

Report to Planning and Environment Committee

To: Chair and Members
Planning and Environment Committee

From: Kelly Scherr, P. Eng., MBA, FEC
Managing Director, Environmental & Engineering Services and City Engineer

Subject: Proposed New City of London Tree Protection By-law - Public Participation Meeting

Date: September 23, 2019

Recommendation

That, on the recommendation of the Managing Director, Environmental & Engineering Services and City Engineer, the following actions be taken with respect to the Tree Protection By-law C.P.-1515-228:

- a) the public input provided at the September 23, 2019 Planning and Environment Committee meeting with respect to the attached, proposed new Tree Protection By-law BE REFERRED to the Civic Administration for consideration in the preparation of a revised Tree Protection By-law; and,
- b) the Civic Administration BE DIRECTED to provide a proposed by-law to repeal and replace the existing Tree Protection By-law C.P.-1515-228 at a future Planning and Environment Committee meeting including replacing the term “City Planner” with “City Engineer”.

Executive Summary

Several issues with the existing Tree Protection By-law C.P.-1515-228 have emerged since it was passed by Council on August 30, 2016. Public consultation also revealed a number of administrative, interpretive or technical matters that were difficult to understand or that were creating problems with compliance. There have also been observations of ambiguity made by the Hearings Officer that suggest improvements in by-law language is necessary. In addition, the Urban Forestry department that administers and enforces the by-law now reports to the City Engineer, therefore, all references to “City Planner” within the by-law requires replacement with “City Engineer” to show that the City Engineer, and not the City Planner, is responsible for the by-law.

Given the extent of these changes, a new Tree Protection By-law is required.

This report brings the proposed by-law forward for public review and comment at a public participation meeting while the existing Tree Protection By-law C.P.-1515-228 remains in force and effect. The aim is that the old by-law will be repealed at a future date and the new by-law will come in to force and effect as the old by-law is repealed. The chosen future date should allow time to prepare necessary changes to forms and administrative processes before those become “live” and this date is recommended to be no sooner than February 2020.

Any new public comments received before or during this public participation meeting may be considered as part of the by-law development process. If changes to the proposed by-law are desired by this Committee, then a further report and proposed new by-law will be brought back to this Committee as soon as practical.

Analysis

1.0 Previous Reports

June 17, 2019

Planning & Environment Committee Report - Proposed New City of London Tree Protection By-law and Notice of PPM

June 18, 2018	Planning & Environment Committee Report – The City of London Tree Protection By-Law C.P.-1515-228 Amendments and Implementation Update
November 20, 2017	Planning & Environment Committee Report - The City of London Tree Protection By-law-C.P.1515-228 Implementation Review
July 17, 2017	Planning & Environment Committee Report – Staffing Resources to support the new Tree Protection By-law
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 recommended amendments to the by-law within a period of one year
August 26, 2014	Planning & Environment Committee Report - Adoption of the Urban Forest Strategy and endorsement of an Implementation Plan that includes by-law revisions

2.0 History

One of the themes of the Urban Forest Strategy is to “Protect More” trees. Since Vision 96 in 1996, the City of London has had a private tree by-law in place. For the first twenty years, the by-law took in the form of a Tree Conservation By-law aimed at protecting woodlands on private property. Through public consultation for the Urban Forest Strategy (2014) it became clear that there was significant unmet public demand for a better private tree by-law with 86% of survey respondents supporting this direction. Requiring replacement planting of protected trees that are destroyed with an approved Permit is an obvious way to help achieve London’s Urban Forest Strategy goal of 34% tree canopy cover by 2065. To help achieve this target it is important to protect large trees and areas of trees and woodlands in the City. The by-law is designed to maintain healthy trees. Dead tree removals require no fee and proper pruning activities will not require a permit.

A new Tree Protection By-law was prepared and passed by Council on August, 30, 2016, scoped to protect:

- (i) Distinctive Trees within the Urban Growth Boundary defined as having a trunk diameter 50cm or greater measured 1.4m above ground; and,
- (ii) All trees regardless of size that are within mapped Tree Protection Areas.

The passing of the by-law was subject to an end-of-first-year review, with reports submitted to this Committee in July and November of 2017. A more detailed report was prepared in 2018 with information gathered from public engagement, but due to the then-ongoing Boulevard Tree Protection By-law review and internal, organizational changes affecting Urban Forestry it was necessary to defer a public participation meeting about the Private Tree Protection By-law until 2019.

The administration of the Tree Protection By-law, to date, has involved staff in over 1000 permit applications. An approximate 86% of applications were for dead or dying removal applications, therefore, no fee is collected; 2% were construction-related, and 12% were refused permits.

3.0 Legislative and Policy Information

Bill 68, *Modernizing Ontario's Municipal Legislation Act, 2017*

Bill 68 amended subsection 270 (1) of the *Municipal Act, 2001* by adding a new clause (7) that requires municipalities to adopt and maintain policies which sets out “the

manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality.” This provision came into effect March 1, 2019.

The London Plan Policies, 2016

- Policy 389 (6) “We establish policies, by-laws, practice standards, and guidelines that clearly define what trees will be preserved and what trees may be removed, to ensure the structure and functions of the Urban Forest are not harmed.”
- Policy 392 “Engagement of the public to manage private trees and woodlands is crucial to achieving tree canopy coverage targets and will be implemented through education, promoting stewardship, planting programs, and the development of policies, by-laws, standards and guidelines.”
- Policy 399 (8) “A tree conservation by-law for private property will be established to prohibit the destruction of trees, unless and until such time as a tree cutting permit is obtained, where required.”

4.0 Community Engagement & Feedback (see more detail in Appendix “B”)

The following community engagement since the by-law was passed has been considered in the development of the proposed new by-law.

Tree Care Professionals & Industry Workshop

In February 2018, a public workshop was held for tree care companies who had prior dealings with the Tree Protection By-law. Staff received feedback on concerns about the by-law, mainly focussed on its language, interpretation and administration. There was strong industry support to reduce the Distinctive Tree size from 50cm or greater, to protect more trees and ensure more trees remain to be pruned regularly over a long timeframe. A reasonable application fee was not a concern, but the sliding scale of fees and the absence of a limit with respect to the fees for a number of Distinctive Trees was a concern. The fee of \$1,000 for a good forestry practices application (i.e. selective tree harvesting in a woodland) was viewed as too high. Instead of applying for a permit while the trees are alive, some landowners choose to leave trees until they become so defective that their removal becomes necessary for public safety, which is an exemption of the by-law.

Public Surveys – Online and By Email or Mail

Two public surveys were undertaken in 2018. One was aimed primarily at those persons who had requested a permit under the existing by-law. Questions were asked about how satisfied the client was with the administrative process and what changes might be suggested. Details of that survey were included in the June 18, 2018 report.

The second survey was open to the public for three months asking for feedback on general tree protection topics, by-law awareness and tree planting. A summary of the survey results is included in Appendix “B”. Some of the major findings of the survey included that approximately 73% of respondents knew that there was a private tree by-law but did not necessarily know if it applied to their land. 87% replied that the size for Distinctive Trees should stay the same or be decreased, therefore protecting more trees.

Trees and Forests Advisory Committee

The Trees and Forests Advisory Committee provided detailed recommendations to staff regarding proposed changes to the by-law (included in Appendix “B”). This included a recommendation to reduce the size threshold for a Distinctive Tree to 25cm or greater.

The Trees and Forests Advisory Committee discussed the by-law again on August 28, 2019 and provided additional comments to the staff in attendance. A delegation by the Vice-Chair of the Trees and Forests Advisory Committee was received by Planning and Environment Committee on September 9, 2019 where key points were outlined:

- That golf courses and cemeteries should not be exempted from the by-law, but the City, as owner of municipal golf-courses, should hold itself to the same standard as private landowners;
- That the size threshold for Distinctive Trees should be lowered from 50cm and greater, so to protect more trees of more species – but recognising that as the size threshold is lowered, the number of trees protected rises exponentially and this will have consequences for urban forestry staff workload and their scope of work in future; a size threshold of 40cm and greater may be appropriate;
- That public education may be cost-effective and possibly a more successful tool to achieve our tree canopy goals, but its cost-effectiveness remains unknown at this time;
- That the application process may be enhanced by requiring photos to be submitted, and including a checklist to ensure the application complies with current best practices (or not);
- That the by-law define a “hazardous tree”.

Hearings Officer

All appeals that may be brought under the by-law are heard by the Hearings Officer. Several appeals have been upheld due to ambiguous language, with several similar decisions by the Hearings Officer that ran counter to the original intent of the by-law. The proposed new by-law language should ensure that the by-law is clear and unambiguous for everyone.

One appeal against the City’s denial to issue a tree destruction permit to allow for construction access and building of an extension that had a Building Permit was dismissed; the extension was built prior to the appeal being heard, with tolerable injury to the tree. The Hearings Officer recommended that the City departments (Building Division and Urban Forestry) find a way to resolve the potential for conflict before issuing a Building Permit.

Feedback to Staff

Staff received a letter from a consultant to bring forward concerns on behalf of two cemeteries (included in Appendix “B”). These included:

- The digging of graves near trees would require a permit. A burial is not something that can be anticipated in advance and requires immediate response. Waiting for a permit is not practical.
- The general maintenance practice of removing seedlings and small trees that have sprung up would require an arborist report and a permit.
- Replanting in a short time frame and as part of a permitting process would be very difficult to implement and would negate opportunities for families to donate memorial trees. In addition, the requirement to pay a fee to the City to facilitate the planting of trees on other properties is not warranted and onerous.
- To require a permit every time a tree is to be injured or removed is cumbersome

The exemption of the municipality from the by-law has been criticised as a financial or competitive advantage at municipally-run golf courses, whereas privately-owned facilities must adhere to the by-law.

Meetings were also held with London Development Institute and staff attended the London’s Planner Lunch to discuss the by-law. Staff also hear informal complaints during their day-to-day work about how to make improvements to the by-law. One such complaint was that the payment process is challenging as only cash and cheques can be received at one location during regular business hours. Staff have been able to address this recently with Recreation staff leading a project to accept other payment types at multiple City facilities outside of normal business hours.

London residents have expressed frustration that a permit is required for homeowner management of properties. From this perspective the by-law process has been identified as onerous and costly.

Staff have also received complaints that the Tree Protection By-law does not go far enough, or is not as rigorous as it should be. Most commonly, this is heard when trees are removed in an approved development activity, such as a new build under site plan, or where lots are created by consent, or lots and roads laid out for a new sub-division.

Notice of Public Participation Meeting

A draft of the proposed Tree Protection By-law was included with a report to Planning & Environment Committee on June 17, 2019, which requested that this Public Participation Meeting be held on September 23, 2019.

5.0 Legislated Exemptions – Where Public Expectations May Not Be Met

The legislation that allows for a municipality to create tree by-laws is in s. 135 of the *Municipal Act*, 2001, but in the *Municipal Act*, 2001 s. 135 (12), certain activities are exempted from all tree by-laws. Among these exemptions are:

- (d) the injuring or destruction of trees imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under section 41, 51 or 53, respectively, of the *Planning Act* or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;
- (e) the injuring or destruction of trees imposed after December 31, 2002 as a condition to a development permit authorized by regulation made under section 70.2 of the *Planning Act* or as a requirement of an agreement entered into under the regulation;

Complaints have frequently been received when protected trees are removed in an approved development activity, such as a new build under site plan, where lots are created by consent, or lots and roads laid out for a new subdivision. The By-law Officer must check all current or recent planning matters to determine if that may be the case, and the Tree Protection By-law is powerless in such matters.

Thus, despite a level of public expectations that a Tree Protection By-law should protect the tree from being removed for development, tree by-laws do not restrict development in most instances. In planning and development applications to the City, determination whether a tree stays is controlled not through a tree by-law, but as a part of the planning process and subject to such policies and other by-laws as may be in place (e.g. Zoning By-law; The London Plan). The Tree Protection By-law may protect trees only until such time as a planning application (site plan, sub-division or consent) is approved.

Other exemptions prescribed by the *Municipal Act*, and listed in the exemptions in the by-law, rarely if ever result in a complaint.

The proposed by-law contains some “made in London” exemptions that aim to simplify management of protected trees in specific situations e.g. when a protected tree must be removed quickly, for safety reasons.

6.0 City Response - Proposed Principal Changes

Repeal and Replace

The proposed major change is to introduce a new Tree Protection By-law that, when passed, will replace the existing Tree Protection By-law C.P.-1515-228.

Internal Reorganization – “City Engineer” to replace “City Planner”

Staff that administer and enforce the tree by-laws now report to the City Engineer, so it is sensible and desirable that all references in the by-law to the “City Planner” be replaced by “City Engineer” throughout. The City Engineer shall then designate by express authority in writing, those staff that may perform which functions of the by-law.

Improved Language and Administration

The proposed new Tree Protection By-law has been prepared by the City Solicitor with input from Urban Forestry staff. Careful attention was paid to the language of the proposed by-law to ensure the intent of the by-law will be conveyed when that language is interpreted by others. The goal was to simplify the language and avoid ambiguity so

any applicant, who may have no experience in interpreting law, would understand what is expected of them. Also, staff and the Hearings Officer will have better guidance for administering the by-law. This improved language shall reduce or remove completely the need for staff to receive managerial direction regarding ambiguous language, and ensure consistency in outcomes from similar types of applications and any appeals.

Among the many changes, under the proposed by-law any application made to injure or destroy a “Distinctive Tree” or a tree in a “Tree Protection Area”, is proposed to follow the same application process and be decided according to the same reasons to issue or deny a permit. This removes a two-stream process that may be confusing for applicants. The required information for a complete application is easier to comprehend. It also sets out clear reasons the City Engineer will consider for issuing, or denying, a permit that provides fair warning to the applicant about the expected outcome of their application and ensures consistency in outcomes in administration of the by-law.

Cemeteries and Golf Courses Exemption - Recommended

In the existing Tree Protection By-law, golf courses and cemeteries must follow a different application process with submission of a long-term 5-year plan. In the attached by-law, cemeteries and golf courses would be treated the same as any other applicant and would follow the same application process. Staff now recommend exempting cemeteries and golf courses from the by-law because it has not proven to be the correct tool to bring about the long-term pro-active management as was envisioned.

Golf courses and cemeteries have relatively low tree canopy cover. Most of the Tree Protection Area is, in fact, open turf. Those trees and small woodlands that occur are highly valued for creating the interest and variety that attracts business. Most trees are pruned regularly in winter to keep them safe or provide for line-of-sight for as long as possible. If protection of trees in cemeteries and golf courses were to be exempted, the risk of total loss of tree canopy in those places is considered to be low.

Cemeteries have struggled with developing long term management plans as required for a complete application. Most applications received to date have been short-term, involving only one or a few large trees that must be removed to allow for a structure (e.g. a mausoleum) to be built. Cemeteries typically manage their trees for amenity and maintain them for as long as possible, removing trees only as they become unsafe or when they need to dig graves. These reasons can be challenging to know five years in advance. While pro-active management occurs, this is usually achieved by pruning, which is an exempted activity under the by-law.

Cemeteries are regulated under the *Funeral, Burial and Cremation Services Act, 2002* and have their own by-laws passed under that Act. Such by-laws include the manner in which vegetation may be managed. For example there may be clauses that govern where and what type of trees are acceptable to be planted, or not, which may conflict with our by-law.

Golf courses have also struggled with developing long-term management plans for similar reasons as cemeteries. Most often, golf courses need to remove trees when they present an unacceptable risk to the members, guests and the public that may enjoy walking over their lands. Less often, it is because a part of the course needs re-working to overcome some issue with turf management or to improve play. Golf courses that were designed decades ago may be adapting to respond to changes in technology that means a golfer can strike a ball over a greater distance than before. Turf management has become increasingly challenging due to unusual and extreme weather. Therefore, occasionally, healthy trees must be removed for reasons that may include removing excessive shading of turf or to adjust for the range or direction of play.

The potential for a conflict between the by-law, and such actions the golf course may desire to undertake to continue to attract and retain business, has been criticised to staff, pointing out that municipally-owned golf courses are exempted from the by-law and operate and continue to generate revenue with no such barriers to their business decisions.

Part 2 – Definitions

Adoption of a Reduced Size for a Distinctive Tree - Not Recommended

The community response seeking a reduction in the size threshold for a Distinctive Tree is not supported by staff, as discussed here.

The Trees and Forests Advisory Committee and members of the tree-care industry are recommending that the size threshold for a Distinctive Tree should be reduced to 20cm or 25cm. This was a result of an observation from the industry that many healthy trees in this size category are being removed. Based on the data collected in the 2008 Urban Forests Effects Model (UFORE), it is estimated that approximately 60% (not including buckthorn) of our urban forest is comprised of trees of this size or greater. At our current size threshold of 50cm or greater, approximately 6% of our trees are protected.

This change is not recommended. If the size threshold is decreased, it is estimated there would be a four-fold increase in Tree Protection By-law workload. Even though ten times as many trees fall into this 20cm-25 cm category, a ten-fold increase in workload is not anticipated, since the smaller-sized trees tend to be younger, healthier, and not at the same risk of removal as larger, older trees.

As workload increases, the ability of staff to conduct other necessary duties, tasks, programs and initiatives under the Implementation Plan for the Urban Forest Strategy (2014) will be further impacted with a corresponding deterioration in customer service levels. Staff already see this impact during times of peak demand from spring through to fall for by-law enforcement and permitting services. In addition, since March 2019, Urban Forestry staff have assumed additional duties to enforce the removal of hazardous trees under the Property Standards By-law, and enforcement duties for the Boulevard Tree Protection By-law. Generally, enforcement activities incur the greatest disruption to service delivery, as staff must respond as soon as practicably possible and investigations can take up a lot of time and resources both within the Urban Forestry office and with support of staff from across the corporation.

With enforcement, time is of the essence. For a prosecution to occur, a Provincial Offence Notice must be served within 30 days of the offence occurring, or a Laying of an Information must occur within six months of an offence occurring. To gather all evidence within these timeframes is challenging. A decision has to be made early in the enforcement process whether sufficient evidence is available for a successful prosecution to proceed.

A four-fold increase in by-law-related workload will overwhelm the City's ability to maintain a timely response to enquiries and enforcement matters, potentially undermining the effectiveness of the by-law.

Part 5 – Exemptions

Conservation Authority exemption – clause 5.1 (j) - limiting scope

Under the existing by-law, activities and matters taken by or under order of a Conservation Authority, and any works under the Conservation Authorities Act and its Regulations and amendments, are exempted. It was intended to allow for necessary works by a Conservation Authority to protect water, human lives and property, but this exemption has resulted in tree removals where a permit, directive or order was made to any person, for any reason falling under s. 28 of the Conservation Authorities Act.

In the proposed by-law the exempted activities are limited to activities undertaken by a Conservation Authority on its own lands or in response to a Declared Emergency.

Emergency Services exemption – clause 5.1 (k)

Occasionally the police, ambulance or fire services must remove or injure trees or direct the injury or destruction of trees to deal with an emergency event. It is proposed in the by-law to exempt the injuring or destruction of trees at the direction of these Emergency Services during an emergency event.

Part 7 - Application for Permits

“Dead Distinctive Tree Permit” process, clause 7.2 (2) (g) – simplifying the requirements

Many applications are received related to dead trees that do not present as an immediate risk to public safety, but where the landowner wanted to remove them before they became a more serious threat that would be more expensive to remove. In the proposed by-law, where an Arborist submits in writing an “Arborist Opinion” to assert that the tree is dead, this shall be accepted by staff and a Dead Distinctive Tree Permit shall be issued. A small number of applications under this new process shall continue to be verified by staff to ensure it is not being abused. Staff administering the by-law have worked closely with tree industry professionals and are recommending the development of this new permitting process only for a tree that is dead, or, as a result of natural causes, is in an advanced and irreversible decline in health. The goal is to avoid expending staff resources to verify each “dead” tree is dead or in advanced decline, while also relieving the Arborist from writing a full report which can be more expensive for the landowner. This should improve performance for permit issuance, reduce applicant costs, and relieve staff of a significant portion of their time in the field.

Dead or declining trees in a Tree Protection Area are not subject to this proposed new permit process. In wooded areas a dead or declining tree may not present a significant risk to human safety, but may support valuable wildlife. A more conservative approach to tree destruction in woodlands is required to ensure that all classes of trees continue to be represented, and this includes having some dead snags and dead trees. Staff will continue to verify the condition of trees for applications affecting Tree Protection Areas and work with applicants to ensure that some dead or declining trees are retained where it is reasonably safe to do so.

Co-owned Trees – s. 7.5 Boundary Tree; s. 7.6 Boundary Tree – City Boulevard Tree

Per the *Forestry Act*, trees along or near to a property line may have two or more co-owners, depending on how the architecture of the tree trunk crosses the property line. The consent of all owners has to be obtained before a co-owned tree may be destroyed. In circumstances where the City may be a co-owner of a protected tree (for example, at or over a Park property line) that is the subject of an application, the City Engineer or designate would decide the City’s role in the fate of the co-owned, protected tree with consideration of private and public interests. Where the co-owned tree is on or over the City Boulevard, then the City’s Boulevard Tree By-law will apply and this proposed Tree Protection By-law will not apply.

Part 8, Powers of the City Engineer

Building Permits, clause 8.2 (4) (f) - tree permit shall issue if no reasonable alternative

It is proposed that where it is necessary for the purposes of a Building Permit, a tree permit under the proposed by-law shall be issued where there are no reasonable alternatives to the tree injury or destruction. Building Permits are approved with reference to the Building Code and various other pieces of “applicable law”. The tree by-laws, enacted under the *Municipal Act*, are not “applicable law”. Therefore a Building Permit shall be issued where the work being permitted accords to the Building Code and applicable laws, irrespective of whether any protected trees may be affected by the proposed work or reasonable access to the work site. A Building Permit may be required for things like accessory buildings (such as greenhouses, sheds), that exceed 10m² in area or additions to an existing dwelling.

One appeal against the City’s denial to issue a tree destruction permit to allow for construction access and building of an addition was dismissed; the addition was built prior to the appeal being heard, with tolerable injury to the tree. The Hearings Officer recommended that the City departments (Building Division and Urban Forestry) find a way to resolve the potential for conflict before issuing a Building Permit. The new practice has been to request that the Building Division provide information to applicants, that if there are protected trees present, they should speak to Urban Forestry. If there is scope to find a reasonable alternative – such as locating an accessory building

elsewhere, or hoisting materials using a crane – then that could be a satisfactory solution.

Cultural Heritage (*Ontario Heritage Act*) – clause 8.3 (b)

In the proposed by-law there is a new provision for the City Engineer or designate to refuse to issue a permit, or revoke or suspend an existing permit or impose conditions to a permit where the protected tree is on lands that were designated under Part IV of the *Ontario Heritage Act*. An individual property may be designated under Part IV of the *Ontario Heritage Act* to be of cultural heritage value and that can include a tree or trees as a heritage attribute. Altering (e.g. removing) a tree that is protected by designation under Part IV of the *Ontario Heritage Act* would also require approvals pursuant to the *Ontario Heritage Act* (Heritage Alteration Permit approval). Where Heritage Trees are protected as Distinctive Trees the owner would be required to obtain a second approval under the *Ontario Heritage Act*. The *Ontario Heritage Act* would govern the final decision and Heritage Tree removal would be the option of last resort after exhausting alternatives that preserve the tree, depending on circumstance e.g. excluding public access around it or propping limbs.

Not specified in the by-law, but mentioned here for clarity, trees that were included as a heritage attribute to a Heritage Conservation District, designated pursuant to Part V of the *Ontario Heritage Act*, will tend to be of large stature and protected as Distinctive Trees under the by-law, but will not require other approvals pursuant to the *Ontario Heritage Act*.

Wildlife – s. 8.3, clauses (a), (c), (d); Part 9 Issuance of Permits, s. 9.2 Permit – Automatic Conditions, clause (h); s. 9.3 Permit – Additional Conditions That May be Imposed, clauses (b), (d), (e), (i)

Concerns have been raised with staff, through advice from the Trees and Forests Advisory Committee and from volunteer rescuers, regarding the disturbance or displacement of wildlife from trees during tree injury or destruction. The City has a Humane Wildlife Policy for City trees, but this does not extend to privately-owned trees. Urban Forestry has updated and expanded information about wildlife rescue on the City website, which includes contact information for wildlife rescue professionals and volunteers. While many types of wildlife are protected in law at a provincial or federal level, provision has been made in the proposed by-law for the City Engineer or designate to refuse to issue a permit, or revoke or suspend an existing permit, or impose conditions to a permit to protect migratory birds, native flora and fauna, or where the tree itself is an endangered species or threatened species. There is also provision for the City Engineer or designate to require the Permit Holder to protect or relocate wildlife (including bees) – a process which may involve other agencies and may require other permits be obtained. Together, these new provisions should help avoid many potential wildlife conflicts and allow for better response and management of necessary relocations of wildlife where advance planning can be undertaken.

Part 9 - Issuance of Permits

Replacement Tree Planting & Fees – s. 9.2 Permit - Automatic Conditions - replacement trees required OR fee be paid

Requiring replacement planting of protected trees that are destroyed with an approved Permit is an obvious way to help achieve our Urban Forest Strategy goal of 34% tree canopy cover by 2065. At present, replacement tree planting is discretionary and may be determined by the approver of the Permit, which is sometimes the Hearings Officer. The applicant, as they proceed with their application, has no way of knowing if they will be required to plant, how many replacement trees may be required, or whether they may be required to pay a fee if they are unable to plant the required trees due to lack of suitable space on-site.

With the proposed by-law, replacement tree planting will be required where an otherwise healthy or safe tree is proposed to be removed and the number of replacement trees will be determined according to Schedule B. Replacement trees are not required for Dead Distinctive Tree Permits or where the tree being destroyed was hazardous. The verification that replacement planting has been completed satisfactorily

will be done by staff, who may enforce the by-law if the planting is not completed by the required date.

The proposed Schedule B provides the number and type of replacement trees required, which varies with the size of tree being destroyed; if there is insufficient space for all or any replacement trees then a fee of \$350 may be charged for each replacement tree that is not planted. Provision is made in the by-law for the City Engineer to determine the size, species and location of a replacement tree at planting; if a very large number of replacement trees must be planted, these may be planted at a smaller size, e.g. 2-year transplants.

Part 13, Pests – Inspection – Removal of Infested Trees

Although it has not yet been invoked, the existing by-law has provision for the City Engineer or designate to enter private lands, take samples, and make Orders to protect urban forest health. This provision was included by consultation with the Canadian Food Inspection Agency, by reference to their federal *Plant Protection Act*. In Part 13 of the proposed by-law, the language has been improved to specify that consent for entry to private land is not required if the City Engineer has been designated by the Canadian Food Inspection Agency as an inspector for the purposes of the *Plant Protection Act*. The term “Pest” appears in the by-law in this Part. In cases where owner consent is forthcoming, then the City Engineer or designate may enter private land to inspect for serious Pests including Asian Long-horned Beetle, and may remove such infested trees from public or private lands.

The Trees and Forests Advisory Committee considered the definition for “Pest” should include those infestations by a Pest that cause detrimental and irreversible damage to the direct health of a tree. That advice is translated to the definition for “Pest” that includes that it must be injurious or potentially injurious to the tree, whether directly or indirectly. If the City Engineer or designate should exercise their powers under this Part of the by-law and remove trees that are infested, it is only to be enacted when Pests may create serious widespread economic or ecological harm. Best practices in Integrated Pest Management (IPM) mean that a suite of possible controls or treatments would be developed to suppress Pest populations below the economic injury level, with minimum use of pesticides, and it may not be necessary to destroy any host trees until all other options have been exhausted. It is considered that this language in the by-law provides sufficient safeguard to avoid tree destruction where, in the opinion of the City Engineer or their designate, the Pest may be adequately controlled by other IPM methods, or the consequences of the Pest is relatively benign to the economy, or tolerable within the ecology of the urban forest as a whole.

Schedule A

Fees - Application; Denial of a Permit, and Right to Appeal

Where a permit shall be issued, it is proposed to introduce a flat fee of \$100 regardless of the type of application and the number of protected trees being injured or destroyed. The City Engineer or designate will retain the ability to waive the fee where extenuating circumstances occur.

No fees at all will be collected before staff have considered the application and are prepared to proceed to a decision. This avoids requiring a fee be paid upfront as part of a complete application, only for staff to discover circumstances that suggest the fee should not be paid, and then returning it to the applicant. It also means the applicant can pay all the required fees (e.g. if a fee is required for a replacement tree that will not be planted) at one time, in one place. Over the past six months, the payment of fees has been facilitated through adopting the City’s SPECTRUM recreational programs payment system, so that applicants may pay their required fees at community centres located around the City using a variety of payment options, including cash. This means applicants would no longer pay in person by cheque or cash at the Urban Forestry office. At some future date, it is anticipated that an online fee-paying system will be introduced to better serve our clients. The payments received through the SPECTRUM system are allocated to an Urban Forestry account (Tree Bank) to support tree planting or other Urban Forest Strategy initiatives across the City.

There will continue to be no fee required for a permit where destroying or injuring trees that are dead, hazardous, or required to be destroyed by Order issued under other legislation.

No application fee will be charged for an application that will end in a denial to issue a Permit. Should the denial be appealed, however, a new appeal fee of \$100 will be required.

7.0 Conclusion

The proposed new Tree Protection By-law strengthens and improves the existing Tree Protection By-law C.P.-1515-228, and public input received to date has informed its development. Protected trees will continue to be protected under the existing Tree Protection By-law C.P.-1515-228 until it is repealed.

Prepared by:	Sara Rowland, R.P.F. Urban Forestry Planner, Transportation, Roadside Operations & Forestry Division
Submitted by:	John Parsons, CET Division Manager, Roads Operations & Forestry
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

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- Appendix A: Proposed Tree Protection By-law
- Appendix B: Public Engagement and Feedback
- Appendix C: Tree Protection By-law C.P.-1515-228