



SUBJECT: Roseland pilot private tree bylaw investigation report

TO: Committee of the Whole

FROM: Roads, Parks and Forestry Department

Report Number: RPF-03-18

Wards Affected: 4

File Numbers: 820-02

Date to Committee: June 4, 2018

Date to Council: June 18, 2018

Recommendation:

Receive and file roads, parks and forestry department report RPF-03-18

Purpose:

- A Healthy and Greener City
 - Environmental Leadership
-

Background and Discussion:

This report sets out the history of recent city deliberations about a private tree bylaw. It also provides comment on the possibility of a pilot project of a private tree bylaw in Roseland in response to a staff direction. It does not recommend a pilot project, primarily because of the difficulty of assessing the effectiveness of a pilot project, but does set out the key parameters of a pilot project should Council wish to undertake a two year pilot.

Burlington's 2010 Urban Forest Management Plan (UFMP) included a recommendation to complete a detailed study to evaluate the appropriateness of a private tree bylaw for Burlington.

Staff submitted report number RPM-08-13 as information to the Development and Infrastructure Committee on July 8, 2013 and report RPM-19-13 on Sept. 9, 2013. At that time a city-wide private tree bylaw was not recommended.

At the March 22, 2016 Development and Infrastructure Committee meeting, the following staff direction was presented and approved by Council on April 22, 2016:

“Direct the Director of Roads and Parks Maintenance to investigate the implementation of a pilot tree by-law for the Roseland neighbourhood, with a review of options including, but not limited to: length of time for pilot project, extent of regulations, budget and staffing requirements, and measures to evaluate success, and to include community consultation and

Direct the Director of Roads and Parks Maintenance to report back to committee on June 21, 2016.”

Urban forests are shared community resources providing collective benefits. Research clearly indicates that trees provide improved air quality; carbon uptake; cooling effect for urban heat islands; shade from UV rays; storm water uptake; wildlife habitat; and psychological well-being benefits for residents.

Strategy/process

History:

RPM-08-13 Private Tree Bylaw Feasibility Study

RPM-08-13 provided a summary of the Private Tree Bylaw Feasibility Study, and contained no recommendations, but provided Council with options and advised which ones were supported by staff.

The report extensively reviewed all aspects of the effectiveness of private tree bylaws, the appropriateness of a bylaw for Burlington and potential resource implications, and developed several alternatives. This was to address the recommendation contained in the Urban Forest Management Plan (UFMP) approved by Council in July, 2010.

Both the study and report endeavored to provide options that balance between the use and enjoyment of private property and public concerns to protect trees.

Methods for data collection for the report included the use of multiple surveys and questionnaires of other municipalities and the local arborist industry (those performing tree work in Burlington). The results of the private arborists survey showed a proportionately low number of trees being removed from private lands in relation to the urban forest. Twenty-five municipalities were surveyed and of those, thirteen had private tree bylaws.

Community input was gathered through many diverse methods. This included online survey #1, community workshop, statistically valid telephone survey, online survey #2,

and stakeholder engagement of 21 tree care companies. A summary of public consultation as contained in report RPM-08-13:

- Residents recognize the value of trees to their community
- Support for a bylaw regulating trees on private property is low
- The unnecessary cutting of healthy trees on private residential property is not prevalent
- Development is viewed by many as a contributor to the loss of trees
- There is a desire amongst residents to increase public education and awareness about trees

Result: Council was provided with an information report that presented all of the data and community input gathered. There were no recommendations. A report was to come back later in 2013 with recommendations for Council's consideration.

RPM-19-13 – Private Tree Bylaw Feasibility Review Recommendations:

Report RPM-19-13 recommended against implementing a private tree bylaw, but rather focused resources on public education and awareness programs.

APPROVE Option A in roads and parks maintenance department report RPM-19-13, deciding against implementing a private tree bylaw; and

APPROVE components of Option C in roads and parks maintenance department report RPM-19-13, increase public education and awareness surrounding tree planting, care and maintenance, that do not have a budget impact; and

APPROVE components of Option D in roads and parks maintenance department report RPM-19-13, enhance public participation and involvement, that do not have a budget impact; and

APPROVE Option E in roads and parks maintenance department report RPM-19-13, identify community partnerships to enhance tree planting programs; and

DIRECT the Director of Roads and Parks Maintenance to prepare a bylaw to delegate the protection of woodlands between 0.5 and 1.0 hectares to Halton Region, as detailed in Option G of roads and parks maintenance department report RPM-19-13; and

DIRECT the Director of Roads and Parks Maintenance to prepare business cases for consideration in the 2014 Budget to support components of Option C, D, and F in roads and parks maintenance department report RPM-19-13 that have budget impacts.

Options:

Option C: Increase Public Education and Awareness

Option D: Enhance Public Participation and Involvement

Option E: Identify Community partnerships to Enhance Tree Planting Programs

Option F: Establish Incentives and Rewards programs Related to Tree Protection

Option G: Delegate the protection of woodlands between 0.5 & 1.0 ha to Halton Region

These RPM-19-13 report recommendations were based on key findings of the feasibility study which “revealed that the unnecessary cutting of healthy trees on private property is not prevalent and that the public support for a private tree bylaw is low, especially when combined with the concept of a tax increase to pay for administration and enforcement”.

Result: A bylaw was not recommended at that time, instead the focus was to be on public education and awareness programs, and that “resources are better focused on continued implementation of the recommendation within the Urban Forest Management Plan”.

Tree Bylaw Research:

Private Tree bylaws are in place or under development throughout many communities across Canada and the United States. They typically include exemptions, permit processes, fees, replanting or monetary compensation, and penalties for non-compliance. Some explicitly prohibit the removal of certain types of trees in certain circumstances. Report RPM-08-13 included a survey of 25 neighbouring Ontario municipalities. Key findings:

- 13 of 25 had a private tree bylaw
- Of those 13, 3 said their bylaw was ineffective, 2 unknown
- 10 of the 13 indicated that diseased or trees in poor health were exempt from requiring a permit
- Of the 12 that did not have a bylaw, 7 stated resourcing was the main reason a bylaw was not implemented

City staff benchmarked a number of municipalities for comparison of the bylaws currently in place. Please see table one below for the bylaw comparisons.

Table 1 – Municipal Private Tree Bylaws

City	Exceptions	Fees	Compensation	Penalties
City of Toronto	<30cm dbh*	\$114 for non-construction; \$341 construction	\$583.00 per tree or 1:1 50mm caliper deciduous or 1.74m coniferous	\$500-\$100,000
City of Ottawa	<50cm dbh	\$100.00	\$700.00 per tree	\$500-\$100,000
City of Mississauga	<15cm dbh or 2 trees per year >15cm dbh	\$403+ each additional tree \$91	trees<50cm replace with 1:1 tree 60mm deciduous or 1.8m coniferous; >50cm 2:1 trees	\$2,500-\$100,000

City	Exceptions	Fees	Compensation	Penalties
City of Markham	<20cm dbh	N/A	2:1 or greater depending on situation	\$500-\$100,000
Town of Oakville	<15 cm dbh	first tree \$50.00 under 24cm dbh; \$325 per additional tree or over 24cm dbh	one tree 30mm deciduous or 150cm coniferous for every 10cm dbh removed	\$400-\$100,000
Town of Richmond Hill	<20cm dbh	First tree \$150; \$50 per additional tree; max \$400	replacement planting or cash in lieu 120% cost of replanting	\$300-\$100,000
City of Vaughan	<20cm base	\$60 + \$100 per tree	1:1 20-30cm base, 50mm 2:1 31-40cm base 3:1 41-50cm base 4:1 over 50cm base	\$1,000-\$100,000
City of Brampton	<30cm dbh	\$50.00	1:1 tree	\$10,000-\$100,000

*dbh= diameter at breast height

General Comments

While some municipalities have private tree bylaws, they are generally municipality-wide. Staff have found little evidence that private tree bylaws have been subject to rigorous assessment of their effectiveness, and in many cases the stated goals of municipal private tree bylaws are more subjective and philosophical than objective and measurable. There is a general belief that the municipality has an obligation to put processes in place to regulate the removal of private trees by putting in place a process that ensures the owners seriously consider the decision to remove a tree, educates the owners, and ensures the replacement of private trees that are removed. While these may be very legitimate goals, there is little evidence found that shows that these bylaws ultimately have had a measurable impact on the quantity or quality of the urban forest, or are more effective than other strategies to retain and enhance the urban forest.

Evaluation and Measurement Challenges

Report RPM-08-13 attempted to estimate Burlington's Urban Forest by using the following method:

- Most trees in Burlington are located on private property
- Canopy cover calculations were used from the UFMP
- City owned street trees represent approximately 0.68% of the city's canopy cover
- Therefore, it is estimated that approximately 1.7 million trees exist within the city's urban area.

Other than this estimate, we have no baseline by which to measure, track or evaluate the success of a private tree bylaw pilot project on the tree canopy. It is also suggested that the scale of the tree canopy alone may not be the best by which to measure urban tree forests. Other cities include such measures as diversity of species, physical access to nature, habitat provision, tree health and characteristics of the trees (size).

Evaluating the effectiveness of a pilot project would be further complicated by the time-limited nature of the pilot in a relatively small area of the city. In short, the city would have little or no baseline on which to measure change, and enforcement of the bylaw would be either voluntary, or by complaint. The city does not have the resources to actively police tree removal in Roseland. In the case of a time-limited trial, people could either remove trees in advance of the pilot starting, or wait it out. In summary, it is not clear that there would be any viable means to measure the effectiveness of a private tree bylaw trial project.

Sample size would also be an evaluation challenge. Staff estimate that in a two-year trial period in Roseland there may be 40-50 permits granted, although given the city's lack of experience in the area, this is at best a rough projection. If the estimate is accurate however, it would be very challenging to extrapolate the impact of the pilot from such a small sample size on the overall urban forest of 1.7 million trees.

Moreover, except for the existence of some degree of community support, there is no other reason to undertake a pilot in Roseland, rather than other parts of the city that also have mature private property trees.

Further community consultation undertaken in Roseland since the staff direction to consider a pilot, shows that the community is highly polarized on the issue. People are either passionately in favour of a bylaw, or strongly opposed on the basis of private property rights. Few, if any people, were indifferent.

Value to Community

Even if it can be determined that a private tree bylaw is bringing value to the urban forest, it is possible that the same resources committed to education and/or actively expanding the forest on city property, might have a greater impact on protecting and enhancing the urban forest as a whole. Again, given the lack of research on the effectiveness of private tree bylaws, there is little way to assess this.

Priority Initiatives

The Urban Forest Master Plan (UFMP) remains a key priority regardless of Council's preferred direction on a pilot project. The UFMP is an extremely important plan for the city and an update to this plan is a priority for staff. This is one of the many plans that are needed as priority follow up work to the Official Plan and the Mobility Hubs Plans.

The Strategic Plan under A Healthy and Greener City places emphasis on the tree canopy and the city's urban forest with reference to how the "streetscape plans and private development will increase the city's tree canopy". This is perhaps where the city's initiatives could best be focused to provide value to the community.

Pilot Tree Bylaw

If Council chooses to implement a pilot program for a private tree bylaw, staff would recommend a moderate bylaw consistent with the attached draft bylaw. It would be applicable to the Roseland Community only because there is some degree of community support, although the neighbourhood remains polarized on the issue. The proposed bylaw would allow some flexibility for private property owners, yet includes restrictions based on preserving heritage and "significant" trees.

Replacement plantings are important for ongoing sustainability of Burlington's Urban Forest, and are proposed for trees greater than 30cm diameter at breast height (dbh). Boundary trees are also addressed.

Exemptions would be allowed for specific instances including emergency work; trees posing high risk as deemed by a Certified Arborist; ash tree removals, or removals allowed under the Planning Act.

At the end of the two year pilot period, a review of the bylaw would be undertaken with a report to Council, including the feasibility of further rollout city-wide, and resource implications. However, as indicted earlier, staff are uncertain whether there would be a meaningful way to measure the effectiveness of the pilot.

The bylaw would be enforced by the Manager of Urban Forestry and any designate, who would have the authority to:

- Issue tree permits
- Issue work orders directing as to how authorized work would be conducted. The authority to issue work orders would also include the authority to order a stoppage of work
- Enforce the bylaw including contraventions which includes all the elements of administering such a bylaw

Please see Appendix A for details of a possible Pilot Private Tree Bylaw.

Implementation would be in late 2018 or early 2019 to allow for full development of the program, public education and communication efforts.

Financial Matters:

Should Council choose to implement the pilot:

- Tree permit fee of \$100.00 per tree to a maximum of \$500.00 would be collected.
- No tree permit fee would be required to remove ash trees on private property, however replacement plantings would be required to offset canopy loss.
- Tree permit fees would help recover resources needed for staff time for application review; site visits; and processing and issuance of permits. The cost recovery would be minor. Additionally, staff time would be required to educate and inform property owners; undertake site inspections for tree replanting compliance, and process refunds of tree security deposits. Staff time may also be required for providing information for the appeals process.
- Resource impacts to be determined through the review of the pilot project, and identified to Council per the follow-up report to Council upon completion of the two-year pilot project.
- Compensation may be either replacement trees planted, or cash-in-lieu which would be applied to future tree planting initiatives by the city.
- Penalties may be assessed for non-compliance.

It is difficult for staff to quantify the resources and costs for a Private Tree Bylaw at this time however staff have done some work around estimating what may be required.

At this time, staff estimate that the total cost impact of the Roseland pilot would cost the city approximately \$18,000 based on the following assumptions:

- 43 permit applications, requiring 300 hours of staff time, would be absorbed into existing staff complement (\$13,000 cost)
- Communication strategy would require \$5,000 for print/web/social media messaging

Costs for a pilot would be absorbed into existing complement. Staff would use the pilot project to gather data and assess the impact on staffing levels, and city costs and report back to Council after the two-year pilot period.

Connections:

Since these reports came to Council in 2013, Burlington City Council developed and approved a new strategic plan. Burlington's Strategic Plan 2015-2040 identifies "The city's urban forest and tree canopy has increased and continues to thrive." in our strategic direction of A Healthy and Greener City (3.2.c).

Public Engagement Matters:

This report is a public document providing the community with the results of staff's investigation regarding a pilot private tree bylaw for Roseland.

Conclusion:

Staff have responded to the staff direction approved by Council on April 22, 2016 requesting staff to investigate the implementation of a pilot tree bylaw for the Roseland neighbourhood and provide report RPF-03-18 for Council's information.

Respectfully submitted,

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Appendices:

A. Draft By-law

Report Approval:

All reports are reviewed and/or approved by Department Director, Director of Finance and Director of Legal. Final approval is by the City Manager.

Appendix A – Draft By-Law

Exemptions and General Prohibitions

Property owners will be allowed to remove or injure (prune) a tree which meets the following criteria:

- A tree with a diameter less than 30cm (measured at 1.37m from the ground, also known as diameter at breast height or dbh)
- Pruning in accordance with good arboricultural practices with the appropriate removal of not more than one-third of the live branches or limbs of a tree as per the standards described in the International Society of Arboriculture pruning guidelines ANSI A300
- For emergency work: any work necessary to protect the lives of people or significant property damage from imminent danger related to a tree
- Trees with a high or extreme consequences of failure as per the International Society of Arboriculture Tree Risk Assessment Qualification (TRAQ), with the condition of the tree(s) documented by a Certified Arborist including written arborist report
- The tree is dead; with the condition of the tree(s) verified by a Certified Arborist including written arborist report
- Ash trees; as verified by a Certified Arborist including written arborist report
- Trees within 2 metres of a dwelling unit (measurement from the edge of the building envelope to the centre of the tree trunk at dbh)
- Trees located on a Nursery or Orchard, operating as a current business
- For the purpose of satisfying condition to the approval of a site plan, a plan of subdivision, or consent under sections 41,51 and 53 of the *Planning Act*
- For the purpose of satisfying condition to a development permit authorized by regulations made under section 70.2 of the *Planning Act*
- For the purpose of pruning, maintenance or removal of branches or limbs of any tree where the branches or limbs interfere with existing utility conductors
- Trees in close proximity to a transmitter or distributor as defined in the Electricity Act 1998 for the purpose of constructing and maintaining a transmission system or a distribution system as defined under that Act
- Where the removal of a tree(s) is specifically required in an order made under the City's property standards By-law.

Application Process

Property owners will be required to apply for a Tree Permit for the injury (pruning) or destruction of a tree(s) on the property owners' lot under the following circumstances:

- Greater than 30cm DBH

- Significant tree, meaning a notable specimen as defined in Appendix B.

The property owner will be required to submit the following:

- A completed application form
- An arborist report completed by a Certified Arborist
- A Tree Protection Plan acceptable to The Manager of Urban Forestry or designates, identifying the trees to be injured (pruned) or destroyed, and including size, species, condition and location; the trees to be retained; and measures to be undertaken for the preservation of remaining trees on the site
- Payment of the permit fee of \$100.00 per tree to be removed or injured up to a maximum of \$500.00. Fees will be waived for ash removals
- For Boundary trees located on a mutual lot line, a letter of agreement to the proposed work, signed by the adjacent property owner(s) or agent; or documentation from a Certified Arborist attesting that the boundary tree(s) will survive the proposed work in healthy condition, and include preservation methods not limited to pruning and fertilizing, according to arboricultural best management practices.

Issuance of a Permit

When a tree permit has been granted all owners are required, as a condition of the permit process:

- To replace each tree removed from their property with either tree(s) planted to compensate for the loss of the tree, or cash-in-lieu compensation of \$700 per replacement tree as specified by the Manager of Urban Forestry or designate.
- A replacement tree security deposit of \$700 per replacement tree will be collected as per the compensation ratio, for tree(s) approved for removal by the Manager of Urban Forestry or designate. The deposit will be returned one year after permit approval, and upon inspection for compliance by City staff.
- For any tree removed with a dbh between 30cm and 50cm the replacement planting is two 50mm dbh (deciduous) trees or 1.74m (coniferous) trees, per tree removed.
- For any tree removed greater than 50cm dbh, the replacement planting is three (3) trees of 50mm dbh (deciduous) trees, or 1.74m (coniferous) trees per tree removed.
- If replacement trees cannot be replanted on site due to space limitations, or in accordance with property owner's wishes, cash-in-lieu will be accepted by the City based on \$700 per replacement tree.
- If the protected trees per the Tree Protection Plan have suffered damage as a result of the construction process, the Replacement Tree Security Deposit will

transfer to the City of Burlington's compensation fund for future tree planting initiatives by the City. Additionally, further penalties may be assessed by City.

- The tree permit shall be valid for a period of one year from date of issuance.

Revocation of Permit

The Manager of Urban Forestry and any designate may revoke a tree permit at any time for any one or more of the following reasons:

- The tree permit was issued based on mistaken, false or incorrect information received.
- Failure to comply with any provisions or conditions of a tree permit.
- Failure to comply with any order under this tree permit.

Appeals Process

Where a tree permit has been denied:

- The applicant may appeal in writing within 30 days, after the notice of refusal is issued, to the Director of Roads, Parks and Forestry. The Director shall have final authority regarding the permission to remove or injure (prune) trees.

Offences

Any person who contravenes any provisions of this By-law including an order made under this By-law is guilty of an offence and, upon conviction is subject to the provisions of the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33 as well as the Municipal Act 2001.

Communications Plan for Private Tree Bylaw

A comprehensive communications plan will be implemented with Corporate Communications to educate and inform residents in the Roseland Area, as well as city-wide. A public meeting will be held in Summer 2018 in the Roseland Community, and updates to the City of Burlington Forestry website will be undertaken. The communication plan will include:

- The benefits of the By-law to our community
- Process and application forms
- Staff contact information
- Arboricultural best management practices
- Property owners' responsibilities
- Boundary tree legislation
- Pilot By-law review process and timing of follow-up report to Council.