



SUBJECT: Private Tree Bylaw Implementation Update

TO: Environment, Infrastructure & Community Services Cttee.

FROM: Roads, Parks and Forestry Department

Report Number: RPF-05-20

Wards Affected: All

File Numbers: 820-01

Date to Committee: January 13, 2020

Date to Council: January 27, 2020

Recommendation:

Approve the Urban Private Tree Bylaw XX-XXXX, Appendix 'A' to report RPF-05-20 and repeal existing bylaw 43-2018 Pilot Private Tree Bylaw, Effective January 27, 2020; and

Amend rates and fees by-law #52-2019 by replacing page 38 of Appendix A effective January 27, 2020.

Approve Option 3 – Apply the Private Tree Bylaw to the extent of the Urban Boundary currently and continue consultation with rural landowners for implementation fall 2020.

Approve Option 3 – Cash in Lieu of replacement of \$305.00 per replacement tree considered a 30 mm deciduous tree and 125 cm conifer. Aggregate caliper method would still apply.

PURPOSE:

Vision to Focus Alignment:

This report outlines the options to consider in following the Vision to Focus plan and the City's declared climate emergency:

- Focus Area 3: Supporting sustainable infrastructure and resilient environment
 - Increase the tree canopy City-wide

- Promoting and working towards a lower carbon footprint community
- Promote the development of trees to 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.

Background and Discussion:

Report RPF-18-19 was submitted to the Committee of the Whole meeting on December 2nd, and later at council on December 16th, included recommendations for the approval of a City-wide private tree bylaw. Through discussion at both Committee and Council meetings, two staff directions were received:

- 1) Defer discussion of the rural/agricultural classification to the Environment, Infrastructure and Community Services Committee meeting of January 13, 2020.
- 2) Defer discussion regarding cash in-lieu to the Environment, Infrastructure and Community Services Committee meeting of January 13, 2020.

These staff directions are directly linked to the proposed bylaw and proposed amendments to the rates and fees bylaw. The information included within this report provides additional information on these items and includes recommendations from staff, and options to consider by Committee.

The information contained within this report should be read in conjunction with information contained within the previously submitted report, RPF-18-19.

For Staff Direction 1 regarding rural/agricultural classification, staff recommends Option 3, whereby the purview of the private tree bylaw would apply to lands within the urban boundary only at this time. Consultation with rural landowners will continue with a report to council in the fall of 2020 with a recommendation for tree protection measures that is a 'rural built' solution.

For Staff Direction 2 regarding cash in lieu of replacement, staff recommends Option 3, which retains the aggregate caliper method of appraisal, reduces the minimum replacement size to 30 mm and a reduced cash in lieu fee. This option will provide more flexibility for homeowners to replace trees themselves and reduce a financial burden by not having to rely on contracted services.

1.0 Rural/Agricultural Classification:

Rural landowners are unique in their land use and tree management in comparison to lands located within the Urban Boundary. These lands are subjected to additional land use related legislation such as the Greenbelt Plan, and the Niagara Escarpment Planning and Development Act, 1990, both of which have a role to play in tree

preservation. In addition, regional environmental legislation like the Halton Region Woodlot Preservation by-law 121-05 which has purview of all woodlots greater than .5 hectare, and Conservation Halton' Land Use Policies also play a role in tree preservation.

From an agricultural perspective, Provincial legislation exists through the Farm and Food Production Protection Act, which states: "agricultural uses and normal farm practices be promoted and protected in a way that balances the needs of the agricultural community with provincial health, safety and environmental concerns."

Through this research as well as consultation with the Burlington Agriculture and Rural Affairs Committee (BARAC), staff recognize the complexities of the legislation that presently exists in the rural areas of the City.

At this point, staff recommend the private tree bylaw apply to the lands within the urban boundary only. Further consultation with rural residents and community committees is required, and staff will report back later in 2020 with recommendations for canopy growth that are more appropriately suited to a rural application.

2.0 Cash in Lieu of Replacement

Staff recommend using the Aggregate Caliper Method for calculating compensation for tree removal. This method requires the user to replace the equivalent cm diameter of the removed tree with the equivalent cm of replacement trees. This method also considers the condition of the removed tree and construction risk factor in the calculation.

Homeowners that remove trees without providing sufficient replacement plantings would be subject to providing compensation to the City via cash in lieu of replacement. These funds would be used by the City to recover the canopy loss through tree planting incentive programs on private and public lands properties

Options for consideration have been provided. Staff recommend option 3 which retains the aggregate caliper method of appraisal and reduces the minimum replacement size to 30 mm caliper (deciduous) and 125 cm (conifer). Cash in lieu of replacement would be reduced to \$305 per 30 mm replacement tree.

Example:

30 cm Norway Maple, Fair condition (70%). **Removal**

(30 cm X 70%) = 21 cm.

Construction Risk Factor: 100 % (removal)

21 cm / 3 = 7

7 – 30 mm* replacement trees would be required, or cash in lieu of \$2,135.00 payable to the City of Burlington Forestry Section.

If the homeowner replaces trees on their property rather than pay cash in lieu, the cost can be reduced:

Approximate cost for a 30 mm* replacement tree: \$200

Total replacement cost: \$1,400

**This refers to a caliper measurement which is a standard unit of measure used in the nursery trade, which is 15 cm above the ground (Canadian Nursery & Landscape Association, Canadian Nursery Stock Standard, 9th Edition).*

This option will provide homeowners more flexibility to plant trees themselves, rather than having to incur additional costs of hiring a contractor to install larger trees, typically with heavy equipment. It is anticipated that this framework would encourage tree replacement on the same property by homeowners rather than pay cash in lieu, which is most desirable by Forestry staff.

Implementation

At previous Committee and Council meetings from December, concerns were raised by delaying the implementation of a bylaw until April 2020, as some healthy private trees may be removed. Through consultation with the City's legal services, staff confirmed that bylaws cannot be phased in, nor does the City have legal grounds to implement a temporary moratorium on tree removal.

In the interest of protecting private trees, staff recommend making the bylaw in force and effect as of the Council meeting of January 27th. At which time, internal Forestry staff from the Operations branch will backfill temporarily while a formal competition for the approved staff positions will be conducted with support from Human Resources. This will impact Forestry operations which will require support from contracted services to ensure the annual workplan schedule is maintained. Estimates of costs are not known at this time.

Given rural lands would fall out of the purview of the private tree bylaw as recommended, not all forest protection officer positions will be filled immediately, and

the hiring of the remaining positions will be deferred until later in 2020 and contingent on workload.

Strategy/process

Staff conducted additional research on both agricultural/rural land use classifications as well as compensation criteria. This included additional research into provincial, regional and municipal legislation, further consultation with local municipalities and consultation with the Burlington Agriculture and Rural Affairs Subcommittee.

Options Considered

1.0 Rural/Agricultural Classification:

OPTION 1: Exempt Agricultural Operations:

The exemption of agricultural operations would provide consistency with regional and provincial legislation.

Pros: This would allow farmers the ability to operate their business and homesteads on a status quo basis through ‘Good Forestry Practices’ and removes a layer of legislation.

Cons: Large property owners would fall under the purview of the city’s bylaw which could create financial hardship in the event of tree removal. Determining a clear classification of ‘agricultural operations’ is difficult and would pose a challenge with administering the bylaw for non-agricultural operations

OPTION 2: Apply the bylaw to rural settlement areas only:

The bylaw would apply to the rural settlement areas as identified in the Official Plan (Lowville, Kilbride, Mount Nemo)

Pros: This would focus the administration of the bylaw to more residential areas of the rural zones.

Cons: Some landowners within the rural settlement areas have properties up to 3 acres in size. Financial hardship could ensue in the event of tree removal.

Some landowners rely on tree removal on their property for fuel for heat. This bylaw may impact their ability to do so.

OPTION 3: Apply the private tree bylaw to the Urban Boundary only and report back in 2020 with recommendations for tree protection for rural lands through further consultation.

The bylaw would apply to urban areas only, which is anticipated to be the highest volume of applications. Staff would continue to consult with rural constituents and report back to Committee with recommendations in fall 2020.

Pros: This would allow for a “rural-made” solution that is supported by rural residents and addresses concerns over over-burdened land-use legislation.

Cons: Trees located outside the urban boundary would not be protected.

2.0 Cash in Lieu of Replacement:

OPTION 1: Aggregate Caliper Method, Reduced Cash in Lieu Fees, 50 mm replacement

To reduce the financial burden on homeowners, cash in lieu of replacement fees would be reduced to \$500.00 (50 mm tree). Aggregate Caliper method would still be applied and a 50 mm tree remains the minimum replacement size.

Pros: Canopy recovery is realized as early as year one, and more affordable to homeowners compared to the \$700/replacement tree rate.

Cons: The cash in lieu rate is lower than market rates for tree replacement, enticing homeowners to pay cash in lieu rather than replace on site. 50 mm trees are not easily transported by homeowners without special equipment.

OPTION 2: Change Replacement Criteria, Reduce Cash in Lieu Fees, 50 mm replacement

Match replacement criteria to Oakville (1 tree for 10 cm removed) and reduce cash in lieu fees to \$500.00 (50 mm tree).

Pros: Reduced financial burden on homeowners

Cons: Does not consider tree condition. The cash in lieu rate is lower than market rates for tree replacement, enticing homeowners to pay cash in lieu rather than replace on site.

OPTION 3: Retain Aggregate Caliper method, 30 mm caliper/125 cm conifer, reduce cash in lieu fees

Retaining the aggregate caliper method for calculating compensation and reduce the minimum replacement size from a 50 mm caliper tree to a 30 mm caliper tree (deciduous) 125 cm conifer and reduce cash in lieu fees of \$305.00 per 30 mm replacement tree.

Pros: The ability to access smaller sized trees make it easier for homeowners to replace trees lost as a “do-it-yourself” project on their own property. In addition, if planting smaller trees, more trees can be planted either on the subject property or elsewhere (funded by cash in lieu).

Cons: Smaller trees may take longer to recover the canopy loss. There may be higher replacement tree mortality if planted improperly.

Financial Matters:

The operating and capital budget requests for 5 staff and 3 electric vehicles were approved through the budget process in December, 2019. Given rural lands would fall out of the purview of the private tree bylaw as recommended, not all forest protection officer positions will be filled immediately, and the hiring of the remaining positions will be deferred until later in 2020 and contingent on workload.

The cash in lieu option 3 that has been recommended will not impact cost recoveries of staff time, which is managed through the development and non-development related permit fees. Funds received through cash in lieu of replacement will remain ear-marked for investment in private and public tree planting initiatives. Private tree planting will be given priority.

Total Financial Impact

Not Applicable

Source of Funding

Not Applicable

Other Resource Impacts

Not Applicable

Climate Implications

Trees provide significant ecosystem services to the Burlington community. The continued preservation and protection of trees within the City is an important measure to aid in the fight against climate change.

Staff responsible for the administration of the private tree bylaw will be assigned electric cars for City business.

Enterprise Risk:

- Climate Change

Engagement Matters:

Public engagement was managed and reported on in Report to Council, RPF-15-19.

City staff consulted with the Burlington Agriculture and Rural Affairs Committee after the December 16 Council meeting.

Conclusion:

The proposed Urban Private Tree Bylaw will help protect the urban forest as a community resource while respecting homeowner rights. Focusing the administration of the bylaw firstly on lands within the urban boundary while developing a 'rural-made' solution for tree protection for rural landowners to be implemented later in 2020, will contribute to a robust piece of legislation that works for all diverse land uses across the City.

Respectfully submitted,

Steve Robinson

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Appendices: (if none delete section)

- A. Urban Private Tree Bylaw XX-XXXX

Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Council. Final approval is by the City Manager.