

HIGHWAY - STREET

Chapter 821 TREE - PLANTING

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**Article 1
INTERPRETATION**

821.1.1 Arborist - defined

“arborist” means a person who is: an arborist qualified by the Ministry of Training, Colleges and Universities; a forest technician or forest technologist possessing a college diploma and a minimum of two years urban forestry experience; a certified arborist qualified by the Certification Board of the International Society of Arboriculture, a consulting arborist registered with the American Society of Consulting Arborists, a member of the Ontario Professional Foresters Association; or, a person with other similar qualifications as approved by the Commissioner.

821.1.2 Arborist report - defined

“arborist report” means a technical report prepared by an arborist or professional forester which identifies the surveyed location, species, size and condition of the tree, provides the reasons for any proposed injuring or destruction of the tree, and describes tree protection measures or other mitigating activities to be implemented.

821.1.3 Care and maintenance - defined

“care and maintenance” means routine care and maintenance of trees in accordance with good arboricultural standards and practices including: inspection, pruning, treatment for insect and disease problems, watering and fertilization.

821.1.4 Commissioner - defined

“Commissioner” means the Commissioner of Parks, Recreation & Culture or his or her delegate.

821.1.5 DBH - defined

“DBH” means the diameter of a trunk of a tree at a point of measurement 1.4 metres (4 feet 3 inches) above the ground.

821.1.6 Destroy/destruction - defined

“destroy/destruction” means to kill by cutting, burning, uprooting, chemical application or other means, or to injure to such an extent that it is deemed necessary to remove or cut down the tree.

821.1.7 Dripline - define

“dripline” means the outer boundary of an area on the surface of the ground directly below a tree and which corresponds with the outer edge of the crown of a tree, the crown of the tree includes the leaves thereon.

821.1.8 Emergency work - defined

“emergency work” means work associated with drain repairs, public utility repairs and structural repairs to a building or any other work of an emergency nature as determined by the Commissioner.

821.1.9 Injure/injury - defined

“injure/injury” means to harm, damage, impair or not protect a tree in accordance with the Parks, Recreation and Culture Details and Specifications, entirely or in part, and/or any acts which will harm a tree’s health or damage a tree in any manner.

821.1.10 Parks - Recreation - Culture Details - Specifications - defined
“parks, recreation and culture details and specifications” means those details and specifications, approved by the Commissioner of Parks, Recreation and Culture as amended from time to time, which provide for the manner in which trees are planted, protected, maintained, removed or transplanted.

821.1.11 Person - defined
“person” means a company, a corporation, a partnership, an individual, a public utility and a person as defined in subsection 29 (1) of the *Interpretation Act*, R.S.O. 1990, c. I.11, as amended.

821.1.12 Prune - defined
“prune” means the removal of a tree branch or branches from a living tree using proper arboricultural techniques and tools.

821.1.13 Public utility - defined
A “public utility” is used herein as defined in section 1 of the *Municipal Act, 2001*, c. 25, as amended.

821.1.14 Town - defined
“Town” means The Corporation of the Town of Richmond Hill.

821.1.15 Town employee - defined
“Town employee” means an employee, servant, agent or contractor of the Town.

821.1.16 Town street - defined
A “Town street” is a common or public highway, road, street, lane, any road allowance or portion thereof under the jurisdiction of the Town or a highway as defined in sections 1 and 26 of the *Municipal Act, 2001*, c. 25 under the jurisdiction of the Town.

821.1.17 Tree - defined
“tree” means any perennial woody plant, including its root system, which has reached or can reach a height of at least 4.5 metres (14.76 feet) at physiological maturity and which at least 50 percent of its main stem is situated on a Town street.

821.1.18 Tree Inventory and Preservation Plan - defined

“Tree Inventory and Preservation Plan” is a plan imposed as a condition of development or redevelopment approval pursuant to sections 41, 51, or 53 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, which determines trees to be preserved through an assessment process which identifies trees, shrubs and other specific areas of natural habitat and their ecological function or importance and determines the impacts of any proposed development on the trees, shrubs, and other specific areas of natural habitat and their ecological function or importance and such plan shall determine mitigation measures and measures to protect and manage trees to be preserved (such measures not limited to protective barriers and/or hoarding) and proper practices to remove trees to be destroyed.

821.1.19 Tree Preservation By-law Officer - defined

“Tree Preservation By-law Officer” means an individual appointed by the Commissioner for the administration and enforcement of this Chapter and includes a By-law Enforcement Officer of the Town and such individual is hereby designated to be an officer pursuant to subsection 135 (11) of the *Municipal Act, 2001*, c. 23.

821.1.20 Tree value - defined

“tree value” means the monetary value of a tree as determined through calculations using the most recent valuation formula from the Guide for Plant Appraisal authored by the Council of Tree and Landscape Appraisers.

Article 2 AUTHORITY

821.2.1 Planting - care and maintenance - removal of trees

The planting, care and maintenance, protection, preservation and removal of all trees shall be under the supervision of the Commissioner.

Article 3 DUTIES

821.3.1 Commissioner - duties

The Commissioner is authorized to:

- (a) plant, or cause to be planted, trees;
- (b) care for and maintain, or cause to be cared for and maintained, any tree;
- (c) transplant, destroy or cause to be transplanted or destroyed any tree where removal of the tree from its existing location is deemed necessary in the public interest. A tree over 20 centi-

metres (7.87 inches) DBH will be posted with a notice of removal ten days prior its removal;

- (d) Remove or cause to be removed without notice or compensation to any person, any object or thing that adversely affects a tree or part of a tree;
- (e) prune or cause to be pruned all trees located on private property, the branches of which extend over a Town street, including the pruning of branches which are hazardous or create an unsafe condition;
- (f) implement or cause to be implemented necessary treatments for insect and disease problems associated with trees;
- (g) remove or cause to be removed, without notice, trees which are dead, hazardous or no longer viable to maintain, certified as such by the Commissioner;
- (h) destroy or injure, or cause the injury or destruction of, without notice, trees as may be required to: facilitate emergency work, certified as such by the Commissioner; or on such occasions as approved by the Commissioner, to facilitate other work by the Town;
- (i) destroy, or approve the destruction of trees where a written request to injure or destroy tree removal has been received from an adjacent property owner that includes a Tree Inventory and Preservation Plan or an arborist report satisfactory to the Commissioner. Such requests for removals may be subject to conditions which include payment of tree value, removal costs and/or replacement costs by the applicant and/or the posting of tree preservation securities by the applicant;
- (j) refuse to approve the destruction of trees;
- (k) permit the trimming of tree roots in accordance with good arboricultural practices and causing minimal damage to the tree. Such requests for injury may be subject to conditions which include payment of tree value, removal costs and/or replacement costs by the applicant and/or the posting of a tree preservation security by the applicant;
- (l) stop any work that may cause the injury or destruction of a tree and is taking place without permission from the Commissioner and/or in a manner contrary to Parks, Recreation and Culture Details and Specifications;
- (m) create and amend from time to time, Parks, Recreation and Culture Details and Specifications, which provide for the

manner in which trees are planted, protected, maintained, removed or transplanted.

821.3.2 Tree Preservation By-law Officer - delegation

Tree Preservation By-law Officers are hereby delegated the authority to enforce this Chapter.

Article 4

PROHIBITED ACTIVITIES

821.4.1 Injury and removal

No person shall injure or destroy a tree, or carry out work within the dripline of a tree, without the prior written approval of the Commissioner. Approval may be subject to such conditions as the Commissioner may impose, including payment of tree value, removal and replacement costs, re-planting, posting tree preservation securities in a form and content acceptable to the Town and in an amount sufficient to cover the appraised value of the subject tree as well as removal and replacement costs, and/or provision of a detailed Tree Inventory and Preservation Plan or arborist report.

821.4.2 Injury - to tree - report to Commissioner - payment

Any person who injures or destroys a tree (including the root system of a tree) shall report it forthwith to the Commissioner and shall pay an assessment which in the opinion of the Commissioner is fair and equitable.

821.4.3 Security - requirement - tree damaged

The Commissioner may ask for and receive a security guaranteeing the good condition of an injured tree up to five years after the date it was injured.

821.4.4 Deposits - near tree - approval required

No person shall deposit, place, store or maintain upon any Town street any stone, brick, sand, concrete, asphalt or other materials which may impede the free passage of water, air and fertilizer to the roots of any tree growing therein, except by written permission of the Commissioner.

821.4.5 Protection devices

No person shall interfere with fences, structures or barriers delineating tree protection zones; associated signage; or other protective devices placed around any tree without the prior written consent of the Commissioner.

821.4.6 Prohibited activities

In addition to the prohibition set out in Section 821.4.1, no person shall:

- (a) mark, cut, break, carve, peel, deface or bury any part of a tree;

- (b) undertake, or cause to undertake, any activities in a manner contrary to the Parks, Recreation and Culture Details and Specifications and/or conditions imposed and set out by the Commissioner pertaining to the protection of a tree except with the prior approval of the Commissioner;
- (c) attach any rope, wire, nails, advertising posters, decorative lights or other contrivance to a tree except with the prior written approval of the Commissioner and upon production of satisfactory evidence that all other requisite approvals have been obtained. Such requests may be subject to conditions imposed by the Commissioner;
- (d) allow any gaseous, liquid or solid substance which is harmful to a tree to come in contact with a tree; or
- (e) set fire to a tree, or permit any fire to burn when such fire or the heat thereof may injure any portion of any tree.

Article 5

TREE - PLANTING - REMOVAL

821.5.1 Tree planting - Town street

Any tree planted on a Town street must be approved by the Commissioner and planted in accordance with the appropriate Parks, Recreation and Culture Details and Specifications. Approval by the Commissioner will include the planting location, species, size and condition.

821.5.2 Tree planting - monetary deposit

The Commissioner may request a monetary deposit in an amount appropriate to secure the planting of trees. These funds may be held by the Town until after the planting of the trees for a period of time determined by the Commissioner and shall be released by the Town, provided that the trees are healthy and in a state of vigorous growth after the stipulated time period.

821.5.3 Tree planting - Town street - without permission

Any tree planted on a Town street without the consent of the Commissioner:

- (a) is the property of the Town and is subject to provisions of this Chapter; and
- (b) may be removed by the Town without notice and without compensation to: the planter of the tree; the person who caused the tree to be planted; or any adjacent property owner.

821.5.4 Tree planting - in violation - removal

Any tree planted in violation of this Chapter may be removed by the Town at the expense of the person planting or causing the planting of the tree.

821.5.5 Tree removed - replacement planted

When a tree is removed, a replacement tree must be planted unless otherwise determined by the Commissioner. The planting location, species, size, condition and planting date must be approved by the Commissioner.

821.5.6 Tree removed - permitted - conditions

Where the Commissioner has approved the removal of a tree, such approval may be subject to conditions which include the applicant providing payment of tree value, removal and replacement costs.

Article 6 WORK NEAR TREES

821.6.1 Protection

Every person doing any work on Town streets shall carry out such work in accordance with Parks Recreation and Culture Details and Specifications.

821.6.2 Approval required - work within dripline of tree

Any person doing any work upon a Town street is required to request written approval from the Commissioner, if proposed work is expected to be executed within the dripline of any tree.

821.6.3 Injury - impossible to prevent - instructions

If, after commencing any work upon a Town street, any person finds it impossible to perform the work without causing injury to a tree (including the trees root system), he or she shall not proceed with the work but it shall be his or her duty to apply to the Commissioner for instructions on the matter.

Article 7 ENFORCEMENT

821.7.1 Contravention of by-law - order issued

If a Tree Preservation By-law Officer is satisfied that a contravention of this Chapter has occurred, he or she may make an order requiring the person who contravened or who caused or permitted the contravention of the Chapter, to discontinue the contravening activity and/or do work to correct the contravention.

821.7.2 Contravention - offences

Any person who contravenes any provision of this Chapter, or an order issued pursuant to Section 821.7.1, is guilty of an offence. Pursuant to clause 429 (2) (a) of the *Municipal Act, 2001* all contraventions of this Chapter, or orders issued under Section 821.7.1, are designated as multiple offences and continuing offences. A multiple offence is 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 a by-law or Chapter. For greater certainty when multiple trees are injured or destroyed, the injury or destruction of each tree is a separate offence.

821.7.3 Fines

On conviction of an offence under this Chapter a person is liable to a fine in accordance with subsection 429 of the *Municipal Act, 2001* and the following rules made pursuant to subsection 429 of the *Municipal Act, 2001*:

- (a) the minimum fine for any offence is \$300;
- (b) the maximum fine for offence as set out in clause (c) and (d) below does not apply to special fines as provided for in Section 821.7.4;
- (c) in the case of a continuing offence, for each day or part of a day that the offence continues, the minimum fine shall be \$500 and the maximum fine shall be \$10,000. The total of all daily fines for the offence is not limited to \$100,000; and
- (d) in the case of a multiple offence, for each offence included in the multiple offences, the minimum fine shall be \$500 and the maximum fine shall be \$10,000. The total of all fines for each included offence is not limited to \$100,000.

821.7.4 Special Fines - no maximum

On conviction of an offence under this Chapter a person is liable to a special fine in accordance with subsection 429 (2) (d) of the *Municipal Act, 2001*, c. 23. The amount of the special fine will be the minimum fine as provided for in Section 821.7.3 to which may be added the amount of economic advantage or gain that the person has obtained or can obtain from the contravention of the Chapter and/or order issued pursuant to Section 821.7.1. Pursuant to subsection 429 (3), paragraph 1. of the *Municipal Act, 2001*, c. 23 a special fine may exceed \$100,000.

821.7.5 Conviction of an offence - additional remedy

Where a person is convicted of an offence under this Chapter, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may order the person to plant or replant trees in such manner and within such a period of time as the court considers appropriate, including any arboricultural treatment necessary to re-establish the tree or have the tree re-established.

**Article 8
GENERAL****821.8.1 Exemptions**

The provisions of this Chapter shall not apply to a public utility provided the public utility is engaged in the provision of emergency work.

**Article 9
SEVERABILITY****821.9.1 Validity**

Should a court of competent jurisdiction declare a part or whole of any provision of this Chapter to be invalid or of no force or effect, the provision or part is deemed severable from this Chapter and it is the intention of Town Council that the remaining provisions of this Chapter survive and be applied and enforced to the extent possible under law.

**Article 10
ENACTMENT****821.10.1 Effective date**

This Chapter shall come into force and take effect on the day of the final passing thereof. By-law 40-07, 19 March 2007.