



OAKVILLE

## REPORT

COMMUNITY SERVICES COMMITTEE

MEETING DATE: OCTOBER 11, 2016

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**FROM:** Parks and Open Space Department and Development Engineering Department

**DATE:** September 28, 2016

**SUBJECT:** Private Tree Protection By-law Review

**LOCATION:**

**WARD:** Town wide

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**RECOMMENDATION:**

1. That the report from the Parks and Open Space and Development Engineering departments dated September 28, 2016 be received; and
2. That the report be forwarded to the 2017 Budget Committee for consideration.

**KEY FACTS:**

The following are key points for consideration with respect to this report:

- Staff has completed a review of the Private Tree By-law after extensive analysis and public consultation.
- The objectives of the proposed amendments are as follows:
  - To ensure that the tree canopy of Oakville is being properly protected and enhanced where possible through a strengthened focus on tree compensation;
  - To simplify the permit requirements and process for residents;
  - To ensure that all options have been considered by the property owner through expanded inspection requirements prior to a healthy tree being approved for removal; and
  - To encourage tree replacement by recommending more practical standards for residents.
- The costs of the additional inspectors required to facilitate the amendments to the by-law will be recovered through the permit fees.

- Since the recommended changes to the by-law require additional staffing resources, it is recommended this report be referred to the 2017 Budget Committee for consideration.
- If the 2017 the Budget Committee deliberations resolve to approve the staff resources necessary to implement the changes to the by-law, staff would bring forward to Council a revised Private Tree Protection By-law in early 2017 for final approval.

## **BACKGROUND:**

Oakville residents place a very high value on the town's urban forest and protection of the urban forest is very important. There is an abundance of scientific evidence confirming the urban forest provides many environmental, economic and social benefits to communities, including storm water retention/absorption, air pollution removal, carbon sequestration and home energy savings.

In recognition of the value placed on tree within our community, Oakville has put into place two by-laws that serve to control the activities around trees and tree removals. Tree's within our public land holdings are protected under the Municipal Tree By-law (By-law 2009-025). Tree's within private lands are subject to the Private Tree Protection By-law (By-law 2008-156).

In 2005 the Town undertook a UFORE study that analyzed, quantified and valued the town's urban forest. This comprehensive analysis has been repeated in 2015 through an I-Tree project (previously entitled UFORE) and the results of that urban forest study appear elsewhere on the October 11, 2016 Community Services Committee agenda. It is estimated that since the implementation of the private tree protection by-law in 2008, more than 1% of the town's tree canopy has been removed without compensation under the current notification provisions of the by-law. Removal of trees in the size class 20 cm – 40 cm make up the bulk of trees removed. At the same time, invasive species such as European buckthorn has increased dramatically and now constitutes a greater % of the Town's overall tree canopy.

The Town's urban forest is under significant pressure from damaging invasive pest species, diseases, climate change, and storm events such as the 2013 ice storm. The Town's urban forest is also being impacted by the continued removal of healthy trees without any compensation. While there are a number of tools in place to achieve and sustain the goal of 40% tree canopy by 2050, the private tree by-law is one of the tools that can be strengthened to support the attainment of tree canopy that benefits all residents of Oakville.

In 2014, Council endorsed a public consultation program and scoped review of the Private Tree Protection By-law. Since that time staff has been finalizing this review of the Private Tree Protection By-law which contemplates by-law amendments to improve the controls over private tree removals including the requirements for canopy compensation where removals are permitted.

Currently tree removals on private lands can be exercised through the following process/approvals:

1. PRIVATE TREE PROTECTION BY-LAW (Where no Planning Act approvals are required)

The current private tree by-law provides three (3) scenarios through which trees (of a set size) may be removed from private lands:

a. By exemption

The existing tree by-law contains a number of exemptions whereby trees can be removed without violating the by-law. Such examples include removing trees that conflict with activities performed by a Surveyor or a transmitter or distributor under the Electricity Act in performing their required duties; and actions undertaken to comply with a property standards order.

b. By notification

The existing tree by-law contains provisions that allow owners to remove dead and hazard trees through a notification process. In addition to dead or hazard trees, owners are also currently allowed to remove up to 4 trees (between 20cm and 76cm) annually through this notification process.

c. By permit

Where an owner wishes to remove a 5<sup>th</sup> tree in a calendar year (beyond the notification provisions) or a tree above 76cm in size, a permit is required.

2. PLANNING APPROVALS

The removal of trees as a consequence of development is evaluated as part of the approval process for land changes subject to the *Planning Act* (site plan, subdivision). *Planning Act* processes engage the public in the consideration of many aspects of a development proposal. Such aspects include building height, setbacks, shadowing effects, grading and even a site's existing and proposed tree and canopy changes.

The Town requires the development proposal to demonstrate its ability to

meet our land use canopy targets. While these land use canopy targets have been validated to achieve a 40% canopy cover for the lands in North Oakville (north of Dundas Street), these targets are being applied to development proposals south of Dundas Street until such time that these canopy targets are reviewed under an update to the Urban Forest Strategic Management Plan (UFSMP) for the south Oakville area.

It is known that sites in south Oakville can and do have a range of existing canopy conditions that can be more or less than the land use canopy targets set out in the North Oakville Urban Forest Strategic Management Plan (NOUFSMP). This circumstance can result in development proposals that while meeting the NOUSFMP targets, result in a canopy reduction or improvement in comparison to the pre-development conditions. The update to the UFSMP is necessary to appropriately guide planning proposals in south Oakville to ensure the changes in this community area continue to meet community expectations and move us toward the 40% canopy vision for Oakville. The update to the UFSMP is planned for 2017 with an RFP proposal seeking a consultant scheduled for release in November 2016.

The Private Tree Protection By-law however, was intended to provide a level of control over tree removals on private lands not subject to the Planning Act approval process in an attempt to:

1. Cease the clear cutting of lands in advance of engaging required planning approval processes where required.
2. To encourage land owners to recognize the value of trees to its community and hopefully encourage reconsideration of contemplated tree removals
3. To condition the replanting of trees where deemed appropriate or reasonable
4. To provide for prosecutions when the provisions of the by-law are violated

The by-law for the most part has been effective in achieving these objectives in particular item 1 above.

Previous reports to Council on the Private Tree Protection By-law has indicated that while the by-law has provided some protection of the privately owned urban forest, it is estimated that more than 1% of tree canopy has been lost since the introduction of the by-law in 2008. This notable loss is attributed to the by-law notification provisions. It is important to note that the notification process, while allowing for the documentation of tree removal, does not require any compensation for loss of trees or canopy. Alternatively, when a resident requires a tree permit to support their tree removal compensation is frequently obtained in the form of either cash or actual tree

replanting. Hence when a tree permit is issued, tree canopy compensation is typically required as a condition of approval.

This loss of canopy through the notification process is concerning and is the main issue that prompted a review of the Private Tree Protection By-law. In addition to assessing the notification process, Council endorsed the review of additional by-law elements, including:

- Review of the regulated size of trees under the by-law
- Permit fees respecting the User Fee Policy
- Tree Canopy Compensation

In the 2014 report to Council, staff had provided some initial recommendations regarding these areas of review and received Council direction to undertake public consultation. This report updates Council with regards to the changes being recommended for each element reviewed.

While staff is prepared to recommend the by-law changes set out in this report, we have identified resourcing needs associated with these by-law changes that require Council consideration and approval. In anticipation of moving towards a more extensive and engaged tree permit process and in alignment with the Single Permit Process changes underway in Development Engineering, staff developed an online permit application process that not only supports the by-law changes contemplated herein; it moves our permit service delivery processes into alignment with our online customer service delivery objectives. This online tool and associated supporting service delivery processes are nearly finalized however we have been able to rationalize the need for additional staffing resources.

Should Council support the Private Tree Protection By-law amendments as set out in this report, and should the Budget Committee deliberations resolve to approve the staff resources necessary to implement the changes to the by-law, staff would bring forward to Council a revised Private Tree Protection By-law in early 2017 for final approval.

#### **COMMENT/OPTIONS:**

Staff is recommending changes to the Private Tree Protection By-law due in large part to the significant number of healthy trees being removed under the current provisions of the by-law. Staff has undertaken a comprehensive analysis of the number of trees removed through the review of Notification Forms for the period 2012 – July 31, 2016. This is a snapshot of the trees and tree removed through the notification since the inception of the by-law in November 2008.

Total Tree Canopy Loss  
 2012 – July 31, 2016  
 (Dead, EAB, Hazardous Trees Excluded)

Year	Canopy Loss (Sq. m)
2012	52,761
2013	54,115
2014	61,872
2015	53,704
2016	28,021
Total	250,473

Total Number of Trees Removed by Size Class  
 2012- July 31, 2016  
 (Dead, EAB, Hazardous Trees Excluded)

Size Class (dbh)	Trees Removed
20 cm – 40 cm	3,830
41 cm – 60 cm	1,473
61 cm – 76 cm	423
76 cm +	126
Total	5,852

One of the primary motivations in amending the private tree protection by-law is to enhance the protection of the Town’s urban forest and if trees are being requested for removal, compensation is a condition of permit approval. Currently only a 5<sup>th</sup> tree being removed or trees above 76 cm dbh require a permit, hence very few permits are issued. However, as noted below, where a permit is issued, staff is most often able to obtain compensation for the tree/canopy loss. This is a combination of either tree planting on the site or off-site through contribution to the Town’s tree replanting fund.

Total Tree Canopy Loss under Permits with the Condition of Planting Trees  
 2012 – July 31, 2016  
 (Dead, EAB, Hazardous Trees Excluded)

Year	Canopy Loss (sq.m)	Canopy Planted (sq.m)
2012	2,894	2057
2013	1,033	1372
2014	579	1676
2015	1,380	2057
2016	103	0
Total	5,886	7,162

Under the existing by-law no permit is required to remove 4 trees per year 20 cm – 76 cm so there is no opportunity for tree compensation and the town’s tree canopy is being negatively impacted. Amending the by-law such that it will require a tree permit for every tree greater than 15 cm dbh, and the potential that tree compensation as a condition of approval; is a significant step forward in protecting, preserving, and provides an opportunity to enhance the town’s urban forest. Additionally the required compensation has been amended to provide greater clarity and transparency.

As noted earlier it is acknowledged and understood that planning approvals result in changes to Oakville’s tree canopy. These canopy changes are being examined through the UFSMP. The updated UFSMP will confirm or adjust as necessary the land use canopy targets currently being applied in south Oakville. The updated UFSMP will provided the science based rationale of adjusting (if necessary) the canopy targets being applied to development proposals.

Summary of Existing vs Proposed Changes to Private Tree Protection By-law:

BY-LAW ELEMENT	Existing By-law	Proposed Amendment
Regulated tree size	20cm dbh and up	15cm dbh and up
Notification Process	Included: Provides for removal of up to 4 trees (20cm to 76cm) annually without compensation	No notification process
Permit Process (see Note 1 and 2 below)	Applies to: 5 <sup>th</sup> tree (\$248.00) and; trees over 76cm dbh (\$621.00)	Applies to all trees. 1 <sup>st</sup> tree (15cm – 24cm) \$50.00 + compensation planting  Additional trees \$325.00 per tree.
Compensation	May be required as permit condition; compensation may be imposed however details are not set out in by-law.	May be required as permit condition; compensation planting defined as 1 tree for every 10cm of removed tree; compensation tree must be 30mm caliper size deciduous or 1500mm height coniferous

Note 1: A tree permit is required, but no fee is required for a tree:

- Identified as dead, infested with Emerald Ash Borer (EAB) or infested with Asian Long-Horned Beetle (ALHB) and approved by the designated official,
- Identified as *high risk* accompanied by an arborist report and approved by the designated official

Note 2: No tree permit and no fee is required for “emergency work” Emergency work is defined as any work required where the likelihood of tree failure is *imminent* and a tree or part of a tree poses extreme risk in which there is a high likelihood of severe consequences, such as serious injury to persons or property.

Staff believes there is an inordinate amount of trees being removed annually as being deemed “hazardous” or “high risk” through the Notification Form process. Staff inspects municipal trees on roads, parkland on a daily basis and on average remove 54 trees labelled as “high risk”. In comparison, the number of “high risk” or “hazardous” private trees removed annually through the Notification Form process is 244. Hence staff believes that inspecting ‘a high risk” private tree prior to their removal is very important. Many of these trees may not be “high risk” and could be



pruned or other arboricultural practice undertaken to retain the tree. Trees noted as “high risk” on a tree permit application would be inspected within 3 – 5 business days.

Public Consultation:

Over the last number of months, staff has undertaken a public consultation process to discuss elements of the Private Tree Protection By-law that are under review. Two (2) public open houses were held and a large stakeholder group was convened to provide feedback. All correspondence received has been included as Appendix A. In addition, all resident associations were invited to discuss the proposed changes to the Private Tree Protection By-law and many met with staff.

Besides the public consultation undertaken by staff, some resident associations canvassed their own constituents on proposed changes to the Private Tree By-law. Both JCRA (Joshua’s Creek Residents Association) and TCRA (Trafalgar Chartwell Resident’s Association) conducted surveys and that has been included within Appendix A.

Throughout the public process there were no large concerns expressed with regard reducing the regulated tree size lower from 20 cm to 15 cm. Many municipalities benchmark 15 cm as the size of tree to be regulated. In addition, with some exception, the movement to regulating tree removal through a permit process was very much supported throughout the public consultation. There is general agreement that if a healthy tree is requested for removal, compensation should be a condition of permit approval.

There was significant discussion regarding the form of compensation. The town standard for municipal tree planting is a 60 mm (diameter) tree that has a large heavy rootball and wire basket. It is unloaded with a crane and a backhoe often is used to plant the tree. Requesting this type of compensation to be implemented by residents is not practical.

There was general agreement that tree planting is to be encouraged as a form of compensation, as opposed to cash compensation. Ideally a tree removed on a lot should be replaced by another tree on that lot. Hence in order to facilitate a reasonable form of tree planting compensation for residents, staff wanted to ensure that someone with a tree compensation requirement, could visit a local garden centre or tree nursery and pickup a tree in his/her vehicle. There is no point having a tree compensation requirement, if the benchmark for tree replacement is not practical, onerous or reasonably able to be achieved. It is noteworthy that tree re-planting is the goal as a condition of approval for a permit. As a result staff are recommending tree compensation be thirty (30) millimeter caliper deciduous tree, or

a one hundred and fifty (150) centimeter height coniferous tree in a five (5) gallon container or balled and burlapped or in a wire basket.

Notwithstanding there was general consensus on several recommended changes to the Private Tree By-law, a number of residents remain opposed to the private tree by-law, and any associated changes to the by-law.

Permit Fees and Resource Allocation:

Through amending the by-law to regulate all trees greater than 15 cm and a permit requirement, additional staff resources are required for inspection and meeting with applicants. At present staff issue approximately 30 tree permits per year and moving to regulating all trees greater than 15 cm it is estimated to result in the processing of in excess of 1200 permits annually. Staff has rationalized that additional resources will be necessary to implement the contemplated by-law, and in keeping with the Town’s User Fee Policy, the costs associated with this service provision should be funded from permit revenue. The permit fees have been calculated in accordance with the user fee policy taking into account all direct costs, other departmental costs, and corporate costs.

Staff has reviewed the number of trees removed under the Notification Form process since the by-law was introduced in 2008. As a result, staff has very good knowledge of the number of trees removed per year and the size class of the number of trees removed per year. Staff has taken the approach that the tree removal trend experienced over the past number of years will likely continue as we move forward. Staff have estimated the number of trees estimated to be removed from 15 cm – 20 cm, as no information is available on trees removed less than 20 cm, as that has been the regulated lower limit (20 cm – 76 cm)

Estimated # of Permits/Year – Revenue

Tree Size	Estimated Permits/Year	Permit Fee	Estimated Revenue /Year
1 <sup>st</sup> tree 15 cm - 24 cm	169	\$50.00	\$ 8,450
2 <sup>nd</sup> tree 15 cm - 24 cm or 1 <sup>st</sup> tree more than 24 cm	1186	\$325.00	\$385,450
Total	1235		\$393,900

In developing the permit fee, staff undertook a comprehensive review of the time required to process a permit including review, site visit(s) and consulting with the applicant. Rather than have a complicated fee schedule by size class of tree, it is recommended to incorporate only 2 fee tariffs, \$50.00 and \$325.00. It is recommended to charge a flat fee of \$50.00 for a tree 15 cm – 24 cm and upon submission that would receive an automatic approval. Staff would not be making a

site visit for that small size of tree. However, once the size goes above 24 cm, that is where the bulk of the tree removals (25 cm – 50 cm) and greatest loss of trees is occurring based on the analysis of the Notification Forms. Hence above 24 cm staff will be undertaking a site inspection upon receipt of a permit application and the time difference to administrate a tree permit for a tree size 30, 40, 50 cm is approximately the same. Since the time does not vary greatly to process the permit between these size classes of tree, it is recommended for simplicity, to charge \$325 per tree permit. Staff notes that only about 30 tree permits above 76 cm are processed per year over the last 8 years. Hence the volume of tree permits and time allocation will be in the 25-50 cm size class.

In order to process the expected volume of permits, and provide the appropriate customer service turnaround time, staff is recommending an additional new 1.5 FTE need to be added to the Forest Protection business unit within Parks and Open Space. At present there is 2 FTE allocated to tree inspection and protection (1 FTE within Parks and Open Space and 1 FTE within Development Engineering) Due to the expected volume of permits an additional 1.5 is forecast as being required. Pending a review following implementation of the updated by-law, if the volume of permits does not amount to the estimated number, the .5 FTE (6 mo. Seasonal contract position) could be eliminated.

The current services that support the by-law and its permit and notification processes are supported by a budget that relies heavily on tax levy funds. Should Council approve the proposed by-law modifications and supporting service changes set herein, the revised budget for this service area would reduce/eliminate its reliance on tax levy funding; bringing this service area in line with the town’s User Fee Policy.

The table below shows the cost recovery of the service based on the proposed fees and staffing requirements. The second table shows the impact the change would have on the town’s 2017 budget.

<b>Tree Permit Cost Recovery</b>	
Direct Costs (Salaries, Cell Phones, etc)	\$ 373,300
Indirect Costs	\$ 39,600
Total Costs	\$ 412,900
Revenue	\$ 393,900
<b>Tax Levy Cost</b>	<b>\$ 19,000</b>
<b>Tax Levy Percentage</b>	<b>4.6%</b>

<b>Tax Levy Impact</b>	
2017 Budget Impact	
Revenue	\$ (393,900)
Less Existing Revenue	\$ (20,000)
Net Revenue Increase	\$ (373,900)
1 FTE Tree Inspector	\$ 89,800
1 Seasonal Tree Inspector	\$ 38,500
<b>Tax Levy Reduction</b>	<b>\$ (245,600)</b>

Licensing Arborist Firms

Enhancements to the private tree by-law recommends regulating on a single tree basis, and accompanying permit and fee, staff believes this greater oversight and regulation will protect and enhance the town’s urban forest and tree canopy. Trees remain extremely important to Oakville residents. In tandem with greater oversight and regulation of tree removal, staff believes it appropriate to also regulate arborist firms working in the Town through annual licencing. At a provincial level there is no oversight governing body for arborists and as such arborists who act in an unprofessional manner or unethical standards cannot be sanctioned. Staff notes there are many good, ethical and professional arborist firms that operate within the Town. However staff believes the importance of the Town’s urban forest is further protected by licencing arborists and any firms operating in an unethical manner and not operating in compliance with the private tree protection by-law, can be banished from operating within the Town. Staff has undertaken similar licencing of landscapers, pool installation contractors, all based on the premise of ensuring ethical standards are upheld, quality service and consumer protection.

Over the next several months staff will be communicating this licencing requirement to the local arborist industry and consulting with them with a timeline of implementation of January 2017.

Summary

Staff is recommending several enhancements to the Private Tree Protection By-law that will protect and further enhance the town’s tree canopy. The number of healthy trees being cut down through the current Notification Form process is removing a significant amount of tree canopy on an annual basis with very, very little compensation. While the stress and damage the urban forest is exposed to with climate change, weather events, and attacks from invasive species, is very difficult to alter and beyond the control of Council, the canopy reduction through the removal of healthy trees can be changed through implementing changes to the private tree protection by-law.

Additionally, and as mentioned in several locations within this report, it is important to update the UFSMP so that planning and development application requirements are cognizant of the changes that occur through development proposals and have established canopy targets that demonstrate their ability to positively contribute to our community canopy objective.

While it is expected the volume of trees being removed through the private tree by-law permitting process will remain the same, the recommended changes to the by-law will allow the application of tree compensation as a means of offsetting any negative impacts to our community canopy. If the recommended by-law changes deters some resident's from cutting down healthy trees, that is seen as a positive and staff would realign its resources based on experience in implementing the new by-law. With the amended by-law and a tree permit system, will bring an inspection of trees being requested for removal and tree compensation an integral part of the process. The amended by-law and resourcing needs (if approved) will meet requests for tree removal through a more consultative and evaluative processes aimed at ensuring tree removals are justified. Additionally our revised process will allow for that application of compensation requirements to ensure canopy losses are compensated where reasoned and appropriate.

#### **CONSIDERATIONS:**

**(A) PUBLIC**

The public has been consulted with regard to the recommended changes to the private tree protection by-law. In addition, all resident associations were contacted and offered the opportunity to meet with staff and offer there feedback.

**(B) FINANCIAL**

If Council implements the changes to the private tree protection by-law there would be an additional staff resource requirement, but also permit fee revenue as described within the report.

**(C) IMPACT ON OTHER DEPARTMENTS & USERS**

This report has been prepared in conjunction with the Finance, Clerks and Legal departments.

**(D) CORPORATE AND/OR DEPARTMENT STRATEGIC GOALS**

This report addresses the corporate strategic goal to:

- enhance our natural environment
- continuously improve our programs and services
- be fiscally sustainable
- be the most livable town in Canada

**(E) COMMUNITY SUSTAINABILITY**

Changes recommended to the Private Tree Protection By-law 2008-156 will protect and enhance the Town's urban forest so it will continue to offer the positive environmental attributes and beauty that makes Oakville livable.

**APPENDICES:**

Appendix A – Public Feedback

Submitted by:  
Chris Mark  
Director Parks and Open Space

Submitted by:  
Darnell Lambert  
Director, Development Engineering