

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
Public Participation Meeting on: February 19, 2019

Recommendation

That on the recommendation of the Managing Director, Environmental & Engineering Services and City Engineer, that the attached proposed new Boulevard Tree Protection By-law (Appendix “A”) **BE INTRODUCED** at the Municipal Council meeting on March 5th, 2019.

Executive Summary

This report and proposed new Boulevard Tree By-Law supports Council’s 2015-2019 Strategic Plan *Building a Sustainable City* through a *Strong and Healthy Environment* to *Plant more trees and better protect them from deforestation, invasive species and other threats*. In addition, The City of London’s Urban Forestry Strategy (adopted 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 Urban Forest 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”.

Purpose
The purpose of this report is to inform a public participation meeting (PPM) in support of approval of the new attached by-law. Consultation on the by-law has occurred since it was introduced on September 10, 2018 at the Planning and Environment Committee. The updated version after consultation was identified in a February 4 PEC report to provide those interested with time to review prior to the PPM.

Analysis

1.0 Previous Reports

February 4, 2019	Planning and Environment Committee Report – Proposed New City of London Boulevard Tree Protection By-law setting public participation meeting date and minor updates to by-law language for public review
September 10, 2018	Planning and 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

The proposed new by-law has remained generally unchanged from the September 10, 2018 report except for a few changes made by staff on a technical nature. Below lists the major changes from the existing by-law to the new proposed.

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 subject to being able to gain to access the tree from City property with the necessary equipment.
- Added the new definition of Boundary Tree and a provision for Civic Administration to provide notification to the private property owner when the City is going to remove a Boundary Tree.
- 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.
- 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 “Tree Removal, Restoration and Replanting Fees” (Schedule “A”). 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 \$1,050. The purpose of these new fees is to capture the real costs of the tree work and ultimately replacing lost tree canopy.

Street Tree Removals Fee Comparisons:

Street Tree Type	Size cm DBH	Current Fees	Proposed Fees	Appraised Value Cost - varies
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

Appraised Tree Value

The proposed fees for tree removal are not based on the appraised value of the tree. However, if a City tree is illegally removed, the appraised value of the tree might be considered by the courts if damages are assessed.

Civic Administration will continue to 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 Public Engagement & Feedback

The proposed new by-law was 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”.

Engagement was completed earlier in the year with the development community. Civic Administration 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. Civic Administration 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. Civic Administration met with the members of the Urban Agriculture as they were interested in the by-law. The topics of being able to plant trees without permission and the planting of fruit trees on the boulevard were discussed.

Due to Council approving an increase in the tree planting budget more trees have been planted and wait times have significantly decreased. 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 the next up-coming planting season.

At the meeting, Civic Administration brought forward the challenges associated with the public planting on boulevards without oversight such as 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. At this meeting, the members 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.

Information about the new Boulevard Tree Protection By-law was posted on the Urban Forestry’s webpage from mid-September until the end of November. Civic Administration brought forward a recent report to give the public advance notice along with the proposed draft by-law for review in preparation of this public meeting. To date there has been very little comment or feedback on the proposed Boulevard Tree Protection By-law.

4.0 Resources & Budget

With the recent consolidation of Urban Forestry within Environmental & Engineering Services, there has been opportunity to find areas of improvements particularly with customer service. There are some functions in the current by-law and the proposed new by-law that are similar such as inspections for tree removals and collecting fees. However, any enforcement activities as a result of this by-law are new responsibilities to Urban Forestry. These activities can include performing investigations, issuing tickets, preparing evidence and attending court hearings if needed. Based on the experience of the Tree Protection By-law, other costs that can be anticipated include costs for staff to attend Municipal By-law Enforcement Officers training, uniforms, and supplies.

Civic Administration will continue to monitor the impact of this By-law on resources and services. Future identification of any additional required resources to support the implementation of the Boulevard Tree Protection By-law will be forwarded for consideration under the 2020-2023 multi-year budget process.

5.0 Conclusion

Reviewing this by-law as part of the action items in the Urban Forestry Strategy has provided the opportunity to evaluate current practices (consensual removal), incorporate new industry standards (boundary trees) and improve upon our work to “Protect More” and “Plant More”.

Acknowledgments

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

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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

Attachment: Proposed New By-law

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Appendix A

Bill No.
2019

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 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;

“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 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, by any means, and includes but is not limited to cutting, carving, drilling, injecting, exploding, shattering, pruning, 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 a corresponding meaning.

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 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 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 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 Schedule "A" to this 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 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.

Ed Holder
Mayor

Catharine Saunders
City Clerk

First Reading –
Second Reading –
Third Reading –

Schedule A

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