

PE8.5

Revised Report



STAFF REPORT ACTION REQUIRED

Revisions to the Tree By-laws

Date:	November 23, 2015
To:	Parks and Environment Committee
From:	Janie Romoff, General Manager, Parks, Forestry and Recreation
Wards:	All
Reference Number:	P:\20156\Cluster A\PFR\PE08-112315-AFS#20848

SUMMARY

City of Toronto *Municipal Code, Chapter 813, Trees*, provides for the protection of City-owned street trees of all diameters and trees on private property having a diameter of 30 cm or greater. City of Toronto *Municipal Code, Chapter 658, Ravine and Natural Feature Protection*, provides for the protection of all trees and natural features in designated areas of the city, collectively referred to as the tree by-laws.

Revisions to the tree by-laws were last approved by City Council at its meeting on November 29, 30 and December 1, 2011, and included new and revised definitions, harmonization of language between by-laws and process clarification. Since 2013, City Council and the Parks and Environment Committee have requested a review of various aspects of the tree by-laws including; options to incorporate evidence-based decision making, improvements to enforcement and transparency and information on the feasibility of excluding certain land types from by-law exception categories. In addition, a recent review of tree by-law administration has identified areas where refinement is needed to improve by-law effectiveness, allow for better customer service and reduce service delays.

This report presents proposed amendments to the tree by-laws and responds to the various City Council and Committee requests for information. Proposed by-law amendments will enhance enforcement, facilitate the issuance of permits, include new procedures related to boundary trees, clarify processes and add new and revised definitions. It is expected that the proposed amendments, identified in this report, will strengthen the by-laws and provide mechanisms to improve customer service, improve response times and enhance enforcement and transparency.

The report also presents a discussion of items that were considered in accordance with various City Council and Committee requests. These discussions are provided for information and have not resulted in any proposed by-law amendments.

RECOMMENDATIONS

The General Manager of Parks, Forestry and Recreation recommends that:

1. City Council authorize the City Solicitor to introduce Bills amending *Chapter 813, Trees and Chapter 658, Ravine and Natural Feature Protection*, of the City of Toronto Municipal Code, substantially in accordance with this report and Attachment No. 1, including such technical and stylistic amendments as may be deemed necessary by the City Solicitor.

Financial Impact

There are no financial implications resulting from the adoption of this report.

Urban Forestry issues approximately 5,600 permits annually. The 2015 Approved Budget includes estimated revenues of approximately \$1.13 million relating to tree permits. Amendments proposed in this report are not expected to have an impact on the total revenues achieved as the estimate of permits processed annually are expected to remain. These changes will allow Urban Forestry to improve response times and customer service without adding additional resources and costs.

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

DECISION HISTORY

At its meeting on July 16, 17, 18 and 19, 2013, City Council requested that the General Manager, Parks, Forestry and Recreation report to the Parks and Environment Committee on updating Toronto's Private Tree By-law in accordance with the Provincial *Planning Act*, *Federal Migratory Birds Convention Act* and accepted principles of evidence based decision making.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.MM37.37>

At its meeting on February 4, 2014, the Executive Committee requested that the General Manager, Parks, Forestry and Recreation, in consultation with the City Solicitor, include in the report, recommendations on mechanisms to enhance the enforcement function of the Tree By-laws and the Ravine and Natural Feature Protection By-law.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.EX38.12>

At its meeting on March 3, 2014, the Parks and Environment Committee requested that the General Manager, Parks, Forestry and Recreation, submit a report in the first quarter

of 2015, on improvements to the transparency and application of Toronto's tree protection by-laws, Municipal Code, Chapter 813, Articles II and III.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.PE26.4>

At its meeting on July 8, 9, 10 and 11, 2014, City Council requested that the General Manager, Parks, Forestry and Recreation report to the Parks and Environment Committee in January 2015, to consider the requirement that businesses, industrial locations and multi-residential properties not be included in the exception categories under the Private Tree by-law, thus requiring permits and replanting when dead or dying trees are removed.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.MM54.37>

At its meeting on August 15, 2014, the Parks and Environment Committee received an information report from the General Manager, Parks, Forestry and Recreation outlining the rationale for reporting to the Parks and Environment Committee in the first quarter of 2015 with a consolidated report.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.PE29.4>

At its meeting on May 5, 6 and 7, 2015, City Council requested that the General Manager, Parks, Forestry and Recreation undertake a full review of the City's Tree By-laws.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EY5.46>

ISSUE BACKGROUND

By-laws to protect trees as well as ravines and natural features were created with the intent of deterring unnecessary injury and removal of trees and natural features and to promote tree preservation.

The tree by-laws exist within the framework of Toronto's Official Plan. The policies within the OP strive to balance economic, social and environmental factors.

At the provincial level, the *Planning Act* requires that planning approval authorities have regard to matters of provincial interest including, "the protection of ecological systems, including natural areas, features and functions," as well as natural hazards for which conservation authorities have commenting authority on behalf of the province. The provincial interest in natural heritage is further outlined in the Provincial Policy Statement which sets out protection requirements for identified natural heritage feature areas.

Provincial statutes including the *Environmental Protection Act*, *Endangered Species Act* and *Forestry Act* may also be applicable in certain instances. The *Endangered Species Act* protects certain species of trees present in the city, an example being butternut (*Juglans cinerea*). The *Forestry Act* outlines good forestry practices. These statutes are administered and enforced by the provincial government.

The federal government has mandates with respect to the *Migratory Birds Convention Act*, *Species at Risk Act* and the *Plant Protection Act*.

COMMENTS

This report is presented in two sections. The first section presents proposed by-law amendments to improve customer service, improve response times and enhance enforcement and transparency.

The second section of the report outlines a discussion of items that were considered in accordance with various City Council and Committee requests. These discussions have resulted in some minor procedural changes to improve by-law transparency, however they have not resulted in any proposed by-law amendments and are provided for information.

In this report *Municipal Code, Chapter 813, Article II* and *Article III* are referred to as the Street Tree By-law and Private Tree By-law respectively. *Municipal Code, Chapter 658, Ravine and Natural Feature Protection* is referred to as the Ravine By-law.

Proposed By-law Amendments

1. Enforcement (Municipal Code Chapter 813, Articles II and III and Chapter 658)

Contravention inspection fees were approved in the 2015 Parks, Forestry and Recreation Operating Budget and are included in the Fees and Charges By-law (*Municipal Code, Chapter 441, Schedule E*). It is being recommended that the Street Tree, Private Tree and Ravine By-laws be amended to specifically reference the collection of these fees and to align with the Fees and Charges By-law.

These fees will recover the costs associated with the investigation of contraventions and help fund staffing and resources necessary to effectively enforce the tree by-laws. The collection of fees will serve as a deterrent and make the contravention inspection process more equitable and efficient. Inspection fees will only be imposed where it is determined by the General Manager that a by-law contravention has occurred.

Since the creation of the tree by-laws, their administration has been primarily based on an educational and compliance model. As a result, thousands of property owners, developers and builders have been educated on the importance of protecting and enhancing the city's urban forest. While most individuals respect and follow the tree by-laws, numerous contraventions are reported and investigated each year. Urban Forestry is aware of increasing community expectation that enhanced enforcement activities should be utilized as a tool to improve tree protection.

Where a contravention has occurred, Urban Forestry may make orders requiring that the contravening activity be discontinued or that work be done to correct the contravention. This is beneficial in that it can educate the land owner on the importance of trees as well

as mitigating tree damage. Urban Forestry can also take legal action and pursue prosecution when warranted by the magnitude of the contravention.

In 2014, eleven (11) contraventions resulted in charges being laid against property owners or their agents, of which seven were resolved and four (4) are still pending pleas or verdicts. The seven (7) contraventions that were resolved resulted in guilty verdicts or pleas. Fines associated with these verdicts and pleas totalled \$65,000.00 and court imposed compliance, for activities such as tree planting and site restoration, totalled \$77,624.24. A typical fine of \$5,000.00 per offence/tree is imposed.

2. Boundary and Neighbour Trees Definitions (Municipal Code Chapter 813, Articles II and III and Chapter 658)

In 2013, Urban Forestry implemented a new procedure to standardize the review of tree injury and removal applications that involve trees on neighbouring private properties (neighbour trees) and trees growing on boundary lines (boundary trees). The procedure includes written notification to the applicant and the owner of the neighbour tree or co-owner(s) of the boundary tree. The main function of the notification is to provide all owners of boundary and neighbour trees with an opportunity to address any civil property law or ownership issues surrounding trees that cannot be addressed through the by-law process. The process also provides that supporting documentation will be routinely disclosed to both parties if requested by either.

It is proposed that the Private Tree and Ravine By-laws be amended to include definitions of "boundary tree", "neighbour tree" and "trunk" in order to clarify the City's procedures. These amendments will make the application process more consistent and transparent and improve customer service.

A "boundary tree" will be defined as "a tree, any part of whose trunk is growing across one or more property lines" and "trunk" will be defined as "the entire trunk of the tree from its point of growth away from the roots up to its top where it branches out to limbs and foliage. These definitions are being adopted in accordance with the recent decision of the Ontario Superior Court of Justice, upheld by the Ontario Court of Appeal in *Hartley v. Cunningham*, "A "neighbour tree" will be defined as a tree whose trunk is growing wholly on an adjacent property.

The *Forestry Act* states that "every tree whose trunk is growing on the boundary between adjoining lands is the common property of the owners of the adjoining lands and every person who injures or destroys a tree growing on the boundary between adjoining lands without the consent of the landowners is guilty of an offence under the Act." Urban Forestry informs all applicants that a permit to injure or destroy a boundary tree or neighbour tree does not authorize the permit holder to injure or destroy the tree without obtaining the consent of the neighbour tree owner or boundary tree co-owner and that it is the applicant's responsibility to obtain any necessary consent prior to undertaking any tree injury or destruction approved by the City.

New fees for applications involving private neighbour, boundary and suspected boundary trees were adopted by City Council through the 2015 Operating Budget process to reflect the additional staff time required to review and process these applications.

It is proposed that the definition of "Tree" under the Street Tree By-law, currently defined as "any tree, all or part of which is located on, above or below a City street. Ownership and maintenance of trees that have 50 percent or more of their main stem situated on a City road allowance will be the responsibility of the City" be amended by deleting the reference to ownership and maintenance and dealing with maintenance under the powers and duties of the General Manager.

3. Security Deposits for Street Trees (Municipal Code Chapter 813, Article II)

An amendment to the Street Tree By-law is proposed that specifically references collection of tree protection guarantees when work may impact street trees.

Urban Forestry collects tree protection guarantees when work may impact street trees based on the authority provided in 813-6.A, which provides that work shall be carried out in accordance with the *City's Tree Protection Policy and Specifications for Construction Near Trees*. The *Tree Protection Policy*, provides that security deposits may be required to guarantee the protection of trees when construction will injure street trees. Specific reference to the collection of tree protection guarantees when work may impact street trees, rather than referring to a separate policy will clarify the process currently in use and provide greater transparency.

4. Issuance of Permits for Healthy Trees (Municipal Code Chapter 813, Article III)

The Private Tree By-law provides the authority to issue permits to injure or remove healthy trees without posting a notice of application and without councillor consultation in specific situations, such as when a healthy tree is causing or is likely to cause structural damage to a roof or load bearing structure. This authority enables staff to process applications in an efficient manner without unnecessary service delays.

Urban Forestry proposes amending the wording in this section (813-18.1), as set out in Appendix "A" for improved clarity. The proposed changes will not alter the existing process, however they will make the process more transparent and understandable.

5. Delegation of Authority to Issue Permits (Municipal Code Chapter 813, Articles II and III)

It is proposed that the General Manager be authorized to issue permits to injure or destroy private trees when permits are required to facilitate construction based on plans that have been determined to be "as of right". This amendment will add clarity to current practices, reduce delays in service delivery and improve customer service while maintaining current levels of tree protection.

For purposes of this report, the term "as of right" refers to construction based on plans that comply with the Ontario Building Code, local Zoning By-laws and other applicable laws. While the tree by-laws still apply in "as of right" situations, the intention of the by-laws is not to impede development but rather to regulate tree injury and destruction while promoting maximum tree protection and retention. The tree by-laws are not considered applicable law under the Ontario Building Code and as such the Chief Building Official cannot withhold the issuance of a building permit where the applicant has complied with all other applicable law. Permits issued in "as of right" situations will be subject to replanting requirements and protection requirements for other trees on site that may be impacted by construction activity.

The Private Tree By-law currently requires posting a notice of application for a period of 14 days and consultation with the ward councillor on the proposed landscape or tree protection plan, prior to issuance of a permit for injury or removal of healthy trees, including in circumstances where it is determined that the removal or injury is required to facilitate construction that is "as of right". This process requires a minimum of 21 days and presents an impractical and unreasonable delay. It is proposed that the General Manager be authorized to issue permits in "as of right" situations without posting notice and without councillor consultation, provided that the applicant has submitted replanting and tree protection plans satisfactory to the General Manager. This change will be consistent with the current provisions of the Private Tree By-law that provide authority for the General Manager to issue permits to injure or remove trees without posting or councillor consultation when trees are identified on plans approved by the Ontario Municipal Board, City Council, or a final and binding decision of the Committee of Adjustment. This proposed change will improve customer service by reducing average processing times for these files by an estimated 3-4 weeks.

For consistency, it is also proposed that the General Manager be authorized to issue permits to injure or destroy street trees when such trees are specifically identified for injury or removal on plans approved by the Ontario Municipal Board, City Council or a final and binding decision of the Committee of Adjustment.

6. Eliminate the Posting of Notice of Application for Tree Injury (Municipal Code Chapter 813, Article III)

When an application to injure or destroy a healthy private tree is received, Urban Forestry is required to post a notice of application at the subject site for a period of 14 days. The purpose of the posting is to identify the level of public interest in the proposed removal or injury for the benefit of the ward councillor and City Council to whom public comments are provided upon request.

A decision to issue a permit to injure trees is based upon a technical assessment by Urban Forestry as to whether or not the tree is expected to survive in good condition after the injury takes place. When presented with a satisfactory arborist report and tree protection plan, Urban Forestry views the issuance of an injury permit as an example of the balance

between development and the environment envisioned in the Official Plan. The tree survives and the development moves forward.

Comments from the public should not be required in such cases as they play no role in the recommendations by staff on permit issuance. The permit application assessment is based solely upon professional urban forestry standards; and the public will continue to receive the benefits from the tree, which will survive well.

Eliminating the need to post notices of application to injure healthy trees will improve efficiency by reducing processing time resulting in reduced delays to applicants, thus improving customer service while preserving valuable trees.

The existing process of posting a notice of application to remove healthy private trees will be maintained.

7. Posting of Permits (Municipal Code Chapter 813, Articles II and III and Chapter 658)

The current tree by-laws do not require owners to post permits in a visible location. This has led to calls to 311 and Urban Forestry reporting possible contraventions when permits have been issued. Urban Forestry proposes the implementation of a requirement that permits be posted on site in a location conspicuous from the street while construction or other work is taking place. Posting of permits will notify the public that a permit has been issued and may reduce the number of "false alarm" by-law contravention calls which will improve transparency and efficiency.

8. Replacement Trees (Municipal Code Chapter 813, Article III)

Replacement tree planting is required as a condition of permit issuance when private trees are removed. The survival of replacement trees planted as a condition of permit issuance is important in achieving the goal of increased canopy coverage. Urban Forestry proposes amending the Private Tree By-law to require that replacement trees be maintained in good condition for two years after planting and that trees that die or are in poor condition within two years shall be replaced.

It is also proposed that the Private Tree By-law be amended to protect replacement trees in the same manner as trees 30 cm or greater in diameter. This additional protection will help ensure that replacement trees can reach a diameter greater than 30 cm and that the intent of the by-law is met by ensuring that replacement trees are protected and cannot be removed except in accordance with the Private Tree By-law requirements. The additional protection for replacement trees will be enforced through complaint-based inspections and the enforcement provisions of Chapter 813.

9. Expiration Dates for Applications (Municipal Code Chapter 813, Articles II and III and Chapter 658)

Currently, applications to injure or remove trees do not expire. Amendments are proposed to allow for the establishment of expiration dates for dormant applications. It is not uncommon for applications to be submitted to Urban Forestry and remain dormant for extended periods of time such as when an applicant fails to provide necessary revisions or fails to satisfy conditions of approval.

When an application is dormant for an extended period of time changes to tree condition and construction plans may occur which require submission of a new application with updated information. Expiration dates will allow dormant applications to be closed and ensure that current information is provided for review. It is proposed that a standard application expiry period of one (1) year be established.

10. Authority to Request an Undertaking and Release (Municipal Code Chapter 813, Article III)

It is proposed that section 813-2 - *Permits to Injure*, be amended in order to ensure that the General Manager has authority to require compliance with submitted tree protection plans and arborist reports, not just landscaping and replanting plans.

11. Permit Conditions (Municipal Code Chapter 813, Articles II and III)

Experience in administering the Street Tree and Private Tree By-laws has highlighted several additional conditions that should be imposed to ensure that both replacement tree planting and tree preservation are effective. Inclusion of these additional standard conditions will allow permits to be issued more efficiently and consistently.

It is proposed that the following permit conditions be added to the Street Tree and Private Tree By-laws:

- installation of tree protection barriers in accordance with the *Tree Protection Policy and Specifications for Construction Near Trees* prior to the start of any work that may require the removal or injury of trees;
- notification that tree protection has been installed or replacement trees have been planted;
- requiring that injury or destruction of trees only take place after the issuance of any required building permits;
- requiring that trees be protected in accordance with the *City of Toronto Tree Protection Policy and Specifications for Construction Near Trees*;
- requiring the property owner to advise all contractors and agents on site during tree injury or destruction of all tree protection requirements; and,
- requiring applicants to ensure that all agents and contractors strictly adhere to all tree protection requirements.

12. Eliminate Exception to Erect a Fence (Municipal Code Chapter 658)

Currently, the Ravine By-law does not require a permit to injure or destroy trees in order to erect a fence. In most cases a fence can be erected while protecting trees.

Amendments are proposed that will eliminate this exception and require property owners to submit an application when a fence will be erected and trees may be injured or removed.

13. New and Revised Definitions (Municipal Code Chapter 813, Articles II and III and Chapter 658)

Several existing definitions in the Street Tree By-law, Private Tree By-law and Ravine By-law are proposed to be amended to improve clarity. New definitions are also proposed to provide an explanation for certain terminology used within the Street Tree and Private Tree By-laws. These amendments include:

- revise the definitions of "landscape plan/replanting plan" and "tree protection plan" currently included in the Street Tree By-law and Private Tree By-law in order to provide consistency and clarification;
- revise the definition of "arborist report" and "destroy" currently included in the Street Tree By-law and Private Tree By-law to provide clarity;
- revise the definition of "officer" currently included in the Street Tree By-law, Private Tree By-law and the Ravine By-law to include students and contractors working on behalf of the General Manager; the definition authorizes Urban Forestry to utilize students to undertake by-law related research.

14. Administrative Changes (Municipal Code Chapter 813, Articles II and III and Chapter 658)

Currently, under the Street Tree By-law and Private Tree By-law, persons living below the low-income cut off as determined by Statistics Canada are not required to pay application fees. An amendment is proposed to clarify that the low-income cut off is before tax in accordance with the current process in Parks, Forestry and Recreation.

It is proposed that submission of satisfactory arborist reports, landscaping and replanting plans and tree protection plans be added as criteria for the General Manager to review in determining whether or not to issue a permit under the Private Tree By-law.

Discussion of City Council and Committee Requests

MM37.37 - Discussion on Impartial Third Party Collection and Review of Evidence, Integrating Evidence Based Decision Making and Migratory Birds Convention Act

At its meeting on July 16, 17, 18 and 19, 2013, City Council requested that the General Manager, Parks, Forestry and Recreation report to the Parks and Environment Committee

on updating Toronto's Private Tree By-law in accordance with the Provincial *Planning Act*, Federal *Migratory Birds Convention Act* and accepted principles of evidence-based decision making.

Impartial Third Party Collection and Review of Evidence

Requiring impartial third party collection and peer review of evidence during the planning and development process, similar to the standards currently set for environmental assessments under the provincial *Environmental Protection Act* (EPA), would result in increased costs and review times to applicants.

Municipal tree by-laws and the provincial EPA differ significantly in terms of what they regulate and the regulatory processes they follow. These differences make it difficult to compare the tree by-laws and the EPA in a meaningful way. As well, the success of any peer review of evidence by a third party is highly dependent on regulated professionals working within a framework of standards requiring minimal government oversight.

The arboricultural industry is the most common provider of evidence in the form of applications, arborist reports and tree protection plans. The arboriculture industry is not regulated. This lack of industry regulation renders any peer review process questionable in value and highlights the need for staff oversight (as is the current process) when tree by-law applications are made. Such oversight ensures that applications are dealt with in an objective and consistent manner, in alignment with City policies.

Changing the tree by-laws to require third party collection and review of application information would result in no clear benefits to tree protection or customer service. It is therefore not recommended.

Integrating Evidence-Based Decision Making

Integrating evidence-based measures such as species, age, health and value for trees measuring greater than 30 cm in diameter into decision making in order to streamline the development and planning process consistent with the provincial *Planning Act* is not recommended. Integrating these additional measures will not result in additional tree protection and will impede, rather than streamline the tree permit review process and incur unnecessary costs to applicants.

Evidence-based decision making is a practice whereby decision makers require quantitative "evidence" (in the form of an analyzed sample), as opposed to qualitative "opinion" (based on visual examination). This is commonly required in academia.

No legislation, including the *Planning Act* or the *City of Toronto Act* provide guidelines or criteria for the assessment of urban trees in the context of by-law administration.

Urban Forestry utilizes best management practices consistent with standards developed by the International Society of Arboriculture (ISA) and the Council of Trees and Landscape Appraisers (CTLA), which primarily rely on visual assessment. These practices are accepted internationally.

A thorough visual assessment completed by an arborist and reviewed by qualified City staff has been effective in achieving the intent of the by-laws. Revising this to an academic "evidence-based" process is therefore not recommended.

Federal Migratory Birds Convention Act (MBCA)

Preventing trees measuring 30 cm in diameter or greater from being removed during the nesting season of migratory birds is not recommended as it is more restrictive than required under the legislation and will have a negative impact on service delivery. If migratory birds are not breeding or nesting in trees or other natural features, removal should not be impeded during the breeding and nesting period.

The City has developed a number of strategies and programs intended to support migratory bird conservation, including the Bird Friendly Development Guidelines and the 2009 Migratory Birds in the City of Toronto Final Report: A Literature and Data Assessment, also known as the Migratory Birds Study (2009), prepared by Dougan and Associates and North-South Environmental Inc., for City Planning. Migratory bird studies are typically completed as part of a Natural Heritage Impact Study (NHIS) for sites within or adjacent to the Natural Heritage areas as outlined in the Official Plan.

The 2009 study also suggests that when small scale activities may impact migratory bird habitat (i.e. the removal of one or two trees in a private yard), the City of Toronto's obligation under the MBCA could be addressed through advising landowners of their obligation not to disturb or disrupt breeding and nesting bird species.

All permits issued under the Ravine and Natural Feature Protection By-law include an advisory related to the MBCA. Typically Private and Street Tree By-law permits are associated with small scale activities and Urban Forestry will therefore add an MBCA advisory to Private and Street Tree By-law permit documents to ensure that applicants are aware of the legislation.

MM54.37 - Discussion on Permits to Remove Privately-Owned Dead Trees

At its meeting on July 8, 9, 10 and 11, 2014, City Council requested that the General Manager, Parks, Forestry and Recreation report to the Parks and Environment Committee in January 2015, to consider the requirement that businesses, industrial locations and multi-residential properties not be included in the exception categories under the Private By-law, thus requiring permits and replanting when dead or dying trees are removed.

The Private Tree By-law identifies when a permit to injure or destroy trees is not required. These are termed "exceptions" and include but are not limited to, the removal of terminally diseased, dead or imminently hazardous trees as certified by the General Manager. Urban Forestry encourages the planting of replacement trees, however this is voluntary for exceptions.

Regulating dead trees on specific land types would lead to increased costs for both the City and property owners and does not promote proactive property maintenance. One of the main reasons exceptions are provided is the acknowledgement that properties should be maintained in a safe condition and that dead trees may need to be removed quickly to eliminate hazards.

Requiring that a permit application be submitted to remove dead trees on business, industrial, institutional and multi-residential lands would create lengthy delays due to permit processing, increase costs to property owners and may lead to hazardous situations.

Urban Forestry will continue to encourage tree planting on private lands though public education on the role that private property owners can play in achieving the City's tree canopy goals as adopted by City Council in Toronto's Strategic Forest Management Plan.

PE26.4 - Discussion on Improvements to By-law Transparency and Process

At its meeting on March 3, 2014, the Parks and Environment Committee requested that the General Manager, Parks, Forestry and Recreation, submit a report in the first quarter of 2015, on improvements to the transparency and application of the City's tree protection by-laws.

Improved By-law Integration into the Planning Process

Parks, Forestry and Recreation is a commenting partner within the City's planning processes for such things as Official Plan and Zoning By-law amendments, Site Plan Control applications and Minor Variance and Consent applications. Urban Forestry staff have recently completed consultation with City Legal, City Planning and Toronto Building divisions to improve the manner in which Urban Forestry provides comments and conditions through the Committee of Adjustment (C of A) process. The proposed improvements will have positive impacts on tree protection, efficiency of service delivery and customer service.

Specifically, Urban Forestry is implementing improved application screening and use of clear and specific conditions to limit the instances when conditions are included and to ensure potential tree issues are brought to the attention of the C of A through improved input and commenting that will inform the decision making process. Staff are also working with City Planning and Toronto Building to improve communication and the

flow of application-related information. This will result in more accurate and better coordinated responses and service, as well as improving service times.

Urban Forestry is working with City Planning to routinely include information on the impact of a development on trees in Zoning By-law amendment reports to Council. This is supported by the Team Lead approach to the planning process being implemented by City Planning. Team Lead will utilize planning leads to support inter-divisional collaboration towards enhanced city building in accordance with Toronto's Strategic Plan.

These process enhancements will improve the integration of Tree By-law considerations into existing planning processes and improve customer service, transparency and speed of service delivery.

Uniform Criteria to Determine Tree Condition

The Private Tree By-law refers to healthy trees and trees in poor condition. These terms are not specifically defined in the by-law, however by default, a healthy tree is any tree that can be maintained in a safe condition and is not diseased, dead or imminently hazardous. Uniform and consistent criteria, used to determine tree condition will add clarity and help to ensure that the by-law is administered fairly and transparently.

Urban Forestry is in the process of implementing a uniform set of criteria to interpret healthy tree and poor condition. Criteria used to determine whether a tree is healthy or in poor condition will be made available to the public via the City website by the third quarter of 2016 to improve transparency and customer relations. Once established, the by-laws will be amended to reference the criteria.

Rational for Collection of Community Comments

Certain applications to injure or remove healthy private trees require the posting of a "notice of application" and collection of comments from the community. This often gives rise to a misunderstanding by residents that their concerns with an application expressed through such comments will result in denial of a tree permit. They are often dismayed to learn that tree injury or removal is permitted to proceed despite their objections.

To avoid these misunderstandings, Urban Forestry is updating the wording on the notice signage to reflect that comments are collected for the purpose of providing public input to Councillors in the event that a denied application is appealed to City Council through Community Council and to clarify the role of councillors.

While it is acknowledged that there are benefits to community engagement, the General Manager's decision to issue or not issue a permit to injure or remove healthy trees is based upon objective criteria. Urban Forestry will provide this information on the City's

website along with the grounds upon which applications to injure or destroy trees can be granted or refused.

Number of Permits Refused or Approved

In 2014, Urban Forestry began collecting tree by-law application volume and outcome measures.

In 2014, Urban Forestry recorded outcomes for 1246 non-construction applications to destroy trees. 1159 (93%) of these applications were approved. The majority of these applications involved trees in poor condition. Urban Forestry achieved a tree replacement ratio of 117% (1354 trees), indicating that more trees were planted than were removed.

Outcomes were recorded for 1769 construction related applications including both destruction (1114 applications or 63%) and injury (654 or 37%). Destruction (removal of trees) applications were approved 96% of the time representing 1069 applications. Less than 1% of injury applications were denied and approximately three (3) times as many trees were protected than were removed in 2014. Replacement tree planting for construction applications is secured at a minimum rate of three (3) trees for every one removed.

The majority of construction related tree removals were approved to facilitate construction that complied with the Zoning By-law or final and binding variances approved through the C of A or Ontario Municipal Board. In all cases replacement tree planting was secured.

The approval rate of injury applications represents trees that have been preserved rather than removed. Injury applications are only approved when staff are confident that tree(s) will withstand the proposed injury and continue to survive well. Wherever possible, Urban Forestry staff work with applicants to eliminate the need for tree removal and to recommend changes that reduce proposed injuries to acceptable levels.

Impacts of Soil Volume on Replacement Trees

The importance of good quality soil and suitable soil volume on the health and longevity of trees is well known. The Toronto Green Standard which applies to certain developments within the city has criteria related to soil volume and tree planting. 30 m³ of un-compacted good quality soil is considered the minimum amount sufficient to support growth of a 40 cm diameter tree. In order to achieve this level of soil volume the City is employing design solutions which include open planting beds, continuous soil trenches with reinforced concrete panels, and continuous soil trenches with soil cells. These design solutions are secured through the development review process in accordance with the Toronto Green Standard to ensure that new and replacement trees have sufficient soil volume.

Tree Protection Deposits and Fees Rationale

The Tree By-laws provide authority for the General Manager, Parks, Forestry and Recreation to require the submission of tree protection guarantees and tree planting security deposits. The purpose of these is to ensure compliance with conditions of permit issuance and approved plans.

The Street Tree By-law and Private Tree By-law require the submission of non-refundable application fees. The purpose of the application fees is to recover costs associated with the review of applications.

At its meeting on September 28, 29, 30 and October 1, 2004, City Council adopted the harmonized city-wide Private Tree By-law which provided for application fees of \$100/tree for non-development applications to a maximum of \$300 and \$100/tree for the first 10 trees and \$50/tree thereafter for development-related applications. At the time these fees were determined to be reasonable and provided recovery of the City's costs in reviewing and processing applications.

Following a review of by-law administration costs, a modified per tree application fee structure for private trees and a new application fee to injure or destroy City trees was approved by City Council in 2008, in order to achieve more full cost recovery associated with administration of the by-laws. In accordance with the User Fee Policy adopted by City Council at its meeting on September 26 and 27, 2011, application fees are now subject to annual inflationary increases.

Tree protection guarantees and tree planting security deposits have proven to be effective tools to ensure existing City-owned trees are protected and new trees are properly planted and maintained. In the absence of requiring security deposits, the City would be required to incur costs associated with unanticipated corrective work required to remove damaged trees or replace improperly planted trees.

Tree protection guarantees are released once all construction activities are complete and compliance with all permit terms and conditions have been verified to the satisfaction of the General Manager. Tree planting security deposits are released provided that replacement trees are healthy and in a state of vigorous growth two years after the date of planting.

CONCLUSION

The tree by-laws have had a significant positive impact on tree preservation within Toronto's urban forest by preventing the unnecessary removal and injury of trees. They provide Urban Forestry staff, together with the private tree service industry an opportunity to advise and educate homeowners, developers and builders on the importance of protecting and retaining trees. Where tree preservation is not possible, the by-laws secure replacement planting.

Experience in administering the by-laws has highlighted the need to make improvements that will make the by-law more efficient and transparent.

The proposed revisions included in this report will strengthen the tree by-laws by clarifying existing processes and making the by-laws more understandable to the public. Customer service will be improved by streamlining processes and reducing the service delivery timeframes.

This report has been prepared in consultation with the City Solicitor.

CONTACT

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SIGNATURE

Janie Romoff
General Manager, Parks, Forestry and Recreation

ATTACHMENTS

Attachment No. 1 – Proposed Amendments to Municipal Code, Chapter 658 and Chapter 813, Articles II and III

Proposed Amendments to Municipal Code, Chapter 658, Ravine and Natural Feature Protection	
658-1. Definitions	
Proposed Amendments	
	<p>Include definitions of Boundary Tree, Neighbour Tree and Trunk.</p> <p>Boundary Tree – a tree, any part of whose trunk is growing across one or more property lines.</p> <p>Neighbour Tree – a tree whose trunk is growing wholly on one property and that is the subject of an application to injure or destroy by an adjacent property owner.</p> <p>Trunk – the entire trunk of the tree from its point of growth away from the roots up to its top where it branches out to limbs and foliage.</p>
	Expand the definition of Officer to include students and City contractors.
658-4. Exceptions	
	Remove references to by-law exception for erection of fences.
658-6. Issuance of permits; conditions	
	Include application process for Boundary and Neighbour Trees requiring notification of Boundary Tree co-owners and Neighbour Tree owners and the disclosure of arborist reports, tree protection plans, surveys and site plans by the City to Boundary Tree co-owners and/or the owner of the Neighbour Tree(s) that are included in the application to injure or destroy.
	Authorize the General Manager to establish expiry dates for applications in addition to expiration dates for permits.
	Require the submission of a new application where a permit or application has expired.
	Require the posting of permits in conspicuous locations visible from the street, for a period of one day prior to commencement of the approved tree injury or destruction, dumping of fill or refuse or alteration of grade and until such time as same is completed in accordance with the permit.
	Authorise the General Manager to impose an inspection fee in accordance with Chapter 441, Schedule "E" where an inspection is undertaken to determine compliance with the by-law or the condition of a permit.
658-10. Orders to Comply	
	Replace 'or' with 'and' in 658-10.A.
	Correction of clerical error by adding 'not' after 'of the property is' in 658-10.C.

Proposed Amendments to Municipal Code, Chapter 813, Article II, Trees on City Streets

813-3. Definitions

	Amend the definition of Officer to include students and City contractors.
	<p>Include definition of Arborist Report.</p> <p>Arborist Report – A technical report that identifies the location, species, size and condition of trees, and describes maintenance strategies and protection measures to be implemented.</p>
	<p>Amend the definition of Destroy.</p> <p>Destroy – To remove, cut down or in any other way injure a tree to such an extent that it is deemed by the General Manager to be an imminently hazardous tree, or that the tree's vitality has been reduced to such an extent that the tree cannot recover to be maintained in a safe or healthy condition, and in the opinion of the General Manager, further maintenance is not warranted and the tree should be removed.</p>
	Amend the definition of Care and Maintenance by deleting "and includes" and replace with "including".
	<p>Include definition of Landscaping and Replanting Plan.</p> <p>Landscaping and Replanting Plan – A plan that identifies the location, species and size of trees proposed for planting and illustrates planting details.</p>
	<p>Include definition of Tree Protection Plan.</p> <p>Tree Protection Plan – A plan prepared in conjunction with an arborist report that identifies the location, species and size of trees, identifies the extent of injury where applicable and illustrates details of protection measures including the location of protective barriers.</p>
	<p>Include definition of Good Arboricultural Practice.</p> <p>Good Arboricultural Practice – Tree planting, maintenance and removal performed in accordance with the American National Standards, ANSI 3000 and best management practices identified by the International Society of Arboriculture to the satisfaction of the General Manager.</p>
	Amend the definition of "Tree" by deleting the words "Ownership and maintenance of trees that have 50 percent or more of their main stem situated on a City road allowance will be the responsibility of the City".
	Include criteria for determination of tree health.
813-5. Powers and duties of General Manager	
	Authorize the GM to require a tree protection guarantee when

	work may impact trees.
	Authorize the GM to establish expiry dates for applications in addition to expiration dates for permits.
	Require the submission of a new application where an application or permit has expired.
	<p>Authorize the GM to issue permits for the removal, destruction or injury of trees where the trees are specifically identified for injury or removal on plans approved by the Ontario Municipal Board, City Council or a final and binding decision of the Committee of Adjustment, and:</p> <p>(1) The General Manager is satisfied there are no reasonable alternatives to tree removal or injury;</p> <p>(2) The General Manager is satisfied that the applicant has undertaken to implement satisfactory replanting; and</p> <p>(3) The ward Councillor has been advised that a permit will be issued.</p>
	Amend 813-5.O.(3) by deleting "required" and replace with "requested"
	Authorize the General Manager to assume responsibility for maintenance of trees that have 50 percent or more of their main stem situated on a City Street.
	Authorise the General Manager to impose an inspection fee in accordance with Chapter 441, Schedule "E" where an inspection is undertaken to determine compliance with the by-law or the condition of a permit.
813-6.A. Compliance, permit required; approval required; prohibited activities	
	Replace 'will' with 'may' in 813-6.A.
813-7. Applications; form and content; application fees.	
	Correct reference to Appendix C, Schedule 7. Fees now found in Appendix E, Schedule 1.
	Add "before tax" in reference to the low income cut off as determined by Statistics Canada.
	813-7.A. (5) Delete "identifying the location, species, size and condition of trees on the property and describing protection measures to be implemented".
	813-7.A.(6) Delete "identifying the location, species, size and condition of trees on the property and illustrating details of protection measures including protective barriers and hoarding"
813-8. Review of applications; criteria.	
	Amend 818-8.J. to read as "The submission of satisfactory Landscape Plans, Arborist Reports and Tree Preservation Plans in accordance with 813-7.A.
813-10. Permit conditions.	

	Require that permits are posted in a conspicuous location visible from the street for a period of one day prior to the commencement of the approved tree injury or destruction and until such time as same is completed in accordance with the permit.
Proposed Amendments to Municipal Code, Chapter 813, Article III, Private Tree Protection	
813-11. Definitions	
	<p>Include definitions of Boundary Tree, Neighbour Tree and Trunk</p> <p>Boundary Tree – a tree, any part of whose trunk is growing across one or more property lines.</p> <p>Neighbour Tree – a tree whose trunk is growing wholly on one property and that is the subject of an application to injure or destroy by an adjacent property owner.</p> <p>Trunk – the entire trunk of the tree from its point of growth away from the roots up to its top where it branches out to limbs and foliage.</p>
	Amend the definition of Officer to include students and City contractors.
	Define 'as of right' as development that complies with the Ontario Building Code, local Zoning By-laws and other applicable laws without further approval by City Planning.
	<p>Include definition of Good Arboricultural Practice.</p> <p>Good Arboricultural Practice – Tree planting, maintenance and removal performed in accordance with the American National Standards, ANSI 3000 and best management practices identified by the International Society of Arboriculture to the satisfaction of the General Manager.</p>
	<p>Amend the definition of Arborist Report.</p> <p>Arborist Report – A technical report that identifies the location, species, size and condition of trees and describes maintenance strategies and protection measures to be implemented.</p>
	<p>Amend definition of Tree Protection Plan.</p> <p>Tree Protection Plan – A plan prepared in conjunction with an arborist report that identifies the location, species and size of trees, identifies the extent of injury where applicable and illustrates details of protection measures including the location of protective barriers.</p>

	Amend definition of Landscaping and Replanting Plan. Landscaping and Replanting Plan – A plan that identifies the location, species and size of trees proposed for planting and illustrates planting details.
	Include criteria for determination of tree health
813-14. Applications; form and content.	
	Correct reference to Appendix C, Schedule 7. Fees now found in Appendix E, Schedule 1.
	Add "before tax" in reference to the low income cut off as determined by Statistics Canada.
	813-14.A delete "to the General Manager" and add "to the satisfaction of the General Manager" after "provide the following"
	813-14.A. (5) delete "identifying the location, species, size and condition of trees on the property and describing protection measures to be implemented" to remove duplication.
	813-14.A. (6) delete "identifying the location, species, size and condition of trees on the property and illustrating details of protection measures including protective barriers and hoarding to be implemented to protect trees that are to be retained" to remove duplication.
813-15.Powers and Duties of General Manager.	
	Authorize the GM to establish expiry dates for applications in addition to expiration dates for permits.
	Require the submission of new application where an application or permit has expired.
	813-15.F Delete "to post" and replace with "to provide a tree protection guarantee or tree planting security deposit by submission of ".
	Authorise the General Manager to impose an inspection fee in accordance with Chapter 441, Schedule "E" where an inspection is undertaken to determine compliance with the by-law or the condition of a permit.
813-16.Review of applications; criteria.	
	Add the Arborist Report, Tree Protection Plans and Landscaping and Replanting Plans submitted to the General Manager are satisfactory.
813-18. Issuance of Permits	
	Authorize the GM to issue permits to injure or to remove healthy trees where construction is permitted 'as of right'.
	Authorize the GM to issue permits to injure healthy trees without requiring the posting of a 'notice of application' where the owner has submitted a tree protection plan to the satisfaction of the GM and the injury is determined by the GM to be minor in nature and will allow the tree to continue to survive in good condition.

	Include application process for Boundary and Neighbour Trees requiring notification of Boundary Tree co-owners and Neighbour Tree owners and the disclosure of arborist reports, tree protection plans, surveys and site plans by the City to Boundary Tree co-owners and/or the owner of the Neighbour Tree(s) that are included in the application to injure or destroy.
813-18.1. Issuance of permits; notification; consultation	
	Delete "Issuance of permits; notification; consultation" and replace with "Issuance of permits; healthy trees; additional requirements".
	Remove requirement for posting of notice and consultation prior to GM issuing permits to injure healthy trees.
	Delete "tree preservation plan" and replace with "tree protection plan".
	Replace "The General Manager may issue permits to injure or destroy healthy trees provided that" with "Despite 813-17.C and subject to 813-18.2, the General Manager may issue permits to injure or destroy trees where:".
	Add 813-18.2 Notification; submission of plans Prior to the issuance of a permit under 813-18.1.A or B: A. Notice shall be posted in accordance with 813-19; and B. The applicant shall submit landscaping, replanting and tree protection plans, satisfactory to the General Manager and Ward Councillor.
813-19 Notice	
	Remove requirement to post notice of application to injure healthy trees.
813-20. Permits to destroy; conditions.	
	Trees permitted for removal shall only be destroyed once a building or demolition permit has been obtained.
	Require that replacement trees be maintained in good condition for two years after planting and that trees that are dead or in poor condition are replaced.
	Extend by-law protection to include replacement trees measuring less than 30 cm in diameter.
	Include requirement for owner to contact Urban Forestry for inspection of replacement planting upon completion.
813-21. Permits to injure; conditions.	
	Delete "landscaping and replanting plans" replace with "tree protection plans and arborist reports"
	Trees permitted for injury shall only be injured once a building or demolition permit has been obtained.
	Prior to the start of any work, tree protection barriers are to be installed in accordance with the City of Toronto Tree Protection Policy and Specifications for Construction Near Trees, and in accordance with the Tree Protection Plans and Arborist Report

	approved by the General Manager.
	Include requirement for owner to contact Urban Forestry for inspection of installation of tree protection measures, prior to the commencement of injury.
	Include requirement that owner shall notify all contractors and agents carrying out work on site of approved tree protection plans and arborist reports and ensure that all contractors and agents strictly adhere to the tree protection plan.
	Require that tree protection barriers must be maintained in good condition throughout the work and not be altered, moved or removed until authorized by the General Manager.
813-22. Posting of Permit.	
	Require that permits are posted in a conspicuous location visible from the street for a period of one day prior to commencement of the approved injury or destruction and until such time as it is completed in accordance with the permit.
Proposed Amendments to Municipal Code, Chapter 813, Article IV, Offences and Enforcement	
813-27. Orders to comply.	
	Replace 'or' with 'and' in 813-27.A.(1)
	Correct clerical error by adding 'not' after 'of the property is' in 813-27(c).