



THE CORPORATION OF THE CITY OF BRAMPTON

# BY-LAW

Number 38 - 2006

A by-law to conserve and protect trees on private  
land within the City of Brampton

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WHEREAS subsection 135(1) of the *Municipal Act, 2001* (the "Act"), as amended, provides that a local municipality may prohibit or regulate the destruction or injuring of trees.

AND WHEREAS 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;

AND WHEREAS City Council has determined that it is desirable to enact such a by-law for the purpose of achieving the objectives of tree conservation through increased public awareness and education of the social, economic and environmental benefits of trees in an urban setting and by providing citizens with specific criteria by which the destruction or injuring of trees will be permitted on private property.

AND WHEREAS City 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 by sustaining a healthy natural environment.

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

## 1. DEFINITIONS

### 1.1 In this by-law:

- (a) "Act" means the *Municipal Act, 2001*, S.O. 2001, c.25, as amended;
- (b) "arborist" means an expert in the care and maintenance of trees and includes an arborist qualified by the Ontario Training and Adjustment Board Apprenticeship and Client Services Branch, a certified arborist qualified by the International Society of Arboriculture, a consulting arborist registered

with the American Society of consulting Arborists, a registered professional forester or a person with similar qualifications as approved by the Commissioner;

- (c) "City" means The Corporation of the City of Brampton;
- (d) "City 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 designate;
- (f) "DBH" means the diameter of the stem or trunk of a tree at a point of measurement 1.37 metres (137 centimeters) from the ground;
- (g) "emergency work" means work required to be done immediately, including drain repairs, soil erosion repairs, utility repairs or structural repairs to a building, which repairs are necessary to terminate imminent danger of damage or injury to life or property;
- (h) "Guide for Plant Appraisal" means the Official Publication of the International Society of Arboriculture authored by the Council of Tree and Landscape Appraisers;
- (i) "hazardous tree" means a destabilized or structurally compromised tree, or a tree with pest infestation, that is in imminent danger of causing damage or injury to life or property;
- (j) "injury to a tree" means lasting damage to a tree which has the effect of inhibiting or terminating its growth, but does not include pruning or removing branches for maintenance purposes;
- (k) "land" includes all private property within the City of Brampton;
- (l) "officer" means an individual appointed by City Council for the administration and enforcement of this by-law.
- (m) "owner" means a person having any right, title, interest or equity in land or any such person's authorized representative;
- (n) "Permit" means a permit to injure or destroy trees issued under section 5 of this by-law;
- (o) "person" includes an individual, a corporation, and their respective heirs, executors, administrators, or other duly appointed representatives;
- (p) "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 as included on Schedule A to this By-law;
- (q) "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, provided that 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 ground;
- (r) "woodlots" means, as defined in the Woodlot Conservation By-law

402-2005, land at least 0.2 hectares in area, including woodlands as defined in the Act, with at least:

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

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

- (s) "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.

## 2. SCOPE OF BY-LAW

- 2.1 This by-law applies to all private property within the City of Brampton, subject to the exemptions noted in Section 3.

## 3. EXEMPTIONS

- 3.1 Despite any other section of this by-law, this by-law does not apply to woodlots as defined by the Woodlot Conservation By-law, By-law 402-2005.

- 3.2 Despite any other section of this by-law, this by-law does not apply to:

- (a) Hazardous Trees;
- (b) injury or destruction of a tree that is necessary for Emergency Work;
- (c) trees located within 5 metres of an occupied building;
- (d) trees that are located within a building envelope in respect of which a building permit has been issued pursuant to the *Building Code Act, 1992* S.O. 1992, Chapter 23 as amended;
- (e) trees with a DBH of under 40 centimetres;
- (f) Manitoba maple also known as *acer negundo*;
- (g) Siberian Elm also known as *ulmus pumila*;
- (h) Buckthorn also known as *rhamnus spec*; and,
- (i) Poplar also known as *populus spec*.

- 3.3 Despite any other section of this by-law, this by-law does not apply to activities exempt by subsection 135(12) of the *Municipal Act, 2001* including:

- (a) activities or matters undertaken by a municipality or a local board of a municipality or school boards for the development of a school or any other government institution or utility corporation;

- (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 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;
- (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*;
- (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*.

#### **PROHIBITION**

- 4.1 No person shall cause or permit the injuring or destruction of a tree growing on private property:
- (a) unless exempted by section 3 of this by-law; or
  - (b) except in accordance with a Permit issued under section 5 of this by-law.
- 4.2 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.
- 4.3. No person shall fail to comply with an order issued under this by-law or remove or deface any order that has been posted pursuant to this by-law.

**5. PERMITS**

- 5.1 The City hereby delegates to the Commissioner the power to issue a Permit under subsection 5.2 of this by-law, and to impose conditions to such Permits in accordance with subsection 6.5 of this by-law.
- 5.2 The City may issue a Permit to permit the injuring or destruction of trees provided that the Commissioner, with the recommendation of the City arborist, is satisfied that the injuring or destruction of trees:
- (a) will be in compliance with natural environment policies adopted by City Council from time to time;
  - (b) will be conducted in accordance with the proposed actions prescribed in the Permit application;
  - (c) is justified in the Permit application, having regard for the value of the trees as defined in the current "Guide for Plant Appraisal" referencing the size, species, condition and location of the trees.
- 5.3 Where a person intends to injure or destroy trees and the proposed activity does not meet the requirements set out in subsection 5.2 of this by-law, an application may be made for a special Permit under subsection 5.4 of this by-law.
- 5.4 The City may issue a special Permit to permit the injuring or destruction of trees provided that City Council is satisfied that the injuring or destruction of trees will be in compliance with natural environment policies adopted by City Council from time to time, and the City may impose conditions to such Permits in accordance with subsection 6.5 of this by-law.

**6. APPLICATION PROCESS**

- 6.1 Every person who intends to injure or destroy a tree where a Permit to do so is required under this by-law shall first complete and submit an application for a Permit in the form approved by the City from time to time.
- 6.2 An application for a Permit shall:
- (a) be accompanied by the applicable fee as prescribed in City of Brampton User Fee By-law, By-law No. 380-2003 as may be amended from time to time;
  - (b) contain a description of the proposed activity.
- 6.3 An application for a Permit shall be deemed incomplete, and no Permit shall be issued if:
- (a) the application has not been completed in full;
  - (b) the owner has not signed the application;
  - (c) the party who will be undertaking or responsible for the injuring or destruction of trees has not signed the application; or
  - (d) the application fee has not been paid.

- 6.4 Upon receipt by the City 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.
- 6.5 The City may impose conditions to a Permit that may include:
- (a) the manner and timing in which the injuring or destruction of trees is to be carried out;
  - (b) the qualifications of persons authorized to injure or destroy trees;
  - (c) the species, size, number and location of replacement trees to be planted; and
  - (d) measures to be implemented to mitigate the direct and indirect effects of the injuring or destruction of trees on the natural environment including protected trees adjacent to or on the land where the tree destruction or injury is to take place.
- 6.6 A Permit issued pursuant to this by-law shall expire one year after the date of issuance, provided that the Commissioner may, upon the request of the owner, renew the Permit for a further period of one year.
- 6.7 A decision regarding an application for a Permit shall not be made by the City until such time as all the required documents have been filed, the applicable fee has been paid and any required inspections have been undertaken.
- 6.8 An application for a Permit shall not be deemed to be received by the City until such time as all requirements under section 6 of this by-law have been fulfilled by the applicant.

## **7. ORDERS TO DISCONTINUE ACTIVITY**

- 7.1 Where the Commissioner or officer is satisfied that a contravention of this by-law has occurred, the Commissioner or officer may make an order requiring the person who contravened the by-law or who caused or permitted the injuring or destruction of trees in contravention of the by-law to stop the injuring or destruction of trees.
- 7.2 An order issued under this section may be served personally or served by sending it by mail to the last known address of:
- (a) the owner of the property; and
  - (b) the corporation, company, person or persons identified as injuring or destroying a tree or trees.
- 7.3 Where service of an order is made by mail, service shall be deemed to have been effected on the fifth day after the order is mailed.
- 7.4 Where service cannot be carried out under subsection 7.2 of this by-law, the Commissioner or 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.

## **8. APPEALS TO THE ONTARIO MUNICIPAL BOARD**

- 8.1 Pursuant to section 136 of the Act, an applicant for a Permit may appeal to the Ontario Municipal Board:
- (a) if the City refuses to issue a Permit, within 30 days after the refusal;
  - (b) if the City fails to make a decision on the application, within 45 days after the application is received by the City; or
  - (c) if the applicant objects to a condition in the Permit, within 30 days after the issuance of the Permit.

## **9. ENFORCEMENT**

- 9.1 The provisions of this by-law may be enforced by an officer appointed by City Council for the administration and enforcement of this by-law.
- 9.2 Pursuant to subsection 137(1) of the Act, the Commissioner or officer may, at any reasonable time, enter 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 subsection 138 (2) of the Act is being complied with.

## **10. PENALTIES**

- 10.1 Any person who contravenes any provision of this by-law, or an order issued under section 137(3) of the Act is guilty of an offence and is liable:
- (a) on first conviction, to a fine of not more than \$10,000 or \$1,000 per tree, whichever is greater; and
  - (b) on any subsequent conviction, to a fine of not more than \$25,000 or \$2,500 per tree, whichever is greater.
- 10.2 Despite subsection 10.1 of this by-law, where the person convicted is a corporation,
- (a) the maximum fines in subsection 10.1 (a) are \$50,000 or \$5,000 per tree, whichever is greater; and
  - (b) the maximum fines in subsection 10.1 (b) are \$100,000 or \$10,000 per tree, whichever is greater.

## **11. REBUTTABLE PRESUMPTION**

- 11.1 An owner of a property shall be presumed to have injured or destroyed or caused or permitted to be injured or destroyed a tree, or contravened or caused or permitted the contravention of the terms or conditions of a Permit issued under this by-law, as the case may be, which presumption may be rebutted by evidence to the contrary on a balance of probabilities.

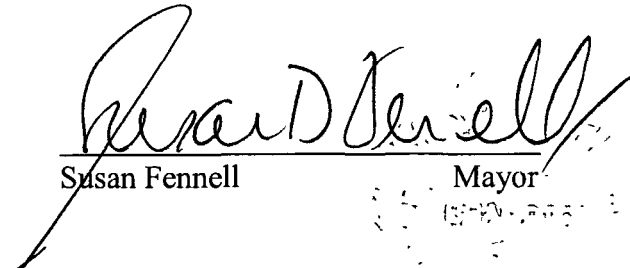
**12. GENERAL**

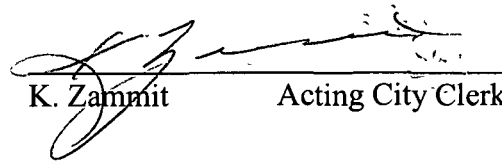
12.1 Schedule "A" forms part of this bylaw

12.2 The short title of this by-law is the "Tree Conservation By-law".

This by-law shall come into effect on February 13, 2006.

READ a FIRST, SECOND and THIRD TIME, and PASSED in OPEN COUNCIL, this 13th day of February, 2006.

  
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 Susan Fennell Mayor

  
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 K. Zammit Acting City Clerk

Approved as to Form and Content:

  
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Colin Grant  
Director of Litigation and Administrative Law



SCHEDULE "A" **TO B/L 38-2006**

List of Pests

Emerald Ash Borer (*Agrillis 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 significant threat to the health of adjacent property or plant material.