



**BY-LAW NUMBER 2014-**

**A By-law of the Corporation of the City of Barrie, regulating the planting, protection, maintenance and removal of public trees or trees growing on adjacent privately owned lands and to repeal By-law 2009-098 and all amendments thereto.**

**WHEREAS** Section 8 of the *Municipal Act*, 2001, S.O. 2001, c. 25 as amended (“the *Municipal Act*, 2001”), confers broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality’s ability to respond to municipal issues;

**AND WHEREAS** Section 9 of the *Municipal Act*, 2001 provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Act;

**AND WHEREAS** Section 10 of the *Municipal Act*, 2001, provides that a single-tier municipality may pass by-laws respecting matters set out therein including, *inter alia*, the economic, social and environmental well-being of the municipality;

**AND WHEREAS** Section 135 of the *Municipal Act*, 2001 provides that a municipality may prohibit or regulate the destruction or injuring of trees;

**AND WHEREAS** pursuant to motion 14-G-232 the Council of The Corporation of the City of Barrie deems it expedient to regulate the planting, protection, maintenance and removal of public trees or trees growing on adjacent privately owned lands adjacent to public lands and to repeal By-law 2009-098 and all amendments thereto;

**NOW THEREFORE** the Council of The Corporation of the City of Barrie enacts the following:

**DEFINITIONS**

1. As used in this by-law, the following terms shall have the meanings indicated:
  - a) CITY and CITY OF BARRIE - The municipality of The Corporation of the City of Barrie.
  - b) HIGHWAY - A common or public highway, road, street, lane, avenue, parkway, driveway, square, place, bridge, viaduct or trestle any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property line thereof.
  - c) COUNCIL - The Council of the Corporation of the City of Barrie.
  - d) DBH - “Diameter at breast height” and refers to the diameter of the stem of a tree measured outside the bark at a point 1.37 metres (4.5 feet) above the highest point on the tree where the ground meets the stump.
  - e) DESTROY/DESTRUCTION - To remove, cut down or in any other way cause major damage to a tree to the extent that it is considered necessary to remove or cut down the tree. Major damage to a tree shall mean any one of:
    - i. a wound greater than the square of the DBH of the tree (for example, a wound with an area of 100 square centimeters is major damage to a tree with a DBH of 10 cm);
    - ii. any wound greater than 1000 square centimeters;
    - iii. if the wound in paragraph (i) or (ii) contacts the ground then the wound shall be considered major damage if it is 60% of the size specified in paragraph (i) or (ii);
    - iv. broken branches destroying more than 33% of the Crown;
    - v. the exposure, severing or compaction of more than 25% of the root area;
    - vi. the breaking off of any tree; or

- vii. the noticeable tipping of any tree.
- f) DIRECTOR - The Director of the Operations Department for the City of Barrie or his or her designate.
- g) EMERGENCY WORK - Includes work associated with drain repairs, utility repairs and structural repairs to a building or any other work of an emergency nature as defined in the City of Barrie's Right-of-Way Activity By-law (or its successors).
- h) FILL - Earth, sand, gravel, rubble, rubbish, garbage, or any other material whether similar to or different from any of these materials, whether originating on the site or elsewhere, used or capable of being used to raise, lower, or in any way affect the contours of the ground.
- i) GRADE - 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.
- j) HERITAGE TREE - A tree that has been designated under Part IV of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18 and/or a tree that Council formally designates as being unique and of importance to the City in terms of distinctive form, size, age and/or historical significance.
- k) HAZARD - Where a tree has been destabilized or structurally compromised, the supporting roots have failed or are cut, the main stem is cracked, the tree has a disease causing branch or stem decay sufficient to create significant risk of structural failure, or any other structural problems that result in an immediate danger of the tree or parts of the tree breaking and causing potential damage or injury to life or property.
- l) INJURE and INJURY - Failure to protect a tree in accordance with the City of Barrie's "Tree Protection Manual" or other standards set out by the Director, entirely or in part, or any act that will harm a tree's health in any manner.
- m) LANDSCAPE PLAN - A plan or set of drawings which shows all related landscape works, specifications, standards and planting details and is signed and stamped by a qualified Landscape Architect.
- n) MAINTENANCE - The care and maintenance of trees in accordance with established arboricultural standards and includes but is not limited to planting, inspection, pruning, cabling and bracing, treatments for insect and disease problems, watering and fertilization.
- o) MUNICIPAL LAW ENFORCEMENT OFFICER - A person appointed under the authority of the Police Services Act for the purpose of enforcing City by-laws.
- p) OFFICER - A Municipal Law Enforcement Officer or other law enforcement officer as appointed by the Council of The Corporation of the City of Barrie, the Barrie Board of Police Commissioners, or a Provincial Offences Officer.
- q) PERSON - Includes any individual, corporation, director or officer of a corporation, partnership, association, firm, trust, or other entity and includes anyone acting on behalf or under the authority of such entity.
- r) PUBLIC PARK - All lands owned by or belonging to the City and as otherwise may be designated for use as a public park.
- s) PUBLIC TREE - Any tree which has 50 percent or more of its main stem situated on a public park, highway or any lands owned by the City of Barrie.
- t) QUALIFIED ARBORIST - A person who is a specialist or expert in the area of 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 other similar qualifications as approved by the Director.
- u) QUALIFIED LANDSCAPE ARCHITECT - A registered Landscape Architect in good standing with the Ontario Association of Landscape Architects.
- v) REGISTERED PROFESSIONAL FORESTER – As defined in the *Professional Foresters Act*, S.O. 2000, c. 18.

- w) SPECIFICATIONS - The most recent version of the City of Barrie's tree protection standards set out within the City of Barrie Tree Protection Manual and the City of Barrie Standard Details.
- x) STANDARDS - The minimum requirements or guidelines established by the Director for the protection and preservation of trees.
- y) TREE - Any species of woody perennial plant including its root system which has reached or can reach a height of at least 4.5 metres (15 feet) at physiological maturity. The term "tree" refers to all parts of the tree; roots, branches, leaves and stem.
- z) TREE PLANTING DETAIL - The most recent version of City of Barrie Standard Details with notes pertaining to the planting of trees on any public park or City highway.
- aa) TREE PROTECTION MANUAL - The Manual maintained by the City of Barrie's Director of Engineering setting out standards for protection of trees in the City of Barrie, as amended from time to time.
- bb) TREE VALUE/APPRaised VALUE - The monetary value of a public tree as determined under the tree appraisal method within the City of Barrie's Tree Protection Manual.
- cc) UNSAFE CONDITION – Any public tree, whether healthy or hazardous including, but not limited to, a hazard tree, a tree growing in a location that does not meet the current City of Barrie Standard Details, a tree which impedes safe views or sightlines at or adjacent to a City highway or intersection, or any tree which, in the opinion of the Director, creates an unsafe condition for the public.

#### **APPLICATION OF BY-LAW**

- 2. This by-law applies to all public trees within the boundaries of the City of Barrie.

#### **AUTHORITY FOR PLANTING, INSPECTION, MAINTENANCE, PROTECTION AND REMOVAL OF TREES**

- 3. The planting, inspection, maintenance, protection and removal of all public trees shall be under the supervision of the Director.

#### **POWERS AND DUTIES OF THE DIRECTOR**

- 4. The Director is authorized to:
  - a) plant, or cause to be planted, public trees;
  - b) maintain, or cause to be maintained, any public tree;
  - c) inspect, or cause to be inspected, any public tree;
  - d) transplant, remove, or cause to be transplanted or removed, any public tree where deemed necessary in the public interest;
  - e) remove, or cause to be removed, without notice or compensation to any person any object or thing that adversely affects a public tree;
  - f) remove, or cause to be removed, without notice or compensation to any person, any tree planted without permission in a public park or on a highway;
  - g) remove, or cause to be removed, without notice or compensation to any person, any parts of a tree which may be hazardous or create an unsafe condition, is located on private property and extends over a highway or public park;
  - h) implement, or cause to be implemented, necessary treatments for insect and disease problems associated with a public tree;
  - i) remove, or cause to be removed, a public tree which is dead, hazardous, creates an unsafe condition, or no longer viable to maintain, certified as such by the Director;
  - j) remove, injure, or cause the removal or injury of a public tree, as may be required to facilitate emergency work, certified as such by the Director;

- k) remove, or cause to be removed, a healthy public tree where a written request for tree removal that includes a landscape plan satisfactory to the Director has been received from an adjacent property owner. Such requests for removal may be subject to conditions which include payment to the City of Barrie an amount equivalent to the tree value, removal and replacement costs and the replanting of a replacement tree or trees by the applicant;
- l) refuse a request for the removal of a public tree;
- m) permit the pruning of public tree branches or roots in accordance with good arboricultural practices causing minimal damage to the tree. Such requests for injury may be subject to conditions which include the payment of tree value, removal and replacement costs, the posting of a letter of credit and the planting of a tree or trees by the applicant; or
- n) stop any work causing injury or destruction to a public tree that is taking place without permission from the Director and/or contrary to the City's Tree Protection Manual and/or other standards set out and imposed by the Director for the protection of a tree or trees.

### **PROTECTION**

- 5. Every person doing any work in a public park or a highway shall carry out such work in accordance with the City of Barrie's Tree Protection Manual and any other standards set out by the Director as amended from time to time.

### **INJURY AND REMOVAL OF TREES**

- 6. No person shall injure, destroy or remove a public tree without the prior written approval of the Director. Approval may be subject to such conditions as the Director may impose, including payment of the tree value, removal and replacement costs, replanting, posting a letter of credit in a form and content acceptable to the City in an amount sufficient to cover the appraised value of the subject tree as well as removal and replacement costs, provision of a detailed Tree Protection Plan and provision of a qualified Arborist's, qualified Landscape Architect or Registered Professional Forester's report detailing specific arboricultural procedures to be undertaken.

### **PROHIBITED ACTIVITIES**

- 7. Subject to Section 11 of this by-law:
  - a) no person shall undertake or cause to undertake to remove, cut down, destroy or injure a public tree except with the prior written approval of the Director;
  - b) no person shall undertake or cause to undertake to mark, cut, break, peel or deface a public tree or any part of a public tree;
  - c) no person shall undertake or cause to undertake to bury the roots of a public tree by placing or dumping fill or refuse, or otherwise altering the grade of land under the branches of a public tree;
  - d) no person shall undertake or cause to undertake any activities that are contrary to the City of Barrie's Tree Protection Manual and any other standards or conditions imposed or set out by the Director for the protection of a public tree except with the prior written approval of the Director;
  - e) no person shall undertake or cause to undertake to attach in any manner any object or thing to a public tree or part of a public tree except with the prior written approval of the Director; and
  - f) despite Subsection 7(e), no person shall undertake or cause to undertake to attach decorative lights to a public tree except with the prior written approval of the Director and upon production of satisfactory evidence that all other requisite approvals have been obtained. The approval of such request may be subject to conditions imposed by the Director.
- 8. No person shall undertake or cause to undertake any activities that are contrary to the provisions of the *Endangered Species Act, S.O. 2007, c. 6*.
- 9. No person shall undertake or cause to undertake any activities that would result in the destruction of a Heritage Tree.
- 10. No person shall undertake or cause to undertake any activities that would negatively affect the flood or erosion control, or the ecological integrity of an Environmentally Protected Area (as defined in the City of Barrie's Zoning By-law, as amended from time to time).

**EXEMPTIONS FROM BY-LAW**

11. Notwithstanding Sections 2 and 7, the prohibitions within this by-law do not apply to:
- a) public trees injured or removed by or under the direction of the City of Barrie;
  - b) the removal of destroyed public trees in the interests of public safety, health and general welfare following any man-made or natural disasters, storms, high winds, floods, fires, snowfall, freezes or as a result of insects, disease or wildlife;
  - c) activities or matters undertaken by the Provincial Government or Federal Government or their authorized agents;
  - d) public trees located within waste disposal sites as defined in Part V of the *Environmental Protection Act, R.S.O. 1990, c. E.19*;
  - e) 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;
  - f) trees cut by a person licensed under the *Surveyors Act, R.S.O. 1990, c. S.29* to engage in the practice of cadastral surveying or any person in his or her employ while making a survey;
  - g) a person working on or adjacent to a public tree pursuant to a Right-of-Way Activity Permit issued under the provisions of the Right-of-Way Activity By-law, provided that the person adheres to the tree protection specifications as set out in that by-law or its successors;
  - h) the unavoidable injury 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 provided such removal is in compliance with any Tree Protection Plans required as a condition of those approvals or as a term of any subdivision or site plan agreement. For the purposes of this paragraph, the injury or destruction of trees is not unavoidable if it could have been prevented using tree protection measures such as those outlined in the City of Barrie's Tree Protection Manual; or,
  - i) the unavoidable injury 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 provided such removal is in compliance with any Tree Protection Plans required as a condition of those approvals or as a term of any subdivision or site plan agreement. For the purposes of this paragraph, the injury or destruction of trees is not unavoidable if it could have been prevented using tree protection measures such as those outlined in the City of Barrie's Tree Protection Manual.

**TREE PLANTING AND TREE REPLACEMENT**

12. No person shall plant any public tree without the approval of the Director and such tree shall be planted in accordance with the appropriate City of Barrie Standard Details. Approval by the Director will include the planting location, species, size and condition.
13. The City of Barrie's Forestry Supervisor and Forestry Coordinator have delegated authority for the selection of location, species, size and condition and the planting of public trees under the City planting program.
14. Should the Director approve the planting of any public tree(s), the Director may request a monetary deposit from such person in an amount appropriate to secure the planting of trees. These funds may be held by the City until after the planting of the trees for a period of time determined by the Director and shall be released by the City, provided that the trees are healthy and in a state of vigorous growth after the stipulated time period.
15. When a public tree is removed, a replacement public tree must be planted unless otherwise determined by the Director. The planting location, species, size, condition and planting date must be approved by the Director.

16. Where the Director has approved the removal of a public tree, such approval may be subject to conditions which include the applicant providing payment of tree value, removal and replacement costs and a minimum of one replacement public tree being planted for each public tree approved for removal.

#### **ENFORCEMENT**

17. A Municipal Law Enforcement Officer, Provincial Offences Officer, Police Officer, or other duly appointed individual shall enforce the provisions of this by-law.
18. No person shall obstruct, hinder, or otherwise interfere with a Municipal Law Enforcement Officer, Provincial Offences Officer, Police Officer or other duly appointed individual in the lawful carrying out of their duties and responsibilities under the provisions of this by-law.

#### **OFFENCES**

19. Every person who contravenes the provisions of any section of this by-law and every Director or Officer of a Corporation, who concurs in the contravention by the Corporation, is guilty of an offence is liable to a system of fines according to the *Municipal Act*.
- (a) A minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$100,000. However, a special fine may exceed \$100,000.
- (b) In the case of a continuing offence, for each day or part of a day that the offence continues, a minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$10,000. However, despite paragraph (a), the total of all of the 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 offences, a minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$10,000. However, despite paragraph (a), the total of all fines for each included offence is not limited to \$100,000.
- (d) A special fine may be imposed in accordance with Subsection 429(2)(d) of the *Municipal Act*. In addition to a fine under clause (a) to (c) above, a special fine may be imposed in circumstances where there is an economic advantage or gain from the contravention of this By-Law or an order under Section 10 of this By-Law, and the maximum amount of the special fine may exceed \$100,000 pursuant to Subsection 429(3)(1) of the *Municipal Act*.
20. The City of Barrie designates that the destruction of each Tree is one offence in a series of multiple offences.
21. If a person is convicted of an offence for contravening this By-law the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may order the person to rehabilitate the land or to plant or replant Trees in such a manner and within such period as the court considers appropriate, including any silvicultural treatment necessary to re-establish the Trees.

#### **REMEDIAL ACTION**

22. Wherever this by-law directs or requires any matter or thing to be done by a person, in default of its being done by the person directed or required to do it, the matter or thing may be done under the direction of the Director, and the City may recover the costs incurred by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes (Part XII of the *Municipal Act*, S.O. 2001, C. 25).

#### **CONFLICT WITH OTHER BY-LAWS**

23. Nothing in this by-law shall exempt any person from complying with the requirements of any by-law in force or from obtaining any license, permission, permit, authority or approval required under any by-law or legislation.

**ADMINISTRATION**

24. If any section or sections of this by-law or parts thereof are found by any Court to be illegal or beyond the power of the Council to enact, such Section or Sections or parts thereof shall be deemed to be severable and all other Sections or parts of this by-law shall be deemed to be separate and independent there from and continue in full force and effect unless and until similarly found illegal.
25. The short title of this by-law is the "Public Tree By-law".
26. By-law 2009-098 of the Municipality of the City of Barrie and all amendments thereto shall be repealed effective on the coming into force and effect of this by-law.
27. Despite Section 26 of this by-law, By-law 2009-098 of the Municipality of the City of Barrie shall continue to apply to proceedings in respect of offences that occurred before its repeal.
28. **THAT** this by-law shall come into force and take effect immediately upon the final passing thereof.

**READ** a first and second time this 15<sup>th</sup> day of September, 2014.

**READ** a third time and finally passed this 15<sup>th</sup> day of September, 2014.

**THE CORPORATION OF THE CITY OF BARRIE**

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**MAYOR – J.R. LEHMAN**

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**CITY CLERK – DAWN A. MCALPINE**