

CORPORATION OF THE CITY OF BRANTFORD
BY-LAW NUMBER 38-2023

A By-law to regulate the planting, maintenance, protection and preservation of City Trees and to repeal Chapter 322 of the Municipal Code.

WHEREAS section 8(1) of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended (*"Municipal Act, 2001"*) provides that the powers of a municipality under any act shall be interpreted broadly so as to confer broad authority on a municipality to enable it to govern its affairs as it considers appropriate;

AND WHEREAS section 10(2)5 of the *Municipal Act, 2001* provides that a local municipality may adopt by-laws for the economic, social and environmental well-being of the municipality, including respecting climate change;

AND WHEREAS without limiting the broad municipal powers, section 135 of the *Municipal Act, 2001* provides authority to municipalities to regulate and prohibit with respect to trees;

AND WHEREAS section 429 (1) of the *Municipal Act, 2001* provides that a municipality may establish a system of fines for a by-law passed under the *Act*;

AND WHEREAS section 436 of the *Municipal Act, 2001* provides that a municipality may pass by-laws providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine compliance with a by-law or an order made pursuant to the by-law.

AND WHEREAS section 444 of the *Municipal Act, 2001* provides that a municipality may make an order to require a Person to discontinue contravening a by-law;

AND WHEREAS section 445 of the *Municipal Act, 2001* provides that a municipality may make an order requiring a Person who contravened a by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention;

AND WHEREAS section 446 of the *Municipal Act, 2001* provides that a municipality may proceed to do things at a Person's expense which that Person is otherwise required to do under a by-law but has failed to do and the costs incurred by a municipality may be recovered by adding the costs to the tax roll and collecting them in the same manner as property taxes;

AND WHEREAS the Council of the Corporation of the City of Brantford ("Council") recognizes the ecological and aesthetic value of trees and is desirous of managing the injury and destruction of City Trees;

AND WHEREAS the City of Brantford's Official Plan enumerates the goal of promoting sustainable development and adapting to climate change through achieving a minimum of 40% tree canopy by 2051;

NOW THEREFORE, the Council of the Corporation of the City of Brantford **ENACTS** as follows:

PART I: SHORT TITLE

1. This By-law may be referred to as "The City Tree By-law"

PART II: DEFINITIONS

2. In this By-law:

"Arborist" means a person with a diploma, degree, or designation involving arboriculture from an accredited College or University which attests to the completion of the course of study of arboriculture or an Arborist as certified by the International Society of Arboriculture;

"Boundary Tree" means every tree whose trunk is growing on the boundary between adjoining lands is the common property of the owners of the adjoining lands." Ontario Forestry Act (Section 10.2.);

"City" means the municipal corporation "City of Brantford" or the area located within the geographical boundaries of the City of Brantford;

"City Forestry and Horticulture Staff" means staff employed by the City, or by their contractors, to perform the duties of reviewing information, inspecting trees, and notifying applicants of decisions regarding requests to remove trees on City Property;

"City Property" means a highway, park, Natural Area, woodlot, boulevard, or any other public place or land owned by, or leased by, or leased to, or controlled by, or vested in the City;

"City Tree" means a woody perennial plant (including its root system) which is located on City Property, which shall include a Boundary Tree;

"Contractor" means a person engaged to perform a specific activity or service on or at a particular land or premises;

"Council" means the Council of the Corporation of the City of Brantford;

“DBH” means “Diameter at Breast Height” and is calculated as the Diameter of the stem or trunk of a Tree measured at a point that is 1.3 metres (4.5 feet) above the ground;

“Dead” means a tree that has been assessed as dead by the City’s Forestry Staff or their Contractors;

“Declining” means a tree that has been assessed as declining by the City’s Forestry Staff or their Contractors;

“Destroy or Destruction” means to change the structure or condition of a tree such that it cannot reasonably be returned to its original structure or condition, as assessed by the City’s Forestry Staff or their Contractors;

“Director” means the Director of Parks and Facilities Services or their designate;

“Dying” means terminally diseased or will no longer be viable to maintain in a safe or healthy condition, assessed and determined by the City’s Forestry Staff or their Contractors;

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

“Fees and Charges By-Law” means the City’s Fees and Charges By-law (30-2023), as amended, or its successor(s);

“General Manager” means the General Manager of Public Works or their designate;

“Grade” means a defined elevation of land that has been established as a result of geologic, hydrologic, or other natural processes or by human alteration; that defines ravines, depressions, hills, stream channels, eskers or steepness of terrain;

“Good Arboricultural Practice” means reference to the guidelines and practices relating to proper tree maintenance and care, as defined and published by the International Society of Arboriculture;

“Injure” or “Injury” means to cause, directly or indirectly, the removal, ruin, uprooting or death of a Tree whether by accident or by design, and includes the removal, ruin, uprooting or death of a Tree cause by one or more of the following activities:

- (a) removing, cutting, girdling, or smothering of the Tree or roots;
- (b) interfering with the water supply;
- (c) setting fire to a Tree;
- (d) the application of chemicals on around, or near the Tree;
- (e) compaction or re-grading within the tree protection zone up to any existing paved surfaces;
- (f) damaged caused by new development or construction related activities including driveways; or
- (g) storing any materials within a tree protection zone;

“Lot” means a parcel of land having specific boundaries which is capable of legal transfer;

“Multiple Offences” means an offence in respect of two or more acts or omissions, each of which separately constitutes an offence and is a contravention of the same provision of this By-law;

“Native Species” means plants that have not been introduced by humans, grow in the area naturally, and are uniquely adapted to local environmental conditions.

“Natural Area” means an area or land and/or water, including woodlands, wetlands, greenbelts and tall grass prairies, dedicated to the protection of native flora and fauna and natural processes;

“Person” means an individual person, a corporation, a partnership, or an association;

“Private Property” means land other than Public Property;

“Pruning” means the cutting of tree branches, twigs or roots;

“Officer” means a City By-law Enforcement Officer, whose duties include the enforcement of this By-law;

“Replacement Tree” means the number of Tree(s) required under this By-law to replace an existing City Tree, as determined by the Replacement Tree Criteria contained in Schedule “B” to this By-law;

“Remove” means the removal of a tree, through either direct or indirect actions, including but not limited to clearing, damaging, or poisoning resulting in the removal of at least half of the live crown or damage to the roots or trunk that is likely to destroy the tree’s structural integrity.

“Tree Replacement Value” means the monetary value of the City Tree(s) removed, hereby attached as Schedule “B” to this By-law, as outlined within the Fees and Charges By-law.

“Trunk” means the part of a tree from its point of growth away from its root collar up to its first branch.

“Trunk Diameter” means the width measured outside the bark at a specified point of a Tree stem or trunk;

PART III: SCOPE AND AUTHORITY

3. (1) This By-law shall apply to all City Property located within the City of Brantford.
- (2) The General Manager shall be responsible for the administration and enforcement of this By-law.
- (3) The General Manager may delegate in writing any responsibilities to an employee of the City that are conferred to the General Manager under this By-law.
- (4) As part of the administration of this By-law, the General Manager, the Director, their Staff, and Contractors are authorized to:
 - (a) plant or cause to be planted Trees on City Property;
 - (b) care for and maintain or cause to be cared for and maintain Trees located on City Property;
 - (c) remove from City Property any Tree of the species contained in Schedule “A” to this by-law, and as may be amended from time to time;
 - (d) remove or cause to be removed without notice or compensation to any person, anything which adversely affects a Tree on City Property;
 - (e) remove or cause to be removed without notice or compensation to any person any Tree or part of a Tree on City Property at the discretion of City Horticulture and Forestry Staff;

- (f) prune, or cause to be pruned, without notice or compensation to any person, the branches of any Tree located on Private Property which extend over City Property or Public Right of Way that, as assessed by City Forestry and Horticulture Staff creates an unsafe condition;
- (g) remove and replace City Trees of the species contained in Schedule "A" to this By-law;
- (h) review written requests for the removal of a City Tree, granting or denying such approvals.
- (i) impose conditions related to written requests for the removal of including the payment of the Tree Replacement Value and removal and replacement costs, as outlined in the Fees and Charges By-law, as satisfactory to the General Manager or their delegates;
- (j) ensure that when Replacement Tree Planting is not physically possible on site, that Replacement Trees, subject to the ratio identified within Schedule "B" to this by-law , as per the Fees and Charges By-law, be replanted at another suitable location(s) at the discretion of City Horticulture and Forestry Staff;
- (k) engage an Officer to pursue an investigation and issue a Stop Work Order for any work causing Injury or Destruction to City Trees;
- (l) administer the planting of Replacement Trees and the collection of Tree Replacement Value fees.

PART IV: PROHIBITIONS

- 4. No Person shall undertake to cause or permit the undertaking of any of the following actions towards a City Tree:
 - (a) injure, remove, disturb, damage, Destroy, cut above or below ground, prune, treat, or alter in any way a City Tree without proper approval and compliance with terms provided in Section 5;
 - (b) attach in any manner any object or thing to a City Tree or part of a City Tree, without prior approval of the General Manager;
 - (c) cause or permit any gaseous, liquid or solid substances which are harmful or toxic to any City Tree, to come in contact with any City Tree, or apply such substances to a City Tree or an area used by said Tree's root system;

- (d) set fire to or permit any fire to burn where such fire or the heat thereof will Injure any portion of any City Tree;
- (e) climb, or permit any person under their care or control to climb any City Tree; or
- (f) remove any City Tree or woody debris that has fallen or has been cut down by the City in a Natural Area from such area.
- (g) the City shall not remove a Boundary Tree without the consent of the adjacent property owner where the tree is located.

PART V: TREE PROTECTION ON CITY PROPERTY

- 5. (1) No person shall undertake or permit the undertaking to perform any work that has the potential to harm a City Tree unless the following protective measures are followed:
 - (a) the Contractor shall notify the City prior to any work taking place;
 - (b) the Contractor shall supply, erect, and maintain temporary fencing around each potentially affected City Tree;
 - (c) the Contractor shall take special precautions to protect trees presently located in the boulevards or behind public sidewalks, notifying the City prior to any excavation near or adjacent to City Trees to ensure construction methods and practices may be reviewed and approved;
 - (d) when conducting work around a City Tree, the Contractor shall prevent the deposit, placement, or storage of any excavated material, construction material, fill, refuse, equipment, or vehicles within the vicinity of the City Tree that may impede the free passage of water, air, or nutrients to the roots of a City Tree;
 - (e) should it become necessary to prune City Tree branches to facilitate work, the City shall be notified prior to any pruning taking place;
 - (f) no City Tree shall be removed without prior approval of the City;
 - (g) should a City Tree be Removed, Destroyed or Injured, the monetary value, as outlined in the Fees and Charges By-law, of the Removed, Destroyed or Injured Tree(s) shall be payable by the party who caused the Tree(s) to be Removed, Destroyed, or Injured;
- (2) To ensure the health of City Trees, City Forestry and Horticulture Staff, in partnership with an Officer, may:

- (a) inspect the City Tree upon request in a timely manner, assess the composition and condition of the City Tree;
- (b) monitor the City Tree throughout construction;
- (c) assess the health and vigour of the City Tree post construction and, if the health of the City Tree has been compromised, may pursue enforcement and collection of the Tree Replacement Value attached hereto in Schedule “B”, as outlined in the Fees and Charges By-law;
- (d) the City shall have the authority to enter upon lands adjacent to City Property to inspect, prune, and/or remove decayed, damaged, or dangerous Boundary Trees if, at the discretion of City Horticulture & Forestry Staff, the Boundary Trees (or their branches) pose a danger or unacceptable risk to the health or safety of any person using City Property.

PART VI: PLANTING TREES ON CITY PROPERTY

- 6. No Person shall, without prior consent of the General Manager, or as part of planned activities led by the City under a public tree planting program, plant or cause to be planted any Tree on City Property;
 - (a) the City reserves the right to plant, or to have planted Trees on any portion of City Property;
 - (b) any Tree planted by the City or by any Person on City Property, with or without the consent of the General Manager is deemed to be a City Tree, and is subject to all terms and conditions as set out in this By-law;
 - (c) the City will prioritize the planting of native species where feasible, as assessed by City Forestry and Horticulture Staff or their Contractors.

PART VII: INSPECTION AND ORDERS

- 7. (1) For the purposes of conducting an inspection pursuant to this By-law, City Forestry and Horticulture Staff, in partnership with an Officer, may:
 - (a) Inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - (b) Require information from any person concerning a matter related to the inspection;

- (c) Make examinations or take tests, samples, or photographs necessary for the purposes of inspection.
- (2) No person shall prevent, hinder, obstruct, or attempt to hinder or obstruct City Forestry and Horticulture Staff, or an Officer, who is lawfully exercising a power or performing a duty under this By-law.
- (3) An Officer may make an Order requiring the Person who contravenes this By-law, or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity.
- (4) An Officer may issue Summons to the Person who contravenes this By-law or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred.
- (5) Any Order to be given or served pursuant to this By-law is sufficiently given or served, if delivered personally or sent by registered mail, addressed to the Person to whom delivery or service is required to be made at the last address for service appearing on the records of the City.

PART VIII: PENALTY AND OFFENCES

- 8. (1) Every Person who contravenes any provision of this By-law, is guilty of an offence and is liable to a fine, including the fines set out in this Part 5, and such other penalties as provided for in the Provincial Offences Act, R.S.O. 1990, c. P. 33, and the Municipal Act, 2001, as both may be amended from time to time.
- (2) Any Person who is charged with an offence under this By-law by the laying of information under Part III of the Provincial Offences Act and is found guilty of the offence is liable, pursuant to the Municipal Act, 2001, to a penalty as follows:
 - (a) the minimum fine for an offense is \$500 and 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) above, for each day that the offence continues, the minimum fine shall be \$500 and 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 multiple offences, for each offence included in the multiple offences, the minimum fine shall be \$500 and the maximum fine shall be \$10,000 and the total of all fines included in each offence is not limited to \$100,000.

PART IX: REPEAL & ENACTMENT

9. (1) Chapter 322 of the City of Brantford Municipal Code and all by-laws amending the chapter are hereby repealed upon the date of enactment of this by-law.

(2) This by-law shall come into force and effect on May 1, 2023.

FIRST READING: MARCH 28, 2023

SECOND READING: MARCH 28, 2023

PASSED: MARCH 28, 2023

City Clerk

Mayor

Schedule A: Tree Species for Removal and Replacement

- Populus-All Poplar species
- Salix-All Willow species
- Acer-Acer negundo (Manitoba Maple)
- Malus-Apple (fruiting varieties)
- Prunus-Cherry (fruiting varieties and ornamental)
- Pyrus-Pear (fruiting varieties)
- Ulmus parvifolia-Chinese Elm
- Fraxinus -(ash species)

Schedule B: Tree Replacement Compensation Values

As of 2023, the City of Brantford has updated its tree compensation ratios, which was guided by the desire to link the loss of ecosystem services more closely to the size of the tree(s) proposed for removal.

DBH (cm)	Compensation Ratio for Replacement Trees
10-30	3:1
31-40	4:1
41-50	5:1
51-60	6:1
61-70	7:1
71-80	8:1
81-90	9:1
91+	10:1