

BYLAW NO. 4218

A BYLAW OF THE CITY OF MEDICINE HAT to protect Public Trees and prevent the spread of tree related diseases in Medicine Hat, such as Dutch Elm Disease.

WHEREAS the *Municipal Government Act*, R.S.A. 2000, c. M-26 provides that Council may pass bylaws for municipal purposes respecting:

- (a) the safety, health and welfare of people and the protection of people and property; and
- (b) people, activities and things in, on or near a public place or place that is open to the public.

NOW THEREFORE THE MUNICIPAL CORPORATION OF THE CITY OF MEDICINE HAT, IN COUNCIL ASSEMBLED, ENACTS AS FOLLOWS:

1. This Bylaw shall be cited as the "Tree Preservation Bylaw".

Definitions

2. In this Bylaw,
 - (a) **"Act"** means the *Agricultural Pests Act*, S.A. 2000, c.A-8.1.;
 - (b) **"Boulevard"** means:
 - (i) the strip of land between the curb and the sidewalk and between the sidewalk and the property line, or
 - (ii) where there is no sidewalk, the strip of land between the curb and the property line, or
 - (iii) where there is no curb, the strip of land between the near edge of the road and the property line;
 - (c) **"Bylaw Enforcement Officer"** means any person employed by the City as a police officer, bylaw enforcement officer or community peace officer;
 - (d) **"City"** means the Municipal Corporation of Medicine Hat, or the area contained within the boundary thereof, as the context requires;
 - (e) **"City Arborist"** means the Horticulture Services Foreman for the City's Parks and Recreation Department, or anyone acting or authorized to act on that person's behalf;
 - (f) **"Dangerous Tree"** means any Tree that is, in the opinion of the City Arborist, in danger of falling, breaking, uprooting or collapsing; and the City Arborist determines that injury to persons or damage to property may occur as a result;
 - (g) **"Elm Tree"** means any Tree of the *Ulmus* genus;
 - (h) **"Emergency Personnel"** includes fire rescue personnel, emergency medical providers, law enforcement officers, local, provincial and federal authorities; and workers engaged in emergency repair to a Public Utility;

- (i) **"Hazard Tree"** means any Tree that, in the opinion of an Inspector, has deteriorated to the point that it is capable of supporting elm bark beetle habitation and breeding, or any other insect or virus, making that Tree a hazard that may promote the spread of disease;
- (j) **"Infected Tree"** means any tree that, in the opinion of an Inspector, is infected by a disease or insect including, without limitation, Dutch Elm disease or Emerald Ash Borer;
- (k) **"Inspector"** means a person appointed by resolution of City Council as Inspector pursuant to the Act;
- (l) **"Parks Manager"** means the General Manager of Parks and Recreation for the City, and anyone acting or authorized by the Parks Manager to act on that person's behalf;
- (m) **"Public Land"** means property owned, controlled or maintained by the City including parks, green spaces, walkways, medians, Boulevards and road rights-of-way;
- (n) **"Public Tree"** includes any Tree which has any part of its trunk located on Public Land;
- (o) **"Public Utility"** means a system or works used to provide one or more of the following for public consumption, benefit, convenience or use:
 - (i) water or steam;
 - (ii) sewage disposal;
 - (iii) public transportation operated by or on behalf of the City;
 - (iv) irrigation;
 - (v) drainage;
 - (vi) fuel;
 - (vii) electric power;
 - (viii) heating and cooling;
 - (ix) roads, sidewalks, or pathways;
 - (x) waste management; and
 - (xi) telecommunications and cable television,and includes the thing that is provided for public consumption, benefit, convenience or use;
- (p) **"Regulation"** includes City Bylaws;
- (q) **"Structurally Damaged Tree"** means any Tree of which the structure has become damaged to the extent that it may become a Dangerous Tree if the City Arborist determines that repair of such Tree is impossible or impractical; and
- (r) **"Tree"** means a living woody plant with one or more stems and a minimum caliper width of 2.5 centimetres and a minimum height of 1.5 metres.

Protection of Trees on Public Land

3. Without first receiving approval from the Parks Manager, no person other than the City Arborist shall:
 - (a) plant a Tree on Public Land;
 - (b) damage, disturb, prune or remove any Public Tree;
 - (c) attach any notice, bill, poster, sign, wire, rope, electrical cord, nail or other object to or around any Public Tree;
 - (d) alter the grade level or drainage pattern in any manner so as to interfere with the access of water, air or nutrients to any Public Tree;
 - (e) place, apply or spray or cause to be placed, applied or sprayed any substance other than water, fertilizer or any lawn weed control product on any portion of a Public Tree or within three (3) metres of the base of any Public Tree;
 - (f) remove or interfere with any protective barrier, structure or device on or around any Public Tree;
 - (g) commence or continue or cause to be commenced or continued any work or activity which damages or interferes with the root system or upper structure of any Public Tree; or
 - (h) subject to section 4, construct or cause to be constructed any walkway, driveway or paving within a distance of 0.5 metres from the base of any Public Tree for every 10 centimetres of diameter of the trunk at a point 140 centimetres off the ground.
4. Subsection 3(h) does not apply to walkways, driveways and paving in existence on the date this Bylaw comes into force.

Exceptions

5. In accordance with Regulations governing Public Utilities, and subject to section 6, a Public Utility may perform pruning of Public Trees that are necessary to comply with safety Regulations and to maintain safe operation of their facilities provided that:
 - (a) at least three business days prior to commencing any pruning, the Public Utility provides the City Arborist notice of its intention to prune;
 - (b) the pruning is carried out in accordance with American National Standard Institute A300 or a similar standard as determined by the City Arborist; and
 - (c) the Public Utility follows any specific directions of the City Arborist as to how the work shall be carried out.
6. Where removal or pruning of a Public Tree is determined to be necessary by Emergency Personnel responding to an emergency, such tree or part of it may be cut or removed without first obtaining authorization to do so.

7. Emergency Personnel shall notify the City Arborist of the emergency and work done on the Public Tree as soon as realistically possible after the removal or pruning of the tree.

Removal of Trees on Public Land

8. The City Arborist may authorize the removal of any Dangerous Tree, Structurally Damaged Tree, Hazard Tree or Infected Tree on Public Land.
9. The City Arborist may authorize the removal of any Public Tree upon receiving a written request for removal from an individual, agency or City department, and upon giving due consideration to:
 - (a) the reason for the request and the need for removal of the Tree;
 - (b) any reasonable options that would not require the removal of the Tree;
 - (c) the possibility of relocating the Tree; and
 - (d) the historic, environmental or other intrinsic value of the Tree in its current location.
10. If the City Arborist authorizes the removal of a Public Tree pursuant to section 9, the party requesting removal shall pay:
 - (a) the costs of removal and/or relocation of the Tree; and
 - (b) the inventory and replacement cost of the Tree being removed, as determined by the City Arborist in accordance with the service standards in place at the time of removal, as established by the Parks Manager.
11. For the purposes of section 10, "removal" includes stump removal, cleanup and site restoration and "relocation" includes all necessary measures required to remove, transport and re-plant the Tree at another location.
12. A person who is dissatisfied with a decision made by the City Arborist pursuant to section 9 may appeal the decision to the Administrative Committee of the City.
13. All appeals must be made in writing and be submitted to the City Clerk within 14 days of receiving notice of the decision of the City Arborist.
14. Upon hearing an appeal pursuant to section 12, the Administrative Committee may uphold the decision of the City Arborist or allow the appeal, with or without conditions.

Disease Control

15. A person who removes an Elm Tree from any land in the City shall ensure the following occurs:
 - (a) removal of the stump of the Elm Tree to a minimum depth of 15 centimetres below the soil line; or
 - (b) treatment of the Elm Tree stump in a manner satisfactory to an Inspector; and
 - (c) that the Elm Tree be disposed of in a manner authorized by an Inspector.

16. Subject to section 17, an owner of an Elm Tree shall keep the Elm Tree pruned:
 - (a) so that the Elm Tree is free of wood that is dead or dying; or
 - (b) within a reasonable time after damage to the Elm Tree occurs so that the Elm Tree is free of wood that is dead or dying.
17. No person shall prune an Elm Tree between April 1 and September 30 in any year unless pruning is explicitly authorized in writing by an Inspector pursuant to section 18.
18. Where an Inspector is satisfied that it is safe, having regard to the control of Dutch Elm Disease, to prune an Elm Tree,
 - (a) which is an Infected Tree or a Hazard Tree, or
 - (b) between April 1 and September 30 in any yearthe Inspector may give written authorization to a person to prune the Elm Tree and may grant such authorization subject to such terms and conditions as the Inspector deems appropriate.
19. A person receiving an authorization by an Inspector to prune an Elm Tree shall comply with all terms and conditions imposed thereon.
20. No person shall transport Elm Tree pieces into the City unless the person has obtained written authorization of an Inspector to store, use, exchange, sell or transport the Elm Tree pieces.
21. An Inspector may give written authorization to a person to store, use, exchange, sell or transport Elm Tree pieces where the Inspector is satisfied that:
 - (a) it is safe to do so;
 - (b) the storage, use, exchange, sale or transport will not spread Dutch Elm Disease or dangerously increase the risk of spreading Dutch Elm Disease; and
 - (c) the Elm Tree pieces to be stored, used, exchanged, sold or transported are not from an Infected Tree or a Hazard Tree.
22. Elm Tree pieces shall only be disposed of through chipping the wood or through burial at the City landfill, unless an Inspector authorizes another mechanism of disposal in writing. Wood chips shall be no greater than 2.5 centimetres in size.

Severability

23. Each provision of this Bylaw is independent of all other provisions and if any such provision is declared invalid for any reason by a court of competent jurisdiction, all other provisions of this Bylaw remain valid and enforceable.

Offences and Penalties

24. A person who contravenes any provision of this Bylaw is guilty of an offence.

25. Where a Bylaw Enforcement Officer believes on reasonable and probable grounds that a person has contravened any provision of this Bylaw, the Bylaw Enforcement Officer may commence proceedings by issuing a summons by means of a violation ticket in accordance with Part 2 of the *Provincial Offences Procedure Act*, R.S.A. 2000 c. P-34.
26. The specified penalty payable in respect of a contravention of this Bylaw is \$350.
27. Pursuant to subsection 27(2)(d) of the *Provincial Offences Procedure Act*, if the summons issued by the Bylaw Enforcement Officer under section 25 so provides, the person named in the summons may make a voluntary payment in the specified amount set out in section 26 of this Bylaw, and upon making the voluntary payment, that person is not required to appear before a justice to answer the summons.
28. A person who contravenes any provision of this Bylaw is liable on conviction to pay a fine
- (a) not less than \$300 nor more than \$500 for a first offence by that person; and
 - (b) not less than \$700 nor more than \$10,000 for any subsequent offence by that person.
29. All violations of this Bylaw which are of a continuing nature shall constitute a separate offence for each day the offence continues.

Miscellaneous

30. Nothing in this Bylaw relieves a person from complying with any federal or provincial law or regulation, other bylaw or any requirements of any lawful permit, order or other direction.
31. This Bylaw shall come into force at the beginning of the date that it is passed.

READ A FIRST TIME in open Council on October 20, 2014.

READ A SECOND TIME in open Council on October 20, 2014.

READ A THIRD TIME in open Council on November 3, 2014.

SIGNED AND PASSED on November 4, 2014.


MAYOR: Keith E. (Ted) Clugston


CITY CLERK: Angela Cruickshank