



BY-LAW 2023-164

TREE PRESERVATION BY-LAW

A by-law to regulate or prohibit the injury or destruction of trees within the City of Markham

WHEREAS the Council of The Corporation of the City of Markham is authorized by Sections 11 and 135 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, to pass by-laws to sustain and promote environmental and social benefits to the community as a whole through the preservation and planting of trees throughout the municipality; to regulate or prohibit the injury or destruction of trees; to require a permit for the removal of trees; and to impose conditions on permits;

WHEREAS the Council of The Corporation of the City of Markham is authorized by Sections 391, 398, 429, 431, 434.1, 435, 436, 441.1, 444, and 446 to impose fees or charges for services or activities provided or done by or on behalf of the City; to add fees and charges to the tax roll for a property and collect them in the same manner as municipal taxes; to require a person to pay an administrative penalty if the municipality is satisfied that a person has failed to comply with a by-law of the municipality; to permit the City to enter onto lands in certain conditions; to provide for a system of fines and other enforcement orders; to add fines that are in default arising from a provincial offence to the tax roll; and to do a matter or thing at a person's expense if in default and for the costs to be added to the tax roll;

AND WHEREAS the Regional Municipality of York enacted Forest Conservation By-law 2013-68, as amended, to prohibit or regulate the destruction or injuring of trees in woodlands and woodlots in the Region of York;

AND WHEREAS the Council of The Corporation of the City of Markham has determined that it is desirable to enact a by-law to protect, prohibit, and regulate the injury or destruction of trees and encourage the preservation and planting of trees throughout the municipality;

NOW THEREFORE the Council of The Corporation of the City of Markham enacts as follows:

DEFINITIONS

1. For the purposes of this By-law:
 - (a) "**Administrative Penalty**" means an administrative penalty pursuant to AMPS By-law for Non-Parking Offences 2016-84, as amended;
 - (b) "**Administrator**" means the Manager of By-Law Enforcement, the Director of Operations, or the Director of Planning or their designates;
 - (c) "**Aggregate Caliper Method**" means a method for evaluating the value of trees for replacement where the Diameter at Breast Height is replaced centimeter for centimeter with caliper trees of 5 cm. If no evidence exists on site, each tree that can be proven to have existed, through the use of aerial photos and existing surveys will be charged at 6:1 ratio for replacement.
 - (d) "**Arborist Report**" means a report prepared by a Qualified Tree Expert containing information on the location, condition, structural integrity, potential impacts of development, recommended actions, and mitigation measures regarding one or more Trees, and any other information as required by the Administrator. The report shall be based on the International

Society of Arborist "Tree Risk Assessment, Best Management Practices", companion publication to ANSI 300 Part 9 – Standard Practices, as amended or replaced;

- (e) **"Boundary Tree"** means a Tree where any part of its trunk or root flare grows or encroaches beyond a defined parcel line. In particular:
 - (i) **"Private Boundary Tree"** means a Tree encroaching onto one (1) or more private properties; and
 - (ii) **"Public Boundary Tree"** means a Tree encroaching onto Public Lands;
- (f) **"City"** means the City of Markham;
- (g) **"DBH" ("Diameter at Breast Height")** means the diameter, measured outside the bark of the stem or trunk of a Tree, and shall be measured at a point 1.37 metres above the existing grade of the ground adjoining its base or, where there are multiple stems to a Tree, measure each stem at 1.37m and use the quadratic equation to determine the sum of the square root to equal effective DBH, that is, multiply each stem measurement by itself, add up all of the stems, and calculate the square root of the total to find the number to record as DBH;
- (h) **"Dead or Dying Tree"** means, as determined by a Qualified Tree Expert, a Tree with no living tissue, a Tree where seventy-five (75) percent or more of its crown is dead, or a Tree infected by a lethal pathogen;
- (i) **"Destruction"** means the removal, ruin, harm, or interference with a Tree, its branches, roots, or water supply, including causing irreversible Injury to a Tree, but does not include the pruning or removal of branches for maintenance purposes provided any such pruning or removal is in accordance with Good Arboricultural Practices, and **"Destroy"** and **"Destroyed"** and similar words have the same meaning;
- (j) **"Good Arboricultural Practice"** means the proper implementation of removal, renewal, or maintenance of Trees, based on generally accepted industry standards and best practices;
- (k) **"Hazard Tree"** means a Tree or part of a Tree that is severely damaged to the extent that it is, or poses, an immediate safety threat to human life or property, as determined by a Qualified Tree Expert;
- (l) **"Hearing Officer"** means an individual duly appointed to conduct hearings under Screening and Hearing Officer By-law 2015-94, as amended;
- (m) **"Injury"** means, whether accidental or not, acts that cause damage to a Tree including its branches, roots, or water supply, but does not include the pruning or removal of branches for maintenance purposes provided any such pruning or removal is in accordance with Good Arboricultural Practices, and **"Injure"** and **"Injured"** and similar words have the same meaning;
- (n) **"Normal farm practices"** means a practice that: (a) is conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances, or (b) makes use of innovative technology in a manner consistent with proper advanced farm management practices;
- (o) **"Nursery"** means lands on which the principal business carried on is the propagation and selling of plants, shrubs or Trees, and includes a Tree farm, but does not include any lands which are not devoted to the propagation and selling of plants, shrubs or Trees;
- (p) **"Officer"** means a Person designated by City for the enforcement of by-laws and includes, but is not limited to, the Administrator, a Municipal Law Enforcement Officer, a Provincial Offences Officer, a police officer, or any other Person authorized to enforce this By-law;

- (q) **"Owner"** means a Person having any right, title, interest, or equity in land or property, including an occupant, tenant or lessee, and any such Person's authorized representative;
- (r) **"Permit"** means permission or authorization given in writing by the Administrator to Injure or Destroy a Tree;
- (s) **"Person"** includes an individual, a sole proprietorship, a partnership, a corporation, a not-for-profit corporation, a registered charity, and their respective heirs, executors, administrators, assigns, or other appointed representatives;
- (t) **"Progressive Aggregate Caliper Method"** means a method for evaluating the value of trees for replacement where the Diameter at Breast Height is multiplied by the average of a health and structure factor, as determined by a Qualified Tree Expert, to depreciate trees with less than perfect health and structure, the outcome of the calculation is the number of replacement trees required as conditional replanting trees.
- (u) **"Public Lands"** includes lands owned, maintained, managed, or leased by the City, including but not limited to, parks, parkettes, City facilities, cemeteries, open spaces, rights-of-way, and boulevards;
- (v) **"Qualified Tree Expert"** means a Person who has graduated from an accredited college or university with a diploma or degree in forestry, arboriculture, or equivalent and satisfies at least one of the following requirements:
 - (i) is certified either by Skilled Trades Ontario or the International Society of Arboriculture;
 - (ii) is currently accepted as a consulting arborist with the American Society of Consulting Arborists;
 - (iii) is a Tree Risk Assessment Qualified arborist;
 - (iv) is a Registered Professional Forester pursuant to the Ontario *Professional Foresters Act, 2000*, S.O. 2000, c.18, as amended; or
 - (v) has comparable qualifications to those set out under clauses (i) to (iv) above and is approved by the Administrator;
- (w) **"Tree"** means any species of woody perennial plant, including its root system, which has reached or can reach a height of at least 4.5 metres at maturity, and where multiple above grade stems grow from the same root system and share the same root flare they shall be considered a single tree;
- (x) **"Tree Management Plan"** means a plan prepared by a Qualified Tree Expert in accordance with Good Arboricultural Practice which assesses the number, species, location, and condition of all Trees on the lands and may include a management schedule related to Destruction, Injury, maintenance, or planting goals over a specified period of time, or any other information as required by the Administrator;
- (y) **"Tree Preservation Zone"** means the area where construction related activities are prohibited to prevent Injury to Trees being preserved during construction and where barriers, fencing either vertical or horizontal hoardings are installed to City standard as per approved drawing detail;
- (z) **"Woodland"** means land at least 1 hectare in area and with at least:
 - (i) 1,000 Trees, of any size, per hectare;
 - (ii) 750 Trees measuring over five (5) centimetres DBH per hectare;
 - (iii) 500 Trees measuring over twelve (12) centimetres DBH per hectare; or
 - (iv) 250 Trees measuring over twenty (20) centimetres DBH per

hectare;

but does not include a Nursery, a cultivated fruit or nut orchard, or a plantation established for the purpose of producing Christmas trees or Nursery stock; and

(aa) **“Woodlot”** means land at least 0.2 hectares in area and no greater than 1 hectare in area, with at least:

- (i) 200 Trees, of any size, per 0.2 hectares;
- (ii) 150 Trees, measuring over five (5) centimetres DBH, per 0.2 hectare;
- (iii) 100 Trees, measuring over twelve (12) centimetres DBH, per 0.2 hectare; or
- (iv) 50 Trees, measuring over twenty (20) centimetres DBH, per 0.2 hectare;

but does not include a Nursery, a cultivated fruit or nut orchard, or a plantation established for the purpose of producing Christmas trees or Nursery stock.

APPLICATION

2. Except as otherwise provided herein, this By-law applies to:

- (a) any Tree located within the City on private property with a DBH of 20 centimeters or greater; and
- (b) any Tree located within the City on Public Lands.

EXEMPTION

3. Notwithstanding anything to the contrary herein, this By-law does not apply to:

- (a) activities and matters exempted under Subsection 135(12) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;
- (b) Woodlands and Woodlots;
- (c) any activity performed by the City or a City contractor with authorization from the City; or
- (d) the Injury or Destruction of the following:
 - (i) a Tree subject to an order permitting its Injury or Destruction under Property Standards By-law 2017-26, as amended;
 - (ii) a Tree on private property that is in an indoor courtyard or in a solarium, excluding rooftops of parking garages or other substructures below or at grade; and
 - (iii) a Tree on a Nursery or cultivated orchard, provided that it is a Tree devoted to the Nursery or orchard business and maintained for sale or propagation of Trees or fruits for sale.

GENERAL PROHIBITIONS

4. No Person shall cause or permit:

- (a) the Injury or Destruction of a Tree without a Permit;
- (b) the Injury or Destruction of a Tree without complying with the terms of a Permit, including any conditions;

- (c) the failure to comply with the conditions of a Permit;
 - (d) the failure to comply with an order issued under this By-law;
 - (e) the submission of false information in a Permit application;
 - (f) the relocation or alteration of a Tree on Public Lands;
 - (g) the hanging, securing, or posting of any object to a Tree on Public Lands;
 - (h) the obstruction or attempted obstruction of an Officer; or
 - (i) the contravention of any provisions of this By-law.
5. An Owner shall be presumed to have caused or permitted the Injury or Destruction of a Tree located on the lands of the Owner or on the lands abutting the Owner's property, which presumption may be rebutted by evidence to the contrary on a balance of probabilities.

ADMINISTRATION AND ENFORCEMENT

6. The Administrator is responsible for the administration of this By-law and may designate any of their duties under this By-law to an Officer.
7. Upon producing the appropriate identification on request, an Officer may, at any reasonable time, enter and inspect any lands to determine whether the provisions of this By-law have been complied with, including to inspect the lands for the purposes of a Permit.

PERMITS

8. Any Person who intends to Injure or Destroy a Tree or whose conduct may reasonably result in the Injury or Destruction of a Tree, including a Dead or Dying Tree or a Hazard Tree, shall apply for a Permit by submitting the following to the City as required by the Administrator:
- (a) a completed Permit application form as prescribed by the City;
 - (b) an application fee as prescribed by Fees By-law 2002-276, as amended, and/or Licensing, Permit and Service Fees By-Law 2012-137, as amended;
 - (c) a photo of the Tree;
 - (d) for the Injury or Destruction of a Private Boundary Tree, the written consent of the other Owner(s);
 - (e) for the Injury or Destruction of a Public Boundary Tree, the written authorization of the City;
 - (f) an Arborist Report in a form satisfactory to the Administrator;
 - (g) a detailed drawing showing the location of the Tree and other nearby trees, buildings, or structures;
 - (h) a Tree Management Plan;
 - (i) any mitigation measures, site inspection details, or other specifications; and/or
 - (j) any information or documentation as required by the Administrator.
9. The Administrator may issue a Permit where the Administrator is satisfied that:
- (a) a completed Permit application is received in accordance with this By-law;
 - (b) the requirements and general intent and purpose of this By-law is met;

- (c) the Injury or Destruction of the Tree is required for works authorized under a building permit issued under the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended and there is no reasonable alternative to preserve the Tree;
 - (d) where a Tree Management Plan is included as part of a Permit, that the plan represents Good Arboricultural Practice;
 - (e) the Tree is causing structural damage to load bearing structures, drains, or buildings; and/or
 - (f) the likelihood of Tree failure is imminent and there is a high likelihood of serious injury to humans and property, as verified by a Qualified Tree Expert.
10. The Administrator may refuse to issue a Permit for any reason, including where:
- (a) the Permit application has not been submitted in full, does not contain all required information, or is not to the satisfaction of the Administrator;
 - (b) the Tree is an endangered species as defined in the *Endangered Species Act*, R.S.O. 1990, c. E.15, as amended, or the Tree is a nationally rare species as defined in the *Species at Risk Act, 2002*, S.O. 2002, c. 24, as amended; or
 - (c) the Injury or Destruction of the Tree is contrary to the general intent and purpose of this By-law.
11. A Permit shall expire on the date set out in the Permit.
12. The Administrator may impose conditions in connection with a Permit, including:
- (a) the manner and timing in which the Injury or Destruction of a Tree is to be carried out;
 - (b) the qualifications of the Persons authorized to Injure or Destroy a Tree;
 - (c) the requirement to post signage prior to Injury or Destruction of a Tree that is visible from the street;
 - (d) the requirement to pay security or a deposit to the City;
 - (e) the requirement to plant replacement Trees, including the species, size, number, location and timing of a replacement Tree, calculated in accordance with the Progressive Aggregate Caliper Method;
 - (f) where a replacement Tree is not physically possible on the lands, requiring a replacement Tree at another suitable location as approved by the Administrator or cash-in-lieu of a replacement Tree, calculated in accordance with the Progressive Aggregate Caliper Method; or
 - (g) measures to be implemented to mitigate the direct and indirect effects of the Injury or Destruction of a Tree on other nearby Trees, lands, water bodies, or natural areas, including the installation of Tree Preservation Zone barriers.
13. Where Trees are approved for removal for Normal Farm Practice, the requirement to plant replacement Trees and cash-in-lieu of a replacement Tree will be at the discretion of the Administrator.
14. The Administrator can revoke a Permit at any time including in circumstances where this By-law is contravened, the conditions of the Permit are not satisfied, a Permit was issued based on mistaken, false, or incorrect information, or there is conduct contrary to the intent or purpose of this By-law.

ORDERS

15. Where an Officer is satisfied that a contravention of this By-law has occurred, the Officer may make an order setting out the particulars of the contravention and requiring a Person to:
 - (a) stop the activity; or
 - (b) perform work to rectify the contravention.
16. An order shall set out:
 - (a) the name of the Person and the municipal address and/or the legal description of the land or property that is the subject of the contravention;
 - (b) reasonable particulars of the contravention and how it must be rectified, including but not limited to, monetary compensation for the Tree removal or replacement of Trees calculated in accordance with the Aggregate Caliper Method;
 - (c) where applicable, the requirement to retain a Qualified Tree Expert to prepare a Tree Impact Report and submit the Tree Impact Report to the City;
 - (d) the date and time by which the order must be complied with;
 - (e) a statement that if the work is not done in compliance with the order within a specified time period, the City may have the work done at the expense of the Person;
 - (f) information to contact the City's representative; and
 - (g) any other information the Officer may deem appropriate.
17. Orders issued by an Officer shall be served personally, by regular mail to the last known address, or by email.
18. Where service of an order is made by regular mail, it shall be deemed effective on the fifth day after the date the order is mailed.
19. In the event that service cannot be carried out for any reason, the Officer may place a placard containing the terms of the order in a conspicuous place on the lands where the subject Tree is/was situated and placement of the placard will be deemed sufficient service of the order.

WORK PERFORMED BY CITY

20. If the work required by an order under this By-law is not performed by the Person within the specified period, the City, in addition to all other remedies it may have, may do the work at the Person's expense and may enter upon the land at any reasonable time for this purpose.
21. In the circumstance where there is a failure to replant a Tree as a condition of a Permit or as required by an order, the City may plant a replacement Tree on Public Lands and impose a fee on the Person for the cost of the Tree and for the cost of planting the Tree. The cost of a replacement Tree shall be calculated in accordance with the Aggregate Caliper Method.
22. If the costs for work performed by the City are not paid to the City within thirty (30) days of written demand, the City may recover the costs by action or by adding the costs, including interest, to the tax roll for the lands and may collect them in the same manner as municipal taxes.

APPEAL

23. A Person may appeal the Administrator's decision to refuse or to revoke a Permit, to impose any condition on a Permit, or to issue an order, by sending a request for an appeal to the City within ten (10) days of the Administrator's written decision, including any applicable fees as set out in Fee By-law 2002-276, as amended, and/or Licensing, Permit and Service Fees By-Law 2012-137, as amended.
24. Where no request for an appeal is registered within the required time period, the decision of the Administrator shall be final.
25. An appeal of a decision does not act as a stay of the Administrator's decision.
26. The powers and authority to hear appeals from decisions made by the Administrator are designated to the Hearing Officer.
27. Upon receipt of a request for an appeal, the City Clerk shall schedule a hearing and shall give notice in writing to all parties of:
 - (a) the place, date and time of the hearing;
 - (b) the purpose of the hearing; and
 - (c) a statement that if the party notified does not attend at the hearing, the Hearing Officer may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding.
28. The *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, apply to all hearings under this By-law.
29. A hearing may be held in person, by telephone or video conference, or by some other City-approved form of communication using electronic technology devices.
30. A hearing shall be open to the public except where the Hearing Officer is of the opinion that:
 - (a) matters involving the public security may be disclosed; or
 - (b) intimate financial or personal or other matters may be disclosed at the hearing that are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any Person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public; in which case the Hearing Officer may hold the hearing, or portion thereof, in the absence of the public.
31. At a Hearing, the onus is on the appellant to demonstrate why the decision of the Administrator should be altered.
32. The Hearing Officer may dismiss a proceeding without a hearing if the proceeding is frivolous, vexatious or is commenced in bad faith.
33. If the appellant does not attend at the hearing, the Hearing Officer may proceed with the hearing in the appellant's absence and the appellant shall not be entitled to any further notice of the proceedings.
34. The Hearing Officer shall have regard to the following factors where relevant:
 - (a) this By-law and other applicable law; and
 - (b) circumstances and facts raised by the evidence of the parties.
35. The Hearing Officer has the power to make any decision that the Administrator was entitled to make in the first instance, including the power to:
 - (a) modify, rescind, or confirm a decision or a Permit condition; and
 - (b) extend time for complying with a decision or any Permit condition.

36. At the conclusion of a hearing, the Hearing Officer may give its decision orally or reserve its decision, but in any case shall provide its decision in writing, with reasons, within fourteen (14) days of the hearing to each party by regular mail or by email.

37. A decision by the Hearing Officer shall be final and binding.

OFFENCE AND PENALTY

38. Every Person who contravenes this By-law is guilty of an offence and upon conviction is liable to a fine and such other penalties as provided for by the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended.

39. All contraventions of this By-law are designated as multiple offences and continuing offences under Sections 429(2) and (5) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended.

40. Pursuant to Section 429 of the *Municipal Act*, every Person who is guilty of an offence under this By-law shall be subject to the following penalties:

40.1 Upon a first conviction, to a fine of not less than \$300.00 and not more than \$100,000.00;

40.2 Upon conviction for a continuing offence, to a fine of not less than \$100.00 and not more than \$10,000.00 for each day or part of a day that the offence continues. The total of the daily fines may exceed \$100,000.00.

40.3 Upon a second or subsequent conviction for the same offence, or conviction for a multiple offence, to a fine of not less than \$400.00 and not more than \$10,000.00. The total of the daily fines may exceed \$100,000.00.

41. A special fine may be imposed, in addition to the fines above, in circumstances where there is an economic advantage or gain from the contravention of this by-law or an Order under this by-law, and the maximum amount of the special fine may exceed \$100,000.00.

42. The City may add any part of a fine or administration fee related to a provincial offence that is in default under Section 69 of the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended, to the tax roll for any property in the City which the Owner is responsible for.

ADMINISTRATIVE PENALTIES

43. Instead of laying a charge under the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended, for a contravention of this By-law, an Officer may issue an Administrative Penalty.

44. The Officer has the discretion to either proceed by way of an Administrative Penalty or proceed under the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended.

45. The amount of the Administrative Penalty for a breach of this By-law is fixed as set out in AMPS By-law for Non-Parking Offences 2016-84, as amended. A Person who is issued an Administrative Penalty shall be subject to the AMPS By-law for Non-Parking Offences 2016-84, as amended.

46. An Administrative Penalty that is not paid within fifteen (15) days after the day it becomes due and payable constitutes a debt of the Person to the City and may be added to the tax roll and collected in the same manner as municipal taxes.

GENERAL

47. Municipal service fees for the administration and enforcement of this By-law shall be in accordance with Fee By-law 2002-276 and/or Licensing, Permit and Service Fees By-Law 2012-137, as amended.
48. Any unpaid fee constitutes a debt of the Person to the City and may be added to the tax roll and collected in the same manner as municipal taxes.
49. If a court or tribunal of competent jurisdiction declares any provision, provisions or part of a provision of this By-law to be illegal or unenforceable for any reason, such provision, provisions, or part of a provision shall be severed and all other provisions of this By-law shall be deemed to be separate and independent therefrom and shall be valid and enforceable.
50. This By-law shall come into force and take effect on the date it is passed.
51. The provisions of the *Legislation Act*, 2006, S.O. 2006, c. 21, Sched. F, shall be apply to this By-law.
52. By-law 2008-96 is hereby repealed.
53. This By-law may be cited as the "Tree Preservation By-law".

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS 13th DAY OF DECEMBER, 2023



Kimberley Kitteringham
City Clerk



Frank Scarpitti
Mayor