, size, and health of a tree to be destroyed, injured or removed;

"City" means the area located within the geographical boundaries of the City of Mississauga;

"Commissioner" means the Commissioner of Community Services or his/her designate;

"Corporation" means The Corporation of the City of Mississauga;

"dead" means a tree that has no living tissue;

"dying" means terminally diseased or will no longer be viable to maintain in a safe or healthy condition;

"emergency work" means work necessary to terminate an immediate threat to life or property, including but not limited to work associated with watermain repairs, utility repairs and structural repairs to a building;

"golf course" means an area of land laid out and operated as a golf course and includes putting greens and driving ranges;

"hazard" means a tree that is a potential safety concern to property or life but not an immediate threat;

“hoarding” means a fence or similar structure used to enclose a portion of a property to protect existing trees or other vegetation;

“injure/injury” means injuring or destroying a tree by:

- a) removing, cutting, girdling, or smothering of the tree or roots; or
- b) interfering with the water supply; or
- c) setting fire to a tree; or
- d) the application of chemicals on, around, or near the tree; or
- e) compaction or re-grading within the tree protection zone up to any existing paved surfaces; or
- f) damage caused by new development or construction related activities including driveways; or
- g) store any materials within a tree protection zone; or
- h) any other means resulting from neglect, accident or by design;

“lot” means a parcel of land having specific boundaries which is capable of legal transfer;

“nursery” means a lot on which the principal business of selling plants, shrubs, and trees occurs;

“owner” means the registered owner of a lot, his respective successors and assigns, or his agent;

“PDC” means the City of Mississauga Planning and Building Committee;

“permit” means a permit issued under this By-law to injure or destroy a tree on private property within the City;

“person” means an individual, a corporation, a partnership, or an association;

“pruning” means the appropriate removal of not more than one-third of the live branches or limbs of a tree or more than one-third of the live branches or limbs on a tree as part of a consistent annual pruning program;

“replacement tree” means a tree that is required under this By-law to replace an existing tree that is approved for destruction;

“Replacement Tree Planting Fund” means the fund set aside for the purpose of planting trees in locations within the City other than the lot where a tree has been injured or destroyed;

“retained tree” means a tree that is to be retained during and after the development of a lot;

“tree” means a self-supporting woody plant which will reach a height of at least 4.5m at maturity;

“tree diameter” means the measurement of the diameter of the trunk of a tree from outside the bark 1.4m above existing grade of the ground adjoining its base or where there are multiple stems on a tree, means the total of the diameters of the three (3) largest stems measured approximately 140cm above existing grade.

PART II: SCOPE

2. This By-law shall apply to all private property in the City.

PART III: ADMINISTRATION AND ENFORCEMENT

3. The Commissioner shall be responsible for the administration and enforcement of this By-law, which shall include, but not limited to, the administration and management of the Corporation's Replacement Tree Planting Fund.

PART IV: GENERAL PROHIBITION AND EXCEPTIONS

4. (1) No person shall injure or destroy five (5) or more trees each with a diameter greater than 15cm on a lot within one calendar year without first obtaining a permit pursuant to this By-law.
- (2) Despite subsection (1), a permit is not required to injure or destroy a tree:
- (a) if the number of trees being injured or destroyed on the lot in a calendar year is four (4) or less;
 - (b) where the tree has a tree diameter of 15cm or less;
 - (c) for emergency work;
 - (d) as a result of activities or matters undertaken by a governmental authority or a school board for the development of a school;
 - (e) for the purpose of pruning the tree;
 - (f) for trees located on rooftop gardens, interior courtyards, or solariums;
 - (g) for trees on a nursery or golf course;
 - (h) by a person licensed under the *Surveyors Act* to engage in the practice of cadastral surveying or his agent while making a survey;
 - (i) for the purpose of satisfying 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;
 - (j) for the purpose of satisfying a condition to the approval of a site plan, a plan of subdivision, or a consent under sections 41, 51, and 53 of the *Planning Act*, or as a requirement of a site plan or subdivision agreement under those sections of the Act;
 - (k) by a transmitter or distributor as defined in the *Electricity Act, 1998* for the purpose of constructing and maintaining a transmission system or a distribution system, as defined under that Act;
 - (l) on the property legally described as Part of Lots 7 and 8 on Plan B-27, Parts 1, 2, and 3, Plan 43R-R20011 and known municipally as 2151 and 2171 Camilla Road.

PART V: PERMIT

Application

5. An owner may file an application for a permit for the injury or destruction of trees on his lot by submitting the following to the Commissioner:

- (1) a completed application form;
 - (2) a plan to the satisfaction of the Commissioner illustrating the trees to be injured or destroyed, the trees to be retained, and any other measures to be taken in relation to the injury or destruction of the trees or tree preservation, as required by the Commissioner;
 - (3) the fees as described in the applicable City of Mississauga Fees and Charges By-law;
 - (4) an arborist report, if required by the Commissioner;
 - (5) the written consent of the adjacent property owner if the base of the tree to be injured or destroyed straddles on a property line with that adjacent owner; and
 - (6) the written consent of the owner of the lot where the subject trees are located, if the applicant is not the owner of that lot.
6. If an applicant does not provide all the required documentation by the Commissioner within the timeframe as specified by the Commissioner, or if the application is two (2) years old and the applicant has not taken any action to provide the Commissioner with all the documentation in the last six months, the applicant shall be deemed to withdraw his application and shall not be entitled to any refunds of any payments made. The Commissioner may close the application file when the applicant withdraws or is deemed withdrawing the application.

Permit Issuance

7. The Commissioner may issue a permit if:
- (1) the tree is dead or dying;
 - (2) the tree is a hazard;
 - (3) the tree location conflicts with any of the following:
 - (a) the proposed building permit plans that comply with the zoning of the land;
 - (b) a proposed pool enclosure;
 - (c) the expansion of parking areas that complies with the zoning of the land;
 - (4) there will be no negative impact on flood or erosion control, or slope stability;
 - (5) the lot is designated under the *Heritage Act* and a written report by the City's Heritage Coordinator has been provided, indicating that:
 - (a) the tree is not relevant to the heritage designation of the lot; or
 - (b) the tree is relevant to the heritage designation of the lot but the City's Heritage Advisory Committee has approved the injury or destruction of the tree;
 - (6) the tree is designated under the *Heritage Act* and the City's Heritage Advisory Committee has approved the injury or destruction of the tree; or
 - (7) the injury or destruction of the tree is otherwise acceptable to the Commissioner.

8. (1) The Commissioner may issue a permit subject to conditions as he deems necessary to protect the natural environment, including but not limited to,
 - (a) the requirements for replacement trees;
 - (b) satisfactory plans for tree preservation and replanting;
 - (c) hoarding to be provided around trees not subject to injury or destruction, and plans indicating the location and type of hoarding to the satisfaction of the Commissioner.
 - (2) Where the planting of a replacement tree(s) has been imposed as a condition, the Commissioner may require that:
 - (a) the replacement tree(s) be located on the same lot in a location, number, size, and/or species to the satisfaction of the Commissioner; and/or
 - (b) a replanting plan be filed to the satisfaction of the Commissioner; and/or
 - (c) a written undertaking by the owner to carry out the replacement planting; and/or
 - (d) monies or a letter of credit in a form satisfactory to the Commissioner be delivered to the Commissioner to cover the costs of the replacement trees, and the maintenance of the tree(s) for a period of up to two (2) years; and/or
 - (e) payment of each replacement tree not replanted on the owner's lot be made into the Corporation's Replacement Tree Planting Fund. The payment for each such tree shall be the cost of each street tree planting as provided in the applicable City of Mississauga Fees and Charges By-law.
 - (3) An owner may request a hearing before the PDC to appeal any condition imposed on a permit within thirty (30) days after the issuance of the permit.
9. A permit shall be valid for a maximum of one (1) year from the date of issuance.

Refusal of a Permit

10. (1) If the Commissioner refuses to issue a permit, he shall advise the owner and prepare a report to be forwarded to PDC providing reasons for the refusal.
- (2) The owner who has been refused the issuance of a permit may appear before the PDC to appeal the Commissioner's decision when the report of the Commissioner is being heard.

Compliance

11. (1) A permit holder shall comply or ensure the compliance of all the provisions and conditions of the permit and this By-law.
- (2) In addition to subsection (1), a permit holder shall ensure that the permit is securely posted on the lot from which the trees are to be injured or destroyed, in a location visible from the street for the period during which work is undertaken to injure or destroy a tree.
- (3) Failure to comply with any provision or condition of a permit or an order issued under this By-law or any other provisions of this By-law may result in the revocation of the permit by the Commissioner, in addition to any other enforcement proceedings against the permit holder as permitted by law.

12. The issuance of a permit under this By-law does not relieve any person from the necessity of acquiring any other license or permit or complying with any other applicable laws, by-laws, regulations, and requirements of other governmental authority.

Revocation of a Permit

13. In addition to section 11(3), the Commissioner may revoke a permit at any time if it was issued because of mistaken, false, or incorrect information received from the owner.
14. The permit holder of a revoked permit shall immediately cease or ensure the immediate cessation of all the activities for which a permit has been issued upon revocation of the permit.

Property of the Corporation

15. A permit is the property of the Corporation and is not transferable unless otherwise authorized by the Commissioner.

PART VI: ORDER

16. An order may be issued for any contraventions of this By-law or a permit, including but not limited to an order to cease and desist all work relating to the injury or destruction of trees.
17. An order may be served by:
 - (1) delivering it personally to the owner and/or the person conducting work on the owner's property;
 - (2) sending it by registered mail to the last known address of the owner, which service shall be deemed five (5) days after mailing; or
 - (3) posting it on the owner's property.
18. (1) No person shall fail to comply with an order.
 - (2) Failure to comply with an order may result in the Corporation conducting work on behalf of the owner to comply with the order at the expense of the owner. The cost of such work may be collected in like manner as taxes.
19. Where an order has been served, the owner or the person to whom the order is being served may apply for a hearing to appeal the order to the PDC within thirty (30) days of being served with the order.

PART VII: APPEAL TO PDC

20. Where an appeal right to the PDC is provided in this By-law, the person requesting the appeal shall deliver to the City Clerk:
 - (1) a written request with reasons for the appeal; and
 - (2) payment of the appeal fee as provided under the applicable City of Mississauga Fees and Charges By-law.
21. Where a hearing date before the PDC has been fixed and the appellant who has been given notice of the hearing does not attend at the appointed time and place, the PDC may proceed in the absence of the appellant and the appellant will not be entitled to any further notice in the proceedings.
22. (1) The PDC may uphold or reverse or vary the Commissioner's decisions, and/or may subject the appellant to conditions as the PDC deems appropriate. The PDC shall set out the reasons of its decision in writing.

- (2) Council may uphold or reverse PDC's decision, or do any act or make any other decision as it deems appropriate.
 - (3) Council's decision with respect orders issued is final and binding.
23. An application made under this Part does not act as a stay of any orders issued, which shall take effect on the day it is served or deemed served, and shall continue to be effective until Council renders a decision indicating otherwise.

PART VIII: OFFENCE

24. (1) Any person who contravenes any provision of this By-law or an order is guilty of an offence and is liable:
- (a) on a first conviction, to a fine of not more than \$10,000 or \$1,000 per tree, whichever is greater; and
 - (b) on any subsequent conviction, to a fine of not more than \$25,000 or \$2,500 per tree, whichever is greater.
- (2) Notwithstanding subsection (1), where the person convicted is a corporation, it is liable:
- (a) on a first conviction, to a fine of not more than \$50,000 or \$5,000 per tree; and
 - (b) on any subsequent conviction, to a fine of not more than \$100,000 or \$10,000 per tree, whichever is greater.

PART IX: VALIDITY AND INTERPRETATION

25. Words importing the singular number shall include the plural, and words importing the masculine gender shall include the feminine, and the converse of the foregoing also applies, unless the context of the By-law otherwise requires.
26. If a court of competent jurisdiction declares any provisions or part of a provision of this By-law to be invalid or to be of no force and effect, it is the intention of Council in enacting this By-law that the remainder of this By-law shall continue in force and be applied and enforced in accordance with its terms to the fullest extent possible according to law.

PART X: EFFECTIVE DATE & REPEAL

27. This By-law shall be effective as of January 1, 2006.
28. After the effective date of this By-law, By-law 0624-2001, as amended shall apply only to properties where a complete Tree Permit application was received prior to the effective date of this By-law or if an order or permit has been issued prior to the effective date, and then only to such properties until such time as the work or actions prescribed pursuant to the order or permit have been completed or otherwise been concluded.

PART XI: SHORT TITLE

29. This By-law may be referred to as the "Tree Permit By-law".

ENACTED and PASSED this 14th day of December, 2005.

Signed by: Hazel McCallion, Mayor and Crystal Greer, City Clerk