

Date: May 13, 2021

To: Chair and Members of General Committee

From: Shari Lichterman, CPA, CMA, Commissioner of
Community Services

Originator's files:

Meeting date:
June 9, 2021

Subject

Public Tree By-Law Update

Recommendation

That staff be directed to conduct community and stakeholder engagement on both the Public and Private Tree By-laws, with a final report and by-laws presented to General Committee for approval in fall 2021 as outlined in the corporate report dated May 13, 2021 entitled "Public Tree By-law Update" from the Commissioner of Community Services.

Executive Summary

- The Tree By-Law 91-75, required updating as it is no longer enforceable.
- Legal Services is unable to prosecute if a contravention occurs.
- An updated by-law is required to strengthen tree preservation and protection standards, provide greater clarity to the public and enforcement staff, implement a public tree permitting process and allow City Legal Services to prosecute corporations or individuals if a contravention occurs.
- A Public Tree By-law protects municipally owned assets. Significant increases in damage and destruction of public trees have been documented over the past several years. The City continues to invest in programs to grow our public tree health and canopy.
- Forestry Staff have prepared a new draft by-law in consultation with affected business units and external agencies.
- Parks, Forestry and Environment staff would like to seek public and stakeholder engagement on the draft Public Tree By-Law and the existing Private Tree By-Law through the summer in order to present both updated by-laws to Council in fall 2021.

Background

The City of Mississauga enacted the first Public Tree By-Law entitled “The Tree By-Law” in 1975 to regulate the planting, maintenance and protection of trees and shrubs on public lands. Here are some of the provisions under the existing by-law:

- No one shall break, injure, uproot or otherwise destroy any tree or part thereof;
- No one shall cut, injure, damage, deface or remove any box casings or supports around any tree;
- No one shall attach any object or thing to a tree located upon a highway or in a public place;
- No one shall plant a tree or shrub on a highway or road without approval
- All trimming or work done to trees along a highway or public place must be approved by the Commissioner

The draft Public Tree By-law was developed in response to recommendations made in the City’s Future Directions Master Plan, Urban Forest Management Plan and Natural Heritage & Urban Forest Strategy.

- Recommendation # 13 of the Future Directions Master Plan (2019) states that the Private and Public Tree By-Laws should be updated every 5 years to ensure they reflect current best practices and urban forestry standards.
- Action # 15 of the Urban Forest Management Plan (2014) supports updating the Public Tree Protection by-law, which provides support to the City’s urban forest expansion objectives.
- Objective # 5 of the Natural Heritage & Urban Forest Strategy (2014) supports the protection of the Natural Heritage System and Urban Forest on public lands through enforcement of applicable regulations and education

A Public Tree By-law protects municipally owned assets. Significant increases in damage and destruction of public trees have been documented over the past several years. The City continues to invest in programs to grow our public tree health and canopy including the One Million Trees Program and Invasive Species Management practices. Public Tree By-laws affect City staff and contractors.

Present Status

The existing Tree By-Law 91-75 is outdated and no longer defensible. City Legal Services is unable to prosecute corporations or individuals that contravene the provisions.

By-law 91-75 provides the City with the authority to issue fines of up to \$1,000 per contravention. Fines in the by-law (1975) are not to exceed \$1,000 exclusive of costs for each offence. The only other fine is for people who ties or fasten any animals to or injures or destroys a tree along a highway or who suffers or permits any animals in his charge to injure or destroy such a tree or cuts down or removes such a tree is subject to a fine no more than \$25. These fines are outdated and no longer appropriate.

Forestry staff have prepared a new draft public tree by-law and circulated it to applicable City departments and agencies for technical comments and review. Comments received are summarized in the Engagement and Consultation section of this report.

There is increasing public pressure to update both the Public and Private Tree By-laws. The City of Mississauga has made huge investments in increasing our tree canopy and protecting and preserving our urban forest. Staff is recommending that we launch an engagement this summer to get formal feedback on both tree by-laws with a goal to have updates prepared for Council's consideration in fall 2021.

Comments

The City Legal Services team has reviewed the draft Public Tree By-Law and has confirmed that as written, the Commissioner, Community Services or their delegate would be able to enforce the provisions and that Legal Services would be able to prosecute if a contravention occurs. It also includes increased fines for those who contravene the by-law:

- **Corporations:**
 - 1st conviction to a fine of not more than \$5,000 per tree;
 - Subsequent conviction, to a fine of not more than \$10,000 per tree;
- **Individuals:**
 - 1st conviction to a fine of not more than \$2,500 per tree; and;
 - Subsequent conviction, to a fine of not more than \$5,000 per tree;

The draft Public Tree By-Law would also introduce new permit fees for related to works that may impact City-owned trees:

- **Public Tree By-Law Permit** (one tree) - \$304.00
- **Additional Trees on each permit** (per tree) - \$110.00

The first fee amount is based on 4.5 hours of staff time at a Non-Union Grade E position (application review, initial inspection, hoarding inspection, final inspection, travel time), plus car allowance for 3 site trips, averaged at 15 kilometres each way.

The additional tree fee is based on 2 hours of staff time at the same grade. This fee ensures any trees potentially impacted by activities undertaken during a Public Tree Permit remain protected and preserved long term while recovering 100% of staff costs.

This permit structure follows industry best practices and the corresponding fees fall in the mid-range of neighbouring municipalities (see Appendix 2).

A non-union Grade E position and non-union part-time temporary position have been requested for 2022 based on the estimated number of permit applications. The budget request for these positions will be fully offset by revenues.

The draft Public Tree By-Law clearly outlines the Tree Protection and Preservation Standards that will guide the public, development community and internal staff. The updated standards lay out City expectations pertaining to tree protection on all projects that involve City owned trees (i.e. tree protection fencing, securities, and replacement requirements).

Updates and improvements to the protection of City trees, include:

- Clearer definitions of a “City tree” and a “Shared tree” with both categories being subject to the Public Tree By-Law
- Prohibiting storage of material, equipment or anything that would impede the health of a trees root zone;
- Requiring approval for work within the tree protection zone as identified and approved by City Staff and prohibiting grade changes in the tree protection zone;
- Prohibiting liquid, gaseous or solid substances to come into contact with the trees root system;
- Prohibiting the removal any woody debris that has fallen or been cut down by the City in a natural area and left.
- Prohibiting planting of trees on public land. In the even trees are planting on public land, the by-law stipulates that the subject tree becomes public and subject to the terms of the draft by-law

Strategic Plan

The draft Public Tree By-Law aligns with the Green Pillar from the City's Strategic Plan that promotes a green culture, in order to lead a change in behaviours to support a more responsible and sustainable approach to the environment, that will minimize our impact on the environment and contribute to reversing climate change. These strategic goals are supported by 3 aforementioned master plan documents.

Engagement and Consultation

Internal Input

Business Unit	Feedback	Resolution
Works Maintenance	<ul style="list-style-type: none">- Duration of work varies: short, medium and long term work- Lost time due to hoarding installation especially on “short” term projects- Location of hoarding need to be realistic to the job and location- Emergency sidewalk repair (non-scheduled)	<ul style="list-style-type: none">- Forestry to ensure staff resources are available to provide guidance on maintenance projects- site specific consideration- Involvement in capital maintenance review- Ensure preservation and protection standards are included in contracts

Technical Services	<ul style="list-style-type: none"> - Tree Planting Locations - Some concern with wording in the Public Tree Bylaw - Hoarding on boulevard sight line obstructions - Damage to boulevard - Does Traffic need to inspect all hoarding locations - Unionized Inspectors versus Preservation Inspectors - ROP integration 	<ul style="list-style-type: none"> - Trees to be planted in accordance with City of Mississauga guidelines (planting, spacing, utilities) - Reviewed hoarding options with team. - Applicants are responsible for obtaining locates and repairing all/any damage - Securities will be taken - Traffic operations has reviewed specifications - Preservation Bylaw Officers have specialized knowledge in arboriculture - ROP Integration happening
Capital Works	<ul style="list-style-type: none"> - Hoarding distances - Hoarding installation costs - Timelines for hoarding installation - Timelines for projects change – communication to ensure no lost time 	<ul style="list-style-type: none"> - Site specific reviews as needed - Proactive engagement in capital projects - Ensure preservation and protection standards are included in contracts
Planning and Urban Design	<ul style="list-style-type: none"> - Education for counter staff in planning to make sure they know when people need a permit - What applications would trigger a permit? - How do building permits apply? - Ability for planning staff to check to see if the tree is public/private or shared 	<ul style="list-style-type: none"> - PF&E to share some education material prior to launch - Tree mapping software can be shared with P&B - Process improvements for demolition and building permits prior to implementation
Park Planning	<ul style="list-style-type: none"> - How to identify trees being public private or shared - Does this apply to City projects 	<ul style="list-style-type: none"> - Tree mapping software to be shared internally - Contractors working on behalf of the City are required to follow all applicable by-laws
Park Development	<ul style="list-style-type: none"> - Compensation requirements for dead trees? - Clarification on what needs to be included in contracts to ensure upfront information is clear to those bidding on contracts 	<ul style="list-style-type: none"> - No compensation required for dead trees - Costs of tree removals and replacements should already be considered within project costs

External contractors who perform work around public trees were consulted through the PUCC group including:

- Alectra
- Bell
- Cogeco
- Enbridge
- Hydro One
- Peel Region
- Rogers
- Union Gas

Financial Impact

The draft Public Tree By-Law will have a net zero cost to the City. The projected \$119,649 in revenue will off-set the 1.69 FTEs (Year 1 of BR # 8443) required to administer the program. The program's revenue will be monitored and additional FTE requests may be brought forward for the 2023 budget cycle.

There is no immediate financial impact on any City projects. Any future projects will be subject to the annual business and budget planning process.

Conclusion

Tree By-law 91-75 is out of date and no longer an effective for enforcing the City's tree preservation and protection standards. Staff have prepared a new, draft Public Tree By-law in order to strengthen tree preservation and protection standards, provide greater clarity to the public and enforcement staff, implement a public tree permitting process and allow City Legal Services to prosecute corporations or individuals if a contravention occurs. It is therefore appropriate to establish the new by-law to protect the over 300,000 trees on City streets and in parks.

Consultation on both the Public and Private Tree by-laws is timely given that both by-laws require updating.

Attachments

- Appendix 1: Draft Public Tree By-Law
- Appendix 2: Public Tree Permit Fee Benchmarking
- Appendix 3: Projected Public Tree Permit Revenue



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