

**A by-law to Regulate
the Injuring and Destruction of Trees
Located on Public Property
and to Repeal the Tree By-law 91-75**

WHEREAS section 8 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, damages 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 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 section 444 of the *Municipal Act, 2001*, provides that the 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 WHEREAS on **INSERT DATE**, the Council for the Corporation of the City of Mississauga passed Resolution **X** to enact a by-law to regulate the injuring and destruction of trees on public property and to repeal by-law 91-75;

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 council of the City;

“Emergency Work” means work necessary to terminate an immediate threat to life, including but not limited to work associated with water main repairs, utility, repairs, structural repairs to a building, storm damage or other environmental conditions;

“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 existing trees and their Tree Protection Zones or other vegetation;

“Injure or Injury” means to cause, directly or indirectly, whether by accident or design, damage, harm or death to a tree including:

- (a) removing, cutting above or below ground, girdling or smothering of a tree;
- (b) interfering with the water supply of a tree;
- (c) setting fire to a tree;
- (d) the application of harmful and/or toxic substances on, around or near a tree;
- (e) damage caused by new development or construction related activities including driveways, service (i.e. utility) installation/connections; or
- (f) 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 to permit work on Public Property that may impact a Public Tree;

“**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 which has reached or could reach a height of at least 4.5m at maturity which is located on Public Property including a Boundary Tree;

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

“**Tree Protection Zone**” means the minimum setback required to maintain the structural integrity of a Public Tree’s anchor roots, 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 - ADMINISTRATION AND ENFORCEMENT

2. 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.
3. 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

4. The Commissioner shall have the authority to plant trees on Public Property, care for and maintain Public Trees and remove Public Trees.
5. 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.
6. 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.
7. Except in accordance with section 6, the Commissioner shall not remove a Boundary Tree without the consent of the adjacent property owner(s).

PART 4 – GENERAL PROHIBITIONS

8. No Person shall plant a tree on Public Property without the consent of the Commissioner or climb a Public Tree.
9. No Person shall Injure or Prune a Public Tree without a Permit.
10. No Person shall interfere with Hoarding, associated signage or other protective devices associated with a Public Tree.

11. No Person shall:
 - (1) deface, tack, paste or otherwise attach an object or thing to, around, or through a Public Tree without a Permit; or
 - (2) remove any woody debris that has fallen or has been cut down by the City in a Natural Area from such area without a Permit.
12. Within a Tree Protection Zone, no Person shall:
 - (1) place, store or maintain any construction material, Fill, Refuse, equipment or vehicles without a Permit;
 - (2) alter, change the Grade without a Permit; or
 - (3) excavate, tunnel or trench or perform other similar type work without a Permit.

PART 5 – PERMIT APPLICATION

13. A Person seeking to do any work or activity set out in Part 4 of this By-law shall apply to the Commissioner for a Permit.
14. The Commissioner shall receive, process and review all permit applications and shall maintain complete records showing all applications received and Permits issued.
15. An application for a Permit shall include the following:
 - (1) a completed application form;
 - (2) the permit fee as set out in the City’s applicable fees and charges by-law;
 - (3) a report from an Arborist, if required by the Commissioner, which may include:
 - a. a tree inventory;
 - 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; or
 - (4) any additional information as may be required by the Commissioner.

PART 6 – ISSUANCE OF A PERMIT

16. When an application for a Permit is made in accordance with section 15 of this By-law and the applicant meets all of the requirements of this By-law, the Commissioner may issue a Permit.
17. 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) the Permit holder shall 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 fee to cover the costs for the removal and replacement of a Public Tree that

has been approved by the Commissioner, as set out in the applicable City 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.
18. Every Permit issued is valid only for a period of one year 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 7 – SECURITY DEPOSIT

19. In addition to **section 17**, the Commissioner may require an applicant to pay a security deposit as a condition to issuing a Permit.
20. The security deposit shall be the amount that would cover the costs:
- (1) to remove and replace a Public Tree; and
 - (2) for any potential maintenance work related to the replaced trees for a period of up to two (2) years.
21. Upon completion of the work for which the Permit was issued, the Permit holder shall notify the Commissioner to perform a final inspection. 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 Trees have 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 Public Trees have 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 Trees is Injured. For greater clarity, the Commissioner shall comply with subsections (1) and (2) once they are able to assess whether or not the Public Trees has been Injured and shall return the security deposit at the expiration of the two (2) year period if no Injury is observed.

PART 8 – EXEMPTIONS

22. A Permit is not required for Emergency Work as determined by the Commissioner in their sole discretion.

PART 9 - REFUSAL OR REVOCATION OF A PERMIT

23. 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 Public Tree;

- (3) the impacted Public Tree relates to a development application that has been submitted but has not yet been approved;
 - (4) the work does not comply with the City's tree preservation and protection standards; or
 - (5) the impacted Public Tree is an endangered, threatened or special concern tree species as defined in the *Endangered Species Act, 2007*.
24. In addition to the circumstances set out in **section 23**, 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.
25. 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.
26. The written notice to be given under **section 25** shall:
- (1) set out the grounds for the decision;
 - (2) give reasonable particulars of the grounds; and
 - (3) be signed by the Commissioner.
27. The decision made by the Commissioner pursuant to **Part 9 of this By-law** shall be final.

PART 10 – INSPECTIONS AND ORDERS

28. 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.
29. 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.
30. A receipt shall be provided for any document or thing removed under **subsection 29(2)** and the document or thing shall be promptly returned after the copies or extracts are made.

31. 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.
32. 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.
33. An order made pursuant to **section 32** 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 **section 32**, 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 or by adding the costs to the tax roll and collecting them in the same manner as property taxes.
34. Every Person shall comply with an order made pursuant to **section 32**.

PART 11 - NOTICE

35. Any notice or order required to be given or served under 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 Licence Manager

PART 12 – PENALTY AND OFFENCES

36. 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, 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.
37. An offence under this By-law may be designated a continuing offence or a Multiple Offence.
38. In addition to **sections 36 and 37**, 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 the following fines:
 - (a) a minimum fine not exceeding \$500 and a maximum fine not exceeding \$100,000;
 - (b) in the case of a continuing offence, for each day or part of a day that the offence continues, a minimum fine not exceeding \$500, and a maximum fine not exceeding \$10,000, and the total of all daily fines for the offence is not limited to \$100,000; and
 - (c) in the case of a Multiple Offence, for each offence included in the Multiple Offence, a minimum fine not exceeding \$500, and a maximum fine not exceeding \$10,000, and the total of all fines for each included offence is not limited to \$100,000.
39. Subject to the fine limitations in **section 38** any Person who Injures a Public Tree in contravention of this by-law 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.

- 40. Notwithstanding **section 38**, 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.

PART 13 - MISCELLANEOUS

- 41. 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.

- 42. All schedules attached to this By-law shall form part of this By-law.

- 43. 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 14 – REPEAL BY-LAW AND SHORT TITLE

- 44. That by-law 91-75 is hereby repealed.

- 44. This By-law may be referred to as the Public Tree Protection By-law.

ENACTED AND PASSED this day of , 2021.

APPROVED AS TO FORM City Solicitor MISSISSAUGA			
Date			

MAYOR

CLERK

