

# THE CORPORATION OF THE TOWN OF GRIMSBY

## BY-LAW NO. 24-37

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

Whereas Council for the Corporation of the Town of Grimsby deems it in the public interest to protect and preserve trees growing upon or located upon Town-owned land;

And whereas the Council for the Corporation of the Town of Grimsby recognizes the importance of trees to the environment within the Town for the purposes of health and welfare, beauty, safety, history, and general well being; and

And whereas the Town, pursuant to Section 135 of the Municipal Act, S.O. 2001, c. 25, may by by-law prohibit or regulate the injuring or destruction of trees;

And Whereas the Town, pursuant to Section 141 of the Municipal Act, S.O. 2001, c. 25, may provide trees to the owners of land adjacent to any highway;

And Whereas the Town, pursuant to Section 62(1) of the Municipal Act, S.O. 2001, c. 25, 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 Town, pursuant to Section 62(2) of the Municipal Act, S.O. 2001, c. 25, 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

Now therefore the Council of the Corporation of the Town of Grimsby enacts as follows:

#### Content

##### 1.1 In this By-law:

- (a) "Arborist" means a person holding a diploma or degree 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;
- (b) "Contractor" means a person engaged to perform a specific activity or service, on or at a particular land or premises;
- (c) "Council" means the Council for the Town of Grimsby and includes its successor;
- (d) "Director" means the Director of Public Works and/or the Director of Community Services for the Town and includes the Director's designate or successor;
- (e) "Drip Line" means the outer boundary of an area on the surface of the ground directly below and which corresponds with the outer edge of the crown of the tree;

- (f) "Highway" means as defined under Part III of the Municipal Act, S.O. 2001, c. 25
- (g) "Officer" means a person designated by the municipality to enforce this By-law, and may include a Municipal Law Enforcement Officer;
- (h) "Private Property" means land other than public property;
- (i) "Public Property" means any land or property owned by the Town;
- (j) "Public Tree" means any tree all or part of which is located on Public Property;
- (k) "Tree" includes all woody vegetation, which at maturity, will reach of height of at least 3.5m;
- (l) "Tree Protection Zone" means the minimum required specifications to protect a tree during any activity in the construction process that may injure or destroy a tree, and is based on generally accepted arboriculture principles;
- (m) "Town" means the Corporation of the Town of Grimsby;

1.2 This by-law shall apply to all Trees growing or living on Public Property throughout the Town of Grimsby.

1.3 This by-law does not apply to Tree's growing or living on lands owned, maintained or otherwise managed by the Niagara Escarpment Commission (NEC), Niagara Peninsula Conservation Authority (NPCA) or the Niagara Region.

#### **Authority**

1.4 The Director(s) are hereby authorized to take or cause the following action:

- (a) plan for, 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) as required, consult an arborist when determining tree health, tree value and options to mitigate potential risks.
- (d) 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;
- (e) remove or cause to be removed 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;
- (f) remove a Tree on Public Property that is of poor quality whose removal is required to facilitate new Tree plantings;
- (g) enter upon land adjacent to Public Property to inspect trees, conduct tests on trees, and remove decayed, damaged or dangerous branches of a tree if, in their opinion, the trees or

branches pose a danger to the health or safety of any person using the Highway; and

- (h) remove or cause to be removed, without notice or compensation to any person, any Tree located on Private Property which, in their opinion, poses an immediate danger to the health or safety of any person using the Highway and which hazard cannot be removed by any means other than removal of the Tree.

1.5 No person shall, or permit any person to:

- (a) injure or destroy, or cause to be injured or destroyed, a tree growing on Public Property;
- (b) fasten any sign, bill, notice, wire, rope, nail, or other object to, around, on, or through any Town Tree in any manner, or around, on or through the stakes or posts that protect such Tree;
- (c) cause or permit any gaseous, liquid, or solid substances which are harmful or toxic to any Town Tree, to come in contact with any Town Tree, or apply to a Town 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 Town Tree;
- (e) plant or cause to be planted a tree on Public Property without first having obtained the permission of the Town;
- (f) interfere with fences, structures, barriers delineating Tree Protection Zones, or associated signage or other protective devices around any Town Tree;
- (g) alter or change any soil levels on Public Property within the Drip Line of any Town Tree in a manner likely to cause injury to said Tree; or
- (h) climb or permit any person under their care or control to climb any Town Tree.

#### **Trees on Private Property**

- 1.6 Any Tree planted on Private Property, whether planted by the Town or by any other person, is the property of the land owner and as such, is the owner's sole responsibility. The owner of property on which a Tree is standing shall not permit or leave the Tree or branches thereof projecting over the Public Property or the highway in such manner as to obstruct the reasonable and safe use of Public Property or the highway.

#### **Request to Undertake Work**

- 1.7 The Director(s) are exempt from section 1.8 - 1.11 below.
- 1.8 A person seeking to undertake or do any of the activities described in paragraph 1.5 above shall make a request to the Director(s) to undertake or do the specified activity.
- 1.9 A request to undertake activities as described above shall include the following documents and information:
  - (a) a report from an Arborist in a form satisfactory to the Town

showing, where applicable:

- (i) the Tree(s) to be planted, removed or injured, including the location, size and species and condition of each;
- (ii) a proposal for the replanting or replacing of Trees that are to be removed or that will be injured by the works;
- (iii) confirmation that the Tree Protection Zone established and maintained around any Trees on the Public Property is in accordance with the Town's Standard Specifications for Tree Protection and Preservation;
- (iv) specifications as to the purpose of the work;
- (v) any additional relevant technical information as may be required by the Town.

1.10 The Director(s) shall determine the appropriate conditions to attach to each request, in accordance with sound arboriculture practice.

1.11 The conditions for approval of a request may include, among other things:

- (a) a requirement to post securities to ensure that the performance of the work is in accordance with the conditions of approval;
- (b) a requirement that the authorized work be carried out under the supervision of an Arborist;
- (c) a requirement that a Tree or Trees be replaced by a tree or trees of a certain size and species;
- (d) a requirement that the site of the work be restored to its original condition;
- (e) a requirement to replant or relocate a Tree or Trees;
- (f) a requirement that a Tree Protection Zone be established around any Trees that will be preserved.

### **Orders and remedial actions**

1.12 if an Officer confirms, after completing an inspection, that there has been a contravention of this By-law, then he or she may make an order requiring the person who contravened the By-law, to discontinue the activity and/or to do work to correct the contravention at the owner's expense.

1.13 An order under this By-law may be served:

- (a) personally, in which case it shall be deemed to have been served on the date of that personal service;
- (b) by email, in which case it shall be deemed to have been served on the date of that email;
- (c) by facsimile transmission, in which case it shall be deemed to have been served on the date of that facsimile transmission; or
- (d) by sending it by registered mail to the last known address of the person being served, in which case it shall be deemed to have been served on the fifth day after the date it was mailed.

1.14 The Town may recover the costs of doing the matter or thing under Section 1.11, from the person required to do it, by adding the costs to the tax roll for the subject land and collecting them in the same manner as property taxes.

1.15 The amount of the costs mentioned in Section 1.13 including interest, shall constitute a lien on the subject land upon the registration, in the proper Land Registry Office, of a notice of lien.

## **Enforcement, Offences and Penalties**

- 1.16 An Officer may enter on lands at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
- (a) a provision of this By-law or any other by-law;
  - (b) a direction or an Order.
- 1.16 A Inspector may, for the purposes of an inspection:
- (a) require the production for inspection of documents or things relevant to the inspection, including but not limited to government-issued photo identification;
  - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
  - (c) require information 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;
  - (e) order a person to take and supply at the persons expense such tests and samples as are specified; and
  - (f) enter upon any property for the purposes of conducting an inspection to ensure compliance.
- 1.17 Any person who directly or indirectly contravenes or who causes or permits a contravention of any provision of this By-law, an order issued under this By-law, is guilty of an offence.
- 1.18 Any director or officer of a corporation who concurs in the contravention of this By-law by the corporation is guilty of an offence.
- 1.19 If an order issued under this By-law has not been complied with, the contravention of the order shall be deemed to be a continuing offence for each day or part of a day that the order is not complied with.
- 1.20 Every person who is convicted of an offence under this By-law is liable to a fine as provided for in the Provincial Offences Act, R.S.O. 1990, Chap. P.33.
- 1.21 Every Person who contravenes a provision of this By-law and every director or officer of a corporation who concurs in such contravention by the corporation, is guilty of an offence and, upon conviction, is liable to the following fines, exclusive of Expenses:
- (a) A minimum fine shall not exceed \$500 and a maximum fine shall not exceeding \$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 maximum fine shall not exceed \$10,000. However, despite subsection (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 offence, a maximum fine shall not exceed \$10,000. However, despite subsection (a), the total of all fines for each included offence is not limited to \$100,000.

## **Severance**

1.22 Should a court of competent jurisdiction declare a part or whole of any provision of this by-law to be invalid or of no force and effect, the provision or 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 underlaw.

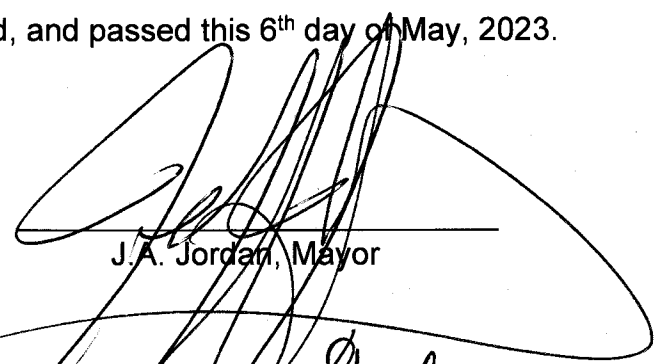
**Short Title**

1.23 The short title of this by-law shall be "The Town of Grimsby Public Tree By-law".

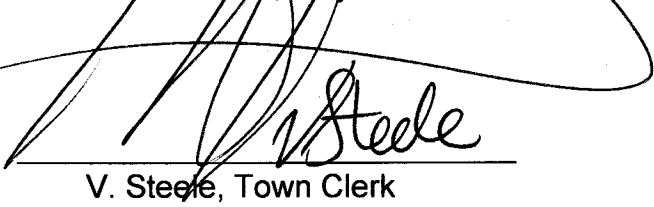
**Enactment**

Online version of this document does not contain signatures. Please contact Town Clerk to obtain a copy of the signed original.

Read a first time, considered, and passed this 6<sup>th</sup> day of May, 2023.



J.A. Jordan, Mayor



V. Steele, Town Clerk