

Report to Planning and Environment Committee

To: Chair and Members
Planning & Environment Committee
From: Kelly Scherr, P. Eng., MBA, FEC
Managing Director, Environmental & Engineering
Services and City Engineer
Subject: Proposed New City of London Boulevard Tree
Protection By-law
Meeting: February 4, 2019

Recommendation

That on the recommendation of the Managing Director, Environmental & Engineering Services and City Engineer, the attached proposed new Boulevard Tree Protection By-law (Appendix "A") **BE REFERRED** to a public participating meeting to be held at the Planning and Environment Committee on February 19, 2019 for the purpose of seeking public input on the proposed new by-law.

Executive Summary

The City of London's Urban Forestry Strategy (2014) includes the pillars to "Protect More" and "Plant More". These pillars are in place to reach Council's goal of 34% tree canopy cover by 2065. The Strategy 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".

Analysis

1.0 Previous Reports

September 10, 2018	Planning & Environment Committee Report - The City of London Boulevard Tree Protection By-law – Proposed new by-law received for information and referred to the Trees & Forest Advisory Committee for review and comment
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
August 26, 2014	Planning and Environment Committee report for adoption of the Urban Forest Strategy and endorsement of an Implementation Plan that includes recommendations for by-law revisions

2.0 Summary

Civic Administration brought forward a report and proposed new by-law to the Planning and Environment Committee on September 10, 2018. As a recommendation, the proposed new by-law was referred to a public participation meeting (PPM) to be held in Q1 2019. Whereas, a specific date for the PPM was not included we are providing this informational report in advance of the PPM to give the public advance notice along with a copy of the proposed by-law for review in preparation of the public meeting.

The proposed new by-law was also referred out to the Trees and Forests Advisory Committee for their review and comment. A working group of the committee met on October 30, 2018 and reported back at their November meeting the following:

“That the Trees and Forests Advisory Committee are satisfied with the proposed revisions to the Boulevard Tree Protection Bylaw; it being noted that the Boulevard Tree Protection working group met with staff with respect to this matter”.

In addition, Staff attended the September meeting of the Building and Development Liaison Forum providing an update on the by-law, general changes and the timeline for comments.

The changes that have been made since the September report to the by-law are minor in nature and are a result of further technical review by Staff. These changes are noted as new language is underlined and deleted language is ~~struck through~~.

Prepared by:	Jill-Anne Spence Manager, Urban Forestry, Road Operations & Forestry Division
Submitted by:	John S. Parsons, CET Division Manager, Road Operations & Forestry Division
Concurred by:	Doug MacRae, P.Eng., MPA Director, Roads & Transportation
Recommended by:	Kelly Scherr, P.Eng., MBA, FEC Managing Director, Environmental & Engineering Services and City Engineer

January 25, 2019

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Bill No.
2019~~8~~

By-law

A by-law relating to planting and preserving of trees on boulevards in the City of London ~~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 City road allowance within the geographic area of the City of London which is not used as a sidewalk, driveway, travelled roadway or 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 its roots ~~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, or form of a Tree, including its roots ~~within the Critical Root Zone~~, by any means, and includes but is not limited to cutting, 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 a~~ a corresponding 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~~ of 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~~ of 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~~ of 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 an 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) payment of fees for the City's estimated costs of removing the tree and purchasing and planting similar new trees as set out in the Schedule "A" to this by-law ~~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 a 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 _____, 2019~~8~~.

Ed Holder
Mayor

City Clerk

First Reading –
Second Reading –
Third Reading –

Schedule A

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