



**Office Consolidation
Tree Preservation By-law 317-2012**

**A by-law to conserve and protect trees on private land
within the City of Brampton and to repeal By-law 38-2006**

RECITALS

Subsection 135(1) of the *Municipal Act, 2001*, R.S.O. 2001, c. 25, as amended (the “Act”), provides that a local municipality may prohibit or regulate the destruction or injuring of trees;

Subsection 135(7) of the Act provides that a by-law may require that a permit be obtained to injure or destroy trees and may 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;

Council in recognition of the environmental and aesthetic value of trees wishes to conserve and protect the City’s trees by regulating and prohibiting the destruction and injury of trees on private property;

Council has determined that it is desirable to enact such a by-law for the purpose of achieving the objectives of the City’s Official Plan;

NOW THEREFORE the Council of The Corporation of the City of Brampton ENACTS
AS FOLLOWS:

PART I – TITLE, SCOPE AND INTERPRETATION

1. The short title of this by-law is the “Tree Preservation By-law”.
2. This by-law applies to all private property within the City of Brampton, subject to the exemptions noted in Part IV of this by-law.
3. For the purposes of this by-law:
 - a. Wherever a word is used with its first letter capitalized, the term is being used as it is defined in Part II of this by-law. Where any word appears in ordinary case, the commonly applied English language meaning is intended.
 - b. Wherever a word defined in Part II of this by-law is used as a noun, verb, adverb or adjective it shall be interpreted as having a corresponding defined meaning even if appearing in ordinary case.
 - c. References to items in the singular include the plural, as the context requires.

PART II – DEFINITIONS

4. For the purposes of this by-law:
 - a. “Act” means the *Municipal Act, 2001*, S.O. 2001, c.25, as amended;
 - b. “Arborist” means a person expert in the care and maintenance of trees with an accredited college or university degree in urban forestry, arboriculture or equivalent and is:
 - (1) an arborist qualified by the Ontario Training and Adjustment Board

Apprenticeship and Client Services Branch;

(2) a certified arborist qualified by the International Society of Arboriculture;

(3) a consulting arborist registered with the American Society of consulting Arborists; or

(4) a person with similar qualifications as approved by the Commissioner;

- c. "City" means The Corporation of the City of Brampton or the land within the municipal boundaries of the City of Brampton, as the context requires;
- d. "Council" means the Council of The Corporation of the City of Brampton;
- e. "Commissioner" means the Commissioner of the Community Services Department of the City of Brampton or his or her designate;
- f. "DBH" (Diameter at Breast Height) means the Diameter of the stem or trunk of a tree at a point of measurement 1.37 metres (137 centimetres) from the highest point on the ground touching the trunk;
- g. "Destroy" means any action which causes or results in injury or death of a Tree including to remove or cut down a Tree;
- h. "Diameter" means a straight line passing through the center of a cross section of a tree trunk that is measured outside the bark at a specified point of a tree stem or trunk;
- i. "Emergency Work" means any work necessary to protect life or property from imminent danger related to any Tree including, to the extent not otherwise addressed by applicable law, repairs related to soil erosion, utilities, buildings or drainage works;

- j. “Hazardous Tree” means a destabilized or structurally compromised tree, or a tree with Pest infestation, that may cause damage or injury to life or property;
- k. “Injure” means to injure or Destroy a Tree by any action that causes physical, biological or chemical damage or death to a Tree, but does not include pruning or removing branches for maintenance purposes.
- l. “Nursery” means a lot on which the principal active business is the growing of plants, shrubs and trees for sale to the public;
- m. “Officer” means an individual appointed by Council for the administration and enforcement of municipal by-laws;
- n. “Orchard” means a lot on which the principal active business is the growing of fruit for sale to the public;
- o. “Order” means any Order authorized by the Act;
- p. “Owner” means a person having any right, title, interest or equity in land or any such person’s authorized representative and includes the person managing or receiving the rent of the land and includes a lessee or occupant of the land;
- q. “Permit” means a valid permit to injure Trees issued pursuant to Part V of this by-law;
- r. “Person” includes an individual, an association, a partnership, or a corporation;

- s. “Pest” means any insect or disease that, in the opinion of an Arborist, is likely to cause the destruction or injuring of Trees, and shall include the insects and diseases included in Schedule A to this By-law;
- t. “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 physiological maturity. For clarity, where multiple stems grow from the same root system, the number of Trees shall be the number of stems that can be counted at a point of measurement 1.37 metres from the highest point on the ground touching the trunk;
- u. “Woodlots” means land at least 0.2 hectares in area with at least:
 - i. 200 trees, of any size, per 0.2 hectare;
 - 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;and includes Woodlands as defined in the Act, but does not include a cultivated fruit or nut orchard or plantation established and maintained for the purpose of producing Christmas trees.
- v. “Woodlot Conservation By-law” means City of Brampton By-law No. 402-2005, or any successor by-law regulating the injury or destruction of trees in woodlots in the City of Brampton.

PART III – PROHIBITIONS

- 5. No Person shall Injure, cause or permit the injuring of a Tree:
 - a. unless exempted pursuant to Part IV of this by-law; or

- b. except in accordance with a Permit issued pursuant to Part V of this by-law.

- 6. No Person shall:
 - a. contravene the terms or conditions of a Permit issued under this by-law; or
 - b. cause or permit the contravention of the terms or conditions of a Permit issued under this by-law.

- 7. Every Person shall comply with an Order issued under this by-law.

- 8. No Person shall remove or deface any Order that has been posted pursuant to this by-law.

PART IV – EXEMPTIONS

- 9. This by-law does not apply to:
 - a. Woodlots as defined by the Woodlot Conservation By-law, By-law 402-2005, or any successor by-law regulating the injury or destruction of trees in woodlots in the City of Brampton;
 - b. Hazardous Trees;
 - c. Injury to Trees that are necessary for Emergency Work;
 - d. Trees located within 2 metres of an occupied building; and
 - e. Trees with a DBH of less than 30 centimetres;
 - f. Trees located on rooftop gardens, interior courtyards or solariums;
 - g. Trees located on a Nursery or Orchard; or
 - h. Trees exempted by Council pursuant to the provisions of this by-law.

- 10. Despite any other section of this by-law, this by-law does not apply to activities exempted by Subsection 135(12) of the Act as follows:
 - a. activities or matters undertaken by a municipality or a local board of a municipality;

- b. activities or matters undertaken under a license issued under the *Crown Forest Sustainability Act, 1994*;
- c. the injuring or destruction of Trees by a person licensed under the *Surveyors Act* to engage in the practice of cadastral surveying or his or her agent, while making a survey;
- d. the injuring or destruction of Trees imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under Section 41, 51 or 53, respectively, of the *Planning Act* or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;
- e. the injuring or destruction of Trees imposed after December 31, 2002 as a condition to a development permit authorized by regulation made under Section 70.2 of the *Planning Act* or as a requirement of an agreement entered into under the regulation;
- f. the injuring or destruction of Trees by a transmitter or distributor, as those terms are defined in Section 2 of the *Electricity Act, 1998*, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
- g. the injuring or destruction of Trees undertaken on land described in a license for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*; or
- h. the injuring or destruction of Trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land,
 - i. that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act, and
 - ii. on which a pit or quarry is a permitted land use under a by-law passed under Section 34 of the *Planning Act*.

11. Despite any other section of this by-law, an Owner may request an exemption to this by-law from Council and upon such request Council may:

- a. grant an exemption;
- b. grant an exemption with conditions; or

- c. refuse an exemption.
12. When evaluating a request for an exemption, Council shall consider if the proposed activity conflicts with City natural heritage and environmental policies, any other relevant City policies and the appropriate use of the land.
13. If granting an exemption, Council may impose conditions as it deems appropriate and shall have regard for:
- a. the manner and timing of the injuring of a Tree;
 - b. the qualifications of persons authorized to Injure a Tree;
 - c. the species, size, number and location of replacement Trees to be planted; and
 - d. measures to mitigate the effects of the injuring of a Tree on the natural environment.
14. An Owner requesting an exemption to this By-law shall at least six (6) weeks before the proposed injuring of Trees submit to the City Clerk a completed, signed request form with the fee prescribed by the City.
15. The City Clerk shall notify the Owner and all owners of lands abutting the subject property of the exemption request at least seven (7) days prior to Council considering the requested exemption.
16. The City Clerk shall notify the Owner in writing of Council's decision.

PART V – PERMITS

17. The City hereby delegates to the Commissioner the power to issue a Permit and to impose conditions to such Permits in accordance with Sections 18 and 19 of this by-law.

18. The Commissioner may issue a Permit to Injure a Tree provided that an Arborist is satisfied that the injuring of the Tree is in compliance with natural heritage and environmental policies adopted by Council from time to time and the applicant for a Permit demonstrates that:

- a. the injuring of the Trees will be conducted in the manner prescribed by the Permit application;
- b. is justified, having regard for the size, species, condition and location of the Trees;
- c. the date(s) and time(s) when the injuring of the Tree may occur has been identified to the City;
- d. those persons authorized to Injure a Tree have been identified to the City;
- e. the species, size, number and location of replacement Trees to be planted have been identified to the City's satisfaction; and
- f. measures to mitigate the direct and indirect effects on the natural environment from the injuring of Trees shall be implemented to the City's satisfaction.

19. The Commissioner may impose conditions to a Permit to address:

- a. Any matters identified in Section 18 of this by-law;
- b. the manner and timing of the injuring of the Tree;
- c. the qualifications of Persons authorized to Injure the Tree;
- d. the species, size, number and location of replacement Trees to be planted;
- e. measures to mitigate the effects of the injuring of the Tree on the natural environment including to protect trees on adjacent lands; and
- f. any other conditions relevant to the injuring of Trees.

PART VI – APPLICATION

20. A Person who intends to Injure a Tree shall file an application for a Permit by submitting the following to the Commissioner:

- a. a complete application in the form required by the City, signed by the Owner of the property where the Tree is located;
- b. information relevant to the conditions of a Permit in Part V of this by-law;
- c. the applicable fee as prescribed in the City's User Fee By-law 380-2003, as amended;
- d. an Arborist report if required by the Commissioner; and
- e. the written consent of the adjacent property owner if the Tree to be injured is a boundary tree.

21. Upon receipt by the Commissioner of an application for a Permit, the Owner shall permit an Officer to enter upon his or her property and undertake such site inspections as may be required to consider the application. An Officer may undertake a site inspection prior to, during and after the proposed activity.

22. A Permit issued pursuant to this by-law shall expire one (1) year after the date of issuance and the Commissioner may, upon the request of the Owner prior to expiry, renew the Permit for a further period of one (1) year.

23. A decision regarding an application for a Permit shall not be made by the Commissioner until such time as all the required documents have been filed, the applicable fee has been paid and any required inspections have been completed.

PART VII - ORDERS

24. Where an Officer believes that a contravention of this By-law has occurred, the Officer may issue:

- a. an Order to discontinue the contravening activity; or
- b. a work Order to correct the contravention including but not limited to the planting or re-planting of Trees.

25. The Orders contemplated in Section 24 shall set out:

- a. the name of the Owner and the municipal address or the legal description of the land;
- b. reasonable particulars of the contravention;
- c. the date by which there must be compliance with the Order;
- d. the work to be done and the date by which the work must be done, if applicable; and
- e. a statement as applicable that if 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 Owner, if applicable.

26. An Order issued under this by-law may be served personally or served by mail to the last known address of the Owner and such other persons affected by it as determined by the Officer and a copy of the Order may be posted on the land.

27. If an Order is served by registered mail, the service shall be deemed to have been made five (5) days after mailing.

28. Where service cannot be carried out in accordance with the process in Section 26 of this by-law, the Officer shall place a placard containing the terms of the Order in a conspicuous place on the Owner's property, and the placing of the placard shall be deemed to be sufficient service of the Order on the Person or persons to whom the Order is directed.

PART VIII – ENFORCEMENT

29. The provisions of this by-law may be enforced by an Officer of the City.

30. An Officer may, at any reasonable time, enter on land and inspect any land to determine whether this by-law, an Order under this by-law, a condition to a Permit, or a court Order under Section 431 of the Act is being complied with.

31. An Officer performing a duty under this by-law may be accompanied by a person under his direction.
32. No Person shall hinder or obstruct an Officer or attempt to hinder or obstruct an Officer who is performing a duty under this by-law.
33. Any Person who provides false information to an Officer shall be deemed to have hindered or obstructed the Officer in the execution of his or her duties.
34. For the purpose of determining compliance with this by-law, "DBH" shall be used to determine whether a Tree which has been injured would have attained the minimum measurement required by this by-law.

PART IX - PENALTIES

35. Any Person who contravenes any provision of this by-law, including an Order issued pursuant to this by-law or Sections 444 or 445 of the Act 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, as amended and the Act.
36. Any person who obstructs an Officer in carrying out an inspection under this by-law is guilty of an offence.
37. All contraventions of this By-law or Order issued pursuant to this by-law are designated multiple and continuing offences pursuant to Subsection 429(2) of the Act.
38. In addition to Section 35 of this by-law, any Person who is charged with an offence under this By-law by the laying of an information under Part III of the *Provincial Offence Act*, upon conviction is liable, pursuant to the fine provisions of the Act to a fine as follows:
- a. the maximum fine for an offence is \$100,000;

- b. in the case of a continuing offence, in addition to the penalty mentioned in clause (a), for each day or part of a day that the offence continues, the maximum fine shall be \$10,000, and the total of all daily fines for the offence is not limited to \$100,000;
 - c. in the case of a multiple offence, for each offence included in the multiple offence, the maximum fine shall be \$10,000 and the total of all fines for each included offence is not limited to \$100,000; and
 - d. If a Person is convicted of an offence under this by-law, the potential for economic advantage from the Injury of a Tree on the affected lands may be considered an aggravating factor for sentencing purposes which may attract a special fine and the maximum amount of the special fine may exceed \$100,000 or such other maximum amount permitted by the Act.
39. If a Person is convicted of an offence under this by-law, in addition to any other remedy or any penalty imposed, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an Order:
- a. prohibiting the continuation or repetition of the offence by the Person convicted; and
 - b. requiring the Person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

PART X – GENERAL

40. Schedule “A” forms part of this bylaw.
41. If any section, subsection or part or parts thereof are declared by a court of competent jurisdiction to be illegal, invalid or otherwise unenforceable, such provision shall be deemed to be severable and the remainder of this by-law shall be declared to be separate and independent and enacted as such.
42. By-law No. 38-2006 is repealed effective on the date this by-law is adopted.

43. Despite Section 42 of this by-law, By-law No. 38-2006, as amended, shall continue to apply to proceedings in respect of matters that were initiated prior to its repeal.

44. This by-law shall come into effect on November 14, 2012.

READ a first, second and third time and PASSED in OPEN COUNCIL, this 14th day of November 2012.

THE CORPORATION OF THE CITY OF BRAMPTON

Original signed by:
Susan Fennell – Mayor
Peter Fay – Clerk

SCHEDULE "A"

List of Pests

Emerald Ash Borer (*Agrillus planipennis*)

Asian Longhorned Beetle (*Anoplophora glabripennis*)

Verticillium Wilt - extreme cases

Dutch Elm Disease - continued significant loss of limbs

Carpenter Ants (where infestation is significant and treatment impractical)

Other such pests or diseases where, if left unchecked, pose a significant threat to the health of adjacent property or plant material.