



Committee of the Whole Report

For the Meeting of May 28, 2020

To: Committee of the Whole **Date:** May 6, 2020
From: Thomas Soulliere, Director of Parks, Recreation and Facilities
Subject: Tree Preservation Bylaw Update

RECOMMENDATION

That Council direct staff to prepare a new Tree Protection Bylaw generally consistent with this report in order to:

- a. Differentiate permit applicant types and requirements according to the complexity and magnitude of projects
- b. Clarify information required from applicants for tree removal permit applications
- c. Define tree retention and replacement requirements to maintain a stable or expanding tree canopy, consisting of new tree replacement ratios, tree planting standards, and tree density targets
- d. Update the requirements for security deposits and update tree permit application fees
- e. Require modification or relocation of proposed building footprints or structures within the zoning setbacks, to retain protected trees
- f. Establish transition provisions to apply the new bylaw in order to minimize impacts to existing applications
- g. Repeal the existing Tree Preservation Bylaw No. 05-106.

EXECUTIVE SUMMARY

In the Strategic Plan, Council directed staff to undertake a comprehensive review and update of the Tree Preservation Bylaw, which resulted in a project plan consisting of two phases. At the end of Phase 1 in the fall of 2019, Council adopted changes to reduce the size of protected trees, clarify certain definitions, as initial steps towards strengthening tree protection.

Over the past several months, staff have undertaken a comprehensive technical review of the bylaw, which has resulted in a proposed change to six key areas. These recommended updates seek to align Victoria's Tree Preservation Bylaw with leading practices and standards, and support implementation of the Urban Forest Master Plan.

PURPOSE

The purpose of this report is to present the outcome of the second phase of review of the Tree Preservation Bylaw, and to seek Council approval to prepare a new tree protection bylaw and implementation plan to implement these changes.

BACKGROUND

The city's urban forest is composed of approximately 150,000 trees. At present, the City directly manages roughly one-quarter (32,950) of the urban forest inventory. The other three-quarters consists of trees on private land.

In the past four years, the city has experienced high population growth. The associated urban development and densification has provided opportunities, while also presenting new challenges including those relating to the protection of trees and other "green" assets.

Trees are a critical community asset providing a wide range of benefits, from positive mental health impacts, to environmental attributes such as regulating temperature, mitigating stormwater runoff, and providing wildlife habitat.

The *Community Charter* authorizes Council to regulate, prohibit or impose requirements in relation to trees. There are three main City bylaws that influence or regulate tree cutting, retention and replacement of trees in Victoria: zoning bylaws, subdivision and development servicing bylaws and the tree preservation bylaw.

The original Tree Preservation Bylaw was established in 1999. In 2005, after a review process that included public input, the City updated the bylaw with measures to prevent unnecessary harm or removal of trees on private land.

Council approved the Urban Forest Master Plan (UFMP) in 2013 following extensive consultation with community members, staff and industry experts. The plan guides the long-term management and enhancement of the urban forest, with 26 recommendations to be completed over the next forty years. Updating the Tree Preservation Bylaw is one of the recommendations in the UFMP.

In 2019, Council directed staff to update the Tree Preservation Bylaw. This work has been pursued in a phased approach. Following completion of Phase 1 Council adopted changes to reduce the size of protected trees, clarify certain definitions, and standardize information requirements to strengthen tree protection. The second phase consisted of a comprehensive technical review, and comparison of leading practices and standards across the region, along with a set of recommendations based on the recent analysis.

ISSUES & ANALYSIS

The comprehensive technical review of the City's Tree Preservation Bylaw involved the following activities:

- Review of standard elements of approximately 20 tree protection bylaws in the province and across Canada that were updated in the last five years
- Review of technical references addressing tree bylaws in Canada and tree ordinances in the United States
- Review of previous public City reports and minutes from deliberations, as well as interviews with staff and consideration of feedback received through Phase 1 of the bylaw review, to understand the local context and challenges related to tree retention and replacement in Victoria.

The outcome of this assessment has informed the proposed updates to the Tree Preservation Bylaw and how the City protects existing trees and promotes growth of the urban forest.

The proposed changes aim to improve transparency through an approach that responds to the relative risks associated with the various types of tree removal applications, including the resource demands to review proposed projects on private property. Staff also view the proposed model as more equitable in that it seeks to engage the entire community in the long-term sustainability of the urban forest.

Specifically, the changes focus on:

- 1) Differentiating permit applications;
- 2) Updating information required from permit applicants;
- 3) Updating replacement tree requirements, including establishing minimum tree density;
- 4) Updating security deposits; and application fees;
- 5) Enhancing tree protection within zoning setbacks; and
- 6) Providing a transition provision.

1. Differentiating Permit Applications

One of the issues with the current bylaw is that it does not differentiate the requirements for applicants and staff according to the complexity and magnitude of the projects. For example, an applicant proposing to cut tree roots to repair a sewer connection has the same requirements as an applicant seeking to subdivide and service a new property. However, the information required by staff and the intensity of review of the latter applicant is far more significant.

Staff propose a new approach to define applications more precisely as 'development related' and 'non-development related' in order to differentiate the information required from applicants, replacement tree obligations, and fees for each type of application. The term 'development related' would be defined as any of the following applications:

- a) rezoning,
- b) subdivision works and servicing,
- c) development permits associated with a new buildings or addition to existing building, or
- d) development variance permits, heritage alteration permits, or building permits associated with demolition, blasting, or construction of a principal building, or, when greater than 10 square metres, construction of an accessory building or an addition to an existing building.

This differentiation will help to achieve a balance between the potential impacts relating to a proposed project, the requirements placed on applicants, and the amount of staff time for review.

Several municipalities in B.C. have differentiated bylaw requirements by defining the applicant or the type of applications. For example, the City of New Westminster has adopted a definition of 'resident applicant' in its latest bylaw update which enabled the City to adjust the fees and information requirements for those applicants. Other municipalities such as City of White Rock, District of Squamish and City of Burnaby have drawn the distinction at the type of permit application, defining what is related to development from other applications. Locally, the District of Saanich and the District of Oak Bay follow this approach.

2. Updating Information Required from Applicants

The information requirements for tree removal permit applications in the current bylaw are not defined sufficiently, and as a result, issues frequently arise which often delay staff review of a tree removal permit application.

The proposed approach involves clarifying the standards of information within the bylaw and increasing transparency, for applicants and their arborist, based on the type of application. This change would, for example, allow the City to require the submission of an arborist report, tree survey and management plan, and a letter of assurance for arborist supervision (if required) for the most complex applications, while keeping the information requirements for other types of applications at a minimum.

There are many municipalities in Canada and the U.S. that define information requirements in this manner. In B.C. the City of White Rock, City of Courtenay and District of Oak Bay specify the requirements which apply to each type of application, as proposed.

3. Replacement Tree Requirements

According to leading urban forest management practices, replacement requirements in a tree bylaw should prevent the loss of canopy cover to achieve a stable or growing canopy cover in the long run (ISA, 2001). Many municipalities in B.C. have adopted tree canopy cover targets to grow their canopy and Victoria will be considering its target in the coming year. The City's Urban Forest Master Plan also recommends increasing replacement ratios and compensation levels, establishing minimum stocking levels for new development and increasing forest cover to more optimal levels in neighbourhoods with low canopy cover.

Replacement ratios are often used in tree bylaws to ensure successional planting occurs. However, it is important to note that replacement ratios alone will not address properties without trees and do not have a direct connection to tree canopy targets.

To maintain a stable or expanding tree canopy, as envisioned in the UFMP, a variety of mechanisms should be incorporated into the bylaw:

- Tree replacement ratios
- Standards for species selection and planting
- Tree canopy or tree density targets
- Cash-in-lieu provision

The summary below describes the proposed changes relating to replacement tree requirements:

A. Maintaining a tree replacement ratio

The update proposed for the City's bylaw is to adjust the replacement ratio to allow 1:1 if planting a medium to large canopy tree, or 2:1 if planting small trees, while also defining standards for species selection and planting locations. In situations where the applicant is unable to meet these conditions, the cash-in-lieu option is available to fund urban forest enhancements elsewhere.

Under the current bylaw, the 2:1 ratio means that a property removing three protected trees is required to plant six replacement trees, while a property with no trees has no requirements. As a result, the replacement ratio increases canopy unsustainably and sometimes unreasonably on treed lots and inadequately on non-treed lots. While the current bylaw does ensure that successional planting occurs, it does not have sufficient standards for species selection and planting locations so replacements may be planted in unsuitable locations.

B. Establishing the standards for replacement tree planting

A replacement ratio of 1:1 (or 2:1 if planting small trees) is suitable to ensure successional planting if it is coupled with standards for species selection and planting locations so that replacement trees grow to healthy maturity.

Many municipalities opt for higher replacement ratios because it would seem to result in a net gain of trees being planted and therefore a net gain in tree canopy. In reality, trees are typically removed to construct larger buildings and replacement trees must be planted onto the same lot, often with less planting space. Moreover, when replacement ratios are high, either the trees are disadvantaged by being crowded into inadequate growing space and never reaching healthy maturity, or the applicant is disadvantaged by paying a large sum as cash-in-lieu.

The standards proposed for replacement tree planting include siting trees at an appropriate distance from buildings, property lines, utilities and paved surfaces; providing sufficient soil volume for the species planted; and planting the tree at a suitable time of year.

Defining the standards for replacement tree planting will ensure that new trees are planted in locations and in conditions where they can grow to healthy maturity or, if the applicant cannot meet these conditions, that the cash-in-lieu provision ensures funding towards urban forest enhancements elsewhere.

C. Establishing a minimum density of trees

A 'tree density target' approach establishes a target number of trees per area to be achieved. To meet the density target, an applicant may be required to retain, replace or introduce trees. The retention of larger trees or valuable species can be credited as multiple trees to incentivize their retention.

Staff propose that development related applications be required to meet a minimum tree density per hectare, as shown in Attachment A. The target of 50 stems per hectare was chosen after testing it at various lot sizes.

The implementation of this approach will be as follows. If an owner is developing a property and as a result will remove a tree, the minimum tree density target will establish the number of trees that must be on the property following the development. In addition, if a protected tree is removed, then this tree must be replaced at a 1:1 ratio. In such an instance, the total number of trees on the property following development may exceed the minimum tree density target. In the case of a subdivision, the minimum tree density target would apply to the lot sizes following subdivision.

Overall, nearly two thirds of parcels in Victoria would be required to have two or three trees to reach the density target, as shown in Attachment A. This approach is viewed as a more effective method of achieving the City's goals, than a canopy cover approach and would utilize the inventory data collected by project arborists. It is proposed that the density target be applied uniformly (i.e. not differentiated by zoning) so that every property in Victoria will contribute to the urban forest proportionate to the land size.

A further outcome of this approach is that it will ensure minimum tree stocking levels for new developments and increase tree canopy cover in low canopy neighbourhoods. This

approach will “level the playing field” such that all properties will contribute to the urban forest regardless of whether trees were removed from the property.

This method is used in several municipalities in the province, including City of Courtenay, City of Vancouver, District of Squamish and City of Maple Ridge, as well as in the U.S.

4. Security Deposits and Application Fees

A security deposit is required from a property owner for the purpose of incentivizing bylaw compliance and adds assurance for tree planting or protection during construction activity. Under the current bylaw, the City requires a deposit for replacement trees, however, not for trees intended to be retained during a project.

As outlined in Attachment B, staff propose that securities are obtained for both replacement and trees intended to be retained, with a variable rate based on the type of project and potential impact. Deposits are returned following completion of a post-construction inspection.

For trees intended to be retained during construction, the collection of securities is an effective mechanism to ensure that proper tree protection and arborist supervision is carried out as required. Staff propose applying a higher security rate for large trees (\$10,000 for trees >60cm DBH) and \$2,000 for all other protected trees as part of a development related application.

Regarding replacement tree deposits, staff recommend adjusting the security amount from the flat \$700 rate adopted in 2019. The proposed approach would increase the replacement securities for development related applications close to the cash-in-lieu amount, while reducing it for applications relating to minor works. The rates proposed for replacement tree securities would change to \$1,000 per tree on development related applications, and to \$350 for less complicated applications.

Many municipalities in B.C. collect securities both for tree protection and replacement, including City of Surrey, City of White Rock, City of New Westminster and the District of Oak Bay. The amounts proposed for tree protection and replacement securities are generally in line with more recent tree bylaws within the province.

The current tree permit application fee structure is calculated based on the number of tree removals projected to take place, which would be challenging to apply for the minimum stocking level requirements for new developments that do not include tree removals.

As shown in Attachment B, the proposed approach is to maintain “no fee” for applications relating to pruning, emergency and hazard tree removals, and to collect permit fees based on the size of the property and the type of application, which reflects the effort required to review an application. A small additional fee is proposed for renewing, extending or modifying a permit, which reflects the staff time required for a permit update.

Tree permit fees vary greatly from one municipality to the other. The staff proposal would keep Victoria within the lower range of tree permit fees and generally consistent with neighbouring municipalities including the District of Oak Bay and District of Saanich.

5. Building Envelope

Currently, when a protected tree is within a building envelope, as defined by zoning setbacks, it can be removed to construct the proposed building or structure. In 2019, Council adopted the

change to the definition of “building envelope” and “building envelope line” limiting the construction impact of accessory buildings on bylaw protected trees. The 2019 updated Bylaw clarifies that a permit to cut down or alter a bylaw protected tree will not be issued if the applicant’s driveway, parking, utility connections or accessory buildings can be located in a manner that allows the tree to be retained (provided the location is still in compliance with other bylaws). These changes were adopted to limit the construction impacts of such lot development activities on bylaw protected trees.

The proposed approach would further enhance tree protection by requiring an applicant proposing a building, structure, underground service, driveway or off-street parking area to be modified or located on the lot to retain a protected tree, if possible. This change would enable staff to request changes, when warranted, to retain a bylaw protected tree.

This is a similar approach to the City of Surrey and City of New Westminster, whose bylaw prioritizes the retention of bylaw protected trees in this manner.

6. *Transition Provision*

The proposed changes may result in increased costs for in-stream development applications due to required updates to submissions and delays in subsequent permit processing. A transition provision will be recommended as part of the adoption of the new Tree Protection Bylaw to limit the impact to applications received by the City after the date of adoption. This is to align with Council’s previous goal of not impacting existing applications received by the City on or before the date of adoption.

OPTIONS AND IMPACTS

Option 1 (Recommended)

That Council direct staff to prepare a new Tree Protection Bylaw generally consistent with this report in order to:

- a. Differentiate permit applicant types and requirements according to the complexity and magnitude of projects
- b. Clarify information required from applicants for tree removal permit applications
- c. Define tree retention and replacement requirements to maintain a stable or expanding tree canopy, consisting of new tree replacement ratios, tree planting standards, and tree density targets
- d. Update the requirements for security deposits and update tree permit application fees
- e. Require modification or relocation of proposed building footprints or structures to retain protected trees
- f. Establish transition provisions to apply the new bylaw in order to minimize impacts to existing applications
- g. Repeal the existing Tree Preservation Bylaw No. 05-106.

Staff recommend that Council support the proposed changes for Phase 2 of the Tree Preservation Bylaw and direct staff to proceed with a legal review and implementation plan in order to prepare a new bylaw implementing these changes, for Council review.

Pending Council support for the proposed changes, staff will coordinate communication material for the public outlining the changes to the bylaw, per the City’s standard process.

Option 2

Council may choose to direct staff to prepare alternatives to the changes proposed above, for the Tree Preservation Bylaw.

Accessibility Impact Statement

The proposed changes noted above are not anticipated to have a direct or indirect impact on accessibility.

Impacts to Financial Plan

The changes proposed are not anticipated to have a significant impact on the current Financial Plan. Staff will continue to provide regular updates on the implementation of the Urban Forest Master Plan and advise Council of any resource implications as part of the annual budget development process.

2019 – 2022 Strategic Plan

The proposed bylaw changes are actions identified with Strategic Plan Objective #6: *Climate Leadership and Environmental Stewardship*.

Official Community Plan Consistency Statement

The Official Community Plan contains the following objectives with respect to urban forest management:

- 10 (d) That the urban forest is enhanced to support a wide range of ecological and community benefits.

CONCLUSIONS

The City has committed to the protection and enhancement of the urban forest, as outlined in the Urban Forest Master Plan, Strategic Plan and Financial Plan. The Tree Preservation Bylaw is one important tool in efforts to reduce negative impacts, such as the loss of valuable trees on privately owned land.

The proposed bylaw changes in this report are rooted in research and analysis of leading practices and are aligned with the City's desired strategic outcomes, in the context of a climate emergency.

Respectfully submitted,



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Parks, Recreation and Facilities



Thomas Soulliere
Director
Parks, Recreation and Facilities



Report accepted and recommended by the City Manager:

Date: 21 May, 2020

List of Attachments

Attachment A: Proposed Tree Density Targets

Attachment B: Proposed Fees and Charges