



STAFF REPORT ACTION REQUIRED

Tree By-law Amendments City of Toronto Municipal Code, Chapter 813

Date:	December 17, 2007
To:	Parks and Environment Committee
From:	General Manager, Parks, Forestry and Recreation
Wards:	All Wards
Reference Number:	

SUMMARY

City of Toronto Municipal Code, Chapter 813, provides for the protection of City-owned street trees and trees on private property. The trees on city streets by-law (Article II of Chapter 813) provides protection for the City's street tree population. The private tree by-law (Article III of Chapter 813) has been in effect citywide since September 2004. Experience with both by-laws has highlighted some areas where refinement is needed to improve their effectiveness and allow for better service to the public.

This report identifies changes that will strengthen the by-law for trees on city streets and private trees and result in improved processing of applications and inspection of potential by-law infractions. Additional revenue will be generated if the proposed adjustments to the fee schedule are adopted.

RECOMMENDATIONS

The General Manager Parks, Forestry and Recreation recommends that City Council authorize the City Solicitor to introduce a Bill amending *Chapter 813 and Chapter 441, Fees, of the City of Toronto Municipal Code* in accordance with this report and Attachment No. 1.

Financial Impact

Approval of the recommendation in this report and the adoption of a new fee schedule for *City of Toronto Municipal Code, Chapter 813*, will have the following additional revenue impact to be considered within the overall 2008 Parks, Forestry and Recreation Operating Budget.

	2008	2009 Annualization	Total
Revenue	\$149,888	49,963	\$199,851

The new fee schedule proposed is as follows:

Fee	Trees on City Streets By-law (Article II)	Private Tree By-law (Article III)
Non-construction related application	N/A	\$100/tree (no maximum)
Construction related application	N/A	\$300/tree (no maximum)
Site inspection for exemption request	N/A	\$50 (flat fee)
City street tree removal request	\$300/tree (no maximum)	N/A

Currently, there are no fees associated with *Article II* (Trees on City Streets By-law). Urban Forestry is proposing a new \$300/tree application fee that would accompany any request for permission to remove a healthy City-owned tree.

A new fee for *Article III* (Private Tree By-law) is proposed. A \$50 flat fee for the review of requests for exemption from the private tree by-law will be imposed when a site inspection is required.

Application fees have been charged under the private tree by-law since it was harmonized in September 2004. The current \$100/tree fee for non-development related applications will remain the same with the \$300 maximum removed. The current \$200/tree fee for development related applications will be increased to \$300/tree.

It is anticipated that the proposed new fee structure will generate additional revenue of approximately \$200,000 annually.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

ISSUE BACKGROUND

City of Toronto Municipal Code, Chapter 813, Articles II and III provides the authority for the protection and growth of Toronto's urban forest on both City streets and private property.

The private tree by-law has been in effect city-wide since September 30, 2004. The private tree by-law regulates trees on private property that have a diameter of 30 cm or greater measured at 1.4 metres above ground level on the main stem of the tree. Based on the experience of administering the by-law for the past 3 years, the Urban Forestry Branch is proposing amendments to the by-law that will result in improvements related to the service provided to the public and to the effectiveness of the by-law.

Amendments are also proposed for the City street tree by-law that will improve its effectiveness. The City street tree by-law protects all trees located on a common or public highway, road, street, lane or any road allowance or portion thereof under the jurisdiction of the City of Toronto.

Chapter 813 also requires updating throughout the Chapter based on recent changes to our organizational structure.

COMMENTS

City of Toronto Municipal Code Chapter 813 regulates City-owned street trees and trees on private property. Recent changes to the organizational structure of the Parks, Forestry and Recreation Division, and revisions to improve the effectiveness of the tree protection by-laws and the level of service provided to the public, require amendments to *Chapter 813*. These amendments are summarized in Attachment No. 1.

Tree by-laws have proven to be an effective tool in the protection, renewal and public awareness of Toronto's urban forest. The private tree by-law has been in place city-wide for the past 3 years and the administration of the by-law over that time period has provided valuable experience and identified several issues that need to be addressed through amendments to the by-law. A revised by-law will be easier to administer resulting in fewer delays to residents and the development industry while still allowing Urban Forestry to achieve its goal of protecting and enhancing the urban forest, and educating individuals with respect to tree protection measures and alternatives to tree injury and destruction.

Amendments to *City of Toronto Municipal Code, Chapter 813*

Article II, Trees on City Streets

Definitions

The definitions section of the trees on city streets by-law requires some revision to reflect the organizational changes that have occurred since the by-law was adopted in 2000. The

definition of Commissioner needs to be removed and replaced with the Director of Urban Forestry.

The definition of Injure/Injury will be revised to provide consistency with the definition found in Article III. Injure/Injury will be defined as any act that will harm a tree's health in any manner, including failure to protect in accordance with standards set out by the Director.

On occasion work takes place near trees that negatively affects the health of the trees. A new provision is proposed for Article II that will allow the City to collect any costs that the City incurs in performing maintenance on affected trees as a result of a person carrying out unauthorized work near City street trees or defaulting on what they were directed to do in order to preserve and protect the trees during authorized work. These costs will be collected either directly, or in the same manner as property taxes.

A new fee for Article II is proposed for situations where we receive a request for permission to remove healthy City-owned trees. The review of these requests is time consuming and involves site inspections and often a staff report. A fee of \$300 per tree is proposed to subsidize the time and resources that are involved in processing these requests.

Article III, Tree Protection

Article III, Tree Protection contains the provisions regulating trees on private property. Staff experience with the private tree by-law since its enactment has highlighted some areas where refinement is needed to improve its effectiveness and allow for better service to the public. The information contained in Attachment No. 1, identifies the changes that will strengthen the private tree by-law and result in improved productivity when processing applications and inspecting potential by-law infractions.

Title of the Article

Changing the title of Article III from "Tree Protection" to "Private Tree Protection" will make it clear to the public that this section of *Chapter 813 of the Municipal Code* applies to trees located on private property.

Definitions

The definitions section of the private tree by-law requires some revision to reflect the organizational changes that have occurred since the by-law was harmonized in 2004. The definition of Commissioner needs to be removed and replaced with the Director of Urban Forestry.

Additionally a definition for Diameter Measurement will be added in order to provide the public with a clear understanding of how to measure a tree to determine if it qualifies for regulation under the private tree by-law based on its size.

The definition of Injure/Injury will be revised to provide consistency with the definition found in Article II. Under the provisions of the private tree by-law an application for

permission to injure a tree is required whenever any activity is proposed within a protected tree's minimum tree protection zone as outlined in the City of Toronto's Tree Protection Policy and Specifications for Construction Near Trees. On occasion, activity is proposed within a tree's minimum protection zone that will have no adverse effect on the health of the tree. Under the current definition of injury, an application would be required in these circumstances. Redefining injury will allow staff to process applications like this more efficiently.

Exceptions, *Section 813-11*

Not for Profit Housing Fees

Several private tree by-law applications have been processed by Urban Forestry for development sites involving the Toronto Community Housing Corporation (TCHC), and Habitat for Humanity. A significant number of private trees required removal at the TCHC's Don Mount Court and Regent Park sites to allow both projects to proceed. The issue of how to apply the application fee for non-profit housing projects arose with each application. Urban Forestry currently has no authority to waive the fee for such projects and staff are required to request City Council's authority in each case when a request is received to waive the application fee. An amendment providing that the private tree by-law application fee shall not be payable for the not-for-profit portion of housing projects undertaken by the TCHC and Habitat for Humanity is proposed.

Redefining Hazardous Trees

The addition of the word "imminently" will be added in front of "hazardous tree" in this section of the by-law. There is often confusion in the tree care industry as to what qualifies for an exemption in terms of a hazardous tree. The addition of the word "imminently" will help to clarify when a tree does not require a permit application under the provisions of the by-law. Numerous requests are received from applicants requesting exemption from the private tree by-law, based on claims that the tree(s) in question are hazardous. A large number of the trees in question are not imminently hazardous and staff have to advise the applicants that a permit application is required. Fewer requests for exemption should result with the addition of the word imminently.

Powers and Duties of the Director of Urban Forestry, *Section 813-13*

This section of the by-law sets out the authority of the Director of Urban Forestry with respect to administration of the private tree by-law and the issuance of permits.

Staff propose adding a clause to this section that will give the Director of Urban Forestry the authority to require a letter of credit for privately owned trees. This option will be used if any activity, including construction activity, is proposed that may impact a private tree located on a mutual property line or on an adjacent property. Requiring a person to post a letter of credit will provide an additional incentive to ensure that the approved tree protection plan is being implemented to the full extent and will provide a degree of protection to the owner of the tree on the adjacent property who is not doing anything on their property that would impact the tree. This practice is currently in place regarding City-owned trees and has proven to be effective.

Issuance of Permits, Section 813-16

Over the past 3 years several scenarios have arisen where staff did not have the authority to issue a permit in circumstances where it would have been reasonable to do so.

Additional authority for the Director, Urban Forestry to issue permits is proposed.

Section 813-16 will be amended to clarify that it contains exceptions to the rule in *813-15* that the Director, Urban Forestry shall refuse to issue permits in respect of healthy trees. The Section will be premised on the notion that the Director, Urban Forestry has the discretion (but is not required) to issue permits to injure or destroy healthy trees in certain circumstances. There has been confusion among some applicants who interpret this section of the by-law to mean that staff must issue permits in the circumstances noted in this section, when in fact permit issuance is at the discretion of staff.

The Director, Urban Forestry should have authority to issue permits for healthy trees without posting a notice or Councillor consultation if injury or destruction is required based on plans approved by the Ontario Municipal Board, City Council or the Committee of Adjustment (collectively the “Planning Approval Authority”) and, in the opinion of the Director, tree removal is appropriate. The Director will only be required to issue a permit if the Planning Approval Authority specifically includes tree removal as a condition of consent, site plan or subdivision approval (in accordance with the *City of Toronto Act, 2006*). Otherwise, despite a planning approval, the Director will retain discretion to refuse a permit or to impose conditions related to the protection and planting of trees.

Prior to the passing of the *City of Toronto Act 2006*, the City’s authority to pass a private tree by-law was found in the *Municipal Act, 2001*. Under the *Municipal Act*, a decision to refuse a tree permit or conditions attached to a permit were appealable to the Ontario Municipal Board, however, under the *City of Toronto Act*, there is no longer any provision for appeal.

The Director of Urban Forestry will also have the authority to issue permits for healthy trees, without the posting of a notice, where trees are growing on top of underground parking structures, if removal or injury is required to facilitate repairs to the structure and a satisfactory replanting and/or tree protection plan is included with the request.

The issue of how to process applications received from cemeteries has been challenging mainly due to the timelines affecting cemeteries with respect to the work they undertake. We are proposing that the Director, Urban Forestry be authorized to issue permits to enable the day to day operations of a cemetery to continue. However, any proposed developments planned in cemeteries will continue to be subject to a full review under the provisions of the by-law.

On rare occasions staff receive requests for permission to relocate trees that qualify for protection under the by-law. If the trees are sufficiently prepared in advance of their relocation they can be moved and survive in their new surroundings. Staff propose

amending the by-law to permit the relocation of large trees where Urban Forestry is of the opinion that the trees will be sufficiently prepared prior to their move.

Notice, Section 813-17

The current posting process under the provisions of *Article III, Chapter 813*, involves posting a Notice of an application on the property that is the subject of the application, advising the neighbourhood of the application and allowing passers-by to write to Urban Forestry with any objections they may have to the application. A new posting process is proposed whereby the Notice will be posted providing details on the application and including a telephone number and e-mail address for concerned citizens to contact Urban Forestry for further information. We are proposing to eliminate the opportunity to submit written objections to Urban Forestry in regards to the Notice. Experience has shown that written objections provide a false expectation to the authors giving them the sense that a letter of objection will stop the application. It will be more efficient for residents to contact the staff member assigned to a file via telephone or e-mail to obtain more information on how they can be involved in the application process.

Applications that require a report to a Community Council will continue to be deputation items and concerned residents will still be provided with the opportunity to provide input and express their concerns regarding the application at the Community Council meeting.

Offences; additional remedies, Section 813-8 & 813-23

The *City of Toronto Act* provisions have necessitated changes to the above noted sections of *Chapter 813*. At present, under the trees on city streets by-law, a person convicted of an offence is liable to a fine of not more than \$5,000.00. The current fines associated with the private tree by-law provide that on first conviction, a person is liable to a fine of not more than \$10,000.00 or \$1,000.00 per tree, whichever is greater. Under the *City of Toronto Act*, a minimum fine shall not exceed \$500.00 and a maximum fine shall not exceed \$100,000.00. The fine provisions in Chapter 813 will be amended to reflect the fine structure provided for in the *City of Toronto Act*.

The *City of Toronto Act* also provides for the establishment of “special fines”. A “special fine” can be established in addition to the regular fine for an offence, and is designed to eliminate or reduce any economic advantage or gain that has been achieved by contravening the by-law. This fine may exceed \$100,000.00 but it is proposed to be set at \$100,000.00 in the interest of deterring anyone who may want to contravene a tree by-law, viewing a fine as a cost of doing business or in order to save time.

Municipal Code, Chapter 441, Fees

The fees associated with the private tree by-law are currently based on whether an application is development related or non-development related. There is some confusion with these classifications as residents are not clear on what is or isn't development. It is proposed to base the application fee on whether an application is construction related or not, and to add a definition of construction related applications to *Chapter 441, Fees*.

The current fee for non-development related applications is \$100 per tree. The fee for non-construction related applications is proposed to be the same, however the maximum fee of \$300 is proposed to be eliminated. The fee for construction related applications is proposed to increase from the current \$200 to \$300 per tree with no maximum.

Two new fees are proposed. The first is a \$50 flat fee associated with the review of requests for exemption from the private tree by-law when a site inspection is required. The second new fee is for requests for permission to remove healthy City-owned trees. The fee amount proposed is \$300 per tree.

The new fee structure proposed will help to cover the costs of administering the private tree by-law and the cost of processing requests for City tree removal. Increasing the construction related fee to \$300 per tree reflects the level of effort that is required to process this type of application.

CONTACT

Mark Procnier, Manager, Tree Protection and Plan Review, Tel: 416-392-7384, Fax: 416-392-0049

Email: mprocuni@toronto.ca

SIGNATURE

Brenda Librecz
General Manager, Parks, Forestry and Recreation

ATTACHMENTS

Attachment No. 1 – Proposed Amendments to Municipal Code, Chapter 813, Articles II and III.

Proposed Amendments to Municipal Code, Chapter 813, Articles II and III		
Article II		
813.3. Definitions		
1.	Add: Director	The Director, Urban Forestry or his or her delegate.
2.	Delete: Commissioner	The Commissioner of Economic Development, Culture and Tourism or his or her delegate.
3.	Redefine: Injure/Injury	Replace existing definition with: Any act that will harm a tree's health in any manner, including failure to protect in accordance with standards set out by the Director.
4.	Add: New Section	Wherever this article directs or requires any matter or thing to be done by a person, in default of its being done by the person directed or required to do it, the matter or thing may be done under the direction of the Director, and the City may recover the costs incurred by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes.
813.8. Offences.		
5.	Revise: 813.8.	<p>A. Any person who contravenes any provision of this article is guilty of an offence.</p> <p>B. A person convicted of an offence under this by-law is liable:</p> <p>(1) To a minimum fine of \$500.00 per tree and to a maximum fine of \$100,000.00 per tree.</p> <p>(2) To a special fine of \$100,000.00</p>
Article III		
6.	Change: Title of Article III	Article III Private Tree Protection
813.9. Definitions		
7.	Delete: Commissioner	The Commissioner of Economic Development, Culture and Tourism or his or her delegate.
8.	Add: Diameter Measurement	<p>For purposes of measuring diameter under this article, trees with straight, upright stems will have their diameter measured at 1.4 metres above ground level. For trees growing on an angle from a horizontal grade and for trees growing vertical on slopes, the diameter shall be measured at right angles to the stem at a height of 1.4 metres along the centre of the stem axis.</p> <p>For double-stem or multi-stemmed trees, the diameter measurement is to be taken at a height of 1.4 metres above ground level for each stem. Where at least one stem measures 30 cm in diameter or greater, the tree is protected under the by-law.</p>
9.	Add: Director	The Director, Urban Forestry or his or her delegate.

10.	Revise: Hazardous Tree	“Imminently Hazardous Tree” – A destabilized or structurally compromised tree that is in imminent danger of causing damage or injury to life or property.
11.	Redefine: Injure/Injury	Replace existing definition with: Any act that will harm a tree’s health in any manner, including failure to protect in accordance with standards set out by the Director.
813.11. Exceptions		
12.	Revise: 813-11A.	Add the word imminently so that 813-11A. will read: Removal of a diseased, dead or imminently hazardous tree certified as such by the Director.
813.12. Applications; form and content		
13.	Add: new clause: Despite 813-12.A.(2)	The private tree by-law application fee is not applicable to the not-for-profit portion of housing projects undertaken by the Toronto Community Housing Corporation, Habitat for Humanity and for owners living below the low-income cut off as determined by Statistics Canada.
813.13. Powers and Duties of the Director		
14.	Add: new clause	The Director is authorized to: Require a person to post a letter of credit in a form and content acceptable to the City for compliance with conditions of permit issuance.
813.16. Issuance of permits.		
15.	Revise: 813.16.	<p>The Director is authorized to issue permits where:</p> <ul style="list-style-type: none"> A. Trees are in poor condition and cannot be maintained in a healthy and safe condition. B. Despite 813-15.C. the Director may issue permits to injure or destroy healthy trees where: <ul style="list-style-type: none"> (1) The trees are causing or likely to cause structural damage to load-bearing structures or roof structures. (2) The trees are growing in inappropriate locations as certified by the Director, and cannot be maintained on a routine basis due to restrictive site conditions. (3) Injury or destruction is required in order to remediate contaminated soil. (4) Trees are to be relocated and will be sufficiently prepared for relocation in the opinion of the Director. (5) Injury or destruction is required based on plans approved by the Ontario Municipal Board, City Council or a final and binding decision of the Committee of Adjustment, and the Director is satisfied that permit issuance is appropriate. (6) Injury or destruction is required to permit activities associated with the day to day operations of a cemetery, including, but not limited to, opening and closing of a grave, interring or disintering human remains, construction of a foundation for a marker, setting of corner posts, providing: 1. a tent or canopy, 2. carrying and lowering devices, and 3. ground cover. (7) The trees are appropriately sited, and not causing or likely to cause structural damage to load-bearing structures or roof structures, provided that:

		(a) Notice has been posted in accordance with § 813-17; and (b) The Director and the Ward Councillor are satisfied that the applicant has undertaken to implement satisfactory landscaping, replanting and tree preservation plans.
813.17. Notice.		
16.	Process change:	The current process of posting a Notice of an application on the property in question will change. The Notice of an application will still be posted, but only as information with the opportunity to send in letters of objection to Urban Forestry no longer being a part of the process.
813.23. Offences; additional remedies.		
17.	Revise: 813.23.	A. Any person who contravenes any provision of this by-law is guilty of an offence. B. A person convicted of an offence under this by-law is liable: (1) To a minimum fine of \$500.00 per tree and to a maximum fine of \$100,000.00 per tree. (2) To a special fine of \$100,000.00

Proposed Amendments to Chapter 441 Fees	
Fee Changes:	
Add Definition: Construction related applications	Construction related applications: Applications to injure or remove tree(s) associated with activity that includes but is not limited to building, demolition work, excavation and boring, placement of fill or surface treatment, storage of construction materials or equipment, storage of soil, construction waste or debris, and movement of vehicles and equipment. Also, applications for Official Plan Amendments, Zoning By-law Amendments, Plans of Subdivision and Condominium, Site Plan Control, Minor Variance, Consent and building permit applications.
Fee Structure Changes:	<p>The fee for non-construction related applications will remain at \$100 per tree. There will no longer be a maximum fee of \$300 for non-construction related applications. Eg. If you apply to remove 5 trees, the fee will be \$500.</p> <p>The fee for construction related applications will increase from \$200 to \$300 per tree with no maximum.</p> <p>A new \$50 flat fee is proposed to cover the cost of reviewing requests for exemption from the private tree by-law when a site inspection is required.</p> <p>A new \$300 per tree fee is proposed for requests for permission to remove City-owned trees.</p>