



BY-LAW

NO. 2021 - 140

A BY-LAW TO REGULATE PLANTING, MAINTENANCE AND PRESERVATION OF TREES ON OR AFFECTING MUNICIPAL PROPERTY

WHEREAS Council deems it in the public interest to protect and preserve trees growing upon or located upon Municipality of Kincardine owned land;

AND WHEREAS the Municipality, pursuant to Section 135 of the Municipal Act, S.O. 2001, c.25 (the "Act") may by by-law prohibit or regulate the injuring or destruction of trees;

AND WHEREAS the Municipality, pursuant to Section 141 of the Act, , may provide trees to the owners of land adjacent to any highway;

AND WHEREAS the Municipality pursuant to Section 62(1) of the Act, , may at any reasonable time, 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 municipality, the trees or branches pose a danger to the health or safety of any person using the highway;

AND WHEREAS the Municipality pursuant to Section 62(2) of the Act, , may 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 Section 391 of the Act provides that a municipality may pass bylaws imposing fees or charges on any class of persons for services or acts provided or done by or on behalf of it;

AND WHEREAS Section 429 of the Act authorizes a municipality to establish a system of fines for offences under a By-law of the municipality;

AND WHEREAS Section 446 of the Act provides a municipality with authority to direct or require a person to do a matter or thing, and in default of it being done by the person directed or required to it, the matter or thing shall be done at the person's expense;

NOW THEREFORE the Council of The Corporation of the Municipality of Kincardine **ENACTS** as follows:

Content

1. In this By-law:
 - a. "Arborist" shall mean a specialist in the cultivation and care of trees and shrubs;

- b. "Contractor" shall mean a person engaged to perform a specific activity or service, on or at a particular land or premises;
 - c. "Council" means the Council of The Corporation of the Municipality of Kincardine; "
 - d. "Director" shall mean either the Director of Community Services or the Director of Infrastructure and Development for the Municipality of Kincardine or their designates;
 - e. "Drip Line" shall mean the area directly located under the outer circumference of the tree branches. This is where the fibrous/feeder roots are located that take up water and nutrients for the tree.
 - f. "Horticulturalist" shall mean the Municipality of Kincardine Horticulturalist or any designated person acting under his or her direction;
 - g. "Municipality" shall mean The Corporation of the Municipality of Kincardine;
 - h. "Permit Fee" shall mean the amount collected by the Municipality at a time of application for Tree Permit as may be prescribed from time to time in the Municipality's rates and fees by-law;
 - i. "Private Property" shall mean land other than public property;
 - j. "Public Property" shall mean any land or property owned by the Municipality;
 - k. "Public Tree" shall mean any species of woody perennial plant with its trunk located, either wholly or in part, on Public Property. A Public Tree shall include its associated roots, stems and branches;
 - l. "Tree" shall mean a plant having a permanently woody main stem, ordinarily growing to a considerable height, usually developing branches at some distance from the ground;
2. This by-law shall apply to all trees growing or living on Public Property in the Municipality of Kincardine.

Authority

3. The Director is hereby authorized to:
- a. plant or cause to be planted trees on Public Property;
 - b. care for and maintain or cause to be cared for and maintained any tree located on Public Property;
 - c. remove or cause to be removed without notice or compensation to any person, anything which in their opinion, adversely affects a tree growing or living on Public Property;
 - d. remove or cause to be removed without notice or compensation to any person any tree or part of a tree on Public Property which, in their opinion, is decayed, diseased or poses a direct and immediate threat to Public Property or to individuals using Public Property;
 - e. remove a tree on Public Property that is of poor quality, or undesirable species whose removal is required to facilitate new street tree plantings;

- f. stop any work causing injury or destruction to a Tree located on Public Property taking place without permission or approval of the Director;
 - g. review and approve or deny any applicable applications or permits for work on, in or around a Public Tree in accordance with applicable policies established from time to time.
4. (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 4(1), the injury or destruction of a Public Tree may include, but is not limited to the following:
- a) Pruning or altering a Public Tree;
 - b) Allowing a toxic substance to come into contact with a Public Tree;
 - c) Depositing, placing, storing, or maintaining any stone, brick, sand, concrete, soil or any material, equipment or vehicles that may impede the free passage of water, air, or nutrients to the roots of the Public Tree;
 - d) Performing any work within the Drip Line of a Public Tree, including, without limitation, excavating, ditching, tunnelling, disturbing soil, or laying any walkway or driveway within the Drip Line of a Public Tree, or otherwise altering soil levels within the Drip Line of a Public Tree;
 - e) Setting a fire that affects a Public Tree
 - f) Altering or removing anything protecting a Public Tree, including stakes, poles, tree wrap, etc.;
 - g) Fastening any object to a Public Tree or to the stakes, post, or other object protecting the Public Tree; and
 - h) Climbing a Public Tree.
5. Notwithstanding section 4(1), a person may only perform work on, in or around a Public Tree, including removal of a part a Public Tree, if the following are fulfilled:
- 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, if any, of the permit; and
 - c. the work is done in accordance with all other applicable by-laws and policies.
6. No person shall plant or place, or cause or permit the planting or placing of any trees partially or wholly located or growing on Public Property; without first applying for and obtaining approval from the Director in accordance with the applicable policy.

Trees on Private Property

- 7. Any tree planted on Private Property, whether planted by the Municipality or by any other person, is the property of the land owner and as such, is the owner's sole responsibility. The owner of the property on which a tree is standing shall not permit or leave the tree or branches projecting over the highway in such a manner as to obstruct the reasonable and safe use of the highway; does not pose a danger to Public Property or people accessing Public Property; and is maintained so as to prevent obstruction from occurring
- 8. The Director and Horticulturalist are hereby authorized in accordance with section 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,

- a. the branches of any tree located on private property which extend over Public Property and which, in their opinion, are hazardous or create an unsafe condition; and
 - b. remove or cause to be removed, without notice or compensation to any person, any tree located on Private Property which, in their opinion, is a hazard to the safe passage of traffic and which hazard cannot be removed by any means other than removal of the tree.
9. Tree replacement for every tree approved to be removed:
- a. Minimum of two (2) trees planted for every one (1) tree removed.
 - b. Same or similar species will be replanted as the removed tree or a tree to suite the location or environment.
 - c. Trees must be on the approved Municipal Tree Species Selection List.

Enforcement, remedial actions and recovery of expenses

10. The Director is authorized to administer and enforce this By-Law including, but not limited to:
- a. Arranging for assistance or work of Municipal staff, agents or police officers;
 - b. Making orders or other requirements and the imposition of conditions, as authorized by this by-law;
 - c. Obtaining warrants, as may be required;
 - d. Issuing policies with respect to Public Trees 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 section 4;
 - e. And prescribing the format and content of any forms, permits or other documents required under this by-law.
11. The Council may from time to time appoint officers to carry out the administrative and enforcement functions of this by-law. An officer or any person acting under their instruction may, at any reasonable time and without a warrant, enter and inspect any lands to which this by-law applies.

WORK ORDER

12. If the Municipality becomes aware of a contravention of this by-law by any person, the Municipality may make an Order in writing to 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.
13. An Order under section 12 shall set out:
- a. The reasonable particulars of the contravention and the location of the property on which the contravention occurred;

- b. If applicable, the work to be completed which may include, but is not limited to requiring any one of the following:
 - i. removal of any item impeding nutrients to the Public Tree;
 - ii. replanting a suitable tree or trees;
 - iii. removal of any item fastened to a Public Tree or protective stakes or posts of a public tree
 - iv. any soil level in the Drip Line of Public Tree be restored;
 - v. payment to the Municipality 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. dates and times 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 Municipality at the expense of the person ordered to do the work.
14. The Municipality may recover the costs of doing a matter or thing under section 13 (d) by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes. The amount of the Municipality's costs constitutes a lien upon the land, upon the registration of a notice of lien upon the land.
15. Any person who contravenes an order issued under this section is guilty of an offence.
16. **ORDER TO DISCONTINUE** If the Municipality becomes aware of a contravention of this by-law by any person, the Municipality may make an Order in writing to 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 activity.
17. An Order issued under section 15 shall set out:
- a. Reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred or is occurring; and,
 - b. The date by which there must be compliance with the order.
18. Any person who contravenes an order issued under this section is guilty of an offence.
19. Every person who contravenes any provision of this by-law is guilty of an offence and, upon conviction is liable to a fine as provided for by the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33, as amended.
- Miscellaneous**
20. Should a court of competent jurisdiction declare a part of whole of any provision of this by-law to be invalid or of no force and effect, the provision of part is deemed severable from this by-law, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its remaining terms to the extent possible under the law.

21. In the event a conflict between this by-law and any other applicable by-law of the Municipality:

- 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.

22. This by-law shall come into full force and take effect on this date of its passing.

23. This by-law may be cited as the "Municipality of Kincardine Tree By-law"

READ a FIRST and SECOND TIME this 9th day of August, 2021.

READ a THIRD TIME and FINALLY PASSED this 9th day of August, 2021.

Mayor

Clerk