



MISSISSAUGA

THE CORPORATION OF THE CITY OF MISSISSAUGA

Private Tree Protection By-law 0254-2012

(Amended by 0013-2013)

WHEREAS section 8(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (“*Municipal Act, 2001*”) provides that the powers of a municipality under any act shall be interpreted broadly so as to confer broad authority on a municipality to enable it to govern its affairs as it considers appropriate;

AND WHEREAS section 11(2)5 of the *Municipal Act, 2001* provides that a local municipality may adopt by-laws for the economic, social and environmental well-being of the municipality;

AND WHEREAS section 11(3)5 of the *Municipal Act, 2001* provides that a local municipality may pass a by-laws in the areas of culture, parks, recreation and heritage;

AND WHEREAS, without limiting the broad municipal powers, section 135 and sections 139 to 141 of the *Municipal Act, 2001* provide municipalities with further authority to regulate and prohibit the destruction or injuring of trees;

AND WHEREAS section 429(1) of the *Municipal Act, 2001* provides that a municipality may establish a system of fines for a by-law passed under this Act;

AND WHEREAS section 436 of the *Municipal Act, 2001* provides that a municipality may pass by-laws providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine compliance with a by-law or an order made pursuant to the by-law;

AND WHEREAS section 444 of the *Municipal Act, 2001* provides that a municipality may make an order to require a Person to discontinue contravening a by-law and to do the work required to correct the contravention;

AND WHEREAS section 445 of the *Municipal Act, 2001* provides that a municipality may make an order requiring a Person who contravened a by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention;

AND WHEREAS section 446 of the *Municipal Act, 2001* provides that a municipality may proceed to do things at a Person’s expense which that Person is otherwise required to do under a by-law but has failed to do and the costs incurred by a municipality may be recovered by adding the costs to the tax roll and collecting them in the same manner as property taxes;

AND WHEREAS the Council of The Corporation of the City of Mississauga 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 or a Registered Consulting Arborist with the American Society of Consulting Arborists.

“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, removed or retained and describes tree protection measures or other mitigating measures to be implemented.

“Calendar Year” means the timeframe from the beginning of January 1 to the end of December 31 of that same year.

“Commissioner” means the City’s Commissioner of Community Services or his/her designate.

“City” means The Corporation of the City of Mississauga or where the context requires the geographical jurisdiction of the City of Mississauga.

“Council” means the elected Council of the City.

“Dead” means a Tree that has no living tissue.

“Destroy” or “Destruction” means to cause directly or indirectly, the removal, ruin, uprooting or death of a Tree whether by accident or by design, and includes the removal, ruin, uprooting or death of a Tree caused by any one or more of the following activities:

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

“Diameter” means:

- (a) the measurement of the diameter of the trunk of a Tree measured from outside the bark at a height of 1.4 metres above existing grade of the ground adjoining its base; or
- (b) where there are multiple stems on a Tree, the total of the diameters of the stems measured from outside the bark on each stem at a height of 1.4 metres above existing grade of the ground adjoining its base.

“Dying” means a Tree that is 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 danger to life or property and includes work associated with watermain repairs, utility repairs and structural repairs to a building where the work is necessary to terminate an immediate danger to life or property.

“Fees and Charges By-law” means the City’s Fees and Charges By-law 307-11, as amended, or its successors.

“Golf Course” means an area of land laid out and operated as a golf course and includes putting greens and driving ranges.

“Government Body” means the City of Mississauga, Regional Municipality of Peel, a conservation authority established under provincial legislation and any Ministry or agent of the Federal or Provincial government.

“Hazard” means a tree that is a potential safety concern to property or life but not an immediate threat.

“Heritage Advisory Committee” means the advisory committee of Council which makes recommendations on the identification, conservation, preservation and designation of the City’s cultural heritage property.

“Heritage Tree” means a Tree that has received designation under Part IV of the *Ontario Heritage Act, 2005*, S.O. 2006, c.6, as amended.

“Hoarding” means a fence or similar structure used to enclose a portion of a property to protect an existing Tree(s) or other vegetation.

“Injure” or “Injury” means to cause, directly or indirectly, whether by accident or design, lasting damage or harm to a Tree, and includes any damage or harm to a Tree caused by one or more of the following activities:

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

“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.

“Officer” means a person employed by the City to perform the duties of enforcing By-laws and appointed by Council as a Municipal Law Enforcement Officer as designated in the City of Mississauga By-law 299-04, as amended, or its successors.

“Owner” means the registered owner of a Lot, and his or her respective successors and assigns, or his or her agent.

“PDC” means the City of Mississauga Planning and Development Committee.

“Permit” means a permit issued under this By-law to Injure or Destroy a Tree on private property within the City.

“Person” means any individual, public or private corporation, partnership, association, firm, trust, public agency, municipality, or other entity and includes any legal representative(s) acting on behalf of or under the authority of such an entity.

“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(s)” means a tree(s) 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.

“Tree” means a self-supporting woody plant which may reach a height of at least 4.5 metres at maturity.

PART II: SCOPE

2. This By-law shall apply to all private property within 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 be limited to, the administration and management of the City’s Replacement Tree Planting Fund.
4. The Commissioner shall prescribe all forms necessary to implement this By-law, and may amend such forms from time to time as the Commissioner deems necessary.

PART IV: APPLICATION FOR DESIGNATION UNDER THE ONTARIO HERITAGE ACT

5. An application to designate a Tree(s) to be of cultural heritage value or interest shall be made in accordance with the *Ontario Heritage Act, 2005*.

PART V: GENERAL PROHIBITION AND EXCEPTIONS

6. (1) No Person shall Injure or Destroy a Heritage Tree unless they receive approval to do so under the requirements of the *Ontario Heritage Act, 2005*.
- (2) No Person shall Injure or Destroy 3 or more Trees each with a Diameter greater than 15 centimetres on a Lot within one Calendar Year without first obtaining a Permit pursuant to this By-law.
- (3) Despite subsection (2), a Permit is not required to Injure or Destroy a Tree:
 - (a) if the number of Trees with a Diameter greater than 15 centimetres being Injured or Destroyed on the Lot in a Calendar Year is 2 or less;
 - (b) where the Tree has a Tree Diameter of 15 centimetres or less;
 - (c) for Emergency Work;
 - (d) as a result of activities or matters undertaken by a Governmental Body or a school board for the construction of a school building or part thereof;
 - (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*, as may be amended or replaced from time to time, 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*, as may be amended or replaced from time to time, or as a requirement of a site plan or subdivision agreement under those sections of the Act;
- (k) where the removal of a Tree(s) is specifically required in an order made under the City's Property Standards By-law;
- (l) 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;
- (m) if an approval has been provided under subsection 6(1); or
- (n) where an Owner is required to comply with the requirements of a Province of Ontario forest management plan that specifically encompasses the Owner's Lot.

PART VI: PERMIT

7. Where an Owner applies for a Permit for the Injury or Destruction of a Tree(s) on the Owner's Lot, he or she shall submit the following to the Commissioner:
 - (a) a completed application form;
 - (b) a plan to the satisfaction of the Commissioner illustrating the Trees to be Injured or Destroyed, the Tree(s) to be retained, and any other measures to be taken in relation to the Injury or Destruction of the Tree(s) or Tree preservation, as required by the Commissioner;
 - (c) the fees as described in the Fees and Charges By law;
 - (d) an Arborist Report, if required by the Commissioner;
 - (e) the written consent of the adjacent property Owner if the base of the Tree(s) to be Injured or Destroyed is partially located on the adjacent property Owner's property; and
 - (f) the written consent of the Owner of the Lot where the subject Trees are located, if the Person who is applying for the Permit is not the Owner of the Lot.
8. If an applicant for a Permit under section 7 does not provide all the required documentation to the Commissioner within the timeframe as specified by the Commissioner, or if the application is 2 years old, the applicant shall be deemed to withdraw the application and shall not be entitled to any refunds of any payments made.
9. Despite section 8, the Commissioner may extend the timeframe for an application where the Commissioner determines that the applicant is actively taking steps to move the application forward.

PART VII – ISSUANCE OF A PERMIT

10. The Commissioner may issue a Permit for any one or more of the following reasons:
 - (a) the Tree is Dead or Dying;

- (b) the Tree is a Hazard;
 - (c) the Tree location conflicts with any of the following:
 - (i) the proposed building permit plans that comply with the zoning of the land;
 - (ii) a proposed pool enclosure; or
 - (iii) the expansion of parking areas that complies with the zoning of the land;
 - (d) there will be no negative impact on flood or erosion control, or slope stability;
 - (e) the Lot on which the Tree is located is designated under the *Ontario Heritage Act, 2005* and a written report by the City's Heritage Coordinator has been provided, indicating that:
 - (i) the Tree is not relevant to the heritage designation of the Lot; or
 - (ii) 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, or
 - (f) the Injury or Destruction of the Tree is otherwise acceptable to the Commissioner.
11. (1) The Commissioner may issue a Permit subject to conditions which may include but are not limited to any one or more of the following:
- (a) the requirement for a Replacement Tree(s);
 - (b) satisfactory plans for Tree preservation and replanting; and
 - (c) Hoarding to be provided around a Tree(s) 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 any one or more of the following:
- (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;
 - (b) a replanting plan be filed to the satisfaction of the Commissioner;
 - (c) a written undertaking by the Owner to carry out the replacement planting;
 - (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; or
 - (e) payment of each Replacement Tree not replanted on the Owner's Lot be made into the City's Replacement Tree Planting Fund. The payment for each such Tree shall be the cost of each street Tree planting as provided in the Fees and Charges By-law.
12. (1) A Permit shall be valid for a maximum of one (1) year from the date of issuance.
- (2) For the purposes of this By-law, a Permit holder includes any one (1) or more of the following:
- (a) the Owner of a Lot;
 - (b) an agent that has obtained a Permit on behalf of the Owner; and
 - (c) any Person conducting any work pursuant to a Permit.

13. (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.
14. 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.

PART VIII – REFUSAL OF A PERMIT

15. Where the Commissioner has decided not to issue a Permit under sections 10 or 11, the application for the Permit has been refused.
16. In addition to section 15, the Commissioner may refuse to issue a Permit, for any one (1) or more of the following reasons:
 - (a) where the application for a Permit is incomplete;
 - (b) where an application for rezoning, a consent, a minor variance, a plan of subdivision or a site plan to the land on which the Tree is located has been submitted to the City but has not received final approval;
 - (c) where the Tree is an endangered, threatened or special concern Tree species as defined in the provincial *Endangered Species Act, 2007*, S.O. 2007, c.6, as may be amended or replaced from time to time;
 - (d) where the Tree belongs to a Tree species of special concern, as defined in the *Species at Risk Act, 2002*, S.C. 2002, c. 29, as may be amended or replaced from time to time;
 - (e) where environmentally sensitive areas, ecological systems, natural landforms or contours will not be adequately protected and preserved;
 - (f) where significant vistas will not be adequately protected and preserved; or
 - (g) where the Tree is relevant to the heritage designation of a Lot as determined by the City's Heritage Coordinator.
17. If the Commissioner refuses to issue a Permit, he or she shall advise the Owner and provide the Owner with written reasons for the refusal.

PART IX – PERMIT REVOCATION

18. The Commissioner may revoke a Permit at any time, for any one (1) or more of the following reasons:
 - (a) the Permit was issued because of mistaken, false, or incorrect information received from the Owner;
 - (b) the Owner has failed to comply with any conditions attached to the Permit;
 - (c) the Owner has failed to comply with any order issued under this By-law; or
 - (d) the Owner has failed to comply with any of the provisions in this By-law.
19. 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.

20. Where a Permit holder of a revoked Permit has Injured or Destroyed any Tree under the revoked Permit, the Permit holder may be ordered to replace the Tree at the expense of the Permit holder.
21. If the Permit holder fails to comply with an order made under section 20 the City may replace the Tree and use any securities posted by the Permit holder under the revoked Permit to pay for any costs associated with carrying out the work.
22. If the costs incurred by the City in carrying out any work under section 21 are greater than the securities posted by the Permit holder under the revoked Permit, any costs not covered by the securities shall be a debt owed by the Permit holder to the City and the City may recover the costs of carrying out the work by adding the costs to the tax roll of the property in question and collecting them in the same manner as property taxes.
23. A Permit is the property of the City and is not transferable unless otherwise authorized by the Commissioner.

PART X: ORDER

24. (1) If an Officer determines that a Person has caused or permitted the contravention of this By-law, the Officer may issue an order requiring the Person who caused or permitted the contravention to discontinue the contravention.
 - (2) An order issued under subsection (1) shall include:
 - (a) the particulars of the contravention;
 - (b) the steps necessary to rectify the contravention; and
 - (c) the date by which there must be compliance with the order.
25. Without limiting subsection 24(1) an order may be issued to a Person to immediately cease and desist all work relating to the Injury or Destruction of a Tree without a Permit.
26. (1) Without limiting subsection 24(2)(b) the order may require that any Injured or Destroyed Tree be replaced on the Lot with a Replacement Tree, and further specify the species and location of any Replacement Tree.
 - (2) Where an Officer determines that an Injured or Destroyed Tree cannot be replaced on the Lot, the Officer may order that the Replacement Tree be located on City property in an area to be determined by the Officer or that payment in lieu of the replacement Tree be provided to the City's Replacement Tree Planting Fund.
27. An order may be served by:
 - (a) delivering it personally to the Owner and/or the Person conducting work on the Owner's property;
 - (b) sending it by registered mail to the last known address of the Owner, which service shall be deemed five (5) days after mailing; or
 - (c) posting it on the Owner's property.
28. (1) No Person shall fail to comply with an order.
 - (2) If the Person fails to comply with an order the City may replace the Tree and use any securities posted by the Person to pay for any costs associated with carrying out the work required under the order.

- (3) If no securities are posted by the Person or if the securities posted are insufficient to cover the costs incurred by the City in carrying out any work where the Person has failed to do so under an order, the costs incurred by the City shall be a debt owed by the Person to the City and the City may recover the costs of carrying out the work by adding the costs to the tax roll of the Lot in question and collecting them in the same manner as property taxes.

PART XI: APPEAL TO PDC

29. An Owner who has been refused the issuance of a Permit may appeal the refusal to the PDC within 30 days after the issuance of the Permit by sending a written request with reasons for the appeal and the applicable appeal fee, in person or by registered mail, to the City Clerk.
30. For greater clarity, section 29 does not include an appeal of any condition under a Permit.
31. For the purposes of section 29, a written request shall include reasons for the appeal and the applicable appeal fee as provided under the Fees and Charges By-law.
32. An appeal shall not be processed if the Owner fails to provide written reasons for the appeal or the applicable fee has not been paid.
33. Where an appeal date before the PDC has been scheduled 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.
34.
 - (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 is final and binding.
35. An appeal made under this Part does not act as a stay of any order issued under this By-law, 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 XII - INSPECTION

36. An Officer acting under this By-law may, at any reasonable time, enter and inspect any property, including all buildings and structures thereon, to determine any one (1) or more of the following:
 - (a) whether there is compliance with this By-law;
 - (b) whether there is compliance with a Permit issued under this By-law;
 - (c) whether there is compliance with any conditions that may be attached to a Permit; or
 - (d) whether there is compliance with any order issued under this By-law.

PART XIII: OFFENCE AND PENALTY

37. Every Person who contravenes any provision of this By-law, including an order made under this By-law, is guilty of an offence and is liable to a fine, including the fines set out in this Part, and such other penalties as provided for in the *Provincial Offences Act*, R.S.O. 1990, c.P.33, as amended and the *Municipal Act, 2001*, as each may be amended from time to time.

38. For the purposes of section 40 the Injuring or Destroying of more than two (2) Trees in contravention of this By-law or an order made under this by-law shall be designated as a multiple offence.
39. (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 \$25,000; and
 - (b) on any subsequent conviction, to a fine of not more than \$50,000.
- (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; and
 - (b) on any subsequent conviction, to a fine of not more than \$100,000.
40. (1) Any Person who Injures or Destroys more than two (2) Trees with a Diameter greater than 15 centimetres in contravention of this By-law or an order is guilty of an offence and is liable:
- (a) on a first offence, to a fine of not more than \$2,500 per Tree, and
 - (b) on any subsequent conviction, to a fine of not more than \$5,000 per Tree.
- (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 \$5,000 per Tree; and
 - (b) on any subsequent conviction, to a fine of not more than \$10,000 Tree.
- (3) The minimum fine for subsection 40(1) shall be \$500 per Tree.
- (4) The total of all fines in subsection 40(1) may exceed \$100,000.
41. In addition to any regular fine for an offence under this By-law, a Person, which includes a corporation for the purposes of this section, is liable to a special fine where the Person has obtained or can obtain an economic advantage or gain from the contravention of any provision of this By-law or order made under this By-law. The minimum fine under this section shall be \$500 and the maximum fine may exceed \$100,000.
42. If a person is convicted of an offence for contravening the provisions of this By-Law, or an order issued pursuant to this By-Law, in addition to any fine, the Court in which the conviction has been entered, may order the person to correct the contravention, which may include but is not limited to: planting or replanting such Tree(s) in such manner and within such time period as the Court considers appropriate, such as replacement of a comparable species and /or payment of the Tree(s) amenity value as determined by the Commissioner.

PART XIV: VALIDITY AND INTERPRETATION

43. 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.
44. 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 XV: EFFECTIVE DATE & REPEAL

45. This By-law shall come into force and effect on March 1, 2013. (0013-2013)
46. After the effective date of this By-law, By-law 0474-2005, 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 XVI: SHORT TITLE

47. This By-law may be referred to as the “Private Tree Protection Bylaw”.

ENACTED and PASSED this 12th day of December, 2012.
Signed by Hazel McCallion, Mayor and Crystal Greer, City Clerk