

## Report to Planning and Environment Committee

**To:** Chair and Members  
Planning & Environment Committee

**From:** John M. Fleming  
Managing Director, Planning and City Planner and  
Kelly Scherr  
Managing Director, Environmental & Engineering Services  
and City Engineer

**Subject:** The City of London Boulevard Tree Protection By-law -  
Amendments

**Meeting:** September 10, 2018

## Recommendation

That, on the recommendation of the Managing Director, Planning and City Planner and the Managing Director, Environmental & Engineering Services and City Engineer, the following actions be taken in regards to The City of London Boulevard Tree Protection By-law:

- a) The report and proposed By-law attached as Appendix "A" **BE RECEIVED** for information;
- b) That the proposed By-law **BE REFERRED** to the Trees & Forest Advisory Committee for review and comment; and,
- c) That the proposed By-law **BE REFERRED** to a public participation meeting to be held by the Planning & Environment Committee in Q1 2019 for the purpose of seeking public input and comments on the proposed By-law.

## Executive Summary

In February of 2015, a report was brought forward to repeal and replace the Boulevard Tree Protection By-law P.-69. As a result of the public participation meeting Council directed Civic Administration to follow up on the feedback that was received (Appendix "C") and report back at a later meeting.

This report has been delayed. Soon after the February report, Civic Administration was directed to focus efforts on the creation of a private tree protection by-law which was subsequently adopted in August 2016. Both the public and private tree by-laws support the Urban Forestry Strategy pillars to "Protect More" and "Plant More" to reach Council's goal of 34% tree canopy cover by 2065. It specifically addresses the action item to "review and revise the current Boulevard Tree Protection By-law to set fines consistent with other by-laws, and to strengthen tree protection" in the Strategy.

## Analysis

### 1.0 Previous Reports

- |                   |   |
|-------------------|---|
| August 22, 2016   | Planning & Environment Committee Report – Adoption of the Tree Protection By-law and direction to monitor the implementation of the By-law and provide a status report and any recommendation to the By-law within a period of one year |
| February 15, 2015 | Planning and Environment Committee report to repeal the Boulevard Tree protection By-law and approve the City Tree Protection By-law to update administrative clauses and increase fees   |

## 2.0 Summary of By-law Changes

### Major Administrative Changes

- Scope of By-law applies to trees located in the “Boulevard” and specifically excludes unassumed lanes. Trees located in unassumed lanes will be managed on a case-by-case basis in a similar manner as outlined in the Lane Maintenance Policy.
- Removed the “Consensual Tree Removal Process” and prior “Schedule B” (Consensual Tree Removal and Replanting Fees) as it only captured the costs to remove the tree. It does not capture costs such as stump grinding, restoration of the boulevard if needed or administrative costs. Current fees are not sufficient for tree replacement(s).
- Added the new definition of Boundary Tree and a provision for Civic Administration to provide notification to the private property owner if the City is going to remove a Boundary Tree.
- Added “Tree Removal, Restoration and Replanting Fees” (Appendix “B”). The new fees proposed include an updated amount for tree removals based on class size, and an average/estimated cost for stump grinding, boulevard restoration and administrative costs. It also outlines the replacement tree fee of \$350 per tree for every 10 cm of diameter at breast height (DBH) of tree removed. For example, a 30 cm DBH tree would require three (3) replacement trees with a total fee of \$1050. The purpose of these new fees is to capture the real costs of the tree work and ultimately replacing lost tree canopy. These fees will be added to the Fees and Charges By-law.
- Removed “Prohibited Species List” and prior “Schedule C” as the Managing Director has the authority to approve all tree planting and the removal of any trees regardless of species on the boulevard.
- Improved enforcement of the By-law through new sections on Powers to Make a Work Order – to Discontinue Activity, Offences & Penalties and also including Civil Remedies. Civic Administration will apply for a set fine order once the By-law has been passed by Council.

This feedback was reviewed with the City’s Legal Services Division and suitable updates to the by-law have been proposed.

### Appraised Tree Value Challenges

One of the major changes proposed in the 2015 report was that the “appraised value” of any City tree being removed should be collected. Trees have value and should be managed comprehensively as part of the City’s infrastructure. They are the only asset that appreciates in value over time. As a tree grows and matures their environmental and economic benefits grow exponentially. This practice is in line with the arboriculture industry best practices and can be seen in other municipalities where trees are seen as the original “green infrastructure”. Capturing replacement costs is aligned with the City’s Corporate Asset Management (CAM) plan for all City assets to have replacement values. In all cases, alternative solutions should be explored, such as pruning the tree or redesign of the proposed works, where feasible, to avoid damaging or removing the tree.

However, the City is limited by the *Municipal Act, 2001* in what fees and charges it can impose by by-law. The City can impose a fee/charge for “services or activities provided

or done by or on behalf of it". In this case, the "service" is the removal/replanting of the tree(s).

Below are a few examples of how the fees/charges compare to one another for the removal of a street tree using the current "Consensual Removal Process", the proposed "Tree Removal, Restoration and Replanting Fees" and "Appraised Value". Please note that the "Appraised Value Cost" is not a set cost/fee but is the result of a calculation based on the trunk formula method (TFM). This method can be found in the "Guide for Plant Appraisal – 9<sup>th</sup> edition" published by the International Society of Arboriculture (ISA). This method defines value in comparison to other trees of the same species and is often used when the tree is too large to be replaced with typical nursery stock. The basic value of a tree is the sum of two factors: the cost of transplanting the largest normally available tree of the same or comparable species, and the increase in value because of the larger size of the tree being appraised compared to the size of the replacement tree. The value of a tree is a result of changing factors for the individual tree being appraised such as species, size, site conditions, and location.

**Street Tree Removals Comparisons:**

Street Tree Type	Size cm DBH	Current Fees	Proposed Fees	Appraised Value Cost - varies (possible development sites)
Sugar Maple	81	\$2,300	\$5,840	\$30,300
Norway Spruce	65	\$2,300	\$4,440	\$25,000
Thornless Honey Locust	43	\$1,600	\$3,740	\$20,700
Flowering Crab-apple	24	\$800	\$2,240	\$1,820

Over the next two months Civic Administration will follow up with the appropriate divisions, such as Development Services, to investigate how the tree appraisal method can fit into their processes, such as site plan and subdivision conditions, to better reflect the true asset value of our trees.

**3.0 2015 Planning & Environment Committee Meeting - Public Feedback (Appendix C)**

**Allow Residents to Plant Trees without Permission**

Civic Administration supports the engagement of the community in improving and enhancing City property. It not only leads to increased pride and sense of ownership, the provision of more trees is highly desirable and accords with the City's strategic goals.

At the February 15, 2015 meeting, public comments were received that requested Civic Administration make it easier for residents to plant a tree on City property. The proposed Boulevard Tree Protection By-law includes a provision for residents to plant a tree on the boulevard, with the consent of the Managing Director. Staff are recommending, at this time, the *status quo* requiring Civic Administration approval continue.

Possible issues associated with planting trees on the City Boulevard without prior approval can include the following:

- a) Creating obstructions: trees are planted in locations that conflict with sight lines, road signs and traffic can create possible safety concerns for pedestrians and vehicles;
- b) Safety of people planting the trees: planting in the boulevard is challenging and proper steps must be taken to ensure safety. This can include calling for underground locates and setting up proper safety zones;
- c) Not complying with industry safety standards (Minimum Maintenance Standards for Municipal Highways): new tree plantings are not inventoried and not included in routine maintenance schedules;

- d) Impacts on utilities: trees planted too close to utilities can damage them as the tree grows. This increases costs for utility providers, reduces service reliability and can, in the case of sanitary and storm sewer assets, risk damages to private property via back-ups and flooding.
- e) Right species of tree: ensuring the right tree is planted for a given site. Site conditions such as water availability, soil structure and tolerance to urban conditions can impact the health and longevity of the tree. Selecting trees that cannot perform in these types of locations can see an increase maintenance costs and trees that are removed prematurely. Also, the selection of shade trees is a priority to meet canopy cover goals. Trees bearing fruits should be permitted only in certain circumstances e.g. where their fruits will be harvested promptly and not left on the ground to become a slip, trip or fall hazard or attracting wasps and vermin;
- f) Specimen quality trees: nursery grown trees with strong central leaders and branch structure are required to minimize future maintenance issues and costs;
- g) Inventory information: not having accurate information about where and what trees are in the City's control will impact tree maintenance through under-resourcing, and could result in increased risk and future claims. It will also lead to the inventory not being a reliable source of data; and
- h) Increased administrative tasks on staff, directly or indirectly, discovering trees, confirming public tree and adding to inventory or coordinating the tree removal if it is discovered to be a hazard.

### **Improved Tree Planting Process**

Since the 2015 report many improvements to the City's tree planting process have been made. Due to Council approving an increase in the tree planting budget more trees have been able to be planted and wait times have significantly decreased. Forestry Operations has also secured a long term planting contract with lower average costs to plant a tree and a more diverse species selection. Depending upon the time of the year residents can see a request for a tree to be planted within that same planting season (spring/fall) or next up-coming planting season. This is at no cost to the resident. All of these efforts support the City of London's Tree Planting Strategy.

## **4.0 Public Engagement**

Some preliminary engagement was completed earlier in the year with the development community. Staff attended meetings with the Building and Development Liaison Forum (BDLF) and London and Area Planners' Association where they were provided a brief update on the status of the By-law and a summary of the proposed changes. Staff are planning to attend the BDLF September 7<sup>th</sup> meeting with an update.

The Urban Agriculture group was identified as being interested in changes to this By-law. The topic of being able to plant trees, specifically fruit trees on the boulevard, with or without permission was an item that was identified in the 2015 public comments.

Staff held a meeting with members of the Urban Agriculture steering committee. The purpose of the meeting was to see if there were any opportunities within the By-law that would support the Urban Agriculture Strategy. The two following two items were identified:

1. Evaluate the potential of public land available in the city for public "foodscaping", and
2. Ensure that good management practices are undertaken to prevent pests; locate edible trees in locations where they can be safely maintained over the long-term.

At the meeting, staff brought forward the challenges associated with the public planting on boulevards without oversight. It was communicated that Civic Administration's position is that this is not supported for the same concerns that are noted previously in the report (safety, tree maintenance, species selection, inventory management and

liability concerns). Civic Administration supports the planting of fruit trees in appropriate locations but the boulevard provides unique challenges. Safety concerns due to low-branching trees, possible lack of maintenance, and concerns related to messy fruit dropping on sidewalks are routine complaints heard by staff. The current City of London “Approved Species List” includes trees that produce fruit and nuts such as serviceberry and walnut trees.

There has been a significant community interest in urban agriculture and food sustainability which Civic Administration supports. Some recent examples of projects that include fruit tree plantings:

Public Lands:

- South Thames Park Food Forest
- West Lion’s Park Food Forest
- Cedar Hollow Orchard
- Community Orchards & Gardens (2017 Neighbourhood Decision Making Project)

Private Lands:

- National Tree Giveaway event– includes fruit trees for sites in smaller urban settings
- London’s Fruit Tree Project (2018 Neighbour Decision Making Project)

There has also been opportunity to award TreeME Grants for fruit tree planting projects such as the Emily Carr Community Garden and Gibbons Park Montessori School Food Forest. The budget for the TreeME Grants have also increased from a total program amount of \$30,000 to \$200,000. This funding increase was supported by Council to help implement The Urban Forest and Tree Planting Strategies.

Other NDMP projects supported with an urban agriculture theme include the following:

- Bee Pollinator Garden
- Community Beehives
- Pollinator Pathways Project

At this meeting, the Committee did not necessarily agree with Civic Administration’s position. However, requests for planting fruit trees, in addition to other type of species, can still be brought forward for locations where they can be maintained over the long term and not cause safety and/or long term maintenance concerns. The Committee was going to bring the topics discussed back to their Urban Agriculture Group in September for more feedback.

Also, as a result of the meeting, other items were identified where Civic Administration could support other Urban Agriculture advances such as mapping fruit and nut trees located on City properties; identifying locations for community orchards and the adoption of previously abandoned orchard by volunteers.

<b>5.0 Resources &amp; Budget</b>
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Environmental & Engineering Services will continue to administer this By-law utilizing existing staffing resources. However, the enforcement of the By-law will be an additional function. There are some functions in the current By-law and the proposed By-law that are similar such as inspections for tree removals and collecting fees. The most significant impact to staffing resources will be the enforcement component. Staff will now have to respond to all possible infractions, perform investigations, issue tickets, prepare evidence and attend court hearings if needed.

Based on the experience of the Tree Protection By-law, other costs that can be expected to enforce the By-law may include costs for staff to attend Municipal By-law Enforcement Officers (MLEO) training, uniforms, and enforcement supplies.

Including Administrative Monetary Penalties (AMP), when the operational protocol

has been established within the City, as part of this By-law would help to streamline the By-law enforcement process.

Staff are proposing that they report back to the Planning and Environment Committee in Q1 2019 on the anticipated impact on resources and services. Any requests for additional funding Council may wish to consider to support the implementation of the Boulevard Tree Protection By-law should be considered in addition to other funding requests, through the 2020-2023 multi-year budget process.

## **6.0 Conclusion**

Over the next two months staff intend to gather feedback from the industry based on the proposed By-law. This report is being referred out for public comment to be submitted to the Civic Administration by the end of November. This will provide stakeholders time to review the proposed amendments and provide input. Once comments have been received the By-law will be revised as needed and a further report back will be provided in early 2019.

This report was prepared with the assistance of L. Marshall, Solicitor and Sara Rowland, Urban Forestry Planner.

<b>Prepared by:</b>	<b>Jill-Anne Spence Manager, Urban Forestry</b>
<b>Submitted by:</b>	<b>Andrew Macpherson, OALA Manager, Environmental and Parks Planning</b>
<b>Recommended by:</b>	<b>John M. Fleming, MCIP, RPP Managing Director, Planning and City Planner</b>
<b>Recommended by:</b>	<b>Kelly Scherr, P.Eng.,MBA,FEC Managing Director Environmental &amp; Engineering Services and City Engineer</b>

August 31, 2018

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## Appendix A

Bill No.  
2018

By-law

A by-law relating to PLANTING AND  
PRESERVING OF TREES ON  
BOULEVARDS IN THE CITY OF  
LONDON

**WHEREAS** Municipal Council has determined that it is desirable to enact a By-law to prohibit the Injury and Destruction of Trees of any size located on City boulevards, to prohibit the planting of trees on City boulevards without the City's consent, and to establish a requirement for payment of the City's estimated costs of removing the tree and purchasing and planting new trees in the event an abutting owner wishes the City to remove a City boulevard tree with the City's consent;

**AND WHEREAS** subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended ("*Municipal Act, 2001*") provides that a municipal power shall be exercised by by-law;

**AND WHEREAS** subsection 8(2) of the *Municipal Act, 2001* provides that in the event of ambiguity in whether or not a municipality has the authority to pass a by-law under s. 10, the ambiguity shall be resolved so as to include, rather than exclude, municipal powers that existed on December 31, 2002;

**AND WHEREAS** subsection 8(3) of the *Municipal Act, 2001* provides that a by-law under section 10 respecting a matter may regulate or prohibit respecting the matter, require persons to do things respecting the matter, provide for a system of licenses (including permits, approvals, registrations and any other type of permission) respecting the matter;

**AND WHEREAS** section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the *Municipal Act, 2001* or any other Act;

**AND WHEREAS** subsection 10(1) of the *Municipal Act, 2001* provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

**AND WHEREAS** subsection 10(2) of the *Municipal Act, 2001* provides that a municipality may pass by-laws respecting: in paragraph 5, Economic, social and environmental well-being of the municipality, including respecting climate change; in paragraph 6, Health, safety and well-being of persons; in paragraph 7, Services and things that the municipality is authorized to provide under subsection (1); in paragraph 8, Protection of persons and property; in paragraph 9, Animals;

**AND WHEREAS** subsection 44(1) of the *Municipal Act, 2001* provides that a municipality that has jurisdiction over a highway shall keep it in a state of repair that is reasonable in the circumstances, and in subsection 44(2) that a municipality that defaults in complying with subsection (1) is (subject to the *Negligence Act*) liable for all damages any person sustains because of the default;

**AND WHEREAS** subsection 44(8)(b) of the *Municipal Act, 2001* provides that no action shall be brought against a municipality for damages caused by any obstruction, or any siting or arrangement of any tree adjacent to or on any untraveled portion of a highway;

**AND WHEREAS** subsection 62(1) of the *Municipal Act, 2001* provides with respect to highways that a municipality 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** subsection 62(2) of the *Municipal Act, 2001* provides with respect to highways that an employee or agent of the municipality may remove 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 employee or agent, the tree or branch poses an immediate danger to the health or safety of any person using the highway;

**AND WHEREAS** subsection 62.1(1) of the *Municipal Act, 2001* authorizes a municipality to apply to a judge of the Superior Court of Justice for an order requiring an owner of land lying along a highway to remove or alter any vegetation that may obstruct the vision of pedestrians or drivers of vehicles on the highway, cause the drifting or accumulation of snow or harm the highway if the municipality is unable to enter into an agreement with the owner of the land to alter or remove the vegetation;

**AND WHEREAS** the *City of London Act, 1953*, c. 118 declares that all trees growing upon highways within the City of London are the property of The Corporation of the City of London;

**AND WHEREAS** section 23.2 of the *Municipal Act, 2001* permits a municipality to delegate certain legislative and quasi-judicial powers;

**AND WHEREAS** the Municipal Council for The Corporation of the City of London is of the opinion that the delegation of legislative powers under this by-law to the Managing Director, including the power to prescribe operational standards such as the format and content of forms or documents, are powers of a minor nature having regard to the number of people, the size of geographic area and the time period affected by the exercise of the power in accordance with subsection 23.2(4) of the *Municipal Act, 2001*;

**AND WHEREAS** section 132.1 of the *Municipal Act, 2001* authorizes a municipality to enter on land adjoining land owned or occupied by the municipality, at any reasonable time, for the purpose of maintaining or making repairs or alterations to the land owned or occupied by the municipality but only to the extent necessary to carry out the maintenance, repairs or alterations;

**AND WHEREAS** subsection 391(1) of the *Municipal Act, 2001* provides that a municipality may impose fees and charges on persons;

**AND WHEREAS** sections 429, 431, 444 and 445 of the *Municipal Act, 2001* provide for a system of fines and other enforcement orders;

**AND WHEREAS** subsection 40(4) of the *Electricity Act, 1998* provides that a transmitter or distributor may enter any land for the purpose of cutting down or removing trees, branches or other obstructions if, in the opinion of the transmitter or distributor, it is necessary to do so to maintain the safe and reliable operation of its transmission or distribution system;

**NOW THEREFORE** the Municipal Council of The Corporation of the City of London enacts as follows:

## **Part 1 SHORT TITLE**

### **Short Title**

1.1 The short title of this by-law is the Boulevard Tree Protection By-law.

## **Part 2 DEFINITIONS**



## **Definitions**

### 2.1 For the purposes of this By-law:

"Boulevard" means that portion of every road allowance within the geographic area of the City of London which is not used as a sidewalk, driveway, travelled roadway of shoulder, and specifically excludes unassumed lanes;

"Boundary Tree" means a tree having any part of its trunk located on the boundary between adjoining lands. For the purposes of this definition, 'trunk' means that part of the tree from its point of growth away from its roots up to where it branches out to limbs and foliage;

"By-Law Enforcement Officer" means a person appointed pursuant to the *Police Services Act*, or any successor legislation, as a Municipal Law Enforcement Officer to enforce the provisions of this By-law;

"City" means The Corporation of the City of London;

"Critical Root Zone" means the area of land within a radius of ten (10) cm from the trunk of a tree for every one (1) cm of trunk diameter;

"Managing Director" means the person who holds the position of Managing Director of Environmental and Engineering Services & City Engineer for the City or their written designate who is authorized by the Managing Director to act on their behalf in respect of this By-law;

"Destroy" means to cut down, remove, uproot, unearth, topple, burn, bury, shatter, poison, or in any way cause a Tree to die or be killed, or where the extent of Injury caused to a live Tree or disturbance of any part of its Critical Root Zone is such that it is likely to die or be killed. The terms "Destroyed" and "Destruction" shall have a corresponding meaning;

"Injure" means to harm, damage or impair the natural function, form of a Tree, including its roots within the Critical Root Zone, by any means, and includes but is not limited to carving, drilling, injecting, exploding, shattering, improper Pruning that fails to meet Good Arboricultural Practices, removal of bark, deliberate inoculation of decay fungi, pest or disease, inserting or driving foreign objects into or through the Tree or its roots, soil compaction, root excavation, suffocation, drowning, burying or poisoning. The terms "Injury", "Injuring" and "Injured" shall have a corresponding meaning;

"Tree" means a woody perennial plant and including the root system, where the plant has reached, could reach, or could have reached a height of at least 4.5 metres (15 feet) at physiological maturity. The term "Trees" shall have the same meaning, plural.

## **Part 3 SCOPE**

3.1 This By-law applies to City Boulevards within the City of London.

## **Part 4 ADMINISTRATION**

4.1 The administration of this by-law shall be performed by the Managing Director.

## **Part 5 PROHIBITIONS**

### **Plant tree without permission**

5.1 No person shall plant or cause to be planted a Tree on a Boulevard without written permission of the Managing Director.

### **Injure Tree – Destroy Tree - prohibited**

5.2 No person shall Injure or Destroy a Tree located on a Boulevard without written permission from the Managing Director.

- Attaching objects prohibited without permission**
- 5.3 No person shall attach any object or thing to a Tree upon a Boulevard without written permission from the Managing Director.
- Undertaking work - Injure Tree**
- 5.4 No person shall undertake any work over, upon or under a Boulevard so as to Injure a Tree, without written permission from the Managing Director.
- Hinder Managing Director in duties**
- 5.5 No person shall hinder or obstruct, or attempt to hinder or obstruct, the Managing Director or any other person in the exercise of the powers and performing the duties authorized and contained in this by-law.
- Fail to Comply with Order to Discontinue Activity**
- 5.6 No person who has been issued an Order to Discontinue Activity shall fail to comply with the Order.
- Exceptions – City – *Electricity Act***
- 5.7 The prohibitions in this Part shall not apply to the City nor to a person acting under authority of the City. The prohibitions in sections 5.2 and 5.4 shall not apply to a person acting under authority of the *Electricity Act, 1998* or any successor legislation.

## **Part 6 POWERS OF THE MANAGING DIRECTOR**

- Managing Director - authority**
- 6.1 The Managing Director is authorized to plan, regulate, supervise and carry out all planting, removal, and maintenance (including pruning) with respect to Trees situated on a Boulevard in the City of London.
- Branch extending over highways**
- 6.2 The Managing Director may trim any Trees on private property where the branches extend over a highway.
- Trees may be removed**
- 6.3 The Managing Director may, in their sole discretion and for any reason, remove any Tree from the Boulevard.
- Trees on adjacent lands – enter upon land – Trees removed - dangerous**
- 6.4 (1) Pursuant to subsection 62(1) of the *Municipal Act, 2001*, or successor legislation, the Managing Director may, at any reasonable time, enter upon land lying along any of its highways to:
- (a) inspect Trees and conduct tests on Trees,
  - (b) 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.
- (2) Pursuant to subsection 62(2) of the *Municipal Act, 2001*, or successor legislation, an employee or agent of the City may remove 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 employee or agent, the Tree or branch poses and immediate danger to the health or safety of any person using the highway.
- Abutting owner request for Boulevard Tree removal - costs - Tree replacement**
- 6.5 (1) An owner of property that is abutting the Boulevard may submit a written request to the Managing Director, in the form prescribed by the Managing Director, requesting the Managing Director to remove a Tree located on that part of the Boulevard that is abutting the owner's property.

(2) Upon a request under subsection (1) above, the Managing Director has the sole discretion to decide whether a Tree may be removed from the Boulevard, and the sole authority to remove such a Tree.

(3) If the Managing Director determines that a Tree may be removed from the Boulevard at the request of an abutting property owner under subsection (2) above, then prior to the Tree being removed by the Managing Director, the person requesting the Boulevard Tree removal is required to give to the City:

- (a) the City's estimated costs of removing the tree and purchasing and planting similar new trees as set out in the City's Fees and Charges By-law; and
- (b) a survey if required by the Managing Director.

(4) Where the City removes a Tree pursuant to this section, the Managing Director, at their sole discretion, may plant another Tree or Trees of a species as determined by the Managing Director, at the same or a different location as determined by the Managing Director.

(5) Nothing in this section shall be construed to limit the Managing Director's authority to remove a Tree located on City Boulevard at any time and for any reason.

**Boundary trees – at least 72 hours' notice to abutting owners**

- 6.6 If it comes to the attention of the Managing Director that a Tree that is to be removed by the City under this By-law is or may be a Boundary Tree, the Managing Director shall provide notice at least 72 hours prior to the removal of the Tree to all apparent abutting owners. Such notice can be effected by leaving the notice at the property (e.g. door-hanger). This requirement to provide notice shall not apply with respect to the City's authority to remove decayed, damaged or dangerous Trees or branches 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.

**Part 7 ENFORCEMENT**

**Enforced By**

- 7.1 This By-law may be enforced by a By-law Enforcement Officer.

**Part 8 POWER TO MAKE ORDERS – TO DISCONTINUE ACTIVITY**

**Orders to Discontinue Activity**

- 8.1 (1) Where a By-law Enforcement Officer is satisfied that a contravention of this By-law has occurred, the By-law Enforcement Officer may make an Order to Discontinue Activity requiring the person who contravened the By-law or a person that caused or permitted a contravention of the By-law or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity.

(2) The Order to Discontinue Activity shall set out reasonable particulars of the contravention adequate to identify the contravention, the location of the land on which the contravention occurred, and the date and time by which there must be compliance with the Order to Discontinue Activity.

**Service of Order to Discontinue Activity**

- 8.2 (1) An Order to Discontinue Activity may be served personally by the By-law Enforcement Officer, may be sent by registered mail to the person contravening the By-law, or may be posted in a conspicuous place on the property where the contravention occurred.

(2) Where an Order to Discontinue Activity under this By-law is served personally by the By-law Enforcement Officer, it shall be deemed to have been served on the date of delivery to the person or persons named.

(3) The posting of the Order to Discontinue Activity on the property where the contravention occurred shall be deemed to be sufficient service of the Order to Discontinue Activity on the person or corporation to whom the Order to Discontinue Activity is directed on the date it is posted.

(4) Where an Order to Discontinue Activity issued under the By-law is sent by registered mail, it shall be sent to the last known address of one or more of the following:

- (a) the person contravening the by-law;
  - (b) the person or company undertaking the Injury or Destruction,
- and shall be deemed to have been served on the fifth day after the Order to Discontinue Activity is mailed.

## **Part 9 OFFENCES AND PENALTIES**

### **Offences**

9.1 Any person who contravenes any provision of this By-law is guilty of an offence.

### **Director or officer of corporation**

9.2 A director or officer of a corporation who knowingly concurs in the contravention of this By-law is guilty of an offence

### **Penalties – Minimum and Maximum**

9.3 A person convicted under this By-law is liable to a minimum fine of \$500.00 and a maximum fine of \$100,000.00.

### **Continuation - repetition - prohibited by order**

9.4 The court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted, and such order shall be in addition to any other penalty imposed on the person convicted.

### **Civil remedies**

9.5 The City's enforcement remedies under this By-law are in addition to its common law or other statutory rights to damages or other compensation, including compensation to the City for damages for the cost of treating or removing Boulevard Trees and the diminution in the value of the Boulevard calculated by reference to the cost of replacing the injured or destroyed Tree.

## **Part 10 MISCELLANEOUS**

### **Repeal**

10.1 By-law No. P.-69 and all amendments are repealed.

### **Effective date**

10.2 This By-law shall come into force and effect on the day it is passed.

**PASSED** in Open Council on \_\_\_\_\_, 2018.

Mayor

City Clerk

First Reading –  
Second Reading –  
Third Reading –

## Appendix B – Proposed Fees

<b>Tree Removal, Restoration and Replanting Fees</b>		
<b>Tree Size (DBH) Diameter at Breast Height</b>	<b>Fees</b>	<b># Replacement Trees (included in fee)</b>
<10cm	\$ 1,240	1
11cm-20cm	\$ 1,890	2
21cm-30cm	\$ 2,240	3
31cm-40cm	\$ 2,590	4
41cm-50cm	\$ 3,740	5
51cm-60cm	\$ 4,090	6
61cm-70cm	\$ 4,440	7
71cm-80cm	\$ 5,490	8
81cm-90cm	\$ 5,840	9
91cm-100cm	\$ 7,190	10
101cm-120cm	\$ 9,040	11
121cm-130cm	\$ 9,390	12
131cm-140cm	\$ 10,940	13
141cm-150cm	\$ 11,290	14
151cm-160cm	\$ 11,640	15
161cm-170cm	\$ 11,990	16
171cm-180cm	\$ 12,340	17
181cm-190cm	\$ 12,690	18
>191cm	\$ 13,040	19

\*This chart is for informational purposes not an appendix to the proposed By-law. The proposed fees will be included in the City's Fees and Charges By-law.

## Appendix C – February 2015 Public Participation Meeting Comments

1. Jim Kennedy, President, London Development Institute – expressing support for the staff recommendation to refer the matter back to them; advising that they do not have any major opposition to this, it is just that generally, before a by-law comes to the floor to be passed, there is a bit more pre-consultation on it; indicating that they would appreciate time, whether it comes back in two weeks or when the report can come back; advising that they did just receive it and he was away last week so they just need some time; and, indicating that he did go through it and there are a few issues that he would like some clarification on.
2. Gabor Sass, 101 Forward Avenue – advising that he loves trees; indicating that he teaches courses on Ecology and Sustainability at Western University; noting that they talk about trees and they have lots of trees on their property; speaking to the concept of planting trees and planting without permission; advising that he does not know what the mechanism could be since we have really lofty goals of planting millions of trees; indicating that many property owners will not want to go through a formal application; advising that, in his case, it took many years for the City to actually come out and plant a tree, which they had requested; advising that there is a time delay; noting that there is a limit on staff resources; advising that he would like to put the idea forward of coming up with a mechanism that allows property owners to plant a tree; advising that perhaps there could be a list of favourable trees on boulevards that will not grow to interfere with wires and whatever may be overhead; reiterating that this would allow people to go ahead and plant an appropriate number, with appropriate size trees on their boulevard; advising that, for whatever reasons, they might be interested in growing food; noting that this is a big item for Londoners – urban agriculture; reiterating that right now it says that they need permission; and reiterating his request that there be a mechanism to allow people to plant trees on their boulevard without asking permission to do so.
3. Dean Sheppard, Executive Director, ReForest London – (see submission below)
4. Maureen Temme, 66 Palmer Street – (see below submission below)



February 2, 2015

To: Members of Planning and Environment Committee

Re: Proposed Revisions to Boulevard Tree Protection Bylaw, per February 2, 2015 PEC Agenda

ReForest London is very pleased to see the proposed revisions to the Boulevard Tree Bylaw. They represent important steps in strengthening the City's ability to protect the trees that will provide much needed canopy and ecological services in our lifetimes.

I was personally sitting on Trees and Forest Advisory Committee some five years ago when the Committee suggested the City adopt the value appraisal method proposed in this bylaw. It has taken this long for the issue to make it to the top of staff's list. This is a good example of how limited the capacity to undertake changes and improvements has been over the last several years. During the budget process, you approved an increase in staff capacity. Thank you for that.

There are many things groups like ReForest London, Scouts, Veteran's Memorial Parkway and Upper Thames Conservation Authority can do to help the City reach its canopy targets but these kind of bylaw changes and other required changes to standards and practices can only be done by City staff. So again, thank you for enhancing staff's ability to move us all forward.

Overall, ReForest London is very supportive of the proposed bylaw. The changes are indeed much needed improvements, including:

- Offering the same level of protection to all trees on city property as those along roadways already have;
- Creating a regime that recognizes that the City has a lot of time and money invested in its trees;
- Starting to treat trees more like other forms of infrastructure and assign a more realistic replacement value to them;
- Utilizing the widely accepted tree valuation procedure outlined in the bylaw;
- Making tree removal no longer the cheapest option in construction works; Constructed items like sidewalks, driveways, or bus shelters, can all be removed and replaced within a few weeks. It's a truer reflection of real value when reconstructing those items is cheaper than losing a mature tree forever.

ReForest London commends staff for the work required to bring these revisions to the table and Council for considering this important step forward in protecting and growing our urban forest.

Sincerely,

Dean Sheppard  
ReForest London  
Executive Director

To: Planning and Environment Committee, Feb. 2, 2015 c/o Heather Lysynski  
from: Maureen Temme, 66 Palmer Street, London.  
Re: Agenda item 9: Boulevard Tree Protection By-law Replacement  
Date: February 2/15

**Councillors Hubert, Cassidy, Helmer, Squire and Turner**

Thanks for setting a public participation time on a proposed replacement of *London's Boulevard Tree Protection bylaw*.

London's urban forest plan has been put together with care and thought, and includes ideas from many individuals, organizations and city staff ... so that London's tree plan fits with other environment-related things the City is doing. It fits the vision of London's proposed official plan, the London Plan.

Bylaws are detail work, necessary to give City staff clear ways of handling situations ... probably more often than not situations where people are in disagreement with each other or with an aspect of City jurisdiction.

**That said, there are some comments I want to make about new, proposed *City Tree Protection By-law*.**

***Could there be a pre-amble to the bylaw - in the bylaw - that says clearly that the Urban Forestry department wants first and foremost to have a conversation with people about any situation concerning trees on public property ... before the regulations of the bylaw come about?*** My understanding is that many calls to the Bylaw enforcement office are by neighbours or realtors ... that the process is "complaint driven". Even tho' the proposed City Tree Protection Bylaw will be handled by the Forestry people, it is likely to be a complaint driven process. Two things that might lessen the "complaint driven" and bad feelings that are often involved might be:

1. A public registry or notification of neighbours/the public where and when trees are to be removed, so people can comment. This could be with signs, or notices in neighbourhoods, or notices in the papers (... perhaps even a regular "urban forestry" column in one of the papers with readable size print) or a mention on the news like there are "gardener forecasts"
2. That leads to a **positive** public information campaign **supporting** the bylaw. I think that London should start with saying "London welcomes gardens and trees" and then go on to say there are some places where they work better, and there are circumstances where people need to know some rules ... but all the time putting first that trees are welcome/needed.

Acknowledging again that I do understand that bylaws need to be specific and use definitions, **is there a way to change section 2.5 - Application to plant, injure, destroy or remove a tree** - so that the very language of the title does not deter a person from contacting the urban forestry department?

**Also, ... and this might be gotten 'round if there's the public conversation aspect coming before and supporting the bylaw ... why should someone have to spend money on an arborist to get a report to take a limb off a tree?**

**And, ... and this leads to the Schedule "B" Tree Destruction or Removal fees**

**... if, after someone has a conversation with the urban forestry department and it's deemed o.k. to take out, for example, a 15cm diameter tree ... may the person do it herself if s/he knows how?**

\$800 fee for City staff is 40 hours of work at \$20/hour

... or almost 73 hours of work at minimum wage of \$11.00 an hour.

Does the personal cost to a low-income person ever figure into the tree value systems that are used?

**When it comes to a \$400.00 fine for planting a tree on City property**

... this is probably going to be relevant mostly to someone planting a tree on her or his front lawn, in situations where the planting is happening on city property. If done in good faith, you are asking someone to pay a fine equivalent to 20 hours of work at \$20 per hour, or about 36.5 hours at \$11.00 minimum wage.

**Welcoming gardens of all types in London ... a joint undertaking of several City departments and citizens who are already gardening.**

Front yard plantings are the trend one sees in garden magazines and books. Food planting is common (if the front is one's only sunny space), and food-producing shrubs are common. Even trees can be "espaliered" or pruned so as to keep to a particular size



This is relevant to this proposed tree protection bylaw ... certainly in whatever section talks about "injury" to a tree ... doing something near the tree that impedes air/water flow. Under this bylaw, someone who has a modest and well kept/mulched integrated pollinator garden on her/his boulevard *and has planted around a tree* could be subject to a \$1000 fine!

I am confident that a well-planned garden around a tree - would be far better for a tree than, for example, the squares of bare, hard earth that London Life instructs its lawn company to cut around its trees each year on Wellington Street, just down the block from City Hall

There are several City departments<sup>a</sup> already involved in evolving Londoners' protection and development of personal and "boulevard" gardens. With a new City tree protection bylaw being developed, perhaps this is a good time for all department to get together with citizens and organizations to talk about how London really can welcome gardens of all kinds. *I've been concerned about this wholistic topic since 2006, and could help with publicizing and getting people any conversations.*

### **Wording/editing**

- It is a **replacement** of, **not a revision** of a bylaw. It is replacing a bylaw to do with boulevards, with one to do with City trees overall.
- **Could text in it clarify how this proposed bylaw relates to situations involving all of individual homeowners, business owners, and companies (hospitals, I don't know)?** The document may need to specifically say that it is written for a long list of entities; and then put "and others". Or it needs to be two-stream for individuals/homeowners and all the others. To me, the bylaw reads as if it is for individuals like homeowners or renters, and my comments above reflect this.
- **The word consensual needs to be in the dictionary** (something I mentioned during my interesting and helpful conversation with S. Rowland last week). See footnote<sup>b</sup>

With some apologies for the length of the notes here ... thank you for the opportunity to help get right any bylaw helping London trees.

Sincerely,

**Maureen Temme**

66 Palmer Street  
London N6H 1P7  
webkeeper: [Community Gardens London](http://CommunityGardensLondon.com)

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**Linda McDougall**, City ecologist, was given a huge round of applause at the November 24/14 pollinator forum at the Central Library, when she encouraged people to grow flowers and food in their yards, including their front yards. She of course said that we need to be mindful of underground whatevers, and site lines, but did say that we may plant on boulevards. ext. 6494 or [lmcdouga@london.ca](mailto:lmcdouga@london.ca)

**Natalie Philps** of the Bylaw department is working on a new flyer to explain the City's yard and lot maintenance bylaw, in a positive way. [nphilps@london.ca](mailto:nphilps@london.ca) or ext. 4475 (working with Heather Chapman)

**Vanessa Kinsley**, Community Projects Coordinator, has an [Adopt-a-Street](#) program under her jurisdiction. ext. 1871 [vkinsley@london.ca](mailto:vkinsley@london.ca)

**Greg Sandle**, Environment Education Coordinator, has had an eye on the boulevard garden topic for some years now. ext. 7328 or [gsandle@london.ca](mailto:gsandle@london.ca)

**Sara Rowland**, Urban Forester, involved with the new tree protection bylaw. ext. 4490 or [srowland@london.ca](mailto:srowland@london.ca)

### **that the word "consensual" needs to be listed in the definitions ...**

Is "consensual" a commonly used term in bylaws and government documents?

Think about "consensus": ("group solidarity in sentiment and belief" and "general agreement").

Think about "consensual" (1) existing or made by mutual consent without an act of writing

... the "without an act of writing" is interesting, and counter to the formalities proposed in the City Tree Protection By-law

"Consensual" is used these days so often in regard to sexual activity; it's origins are:

mid 18th century: from Latin *consensus* 'agreement' (from *consens-* 'felt together, agreed', from the verb *consentire*) + -al. (<http://www.oxforddictionaries.com/definition/english/consensual>)

Note there the "felt together" reference. Using that idea, there's an implication of a homeowner and a city staff person having a conversation about a gardening situation, finding a solution. That is not the way the document sets up. The bylaw is all about getting in a tree expert and filling out a form.

"Consensual" doesn't seem to be the right word for the situation. So, unless "consensual" is the currently accepted bylaw/legislative term, is there something else?