



BY-LAW 2008-96

TREE PRESERVATION BY-LAW TO REGULATE OR PROHIBIT THE INJURY OR DESTRUCTION OF TREES WITHIN THE TOWN OF MARKHAM

WHEREAS the Council of The Corporation of the Town of Markham (hereinafter the “Town”) is authorized by subsection 11(1), paragraph 11(2) 5, subsections 135(1) and (7), and sections 429, 431 and 444 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, to impose conditions on permits and to provide for a system of fines and other enforcement orders;

AND WHEREAS the Regional Municipality of York, pursuant to the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, at subsections 11(2) and (10), enacted the Forest Conservation By-law No. TR-0004-2005-036 to protect trees in all woodlands of 1.0 ha or more in area and in woodlots with an area of 0.2 ha up to 1.0 ha, pursuant to delegated authority authorized by Town of Markham By-law No. 2005-84;

AND WHEREAS trees on municipal public lands are regulated under existing Town of Markham By-law Nos. 118-1999 and 2002-115, including trees along highways and in parks within the Town of Markham;

AND WHEREAS the Council of the Town 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 TOWN OF MARKHAM ENACTS AS FOLLOWS:

SECTION 1.0: BY-LAW TITLE

1.1 This By-law may be cited as the “Tree Preservation By-law”.

SECTION 2.0: DEFINITIONS

2.1 For the purpose of this By-law:

- (a) “Act” means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;
- (b) “Administrator” means the Tree Preservation Technical Coordinator employed by the Town of Markham who is responsible for the administration of this by-law;
- (c) “Building Permit” means a building permit issued under the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended, or any successor thereto;
- (d) “Business Day” means any day falling on or between Monday and Friday of each week, excluding statutory holidays;
- (e) “Clerk” means the Clerk of The Corporation of the Town of Markham;
- (f) “Council” means the Council of The Corporation of the Town 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, means the total of the diameters of the three (3) largest stems measured at a point 1.37 metres above the existing grade of the ground adjoining its base;
- (h) “Dead”, “Dying” or “Diseased Tree” means a tree with no living tissue, a tree where seventy (70) percent or more of its crown is dead or a tree infected by a lethal pathogen, as certified by a Qualified Tree Expert;
- (i) “Destruction” means the removal, ruin or harm of a tree by cutting, burning, girding of the tree or roots, interfering with roots or uprooting, interfering with water supply, chemical application, compaction or re-grading within the drip line of a tree, or by other means including irreversible injury to a tree, which may result from accident or design, but does not include the pruning or removal of branches for maintenance purposes provided any such pruning is limited to the appropriate removal of no more than one-third of the live branches or limbs of a tree, and “destroy”, “destroyed”, “destroying” and similar words have the same meaning;
- (j) “Director” means the Director of Operations, Community Services Commission of The Corporation of the Town of Markham;
- (k) “Emergency Work” means any work necessary to protect lives or property and includes utility repairs and structural repairs to a building;
- (l) “Good Arboricultural Practice” means the proper implementation of removal, renewal and maintenance activities known to be appropriate for individual trees in and around urban areas to minimize detrimental impacts on urban forest values, 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;
- (m) “Hazard Tree” means a tree that is severely damaged to the extent that it is or poses an immediate safety threat to persons or property;
- (n) “Injury” means lasting damage to a tree which has or is likely to have the effect of inhibiting or terminating its growth, but does not include pruning or removing branches for maintenance purposes, provided that any such pruning or branch removal is limited to the removal, as appropriate, of not more than one-third of the live branches or limbs of a tree, and “injure” “injured”, “injuring” and similar words have the same meaning;
- (o) “Local Board” means a municipal service board, public cemetery board, public library board, transportation commission, board of health, police services board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities, but does not include a school board and a conservation authority;
- (p) “Maintenance” includes all work or operations related to trimming, pruning, spraying, injecting, fertilizing, treating, cabling and bracing a tree in accordance with Good Arboricultural Practice;
- (q) “Nursery” means lands or property on which or where 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 excess lands or property owned by a nursery which are not devoted to the growth of plants, shrubs or trees intended for sale;
- (r) “Officer” means a person designated by The Corporation of the Town of Markham for the enforcement of this By-law and includes but is not limited to the Tree Preservation Technical Coordinator, any duly appointed

Municipal Law Enforcement Officer, any police officer or any other person authorized to enforce or perform inspections pursuant to this by-law;

- (s) “Owner” means a person having any right, title, interest or equity in land or property, or any such person’s authorized representative, and includes an occupant, tenant or lessee;
- (t) “Permit” means permission or authorization given in writing by the Administrator to injure, destroy or remove a tree, or for a tree management plan issued by the Town under section 7.0 of this by-law;
- (u) “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 duly appointed representatives;
- (v) “Pruning” means the removal, as appropriate, of not more than one-third of the live branches or limbs of a tree in accordance with Good Arboricultural Practice;
- (w) “Qualified Tree Expert” means a person who has graduated from an accredited college or university with a diploma or degree in Urban Forestry, Arboriculture or the equivalent and satisfies at least one of the following requirements:
 - (i) is certified either by the Ontario Training and Adjustment Board or the International Society of Arboriculture;
 - (ii) is currently accepted as a consulting arborist with the American Society of Consulting Arborists;
 - (iii) is a Registered Professional Forester (R.P.F.), as defined in the *Ontario Professional Foresters Act, 2000*, S.O. 2000, c.18; or
 - (iv) has comparable qualifications to those set out under clauses (i) to (iii) above and is approved by the Director;
- (x) “Town” means The Corporation of the Town of Markham;
- (y) “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, 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;
- (z) “Woodland” means land at least 1 hectare in area and with at least:
 - (i) 1000 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;
- (z) “Woodlot” means land at least 0.2 hectares up to 1 hectare in area and with at least:
 - (i) 200 trees, of any size, per 0.2 to 0.99 hectares;

(ii) 150 trees, measuring over five (5) centimetres DBH, per 0.2 to 0.99 hectares;

(iii) 100 trees, measuring over twelve (12) centimetres DBH, per 0.2 to 0.99 hectares; or

(iv) 50 trees, measuring over twenty (20) centimetres DBH, per 0.2 to 0.99 hectares;

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;

(aa) “Zoning By-law” means a by-law of the Town regulating land use within the Town and passed pursuant to the *Planning Act*, R.S.O. 1990, c. P.13, as amended.

SECTION 3.0: APPLICATION OF THE BY-LAW

3.1 Except as otherwise provided in this By-law, the provisions of this By-law shall apply to any tree located within the Town with a DBH of 20 cm or greater.

3.2 Despite subsection 3.1, the provisions of this By-law do not apply to any woodland with an area of 1.0 ha or more or to any woodlot with an area of 0.2 ha up to 1.0 ha within the Town, in accordance with Regional Municipality of York Forest Conservation By-law No. TR-0004-2005-036.

3.3 Despite subsection 3.1, the provisions of this By-law do not apply to trees on municipal public lands regulated under existing Town of Markham By-law No. 118-1999 and By-law No. 2002-115.

SECTION 4.0: EXEMPTIONS FROM THE BY-LAW

4.1 The provisions of this by-law do not apply to:

(a) activities or matters or the injury or destruction of any tree exempted pursuant to subsection 135(12) of the Act;

(b) the injury or destruction of any tree located within a waste disposal site as defined in Part V of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended;

(c) the injury or destruction of, or where specifically noted in the following clauses, the maintenance of any tree that:

(i) is a Dead, Dying or Diseased Tree, as defined in this by-law;

(ii) is a Hazard Tree, as defined in this by-law;

(iii) is required as a result of Emergency Work, as defined in this by-law;

(iii) is required under an Order under any Property Standards By-law of the Town;

(iv) requires the pruning, maintenance or removal of branches or limbs, where the branches or limbs interfere with existing utility conductors, buildings or structures, provided such activities shall be carried out in accordance with Good Arboricultural Practice;

(v) is a tree on a raised podium, in an indoor courtyard, in a solarium or on a rooftop garden, excluding rooftops of parking garages or other substructures below or at grade;

(vi) is a tree in 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;

- (vii) is removed, injured or destroyed to permit the construction of a building or structure, where the removal, injury or destruction is required under a municipal building permit;
 - (d) the pruning or maintenance of any tree carried out in accordance with Good Arboricultural Practice.
- 4.2 Persons owning larger tracts of land used for cemeteries, golf courses, and like commercial or institutional uses, may file an application for a permit for approval of a tree management plan in accordance with clause 7.1 (f) of this by-law, and in circumstances where such a tree management plan has been approved by the Administrator and a permit for the plan has been issued, a permit for the injury or destruction of any individual tree within the plan area shall not be required.
- 4.3 In all other circumstances, prior to the injury or destruction of any tree, a permit shall first be obtained from the Town in accordance with section 7.0 of this by-law.

SECTION 5.0: ADMINISTRATION AND ENFORCEMENT

- 5.1 The Administrator of this by-law is responsible for the administration of this by-law and is hereby delegated the authority to review applications for permits, issue permits, refuse permits and include conditions of permits.
- 5.2 The Administrator may delegate any of his/her duties under this by-law to an Officer.
- 5.3 For the purposes of conducting an inspection to determine compliance with this by-law, an order, a permit or any condition of a permit, the Administrator or Officer may, upon producing the appropriate identification, at any reasonable time, enter and inspect any lands or property, to determine whether the provisions of this by-law, an Order issued under this by-law or a permit or condition of a permit issued under this by-law, have been complied with.
- 5.4 No person shall obstruct the Administrator or an Officer who is carrying out an inspection pursuant to this by-law. Any person who obstructs the Administrator or Officer is guilty of an offence.

SECTION 6.0: GENERAL PROHIBITIONS

- 6.1 Except as provided in Section 4.0 of this by-law, no person, through his or her own actions or through the actions of another, shall:
- (a) injure or destroy any tree within the Town of Markham without first obtaining a permit issued under this by-law;
 - (b) injure or destroy any tree within the Town of Markham without first complying with all conditions of a permit issued under this by-law;
 - (c) fail to comply with any condition or term of a permit issued under this by-law;
 - (d) fail to comply with any Order issued under this by-law or remove or deface any Order issued under this By-law, without obtaining the prior consent of the Administrator;
 - (e) obstruct or attempt to obstruct the Administrator, any Officer or any person acting under the Administrator's instructions in the exercise of a power under this by-law; or
 - (f) contravene any other provision of this by-law.

SECTION 7.0: PERMITS

7.1 PERMIT APPLICATION REQUIREMENTS

Except where otherwise stated in this by-law:

- (a) an owner who intends either himself, herself or through an authorized representative or agent to injure or destroy a tree, where a permit to do so is required, shall submit a Permit Application to the Tree Preservation Technical Coordinator in the form provided by the Town and the prescribed permit fee set out in the Town's Fees By-law No. 2002-276, as amended, from time to time, or any successor thereto.
- (b) where a tree to be destroyed is or may be exempt under section 4.0 of this by-law, the owner shall obtain the prior written confirmation of the Administrator that the tree is exempt and there shall be no requirement for a permit and no permit fee payable for such confirmation;
- (c) where, following a review of a Permit Application, including any required information and documentation, the Administrator determines the application is exempt from the requirement for a Permit in accordance with section 4.0 of this by-law, the prescribed permit fee shall be refunded to the owner;
- (d) a report by a Qualified Tree Expert in support of a Permit Application may be required by the Administrator as a condition of approval, but is not required as part of the initial Permit Application;
- (e) where any part of a tree is located on an adjacent property, a Permit Application shall include the written permission of the adjacent property owner;
- (f) an owner of lands used for a cemetery, golf course, or similar commercial or institutional use, may file an application for a permit for approval of a tree management plan and in support of a Permit Application shall submit a tree management plan, prepared by a Qualified Tree Expert, in accordance with Good Arboricultural Practice, which at a minimum shall itemize the existing number, species, location and condition of all trees on the lands and the proposed management schedule related to pruning, maintenance, destruction and removal requirements for a period of years;
- (g) a Permit Application may be submitted in person or sent by pre-paid first class mail to the Clerk and must be received by the Clerk at least thirty (30) days prior to the planned injury or destruction of any tree.

7.2 ISSUANCE OF A PERMIT

The following provisions apply to the issuance of Permits:

- (a) Following receipt of a Permit Application, the Administrator, or any person acting under the Administrator's instructions, may inspect the lands and tree(s) to determine whether or not a Permit should be issued;
- (b) The Administrator may issue a Permit to injure or destroy a tree where the Administrator is satisfied that:
 - (i) the application satisfies the requirements of this by-law;
 - (ii) the application is to permit the establishment or extension of a building or structure which requires the tree(s) to be removed for the proposed works authorized under a municipal building permit and there is no reasonable alternative to the injury or destruction of the tree(s);
 - (iii) the tree is causing structural damage to load bearing structures, drains or buildings.

- (c) The Administrator may issue a Permit for a tree management plan sought under clause 7.1 (f) where the Administrator is satisfied that:
 - (i) the application satisfies the requirements of this by-law;
 - (ii) the proposed schedule for the injury or destruction of trees as set out in the plan represents Good Arboricultural Practice;
 - (iii) the proposed schedule for the injury or destruction of trees as set out in the plan does not contravene the general intent of this by-law.
- (d) The Administrator may refuse to issue a Permit to injure or destroy a tree or may refuse to issue a Permit for a tree management plan, where any one or more of the following applies:
 - (i) the Permit Application form has not been submitted in full, does not contain all required information or is considered incomplete;
 - (ii) the Administrator requires a report by a Qualified Tree Expert in support of the application and the report has not been provided;
 - (iii) an application for a rezoning, consent, minor variance, plan of subdivision or site plan related to the land on which the tree is located has been submitted to the Town or to the Region, as the case may be, but has not received approval;
 - (iv) 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, or successor legislation;
 - (v) where required and where the lot size and conditions would accommodate such replacement, no adequate provision for replacement of the tree has been included in the Permit Application; or
 - (vi) the injury or destruction of the tree or the approval of the tree management plan contravenes the general intent and purpose of this By-law.
- (e) Any Permit issued pursuant to this by-law for the injury or destruction of a tree shall be issued in the name of the owner and shall expire ninety (90) calendar days after the date of issuance, unless a written request for an extension is received by the Clerk on or before the Permit expiration date and is approved by the Administrator.
- (f) Any Permit issued for the approval of a tree management plan shall be issued in the name of the owner and shall expire on the date set out in the Permit for the tree management plan.
- (g) The Administrator may impose conditions on any Permit to injure or destroy a tree or for the approval of a tree management plan, including but not limited to the following conditions:
 - (i) the manner and timing in which the injury or destruction of the tree is to be carried out;
 - (ii) the qualifications of the persons authorized to injure or destroy the tree;
 - (iii) the requirement for replacement tree(s) or plantings, including the species, size, number, location and timing of replacement tree(s) or plantings;
 - (iv) where replacement tree(s) or plantings are not physically possible on the site, requiring replacement trees or plantings at another suitable location;

- (v) measures to be implemented by the owner to mitigate the direct and indirect effects of the destruction of the tree on other nearby trees, properties, water bodies or natural areas.
- (h) Any request for an extension of a Permit which is received by the Clerk after the permit expiration date will require the submission of a new Permit Application.

SECTION 8.0: ORDERS TO DISCONTINUE ACTIVITIES

- 8.1 Where the Administrator or any Officer is satisfied a contravention of this by-law or a permit issued under this by-law has occurred, the Administrator or Officer may make an Order setting out the particulars of the contravention and requiring the owner or any other person to stop the injury or destruction of a tree, or requiring work to be done to correct the contravention.
- 8.2 The Order shall set out:
- (a) the name of the owner, the municipal address and the legal description of the land or property that is the subject of the contravention;
 - (b) reasonable particulars of the contravention;
 - (c) what the owner or any other person must do to rectify the contravention;
 - (d) a statement that if the work is not done in compliance with the Order within a specified time period, the Town may have the work done at the expense of the owner or other person;
 - (e) the date and time by which the Order must be compliance with;
 - (f) information regarding the Town's contact person.
- 8.3 An Order issued under section 8.1 may be served personally or by sending it by prepaid registered mail to the last known address of the owner and, if known, to the last known address of any other person responsible for the injury or destruction of a tree.
- 8.4 Where service of an Order under section 8.1 is made by mail, it shall be deemed to have been effected on the fifth day after the date the Order is mailed.
- 8.5 In the event that service cannot be carried out under subsection 8.3 of this by-law, the Administrator or an Officer shall place a placard containing the terms of the Order in a conspicuous place on the property where the tree or trees are situate and placement of the placard will be deemed sufficient service of the Order on the owner and any other person to whom the Order is directed.
- 8.6 Wherever this by-law or a permit issued under this by-law directs or requires any matter or thing to be done by any person, applicant or owner, in default of its being done its by the person directed or required to do it, the matter or thing may be done by the Town under the direction of the Administrator or an Officer at the owner's expense, the Town may enter upon the land at any reasonable time for this purpose and the Town may recover the costs incurred by action or by adding the costs to the tax roll and collecting them in the same manner as taxes.

SECTION 9.0: APPEALS

- 9.1 Where the Administrator refuses to issue a permit an applicant may within fifteen (15) days of the date of refusal of the permit appeal to the Licensing Committee of Council by submitting a written request to the Administrator that the appeal of the permit application be heard by Licensing Committee.
- 9.2 Where an applicant has filed an appeal:

- (a) the Administrator shall prepare and forward a report on the appeal of the refusal of the permit to the next Licensing Committee meeting, setting out the grounds for refusal of the permit;
- (b) prior to reporting to the Licensing Committee, the Administrator shall notify the Ward Councillor, any abutting property owners and any other persons who have expressed interest by written request in the application of the date the appeal of the refusal of the permit will be considered by the Licensing Committee;
- (c) after holding a hearing on the appeal of the refusal of the permit, the Licensing Committee shall make a recommendation to Council;
- (d) Upon consideration of the recommendation of the Licensing Committee, Council may:
 - (i) direct the Administrator to refuse the permit; or
 - (ii) direct the Administrator to issue a permit on such conditions as the Council considers appropriate.

SECTION 10.0: PENALTIES

- 10.1 Any person who contravenes any provision of this by-law or an Order issued pursuant to Section 8 of this By-law is guilty of an offence.
- 10.2 All contraventions of any provision of this by-law or an Order issued under Section 8 of this by-law are designated as multiple offences and continuing offences, pursuant to subsection 429(2) of the Act. A multiple offence is 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 a by-law and, for greater certainty, when multiple trees are injured or destroyed the injury or destruction of each tree is a separate offence.
- 10.3 Upon conviction of an offence under this by-law, a person is liable to a fine in accordance with section 429 of the Act as follows:
 - (a) The minimum fine for an offence is \$500.00 and the maximum fine for an offence is \$100,000.00;
 - (b) In the case of a continuing offence, for each day or part of a day that the offence continues, the minimum fine shall be \$500.00 and the maximum fine shall be \$10,000.00, and the total of all daily fines for the offence is not limited to \$100,000.00;
 - (c) In the case of a multiple offence, for each offence included in the multiple offence, the minimum fine shall be \$500.00 and the maximum fine shall be \$10,000.00, and the total of all fines for each included offence is not limited to \$100,000.00;
 - (d) A special fine may be imposed, in addition to a fine under clause (a) to (c) above, in circumstances where there is an economic advantage or gain from the contravention of this by-law or an order under section 8.1 of this by-law, and the maximum amount of the special fine may exceed \$100,000.00.
- 10.4 Upon conviction of an offence under this by-law, in addition to any other remedy or penalty, the Town may further request the court in which the conviction is entered and any court of competent jurisdiction thereafter to 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 the court may consider appropriate, which may include a request for an order for:

- (i) the planting or replanting of any tree or trees injured, removed or destroyed in a specified location and within a specified period of time; and
- (ii) the application of any silvicultural treatment that may be necessary to re-establish the tree or trees.

SECTION 11.0: SEVERABILITY

11.1 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 to the fullest extent permitted by law.

SECTION 12.0: IN FORCE

12.1 This By-law shall come into force and take effect on the date it is passed.

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS
24TH DAY OF JUNE, 2008.

KIMBERLEY KITTERINGHAM
DEPUTY CLERK

FRANK SCARPITTI
MAYOR