

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

Date: November 16, 2020

Recommendation

That, on the recommendation of the Managing Director, Environmental & Engineering Services and City Engineer, the attached proposed new Tree Protection By-law (Appendix "A") BE INTRODUCED at the November 23, 2020 meeting of Municipal Council to repeal and replace Tree Protection By-law C.P.-1515 – 228 (Appendix "C") with effect from March 1, 2021.

Executive Summary

On September 23, 2019, a public participation meeting was held regarding a proposed new Tree Protection By-law to replace the existing one. The recommendations at the time were informed by consultation including workshops, public surveys, stakeholder and Trees and Forests Advisory Committee discussions. Subsequent public comments and input from staff in other Divisions of the City have further informed the by-law development process, resulting in some further refinements to the proposed by-law as addressed in this report (Appendix "B").

This report addresses the items that were brought forward at the public participation meeting and identifies any new recommendations, with the goal of repealing Tree Protection By-law C.P.-1515-228 and replacing it with this new by-law on March 1, 2021. The most significant change since the 2019 report is updated mapping of Tree Protection Areas in response to issues identified at the previous meeting.

Necessary changes to forms and administrative processes are being developed by staff, in preparation for when the new by-law becomes "live".

Analysis

1.0 Previous Reports

September 23, 2019	Planning & Environment Committee Report and Public Participation Meeting – Proposed New City of London Tree Protection By-law
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 Other Legislation and Policies

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.”

3.0 Rationale

Prior to 2014, and the adoption of the Urban Forest Strategy, canopy cover in the city was on a downward trend. London’s Urban Forest Strategy set a goal of 34% tree canopy cover by 2065. To help achieve this target it is important to protect existing large trees and areas of trees and woodlands. The Tree Protection By-law is designed to maintain healthy trees for as long as possible and is subject to various exemptions and considerations where healthy tree removal may be necessary.

Is the by-law achieving its goals?

The effectiveness of the by-law has been estimated from a number of sources such as data collected from applications and feedback from industry. The amount of tree canopy preserved since 2016 through denial of permits under the by-law, that remained unaffected by a contrary decision at a hearing, is estimated at 9 hectares. Of that 9 hectares that was preserved, 0.75 ha of tree canopy was later removed under a different approvals process such as site plan which is governed by the Planning Act.

Staff receive about 500 applications for permit every year of which about 10% are denied. For every application received, it is estimated by local arborists that four applications are never submitted, and instead the tree was pruned or left alone because of bylaw awareness. Based on the limited information that is available, staff estimate that each year around 2,000 Distinctive Trees with an average 14m crown diameter that could have been removed by will of the landowner are retained because of the by-law, whether directly administered through denial of a permit, or indirectly through no application being submitted. It is estimated that this has preserved 120 hectares of tree canopy since 2016.

One of the most effective ways to determine if the City is succeeding is through a canopy cover analysis. In 2019 this analysis was completed and showed that the city’s tree canopy cover has increased, from 23.7% (2015) to 26.8% (2019). Some of this 3.1% increase may be attributed to improved measurement methodology, utilising light detection and ranging (LiDAR). It is more likely, however, that it is an outcome of the comprehensive approach to managing the urban forest through the implementation of the Urban Forest Strategy. Much of the success of the Urban Forest Strategy can be attributed to the support of Municipal Council.

In addition to preserving trees on private land, programs for residents to participate in expanding the urban forest through tree planting have been implemented. The TreeME grant program and the annual National Tree Day giveaway event are both very successful.

4.0 City Response to Previous Public Participation Meeting – Informing and Improving the By-law

A public participation meeting about the proposed new private Tree Protection By-law was held on September 23, 2019 where a number of issues were raised. The following matters arising from the public participation meeting has been considered in the further development of the proposed new by-law with changes made to the proposed new by-law as appropriate.

Part 2 – Definitions

Distinctive Trees

(i) Adoption of a Reduced Size for a Distinctive Tree & Staffing Levels

While there has been public and industry support for reducing the size threshold below 50cm diameter at breast height (DBH), possibly to 20cm or greater, and the Trees and Forests Advisory Committee has supported a reduction in size, the predicted impact on workload remains a barrier; additional staff would be required to maintain minimum levels of service. Assuming new staff worked only on the Tree Protection By-law and no other matters, the number of Full Time Equivalents (FTEs) that would be required to maintain minimum levels of service is estimated as:

Distinctive Tree Size Threshold	Estimated percentage of protectable tree population protected %	Additional # FTEs required to maintain minimum service assuming they work on Tree Protection By-law only
No limit – all trees protected	100	18
20cm or greater	50	8
30cm or greater	21	4
40cm or greater	11	2
*50cm or greater	6	-

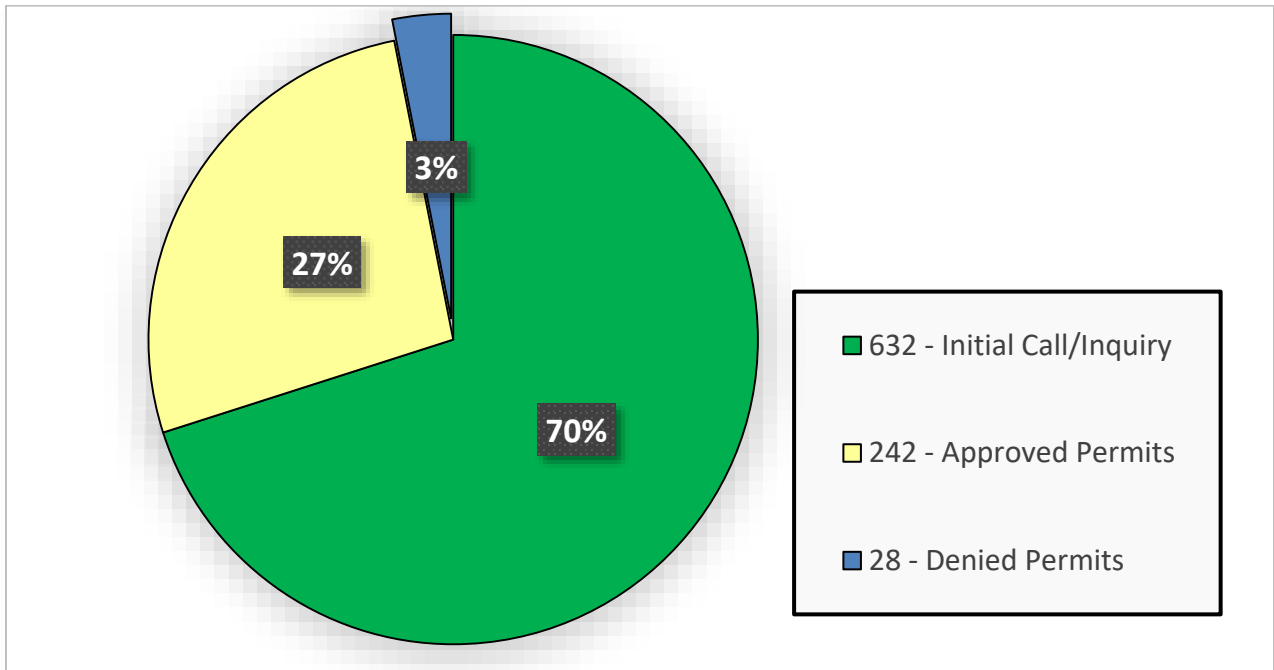
*Current staffing levels

While the number of permit applications is one indicator of workload, the enforcement of the by-law can be a far bigger commitment. Enforcement requires an immediate response (or as close to immediate response as possible) to reports of infractions every day of the week including weekends and holidays, and it absorbs considerable staff time to investigate each complaint.

The turnaround on applications where all required information has been submitted by the applicant is generally 2 weeks.

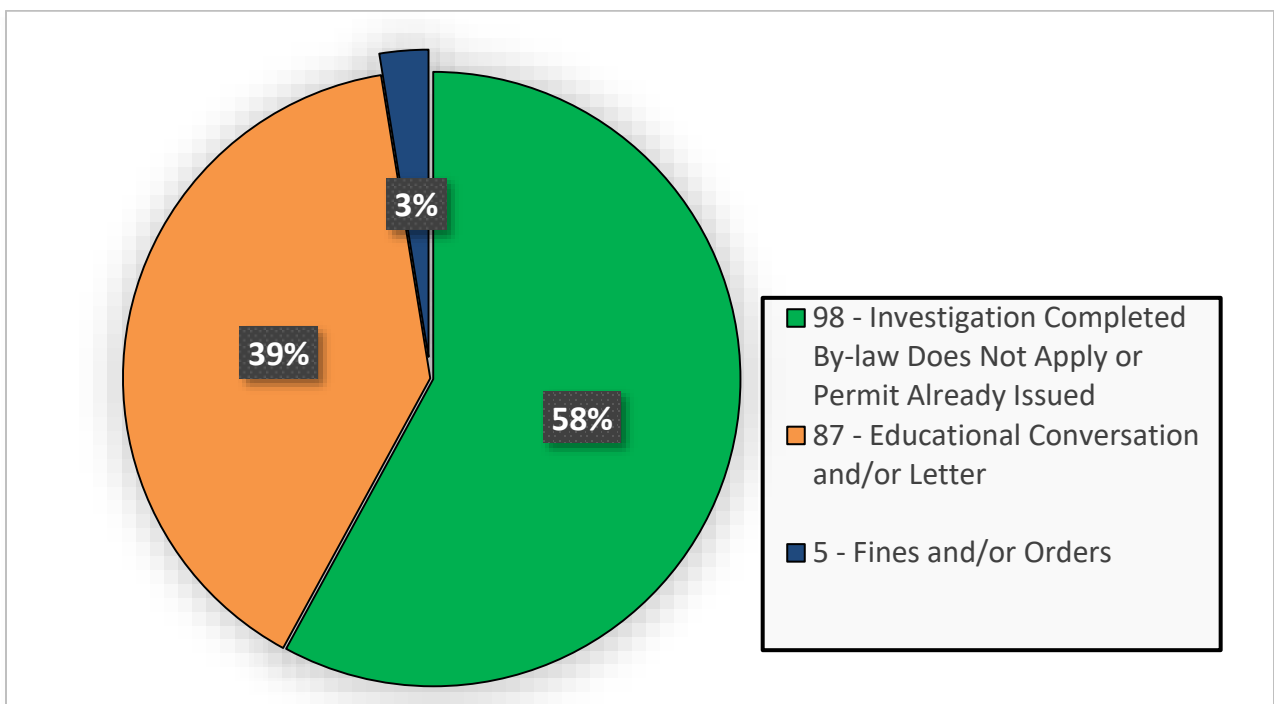
Recommendation: Consistent with the recommendation in 2019, no change to the Distinctive Tree definition size and maintaining the 50cm or greater diameter is recommended.

Fig. 1 Administration Activities of By-law from November 2019 to September 2020*



Total 916 Inquiries

Fig 2 Enforcement Activities of By-law from November 2019 to September 2020*



Total 195 Complaints

***Note that this timeframe was during the COVID-19 pandemic where the by-law was suspended for 3-4 months.**

(ii) Urban Growth Boundary Geographic Limitation

Public comment was received at the Public Participation Meeting regarding the arbitrary protection of individual large trees as Distinctive Trees based on a geographic marker, the Urban Growth Boundary. Those large trees inside the Urban Growth Boundary are protected as Distinctive Trees, while those outside the Urban Growth Boundary are not. The Urban Growth Boundary is invisible on the ground, which makes it difficult for the public to know where the by-law applies. Often, when the public complain about cutting of large trees outside the Urban Growth Boundary, they are surprised to learn the trees are not protected and may express confusion or exasperation as to why those trees outside the Urban Growth Boundary were not protected.

It is not recommended to remove the geographic limit (the Urban Growth Boundary) within which large trees are protected as Distinctive Trees, although this invisible line does create confusion for the public - particularly those reporting tree removals in the rural area. To remove this limit may impact staff workloads, particularly for enforcement. There are other factors that affect rural tree management decisions including normal farming practices; municipal drain maintenance; resource extraction; many of those are exempted activities or mandated through other legislation, but if there is a complaint they still have to be investigated to discover the details.

Recommendation: No change to the Distinctive Tree definition.

Add Hazardous Trees Definition

The Trees and Forests Advisory Committee asked that a definition of “hazardous” be included in the by-law. Staff did consider whether to include wording around high or extreme risk assessment, but as the assessment of trees is subjective this would likely become an area of contention. Further, the level of tolerance of risk varies from person to person, so what one landowner finds acceptable, another may not. For this by-law it is not appropriate for the City to determine that a tree is or is not hazardous. It is better that the applicant’s arborist makes that determination, substantiates the risk, and applies the landowner’s tolerance of risk. Staff will verify that the risk has been substantiated and ask for further information where necessary. As a general rule, proximity alone is not sufficient reason for a tree to be deemed hazardous.

Recommendation: Not to include “hazardous” as a definition in the by-law.

Part 5 – Exemptions

Exemption from By-law - Golf Courses

It is proposed to exempt golf courses from the by-law because golf courses are a business that need to adapt and continue to attract players, with new technology creating new standards, e.g. in the distance a ball can be struck, that requires golf courses to be modified over time. With the natural environment serving as a fundamental feature of these businesses, golf courses conduct a level of stewardship and are expected to conserve trees when possible.

Golf courses in the City may contain hazard lands, floodplains, with slope stability and erosion control risks, and concern was heard about providing golf courses with the freedom to determine their own tree removal. These terrestrial areas also provide habitat and conduits for urban wildlife. Staff looked at whether the Tree Protection By-law – which only protects trees - is the appropriate mechanism for controlling hazard lands and believe it is outside the scope of the by-law. Land-use conflicts may be addressed through the Zoning By-law. The Conservation Authorities have far greater controls in their regulated areas under the Conservation Authorities Act and are the appropriate bodies to address concerns with slope stability and soil erosion.

Recommendation: Consistent with the recommendation in 2019, exempt actively managed golf courses from by-law.

Exemption from By-law - Cemeteries

Cemeteries can have their own by-laws which sometimes may conflict with the Tree Protection By-law. This can be the case when replacement tree plantings are required. Cemeteries have received permits under the by-law, to create space for burial, or to manage a public safety issue. A hearing against the City’s decision to refuse to issue a permit for removal of a tree in a cemetery was upheld by Hearing Officer, to allow for building a new columbarium. The City Engineer is unlikely to refuse a permit that would interfere with public safety or the normal running of the cemetery. Therefore the by-law becomes a layer of extra bureaucracy, serving no useful purpose. For these reasons, cemeteries should be exempted from the by-law.

Recommendation: Consistent with the recommendation in 2019, exempt cemeteries from the by-law.

Part 7 - Application for Permits

Photographs

The Trees and Forests Advisory Committee has asked that photographs be submitted for every tree permit application. This is helpful, and many applications do include photographs or video, occasionally both - but in some instances a photograph may not be feasible, for example it may not be possible to clearly identify a tree or an issue in a tree due to poor light, bad weather, or physical obstructions – which may include other trees around it.

Recommendation: Currently, an Arborist Opinion requires photos and/or video and can be requested for other applications if needed.

Part 9 - Issuance of Permits

Successor Planting, Shadow-planting or Under-planting

The concept of successor planting was raised at the Public Participation Meeting. This would mean that a tree owner could, by anticipating the loss of a large Distinctive Tree, designate or plant a replacement tree on their own property as its successor, and ensure that it is established some years before the larger tree is removed. The tree owner would obtain a permit to remove the larger tree, whether it is healthy or not, by virtue of already having a successor ready to take over in approximately the same place.

Staff has considered that the mechanism to allow for a permit to be issued where a successor exists would be desirable in some cases, for example removing a species of tree that may be invasive or a tree that has a likelihood to do harm, and releasing a native species of tree that is close by.

The risk is that the successor tree, being smaller, may not be a Distinctive Tree and may not be protected by the by-law. Nevertheless, if a tree that is invasive or having potential to do harm is removed, that benefit may be sufficient to outweigh the risk of a landowner not upholding their commitment to retain the successor tree. This is no worse than requiring replacement planting, where the replacement tree is also not protected (see below).

Recommendation: There is flexibility in the proposed new by-law to permit this consideration.

Replacement Tree Planting

With the proposed by-law, replacement tree planting will be required where an otherwise healthy or safe tree is proposed to be removed. The number of replacement trees will be determined according to Schedule A in the proposed new by-law. During consultation with the Trees and Forests Advisory Committee, clarification on the protection of replacement trees was sought and recommendations were received to protect young trees or replacement trees that are not in a Tree Protection Area. Outside of Tree Protection Areas, replacement trees would not be automatically protected by the by-law as they would not meet the size threshold to be a Distinctive Tree.

Staff considered amending the by-law maps to include replacement trees as they are planted, but this is not a practical approach as it increases workload, risks the by-law becoming uncertain in scope during the interval between imposing the replacement planting condition and mapping it, and may mean returning to Committee frequently for approval of the new map.

While the planting of replacement trees can be enforced, the **retention** of replacement trees after planting remains at the discretion of the landowner.

Recommendation: There is not a practical approach to track replacement trees towards their long term protection after they have been planted and met the conditions of the permit.

Schedule A

Fees - Application; Appeal

No application fees are recommended to be collected under the Tree Protection By-law. A number of comments were received from the public about the unfairness of passing along all the costs within the by-law (including the then-proposed \$100 flat fee for an application for a permit; replacement trees, and arborist reports) to the owner of a protected tree, when the owner has often been maintaining a large tree for the benefit of society for years. This was described at the Public Participation Meeting as being a “big stick”, in effect punishing the people that do right by having cared for large trees, instead of incentivising actions as a “carrot”. Concerns were also expressed regarding harvesting in woodland, where the fee is a disincentive to managing the woodland properly and potentially could create unsafe conditions.

Staff has heard from the tree care industry that a modest fee is no deterrent to tree removal.

Staff consider it appropriate not to charge application fees for these various reasons. The financial impact of this change is minor and absorbable in the existing operating budget.

An appeal (hearing) fee of \$150, as amended, will still be required, per the sundry receipts described in the City's *Fees & Charges By-law*.

Recommendation: No application fees shall be required when applying for a permit however, fees for replacement trees may still apply.

Schedule B– Tree Protection Area maps

Over the past four years, since the adoption of the by-law, staff have monitored the practical application of administering and enforcing the part of the by-law that pertains to trees located in Tree Protection Areas. Edits to the maps have been necessary to address routine residential maintenance such as lawn mowing and making the physical location of the Tree Protection Area identifiable in the field. This will ensure that applicants and staff can be confident where the by-law applies for the purposes of submitting applications and enforcement.

The Public Participation Meeting highlighted where church yards and rear yards, often devoid of trees and laid to lawn, are part of a Tree Protection Area - where all trees would be protected, regardless of their size. The Tree Protection Area was intended to cover “trees in woodlands” - but was applied in most parts based on (2016) Official Plan designation as Environmental Review (ER) or Open Space (OS), and Zoning By-law OS5 and ER zones. Since land designation and zoning lines are not always matched by property lines, and zoning does not always reflect the current land-use (that may have been “grandfathered” at the passing of the Zoning By-law) in many places the Tree Protection Area spills over into yards where there are no or only a few trees. Apart from being difficult to interpret on the ground, this raises the issue of frequent and unavoidable infractions of the by-law by, for example, destroying tree seedlings while mowing the lawn. The ER zoning included drains and municipal drains. The City's Stormwater Management staff has advised that municipal drains were usually not designed to function with trees and, for reasons of overland flow interception, routine inspection and maintenance, trees are generally unwelcome in the vicinity of a municipal drain and should be removed or prevented from growing there.

Further, the ER or OS designation and zoning resulted in large swathes of City-owned lands being included in the by-law (e.g. parks, Environmentally Significant Areas), when

the intent of the by-law is to protect trees on private lands. The Parks & Recreation Area By-law already applies to trees on many of those City-owned lands.

A comprehensive review and update of maps has been completed that:

1. removed Tree Protection Area from City-owned lands; hydro power-line corridors; Conservation Authority lands; privately-owned golf courses; cemeteries and known tree farms and Christmas tree plantations;
2. removed Tree Protection Area where trees are absent, sparse, or grass is obviously mown; in essence, wherever it is not resembling woodland. This also removed some fruit-tree orchards;
3. removed Tree Protection Area over water, and municipal or managed drain corridors (mostly in the urban built-up areas and across agricultural fields);
4. removed Tree Protection Area where development approvals are known to be underway or completed;
5. added Tree Protection Area to fill in holes in woodland so to avoid the “Swiss Cheese effect” which is difficult to interpret on the ground;
6. added some new Tree Protection Area that had previously been omitted, capturing tree features 1ha or greater in area, or more-or-less continuous tree canopy connecting to or within 100m of a Tree Protection Area
7. if possible and reasonable, re-drew Tree Protection Area polygons to match with an identifiable feature e.g. terminating at a property line.

This mapping exercise can be summarised as:

- A: Tree Protection Area in original by-law (hectares): **9,909 ha**
- B: Tree Protection Area removed (ha) from the proposed by-law: **6,944 ha**
- C: New Tree Protection Area added: **151 ha**, on 255 parcels of land
- D: Total Tree Protection Area proposed (A minus B plus C): **3,116 ha**

Although Tree Protection Areas have been removed, large trees (50cm DBH or greater) within the Urban Growth Boundary remain protected as Distinctive Trees.

It is recommended that staff continue to revise the Tree Protection Area maps every four or five years to maintain accuracy and applicability with respect to development approvals, and consistency in protecting trees in woodland – which may add new sites with recent afforestation. These changes will be brought forward as a by-law amendment.

Recommendation: That the Tree Protection Area maps in Appendix A Schedule B be approved with the passing of the new Tree Protection By-law.

5.0 Issues Outside the By-law

The Public Participation Meeting reiterated the concerns that the public has with the inability of tree by-laws to effectively protect trees through many Planning Act development approvals processes. Discussions with Development Services are ongoing to find a practical approach and a strong deterrent to tree removal through existing policies and by-laws. For example, it may be possible to utilize a provision in the Site Plan Area Control By-law to withhold a required security as a penalty if there is a failure to comply with an approved Tree Protection Plan.

Incentives – the “carrot”

Regarding the incentivising of the by-law, staff are developing a Veteran Tree Incentive Program to respond to the concerns that nothing is offered to help landowners maintain protected trees. Retaining the largest trees could contribute some of the best tree canopy, environmental, social, cultural, ecological and emotive values for our community. The Trees and Forest Advisory Committee also commented on the need to retain habitat for wildlife, which may mean retaining dead branches on a large tree for raptors. Therefore, staff has worked on a program to support appropriate veteran tree care and management for large Distinctive Trees that reduces risk to a level tolerable to the landowner, short of cutting the tree down completely. It is hoped that some tree

owners will decide to keep a large and ageing tree for longer, supported by this program.

A veteran tree training event was to be held by the City on April 8, 2020, to which over 40 tree care company participants had planned to attend. Completion of that training could become a qualifying requirement for a company to be engaged by a landowner participating in the Veteran Tree Incentive Program. Due to the pandemic this event had to be cancelled however, staff plan to host the event when possible.

Licensing Tree Care Contractors

Concerns have been heard over the past several years of tree care contractors springing up and operating as “fly by nights”, often for cash, identified only by a cellphone number, ignoring or circumventing the by-law and doing poor work without concern for safety. It is often impossible to trace such contractors or individuals to a name or business address. It also appears to reward those companies that are not following the by-law. They are under-cutting prices of other tree care companies and able to respond to work quicker as they are not applying for needed permits.

Staff consider that licensing tree care contractors would be feasible and may be brought forward through a separate by-law. Some licensing requirements for tree care contractor could include proof of insurance, compliance with worker safety insurance (WSIB), and continuing industry qualifications. The purpose of the licensing would be to influence and improve on tree care standards across the City, reducing enforcement, and fostering better working relationships with a variety of tree care companies working in the City.

6.0 Conclusion

Communities with healthy trees and robust canopy cover create a sense of neighbourhood identity, have cleaner air and water, and can increase shopping times and expenditure in commercial districts by up to 20% more. Recently, the urban forest has moved from being considered green infrastructure to critical infrastructure. Trees sequester carbon, helping mitigate climate change, and people living in treed areas have better health outcomes with less impact to health services. A recent study has shown during the COVID-19 pandemic that parks and forested areas are being used three times as often, by a more varied population and for longer periods of time.

Changes that have been made to the proposed new by-law since the September 23, 2019 meeting are included in Appendix “B”. New language is underlined and deleted language is ~~struck through~~. Changes in the Tree Protection Area maps are identified as hatched orange for removed, purple for newly added, and green for no change.

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. Staff recommend that this new Tree Protection By-law be approved. Protected trees will continue to be protected under the existing Tree Protection By-law C.P.-1515-228 until it is repealed and the new Tree Protection By-law is put in force and effect on March 1, 2021. The will allow for time to obtain set fine orders, finalize application forms and supporting documents and inform residents and contractors of any new processes.

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Appendix A: Proposed New Tree Protection By-law

Appendix B: Changes to Proposed New Tree Protection By-law from Sept 23, 2019

Appendix C: Tree Protection By-law C.P.-1515-228