



# MISSISSAUGA

## THE CORPORATION OF THE CITY OF MISSISSAUGA

### Public Tree Protection By-law 0020-2022

**WHEREAS** subsection 8(1) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended (the "*Municipal Act, 2001*"), states that the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

**AND WHEREAS** section 11 of the *Municipal Act, 2001*, provides a lower-tier municipality with broad authority to pass by-laws respecting the economic, social and environmental well-being of the municipality, the health, safety and well-being of persons and respecting the protection of persons and property including consumer protection;

**AND WHEREAS** without limiting sections 9, 10 and 11, section 135 of the *Municipal Act, 2001*, permits a local municipality to prohibit or regulate the destruction or injuring of trees including requiring that a permit be obtained to injure or destroy trees and to impose conditions to a permit, including conditions relating to the manner in which destruction occurs and the qualifications of persons authorized to injure or destroy trees;

**AND WHEREAS** section 62 of the *Municipal Act, 2001*, permits a municipality, at any reasonable time, to enter upon land lying along any of its highways to inspect trees and conduct tests on trees and to remove decayed, damaged or dangerous trees or branches of trees if, in the opinion of the municipality, the trees or branches pose a danger to the health or safety of any person using a highway;

**AND WHEREAS** subsection 391(1) of the *Municipal Act, 2001*, provides that a municipality may impose fees and charges on persons for services or activities provided or done by or on behalf of it;

**AND WHEREAS** subsection 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*, as amended, provides that a municipality may pass a by-law providing that the municipality may enter on lands at any reasonable time for the purpose of carrying out an inspection to determine whether a by-law of the municipality has been complied with;

**AND WHEREAS** sections 444 and 445 of the *Municipal Act, 2001*, provide that a municipality 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 land on which the contravention occurred to discontinue the contravening activity and/or 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** on December 8, 2021, Council for the Corporation of the City of Mississauga passed Resolution 0229-2021 approving GC-0634-2021 to enact a by-law to regulate the injuring and destruction of trees on public property and to repeal By-law 0091-75;

**NOW THEREFORE** the Council of The Corporation of the City of Mississauga hereby **ENACTS:**

## **PART 1 - DEFINITIONS**

1. For the purpose of 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;

**"BOUNDARY TREE"** means a tree where any part of its Trunk is located on both Public Property and an adjacent property;

**"CITY"** means the municipal boundaries for the City of Mississauga or the Corporation of the City of Mississauga (depending on the context);

**"COMMISSIONER"** means the Commissioner of Community Services or their designate;

**"COUNCIL"** means the municipal council of the City;

**"EMERGENCY WORK"** means work necessary to terminate an immediate danger to life or property as determined by the Commissioner and includes but is not limited to work associated with water main 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 0247-2021, as amended, or its successor(s);

**"FILL"** means earth, sand, gravel, rubble, rubbish, garbage, or any other material whether similar to or different from any of these materials, whether originating on the site or elsewhere, used or capable of being used to raise, lower, or in any way effect the contours of the ground;

**"GOOD ARBORICULTURE PRACTICE"** means the proper implementation of removal, renewal and maintenance activities known to be appropriate for individual trees in and around urban areas and includes pruning of trees to remove dead limbs, maintain structural stability and balance, or to encourage their natural form, provided that such pruning is limited to the appropriate removal of not more than one-third of the live branches or limbs of a tree, but does not include pruning to specifically increase light or space;

**"GRADE"** means a defined elevation of land that has been established as a result of geologic, hydrologic, or other natural processes or by human alteration that defines ravines, depressions, hills, stream channels, eskers or steepness of terrain;

**"HOARDING"** means a fence, barrier or similar structure used to enclose a portion of a property to protect an existing tree including its Tree Protection Zones or other vegetation;

**"INJURE OR INJURY"** means to cause, directly or indirectly, whether by accident, intent or design, damage, harm or death to a tree including but not limited to:

(1) removing, cutting above or below ground, girdling or smothering of a tree;

- (2) interfering with the water supply of a tree;
- (3) setting fire to a tree;
- (4) the application of harmful and/or toxic substances on, around or near a tree;
- (5) damage caused by new development or construction related activities including driveways, service (i.e. utility) installation/connections; or
- (6) compaction or re-grading within the Tree Protection Zone up to any existing paved surfaces;

**“MULTIPLE OFFENCE”** means an offence in respect of two or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of this By-law;

**“NATURAL AREA”** means an area of land and/or water, including woodlands, wetlands, greenbelts and tall grass prairies, dedicated to the protection of native flora and fauna and natural processes;

**“OFFICER”** means a by-law enforcement officer employed by the City and/or appointed by Council to perform the duties of enforcing City’s by-laws, and also includes a police officer employed by the Peel Regional Police or the Ontario Provincial Police;

**“PERMIT”** means a permit issued by the Commissioner pursuant to this By-law;

**“PERMIT HOLDER”** means the Person who has been issued a Permit pursuant to this By-law;

**“PERSON”** includes an individual, a corporation and its directors and officers, or partnership and their heirs, executors, assignees and administrators;

**“PRUNE”** means the cutting of tree branches, twigs or roots;

**“PUBLIC PROPERTY”** includes a highway, park, natural area, woodlot, boulevard, or any other public place or land owned by, or leased by, or leased to, or controlled by, or vested in the City;

**“PUBLIC TREE”** means a woody perennial plant (including its root system) which has reached or could reach a height of at least 4.5m at maturity which is located on Public Property which shall include a Boundary Tree;

**“REFUSE”** means leaves, branches and logs that have not fallen naturally, roots, construction material, debris and household garbage;

**“REPLACEMENT TREE PLANTING FUND”** means the fund that has been established by the City to replace and/or maintain Public Trees have been injured or destroyed;

**“TREE PROTECTION ZONE”** means the minimum setback from a Public Tree (including above, below and at ground level) required to protect the biological health and maintain the structural integrity of a Public Tree, as determined by the Commissioner; and

**“TRUNK”** means the part of a tree from its point of growth away from its roots up to where it branches out to limbs and foliage.

## **PART 2 - SCOPE, ADMINISTRATION AND ENFORCEMENT**

2. This By-law shall apply to all Public Property located within the City.
3. The administration and enforcement of this By-law is assigned to the Commissioner who shall perform all of the functions conferred upon them by this By-law.
4. The Commissioner may delegate any responsibilities to an employee of the City that are conferred to the Commissioner under this By-law.

### **PART 3 - COMMISSIONER RESPONSIBILITIES**

5. The Commissioner shall have the authority to plant trees on Public Property, care for and maintain Public Trees and remove Public Trees.
6. The Commissioner shall have the power to:
  - (1) issue a Permit;
  - (2) refuse to issue a Permit;
  - (3) revoke a Permit;
  - (4) suspend a Permit; and
  - (5) impose terms or conditions on a Permit.
7. The Commissioner shall have the authority to transfer funds into and out of the Replacement Tree Planting Fund in accordance with this By-law.
8. The Commissioner shall have the authority to enter upon lands adjacent to Public Property to inspect trees and conduct tests on trees and to remove decayed, damaged or dangerous trees or Prune trees if, in the opinion of the Commissioner, the trees or branches pose a danger to the health or safety of any person using Public Property.
9. Except in accordance with Section 8, the Commissioner shall not remove a Boundary Tree without the consent of the adjacent property owner where the tree is located.

### **PART 4 - GENERAL PROHIBITIONS**

10. No Person shall Injure or Prune a Public Tree without a valid Permit.
11. No Person shall perform any work within a Tree Protection Zone without a valid Permit.
12. No Person shall:
  - (1) interfere with Hoarding, associated signage or other protective devices associated with a Public Tree;
  - (2) plant a tree on Public Property without the consent of the Commissioner;
  - (3) climb a Public Tree without the consent of the Commissioner;
  - (4) deface, tack, paste or otherwise attach an object or thing to, around, or through a Public Tree without the consent of the Commissioner; or
  - (5) remove any woody debris that has fallen or has been cut down by the City in a Natural Area from such area.
13. Within a Tree Protection Zone, no Person shall:
  - (1) place, store or maintain any construction material, Fill, Refuse, equipment or vehicles;
  - (2) alter, change the Grade; or
  - (3) excavate, tunnel or trench or perform other similar type work.

### **PART 5 - PERMIT APPLICATION**

14. A Person seeking to Injure or Prune a Public Tree or to work within a Tree Protection Zone shall apply to the Commissioner for a Permit.
15. The Commissioner shall receive, process and review all permit applications and shall maintain complete records showing all applications received and Permits issued.
16. An application for a Permit shall include the following:

- (1) a completed application form which shall include the purpose for which the Permit is required;
- (2) the permit fee as set out in the City's Fees and Charges By-law;
- (3) a report from an Arborist, if required by the Commissioner, which may include:
  - (a) details of the size, species and health of a particular tree;
  - (b) mitigation measures to be used to reduce the risk of any harm to a Public Tree;
  - (c) the number and frequency of site inspections to be performed by an Arborist; and
  - (d) specifications as to the goals of the work.
- (4) any additional information as may be required by the Commissioner.

## **PART 6 - EXEMPTIONS**

17. A Permit is not required for Emergency Work.

## **PART 7 - ISSUANCE OF A PERMIT**

18. If an application for a Permit is made in accordance with Part 5 of this By-law and the applicant meets all of the requirements of this By-law, the Commissioner may issue a Permit.
19. Every Permit issued is valid for a period of one year from the date of issuance and is non-transferrable. The Commissioner shall be permitted to renew or extend a Permit for a period of time as determined by the Commissioner.

## **PART 8 - PERMIT CONDITIONS**

20. The Commissioner may impose any of the following conditions when issuing a Permit:
  - (1) the standards and timelines for which the work is to be performed;
  - (2) requiring the Permit Holder to have regard for Good Arboricultural Practices;
  - (3) a requirement for Hoarding and/or plans indicating the location and type of Hoarding to the satisfaction of the Commissioner;
  - (4) the fees to cover the costs for the removal and replacement of a Public Tree, where the Commissioner has authorized the removal of a Public Tree, as set out in the City's Fees and Charges By-law;
  - (5) a requirement that the authorized work be carried out under the supervision of an Arborist;
  - (6) authority for the Commissioner to impose additional fees on the Permit Holder, by way of a notice of additional fees at any time for costs incurred by the City attributable to the activities of the Permit Holder; or
  - (7) any other condition as may be required by the Commissioner.
21. A Permit Holder shall comply with the conditions imposed by the Commissioner.

## **PART 9 - SECURITY DEPOSIT**

22. In addition to Section 20, the Commissioner may require an applicant to provide a security deposit as a condition to issuing a Permit.
23. The security deposit shall be the amount that would cover the costs:
  - (1) to replace a Public Tree based on the appraisal value for the tree according to

the Council of Tree & Landscape Appraisers trunk formula method; and

- (2) for any potential maintenance work related to any trees that need to be replaced for a period of up to two (2) years.
24. Where a Permit Holder has provided the Commissioner with a security deposit, the Permit Holder shall notify the Commissioner to perform a final inspection, upon completion of the work for which the Permit was issued. Following the completion of a final inspection, the Commissioner shall:
- (1) immediately return the security deposit to the Permit Holder if the Commissioner has determined that the Public Tree that was the subject of the Permit has not been Injured;
  - (2) transfer the security deposit or a portion of the security deposit to the City's Replacement Tree Planting Fund if the Commissioner has determined (in their sole discretion) that any or all of the security deposit is required to replace and/or maintain a Public Trees that has been Injured; or
  - (3) retain the security deposit for a period of two (2) years from the date of the final inspection, if the Commissioner is unable to conclude during the final inspection if the Public Tree is Injured. For greater clarity, the Commissioner shall comply with subsections (1) and (2) once they are able to assess whether or not a Public Tree has been Injured and shall return the security deposit at the expiration of the two (2) year period if no Injury is observed.

#### **PART 10 - REFUSAL OR REVOCATION OF A PERMIT**

25. The Commissioner may refuse to issue a Permit if they determine that:
- (1) the applicant does not comply with applicable laws, including but not limited to, this By-law, municipal by-laws, provincial or federal laws;
  - (2) the work is to Injure a healthy Public Tree;
  - (3) the application relates to a tree that is subject to a building permit, rezoning, a consent, a minor variance, a plan of subdivision or a site plan that has been submitted to the City but has not received final approval;
  - (4) the work does not comply with the City's tree preservation and protection standards;
  - (5) where the Public Tree is relevant to the heritage designation of the Public Property as determined by the City's Heritage Coordinator;
  - (6) where natural heritage systems, environmentally sensitive areas, ecological systems, natural landforms or contours (any of which may be defined in the City's Official Plan) will not be adequately protected and/or preserved;
  - (7) the impacted Public Tree is an endangered, threatened or special concern tree species as defined in the *Endangered Species Act, 2007*;
  - (8) 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; or
  - (9) a person or property will be adversely affected.
26. In addition to the circumstances set out in Section 25, the Commissioner may revoke a Permit if:
- (1) this By-law or the terms and conditions of the Permit are not complied with;
  - (2) the specifications and recommendations in the report from an Arborist are not followed; or
  - (3) the Permit was issued because of mistaken, false or incorrect information.

27. After a decision is made by the Commissioner to refuse to issue or to revoke a Permit, written notice of that decision shall be given to the applicant or Permit Holder, advising the applicant or Permit Holder of the Commissioner's decision with respect to the application or Permit.
28. The Permit Holder of a revoked Permit shall immediately cease or ensure the immediate cessation of all the actions for which a Permit has been issued upon revocation of the Permit.
29. The written notice to be given under Section 27 shall:
  - (1) set out the grounds for the decision;
  - (2) give reasonable particulars of the grounds; and
  - (3) be signed by the Commissioner.
30. The decision made by the Commissioner pursuant to Part 10 of this By-law shall be final.

## **PART 11 - INSPECTIONS AND ORDERS**

31. An Officer may at any reasonable time, enter upon and inspect the land of any Person to ensure that the provisions of this By-law are complied with, which may include a dwelling if the consent of the occupier is obtained, the occupier first having been informed that the right of entry may be refused.
32. For the purposes of conducting an inspection pursuant to this By-law, an Officer may:
  - (1) require the production for inspection of documents or things relevant to the inspection;
  - (2) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
  - (3) require information from any person concerning a matter related to the inspection; and
  - (4) alone, or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
33. A receipt shall be provided for any document or thing removed under subsection 32(2) and the document or thing shall be promptly returned after the copies or extracts are made.
34. No Person shall prevent, hinder, or obstruct, or attempt to hinder or obstruct, an Officer who is lawfully exercising a power or performing a duty under this By-law.
35. An Officer may make an order requiring the Person who contravened this By-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity or to do work to correct the contravention.
36. An order made pursuant to Section 35 shall include:
  - (1) the reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred;
  - (2) the date by which there must be compliance with the order or the work to be done and the date by which the work must be done; and
  - (3) direct that if the thing or matter that is required to be done is not completed by the time set out in the order, the matter or thing will be done by the City at the Person's expense and the City may recover the costs of doing the matter or thing from the Person directed or required to do it by action (using a security deposit provided pursuant to Section 22 if applicable) and/or by adding the costs to the tax roll and collecting them in the same manner as property taxes.

37. Every Person shall comply with an order made pursuant to Section 35.

## **PART 12 - NOTICE**

38. Any notice or order required to be given or served pursuant to this By-law is sufficiently given or served, if delivered personally or sent by registered mail, addressed to the Person to whom delivery or service is required to be made at the last address for service appearing on the records of the Commissioner.

## **PART 13 - PENALTY AND OFFENCES**

39. Every Person who contravenes any provision of this By-law, and every director or officer of a corporation who knowingly concurs in such contravention by the corporation, is guilty of an offence and is liable to a fine, including the fines set out in this Part 13, and such other penalties, as provided for in the Provincial Offences Act, R.S.O. 1990, c. P. 33, and the Municipal Act, 2001, as both may be amended from time to time.
40. Any Person who is charged with an offence under this By-law by the laying of an information under Part III of the Provincial Offences Act and is found guilty of the offence is liable, pursuant to the Municipal Act, 2001, to a minimum fine of \$500 and a maximum fine not exceeding \$100,000.
41. In addition to section 40 of this By-law, every Person who fails to comply with an order made pursuant to section 35 of this By-law and is found guilty of the offence, is liable to a minimum fine of \$500, and a maximum fine not exceeding \$10,000 for each day or part of a day that the offence continues, and the total of all daily fines for the offence is not limited to \$100,000.
42. In addition to section 40 of this By-law, if a Person is convicted of an offence under this By-law and a Person has or may have obtained an economic advantage as a result of the commission of said offence, this may be considered an aggravating factor for sentencing purposes which may attract a special fine of not more than \$100,000.
43. In addition to section 40 of this By-law, non-compliance with section 10 of this By-law is considered a Multiple Offence if more than one Tree has been Injured and any Person who Injures more than one tree in contravention of section 10 and is found guilty is liable:
- (1) on a first conviction, to a fine of not more than \$2,500 per tree; and
  - (2) on a subsequent conviction, to a fine of not more than \$5,000 per tree.
44. Notwithstanding Section 43, where the Person convicted is a director or officer of a corporation, they are liable:
- (1) on a first conviction, to a fine of not more than \$5,000 per tree; and
  - (2) on a subsequent conviction, to a fine of not more than \$10,000 per tree.
45. For greater clarity, in the case of a Multiple Offence as set out in section 43, for each offence included in the Multiple Offence, the minimum fine shall be \$500, and the maximum fine shall not exceed \$10,000, and the total of all fines for each included offence is not limited to \$100,000.

## **PART 14 - VALIDITY AND INTERPRETATION**

46. Any section of this By-law, or any part thereof, that is found by a court of competent jurisdiction to be invalid shall be severable, and the remainder of the By-law shall continue to be valid.
47. In this By-law, unless the context otherwise requires, words imparting the singular number shall include the plural, and words imparting the masculine gender shall include the feminine and further, the converse of the foregoing also applies where the context so requires.



**PART 15 - EFFECTIVE DATE AND REPEALING BY-LAW**

48. That by-law 91-75 shall be repealed, effective at 12:01 am on April 1, 2022.
49. This By-law shall come into force and effect at 12:01 am on April 1, 2022.

**PART 16 - SHORT TITLE**

50. This By-law shall be referred to as the Public Tree Protection By-law.

**ENACTED** and **PASSED** this 2<sup>nd</sup> day of February, 2022.  
Signed by Bonnie Crombie, Mayor and Diana Rusnov, City Clerk.