

BY-LAW NO.7285

AS AMENDED BY BY-LAW NO. 7335.

BEING A BY-LAW of the City of Brandon to protect, preserve, and retain trees in public spaces owned or controlled by the City of Brandon adjacent to City property.

WHEREAS Section 232.1(a) of the Municipal Act provides authority for a municipality to pass by-laws for the safety, health, protection and well-being of people, and the safety and protection of property;

AND WHEREAS Brandon's Urban Forest provides many environmental, health and safety benefits to the community;

AND WHEREAS public trees share limited space with services such as utilities and transportation infrastructure, the repair and replacement of which causes loss of valuable trees;

NOW THEREFORE the City of Brandon, in Council assembled, enacts as follows:

1. This By-law shall be referred to as "Tree Protection By-law".

APPLICATION:

2. This by-law applies to straddling or public trees owned or controlled by the City of Brandon.

DEFINITIONS:

3. (a) Unless otherwise expressly provided or unless the context otherwise requires, words and expressions in this by-law have the same meaning as the same words and expressions in *The Municipal Act*, the City's Legislative Standards By-law, or as defined within other by-laws for the City of Brandon.
(b) This by-law shall be subject to general provisions and interpreted in accordance with the provisions of the Legislative Standards By-law, as appropriate.
(c) In this by-law:

"AGENCIES" means all public and private utility providers.

[REP. B/L 7335]

"ARBORIST" means an expert in the care and maintenance of trees including an arborist qualified by the Province of Manitoba, and a certified arborist qualified by the International Society of Arboriculture, a consulting arborist registered with the American Society of Consulting Arborists, a registered professional forester, or a person with similar qualifications as approved by the City Manager or designate.

"BOULEVARD" means:

- a) the strip of land between the curb and the sidewalk and between the sidewalk and the property line; or
- b) where there is no sidewalk, the strip of land between the curb and the property line; or
- c) where there is no curb, the strip of land between the near edge of the road and the property line.

“BUFFER STRIP” City Property set aside to provide an aesthetic barrier between adjacent land uses and prevent through sites.

“CITY” means the Municipal Corporation of Brandon, or the area contained within the boundary thereof, as the context requires.
[EN. B/L 7335]

“CITY PROPERTY” means all land owned, controlled, or maintained by the City, including parks, boulevards, buffer strips, medians, streets, rights-of-way, and natural stands.

“DESTROY” means to cause major damage to a tree to the extent that it is considered necessary to remove or cut down the tree.

“DIRECTOR OF PARKS AND RECREATION” means the current Director of the City of Brandon’s Parks and Recreation Services or their authorized designate.

“EMERGENCY PERSONNEL” includes fire rescue personnel, emergency medical providers, law enforcement officers, local authorities, and workers engaged in emergency repair to a Public Utility.

“ENFORCEMENT OFFICER” means a member of Brandon Police Service or a Bylaw Enforcement Officer of the City.
[AM. B/L 7335]

“MAINTENANCE” means the care and maintenance of trees in accordance with established arboricultural standards and includes but is not limited to planting, pruning, inspection, cabling and bracing, treatments for insects and disease problems, watering and fertilization.

“MEDIAN” means that part of the roadway dividing the lanes of traffic moving in opposite directions, also known as centre boulevard, including traffic islands, lay-bys, and traffic circles.

“NOTICE” as referenced in this By-law, means a By-law Violation Notice issued with regards to an order requesting remediation of a contravention of this By-law.”;
[EN. B/L 7335]

“PRUNE” means the removal of specific branches for the purpose of preserving the health and appearance of a tree, and for public safety.

“PUBLIC TREE OR TREES” means a plant having a permanently woody main stem or trunk, ordinarily growing to a considerable height, and usually developing branches at some distance from the ground. This includes trees on City Property that have 50% or more of the main stem on a public greenspace, street, boulevard, and includes all parts, including the roots.

“ROOT CUTTING” means another type of physical injury that can significantly impact the health of a tree.

“STRADDLING TREE” means a tree partly on City Property whose main stem is more than 50% on private property.

“TREE PROTECTION POLICY” means the policy maintained by the City of Brandon’s Director of Parks and Recreation Services setting out standards for protection of trees in the City of Brandon, and as amended from time to time.

“UTILITY” means a system or works including city owned and externally owned (fibrotic, hydro, gas, sewer and water distribution) used for public consumption.

PART II: ADMINISTRATION

4. It shall be the responsibility of the Director of Parks and Recreation Services to administer and enforce the provisions of this by-law.
5. Only the City’s Department of Parks and Recreation Services has the authority to remove, restore and replace trees on City Property.
[AM. B/L 7335]
 - 5.1 Requests made to Parks and Recreation Services for removal, restoration or replacement of Public Trees from residents, contractors, agencies and other City Departments will be carried out in accordance with the City of Brandon’s Tree Protection Policy.
 - 5.2 [REP. B/L 7335]
 - 5.3 [REP. B/L 7335]
 - 5.4 [REP. B/L 7335]
 - 5.2 No person other than staff of Parks and Recreation Services shall remove or interfere with any protective barrier, structure or device on or around any Public Tree.
[EN. B/L 7335]
 - 5.3 The City’s Parks and recreation Services may authorize the removal of any Public Tree upon receiving a written request 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 Public Tree;
 - b. any reasonable options that would not require the removal of the Public Tree;
 - c. the possibility of relocating the Public Tree; and
 - d. the historic, environmental or other intrinsic value of the Public Tree in its current location.[EN. B/L 7335]
 - 5.4 All costs association with requests made under Section 5.1 for maintenance or removal of a Public Tree for the following reasons:
 - a. Public hazard;
 - b. Interference with overhead utility infrastructure;
 - c. Disease; and
 - d. General tree care.[EN. B/L 7335]
 - 5.5 If the City’s Parks and Recreation Services authorizes the removal of a Public Tree pursuant to Section 5.3, the party requesting removal shall pay:
 - a. the costs of removal and/or relocation of the Public Tree; and
 - b. the inventory and replacement cost of the Public 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 and Recreations Manager.[EN. B/L 7335]

- 5.6 For the purposes of Section 5.5, “removal” includes stump removal, cleanup and site restoration and “relocation” includes all necessary measures required to remove, transport and re-plant the Public Tree at another location.
[EN. B/L 7335]
- 5.7 A person who is dissatisfied with a decision made by the City’s Parks and Recreation Services pursuant to Sections 5.3 and 5.5 may appeal the decision to the By-law Compliance Committee of the City.
[EN. B/L 7335]
- 5.8 All appeals must be made in writing and be submitted to the City Clerk within fourteen (14) days of receiving notice of the decision of the City’s Parks and Recreation Services.
[EN. B/L 7335]
- 5.9 Upon hearing an appeal pursuant to Section 5.7, the By-law Compliance Committee may uphold the decision of the Parks and Recreation Services or allow the appeal, with or without conditions. The decision of the By-law Compliance Committee shall be final and binding upon the parties.
[EN. B/L 7335]
- 5.10 Fines and associated costs for damage and/or removal of a Public Tree shall be imposed as listed in the Compliance By-law.
[EN. B/L 7335]

PART III: REQUIREMENTS

6. No person shall plant trees or shrubbery on City Property.
- 6.1 Notwithstanding section 6, trees or shrubbery may be planted on City Property for new construction areas provided prior written authorization has been obtained within the Development Agreement.
- 6.2 Notwithstanding section 6, trees may be planted on City Property on a case by case basis, provided prior written authorization has been obtained from the Director of Parks and Recreation Services.
7. All work performed on City Property in or around any Public Trees shall be carried out in accordance with the City of Brandon’s Tree Protection Policy.
8. No person shall remove, cut, prune, treat with pesticide or destroy in any way a Public Tree.
- 8.1 No person shall remove the bark of any Public Tree or use or cause to be used an object of any kind to penetrate the bark of a Public Tree.

PART IV: EXCEPTIONS

[EN. B/L 7335]

9. Notwithstanding Section 8 Manitoba Hydro may perform such pruning as necessary to comply with safety Regulations and to maintain safe operation of their services.
- 9.1 The Director of Parks and Recreation Services may order Manitoba Hydro to stop any pruning performed if appropriate arboricultural practices are not being followed.
10. 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 written authorization to do so.

- 10.1 Emergency Personnel shall notify the Director of Parks and Recreation Services of the emergency and work done on or damage to the public tree as soon as possible but no later than three days after the removal or pruning of the tree.

PART V: PROTECTION OF TREES AND PUBLIC LAND

[EN. B/L 7335]

11. No person shall, by any means, attach a sign or poster to any public tree.
12. No person shall attach electrical cord to a public tree.
13. No person shall use a public tree to secure any object.
14. No person shall put anything in the branches of a public tree or cause anything to be put in the branches of a public tree.
- 14.1 Notwithstanding section 14, a person may place strings of lights and ornaments in a public tree during the months of October, November, December and January so long as doing so does not injure or damage the public tree, and the location of lights and electrical cords do not violate any other Regulation or By-law and does not create a safety hazard.
- 14.2 Notwithstanding section 14.1 lights or ornaments left in public trees after January will be removed at the home owners' expense should they interfere with the City's Tree Maintenance Program.

PART VI: ORDERS

[AM. B/L 7335]

15. Any person who contravenes, or refuses, neglects, omits, or fails to obey the provisions of this By-law and damages a public tree is deemed to be in contravention of this By-law and subject to the enforcement provisions set out in the City's Compliance By-law.
[AM. B/L 7335]
16. Where a By-law Enforcement Officer believes on reasonable and probable grounds that a person has contravened any provision of this By-law, the By-law Enforcement Officer shall issue in writing such notices or orders as may be necessary to inform the owner/occupier where a contravention of this By-law has been observed, and must in such notice or order designate a time within which such correction contravention shall be made.
[AM. B/L 7335]

PART VII: PENALTIES

[AM. B/L 7335]

17. Any person who does not comply, or improperly complies, or only partly complies with a Notice within the time frame, will be subject to the full costs associated with the City taking the necessary steps to remedy the violation.
- 17.1 Any items removed pursuant to section 17, if deemed of value, will be removed to a place of safe keeping, and returned to the owner/occupier once all costs have been recovered.
- 17.2 Any person who contravenes any provision of this By-law that results in the loss of, or damage to a protected or specimen tree is subject to a fine(s) as specified in the Compliance By-law.
[EN. B/L 7335]

18. Any person who contravenes any provision of this By-law as referenced in section 16, commits an offence and is subject to penalty in accordance with the provisions of the Compliance By-law.

PART VIII: ENACTMENT
[AM. B/L 7335]

19. This by-law shall come into full force and take effect on the day following its passage.

DONE AND PASSED by the Council of the City of Brandon duly assembled this 4th day of January A.D. 2022.

"R. Chrest"
MAYOR

"H. Ewasiuk"
CITY CLERK

Read for a first time this	6 th	day of	December	A.D. 2021
Read for a second time this	20 th	day of	December	A.D. 2021
Read for a third time this	4 th	day of	January	A.D. 2022

I, Heather Coreen Ewasiuk, Clerk of the City of Brandon, DO HEREBY CERTIFY the above within to be a true and correct copy of By-law No. 7285, as amended by By-law No. 7335.

Original Signed by
H. Ewasiuk

H. Ewasiuk, City Clerk

