

Authority: Item 7, Public Works Committee
Report 15-006
CM: May 13, 2015

Bill No. 125

CITY OF HAMILTON

BY-LAW NO. 15-125

To Regulate Trees on or Affecting Public Property

WHEREAS the urban forest benefits the City of Hamilton by, amongst other things, providing natural habitat, better air quality, shade, storm water control and an improved pedestrian experience through enhanced landscapes and aesthetic beauty;

AND WHEREAS the City of Hamilton promotes and preserves a sustainable urban forest through diversity of tree species, health management and community awareness with the goal of increasing the tree canopy coverage in the City to over 35%.

AND WHEREAS the protection of the City of Hamilton's highways and those using the highways requires the maintenance of trees on or affecting the highways;

AND WHEREAS sections 8, 9 and 10 of the *Municipal Act, 2001* authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes, and in particular, paragraphs 4, 5, 6 and 8 of subsection 10(2) authorize by-laws respecting public assets of the municipality, the economic, social and environmental well-being of the municipality, the safety and well-being of persons and the protection of persons and property;

AND WHEREAS section 135 of the *Municipal Act, 2001* authorizes the City of Hamilton to prohibit or regulate the destruction or injuring of trees;

AND WHEREAS subsection 62(1) of the *Municipal Act, 2001* authorizes the City of Hamilton, at any reasonable time, to enter upon land lying along any of its highways to inspect trees and conduct tests on trees, and to remove decayed, damaged or dangerous trees or branches of trees if, in the opinion of the City of Hamilton, the trees or branches pose a danger to the health or safety of any person using the highway;

AND WHEREAS subsection 62(2) of the *Municipal Act, 2001* authorizes an employee or agent of the City of Hamilton to remove a decayed, damaged or dangerous tree or branch of a tree immediately without notice to the owner of the land upon which the tree is located, if, in the opinion of the employee or agent, the tree or branch poses an immediate danger to the health or safety of any person using the highway;

AND WHEREAS the *Municipal Act, 2001* authorizes the City of Hamilton, amongst other things, to delegate its authority, to impose fees or charges on persons for services or activities provided or done by or on behalf of it, to provide for inspections and inspection orders, and to make orders to discontinue activity or to do work;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

Definitions

1. In this By-law:

"business day" means 8:30 a.m. to 4:30 p.m. on any day on which the City of Hamilton's administration buildings are open for business;

"City" means the geographical area of the City of Hamilton or the municipal corporation as the context requires;

"Council" means the Council of the City of Hamilton;

"Director" means the Director of Environmental Services for the City of Hamilton or his or her designate;

"drip line" means an imaginary line running directly beneath the outermost branches of an individual tree;

"highway" includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct, or trestle, any part of which is intended for, or used by, the public for the passage of vehicles and includes the area between the lateral property lines thereof;

"Municipal Law Enforcement Officer" means the Director or a person appointed by Council or by the Director for the enforcement or administration of this By-law, and includes a person employed by the City whose duties are to enforce or administer this By-law;

"owner" means a person having any right title, interest, or equity in land including right, title, interest, or equity to the trees standing on the land;

"person" includes an individual, sole proprietorship, partnership, association, or corporation;

"policy" means a policy respecting trees which the Director is authorized to issue under this By-law or is otherwise issued by the City;

"private property" means land other than public property;

"private tree" means any tree which has greater than 50 per cent of its trunk diameter measured at ground level on private property;

"public property" means any land that is owned by, leased to, controlled by, or vested in the City including those public unassumed alleys which have been occupied or fenced by a person other than the City;

"public tree" means any tree which has greater than or equal to 50 per cent of its trunk diameter measured at ground level on public property;

"tree" means a self-supporting woody perennial plant which has reached or can reach a height of at least 3 metres at physiological maturity;

"tree protection zone" means a restricted area around the base of a tree one metre from the dripline, which serves to protect a tree and its root zone as established by the Director or another authorized City employee or agent in accordance any applicable City by-law or policy; and

"work" includes excavating, constructing, developing, ditching, tunnelling, trenching, disturbing soil, compacting soil or removing part or all of a public tree.

Application

2. This By-law applies in addition to the City Parks By-law No. 01-219 and the *Plant Protection Act* (Canada) and its regulations or any other by-law, statute or regulation that applies to trees.

Prohibitions

3. (1) No person shall injure or destroy a public tree, or permit the injury or destruction of a public tree.
- (2) For the purposes of section 3(1), the injury or destruction of a public tree may include but is not limited to:
 - (a) pruning or altering a public tree;
 - (b) placing any item which may impede the free passage of water, air, or nutrients to the roots of a public tree;
 - (c) performing any work within the drip line or the tree protection zone of a public tree;
 - (d) fastening any object to a public tree or to the stakes or posts that protect a public tree;
 - (e) allowing a toxic substance to come into contact with a public tree;
 - (f) setting a fire that affects a public tree;
 - (g) altering or removing anything protecting a public tree including stakes, poles, tree trunk wraps or watering bags;
 - (h) altering soil levels within the drip line of a public tree;

- (i) excavating any ditch, tunnel or trench, or laying any walkway or driveway within the drip line of a public tree; or
 - (j) climbing a public tree.
- (3) Despite section 3(1), a person may only perform work on, in or around a public tree, including removing any part of a tree, if:
- (a) a permit is first obtained from the Director in accordance with the applicable policy;
 - (b) the work is done in accordance with the conditions of the permit; and
 - (c) the work is done in accordance with all applicable by-laws and policies.
4. No person shall plant or permit the planting of a tree on public property.
5. No person shall remove or permit the removal of any part of a public tree that has fallen, including but not limited to any part of a public tree that has fallen on public property that is a park, trail, or natural area.
6. The owner of a private tree shall ensure that the private tree:
- (a) does not obstruct the use of a highway;
 - (b) does not pose a danger to public property or people accessing public property; and
 - (c) is maintained so as to prevent an obstruction as described in 6(a) or a danger as described in 6(b) from occurring.

Administration

7. The Director is authorized to administer and enforce this By-law including, but not limited to:
- (a) arranging for the:
 - (i) assistance or work of City staff, City agents, or police officers;
 - (ii) making of orders or other requirements and the imposition of conditions, as authorized under this By-law;
 - (iii) obtaining of court orders or warrants, as may be required;
 - (iv) commencement of such actions on behalf of the City to recover costs or restrain contravention of this By-law, as deemed necessary;
 - (b) issuing policies with respect to trees on or affecting highways which may include but are not limited to criteria to guide the Director in exercising his or her discretion concerning such matters as issuing a permit under subsection 3(3); and

- (c) prescribing the format and content of any forms, permits or other documents required under this By-law.
8. The Director may assign Municipal Law Enforcement Officers to enforce this By-law, and Municipal Law Enforcement Officers so assigned or appointed by Council to enforce this By-law shall have the authority to:
- (a) carry out inspections;
 - (b) make orders or other requirements, as authorized under this By-law; and
 - (c) give immediate effect to any orders or other requirements made under this By-law.
9. The Director may assign duties or delegate tasks under this By-law to be carried out in the Director's absence or otherwise.

Entry and Inspections

10. A Municipal Law Enforcement Officer may enter on land at any reasonable time, and in accordance with the conditions set out in sections 435 and 437 of the *Municipal Act, 2001*, for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
- (a) this By-law;
 - (b) a direction or order made under this By-law;
 - (c) a condition of consent granted by the Director under this By-law; or
 - (d) an order made under Section 431 of the *Municipal Act, 2001*.
11. A Municipal Law Enforcement Officer may, in accordance with subsection 62(1) of the *Municipal Act, 2001* and with the conditions set out in sections 435 and 437 of the *Municipal Act 2001*, at any reasonable time, enter upon land lying along any of its highways, to:
- (a) inspect or conduct tests on trees;
 - (b) remove decayed, damaged or dangerous trees or branches of trees if, in the opinion of the Director, the trees or branches pose a danger to the health or safety of any person using the highway.
12. The Director may, in accordance with subsection 62(2) of the *Municipal Act 2001* and with the conditions set out in sections 435 and 437 of the *Municipal Act 2001*, arrange for the removal of a decayed, damaged or dangerous tree or branch of a tree immediately and without notice to the owner of the land upon which the tree is located if, in the opinion of the Director, the tree or branch poses an immediate danger to the health or safety of any person using the highway.

13. A Municipal Law Enforcement Officer may, for the purposes of an inspection under section 10 or section 11 and in accordance with the conditions set out in section 436 of the *Municipal Act, 2001*:
 - (a) require the production for inspection of documents or things relevant to the inspection;
 - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - (c) require information, in writing or otherwise, from any person concerning a matter related to the inspection;
 - (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples, or photographs necessary for the purposes of the inspection.
14. A Municipal Law Enforcement Officer may undertake an inspection pursuant to an order issued by a Provincial Judge or Justice of the Peace under section 438 of the *Municipal Act, 2001* in accordance with the conditions set out in that section.

Orders

15. If a Municipal Law Enforcement Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred, to discontinue the contravening activity.
16. An order under section 15 shall set out:
 - (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which the contravention occurred; and,
 - (b) the date or dates by which there must be compliance with the order, which may be of immediate effect should the Municipal Law Enforcement Officer determine that the circumstances warrant.
17. If a Municipal Law Enforcement Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred, to do work to correct the contravention.
18. An order under section 17 shall set out:
 - (a) reasonable particulars of the contravention adequate to identify the contravention and the location of property on which the contravention occurred;

- (b) the work to be completed which may include but is not limited to requiring any one or more of the following:
 - (i) removal of any item which may impede the free passage of water, air, or nutrients to the roots of a public tree;
 - (ii) removal of any object fastened to a public tree or to the stakes or posts that protect a public tree;
 - (iii) any structure protecting a public tree that has been altered or removed be restored to its original condition;
 - (iv) any soil level within the drip line of a public tree that has been altered be restored to its original condition;
 - (v) any excavation of a ditch, tunnel or trench within the drip line of a public tree be filled;
 - (vi) removal of any walkway or driveway laid within the drip line of a public tree;
 - (vii) payment to the City for the replacement of any public tree which has been injured or destroyed as determined by the Director in accordance with any applicable policy;
 - (c) the date or dates by which the work must be completed; and,
 - (d) notice that if the order is not complied with, then the work may be completed by the City at the expense of the person ordered to do the work.
19. Delivery of an order to discontinue a contravening activity made under section 15, or an order to do work made under section 17, may be given personally or by registered mail to the last known address of:
- (a) the person ordered to do the work;
 - (b) such other persons affected by the order as a Municipal Law Enforcement Officer determines.
- Delivery by registered mail shall be deemed to have taken place five business days after the date of mailing.
20. In addition to delivery in accordance with section 19, an order to discontinue a contravening activity made under section 15 or an order to do work made under section 17 may be delivered by a Municipal Law Enforcement Officer by placing a placard containing the order in a conspicuous place on the property where the contravention occurred.
21. Where delivery cannot be made in accordance with section 19, sufficient delivery is deemed to have taken place when made in accordance with section 20.

22. Where a time frame is set out in an order for carrying out any action, a Municipal Law Enforcement Officer may extend the time for compliance beyond the established deadline, provided such extension is acceptable to the Municipal Law Enforcement Officer.

City Carrying Out Work

23. Where a person does not comply with a direction or a requirement, including an order under this By-law to do a matter or thing, the Director, with such assistance by others as may be required, may carry out such direction or requirement at the person's expense.
24. Where the costs of doing a matter or thing under section 23 are estimated to be:
- (a) less than \$10,000, the Director may proceed without further approval, and in accordance with the City's Procurement Policy; or,
 - (b) \$10,000 or more, the Director may proceed with approval of an authorized person or of Council, and in accordance with the City's Procurement Policy.
25. The City may recover the costs of doing a matter or thing under section 23 by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes, and such costs shall include an interest rate of 15 per cent commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full. The amount of the City's costs, including interest to the date payment is made in full, constitutes a lien upon the land, upon the registration of a notice of lien upon the land.

Penalties

26. Every person who contravenes any provision of this By-law, and every Director or Officer of a Corporation who knowingly concurs in the contravention of this By-law by the Corporation is, upon conviction, guilty of an offence and is liable:
- (a) on a first conviction, to a fine of not more \$10,000 or a fine of \$1,000 per tree, whichever is greater; and,
 - (b) on any subsequent conviction, to a fine of not more than \$25,000 or a fine of \$2,500 per tree, whichever is greater.
27. Despite section 26, where the person convicted is a corporation,
- (a) the maximum fines in subsection 26(a) are \$50,000 or \$5,000 per tree; and,
 - (b) the maximum fines in subsection 26(b) are \$100,000 or \$10,000 per tree.

28. Every person who is convicted of an offence under this By-law may be liable, in addition to the fines established under sections 26 and 27, to a special fine, which may exceed \$100,000, designed to eliminate or reduce any economic advantage or gain from contravening this By-law or failing to comply with an order made under this By-law.
29. Where a person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, make an order:
 - (a) prohibiting the continuation or repetition of the offence by the person convicted;
 - (b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

General Provisions

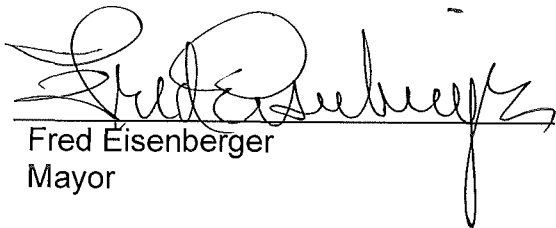
30. This By-law may be referred to as the Hamilton Public Tree Protection By-law or the Public Tree Protection By-law.
31. If a court of competent jurisdiction declares any subsection, section, or part of this By-law invalid, it is the intention of Council that the remainder of the By-law shall continue to be in force.
32. The provisions of this By-law apply in addition to the provisions contained in any other applicable By-laws of the City or applicable provincial or federal statutes or regulations.
33. In the event of a conflict between this By-law and any other applicable By-law of the City:
 - (a) where one or more conflicting provisions provides for public health or safety, then the provision which is most protective of public health or safety prevails; or
 - (b) where none of the conflicting provisions provides for public health or safety, then the provision which is most protective of trees prevails.

Repeals and Enactment

34. By-law 06-151, being the City of Hamilton Public Trees By-law, as amended, is repealed.
35. Despite the repeal of By-law No. 06-151 under section 34:
 - (a) that By-law shall continue to apply to proceedings in respect of offences that occurred before its repeal;

- (b) all approvals issued under that by-law that are in effect at the time of the repeal shall be deemed to be approvals issued under this By-law with all necessary modifications, and all the requirements of this By-law shall apply.
36. (1) The City of Hamilton's Street Tree Planting Policies for Planning and Design and for New Developments, Reforestation Policy for Municipally Owned Lands, Tree Preservation and Protective Measures for Trees Affected by Construction Policy, and Public Tree Removal Policy are all repealed on August 10, 2015.
- (2) The Director will issue policies, to be effective on August 10, 2015, to replace the policies repealed under subsection 37(1) .
37. This By-law comes into force on the date of its passing.

PASSED this 13th day of May, 2015.



Fred Eisenberger
Mayor



Rose Caterini
City Clerk