



**SUBJECT: City Private Tree By-law 02-2020 Implementation Update**  
**TO: Environment, Infrastructure & Community Services Cttee.**  
**FROM: Roads, Parks and Forestry Department**

Report Number: RPF-07-21

Wards Affected: All

File Numbers: 820-01

Date to Committee: May 6, 2021

Date to Council: May 18, 2021

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**Recommendation:**

Repeal and replace By-law 02-2020 with a by-law substantially in the form attached in Appendix 'A' to roads, parks and forestry department report RPF-07-21 and in a form satisfactory to the Executive Director of Legal Services and Corporation Counsel; and

Approve the changes to the Rates and Fees By-law 92-2020 with respect to the City of Burlington Private Tree By-law as described in roads, parks and forestry department report RPF-07-21, and detailed in Appendix "B"; and

Approve the amending by-law to Rates and Fees By-law 92-2020 substantially in the form attached in Appendix "C" to roads, parks and forestry department report RPF-07-21, which has been prepared in a form satisfactory to the Director of Legal Services and Corporation Counsel.

**PURPOSE:**

The purpose of this report is to provide an update to Council as to the status of the current City of Burlington Private Tree By-law 02-2020 within the Urban Boundary and highlight proposed improvements for consideration.

**Vision to Focus Alignment:**

The City's Private Tree By-law 02-2020 was initiated as part of the Vision to Focus Plan and the City's declared climate emergency. As part of the Plan, the implementation of a Private Tree By-law falls within the following focus area:

Focus Area 3: Supporting sustainable infrastructure and resilient environment

Key actions under this focus area are the development of Burlington's Climate Action Plan and the Urban Forestry Management Plan. The plan's goals of increasing the City's tree canopy and protection of trees, aligns, and is enabled through implementation of the City Private Tree By-law.

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## **Executive Summary:**

Report RPF-07-21 provides an update to the implementation of the Private Tree By-law since its enactment on January 27, 2020 and identifies recommendations for consideration.

The Private Tree By-law has been implemented using a two (2) application stream process: Development and Non-Development. Application intake and permit issuance relative to those two (2) streams were reviewed, whereby a total of 265 Development Permit Applications, and 1,003 Non-Development Permit Applications were received in 2020. A total of 196 Tree Permits were issued for Development related projects resulting in 112 tree removals and 28 tree injuries. Similarly, a total of 758 Non-Development Tree Permits were issued in 2020, which resulted in 1,128 tree removals, of which 65% were exempt. A total of 1,015 trees are proposed for replanting as part of compensation requirements, which will be reviewed by Forestry staff for completion in 2021. Additional cash-in-lieu in the amount of \$57,400 was collected in 2020, which will be utilized to plant trees elsewhere within the City.

The majority of tree removals where the exemption criteria was applicable were for those trees identified as terminally diseased (e.g., Ash (*Fraxinus spp.*)), followed by dead, trees within two (2) metres (m) of an occupied building, and finally those that were considered hazardous or at risk of failure.

Those trees removed that were not subject to a health and structure condition exemption, were largely within the size range of 20 to 40 centimetre (cm) diameter-at-breast (DBH).

A Council Workshop was held on January 18, 2021 to provide an update to the Private Tree By-law by providing a presentation on statistics and/or key performance indicators (KPIs) along with the program successes and limitations. As part of the Council Workshop, several brainstorming sessions were undertaken with Council and City staff to review the goal of the Private Tree By-law and its alignment with the Vision to Focus Plan, the limitations of its success, and ways to improve it moving forward to ensure

goals are achieved. Given the results and discussions, Forestry has reviewed and provides the following recommendations:

- Update the existing Private Tree By-law 02-2020 in accordance with the recommendations of this Report;
- Revise the fee structure to introduce new fees which includes an application and/or administrative review fee, a permit per tree fee, a permit renewal/extension/transfer fee, a security deposit for replacement tree plantings, and a compliance inspection fee.

Additionally, the identification of ways to improve efficiency to process related tasks has been included for consideration which includes revising permit forms, introducing declarations and continuing efforts to improve Forestry's use of the City's AMANDA software for permit processing.

The decision to update the existing By-law was made based on the lessons learned over the past year and the data collected. Forestry determined that amendments to the By-law are necessary, and will assist in providing greater clarity overall to the document which will be a benefit to the customer.

The revision to the fee structure was based on a review of the existing program expenditure and revenue data collected in 2020. In the event the fee structure remains the same, a net cost to the Corporation in the amount of \$417,200 is expected. Through the implementation of the recommended fee structure, the estimated revenue is \$396,600 with an estimated tax levy support of \$188,900. As noted, the recommended revision to the fee structure will include fees associated with the application as well as a permit per tree fee. The permit per tree fee will vary dependent on whether the proposed impact to the tree is for the destruction (removal) of a tree, or a proposed injury, whereby the fee for removals will be greater. Forestry also recommends introducing a fee for permit extension/renewals/transfers, compliance inspections and a security deposit for tree compensation.

Forestry staff started engagement discussions with the Rural community in late 2020, with a meeting with the Burlington Agricultural Rural Affairs Advisory Committee (BARAAC), with additional follow up and review to occur in 2021. Similarly, Forestry staff have consulted with the City's legal department on a regular basis to review and obtain legal interpretation of various provisions of the existing Private Tree By-law, and to draft a new By-law to address the priorities and concerns of Forestry, to ensure lessons learned over the past year are adequately addressed.

In summary, since the enactment of the Private Tree By-law, Forestry staff has had the opportunity to engage with members of the public, to review their projects and proposed tree removals and injuries. This has started a dialogue with residents and has allowed for meaningful discussions to be held with staff about the importance of trees, and

understanding of their structural and biological limitations. This is viewed as a proactive approach to maintaining and increasing the City canopy coverage which is in alignment with the Vision to Focus Plan.

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## **Background and Discussion:**

### **Private Tree By-law Implementation Review:**

The City of Burlington Private Tree By-law 02-2020 was implemented within the City's Urban Boundary on January 27, 2020. The City's Public Tree By-law 068-2013 remains in force and effect City wide (inclusive of the Rural Boundary limits).

Private Tree Permit applications were split into two (2) streams:

- Development Tree Permit Applications which included those that are part of the consolidated pre-building permit application process; and
- Non-Development Tree Permit Applications, which included general removals, pools, landscaping, fences, and patios that are received online through the Forestry webpage or by mail (as required).

Shortly after implementation of the Private Tree By-law, closures and operational modifications took place as a result of the COVID-19 pandemic. These operational modifications resulted in unanticipated changes to the planned program, including delays in staff hires, and impacts to permit processes and procedures.

In short, due to the pandemic, the collection and process of applications for permits during the 2020 year may not be reflective of normal conditions given the following:

- Greater number of people have been home and opted to complete home improvement projects (e.g., pools) rather than vacationing abroad, which may have resulted in a higher number of applications;
- COVID-19 resulted in delays to staff hires which lead to a significant and immediate backlog that remained throughout the year; and
- Permit application review and approval processes required modification immediately to an online platform to address customer needs while respecting social distance requirements (e.g., online application intake and e-transfer payment, higher phone call requests vs. in person meetings).

As part of Forestry's commitment to update Council on the program, Forestry has also provided a status update to the existing Council Directives that were identified during

the December 16, 2019 meeting. The Directive and updates are provided as an Appendix to this Report, and can be found in Appendix D.

### **Council Workshop Summary**

A Council Workshop was held on January 18, 2021 to provide an update on the Private Tree By-law since implementation on January 27, 2020. This update included a presentation on various statistics that illustrated the data collected during the 2020 year in addition to team exercises that looked to revisit the goals of the Private Tree By-law, while identifying the constraints and/or issues that may be affecting those achievements and to identify strategies that could be explored in order to achieve the desired goal.

The first team exercise was a breakout session that looked to answer the following question:

“How might we improve the City’s Private Tree By-law to address the needs of the City?”

- Why is it important and what is stopping us?

During the breakout session some key themes were identified and are summarized in Table 1:

Table 1: Breakout Session No.1 Summary

<b>How might we improve the City’s Private Tree By-law to address the needs of the City?</b>	
<b>Why is this important?</b>	<b>What is stopping us?</b>
• Support Council Climate Emergency Declaration	• System integration
• Tree Canopy Growth	• Process is complicated
• Wildlife and Habitat	• Competing priorities
• Engage, educate and empower community	• Funding/Budget
• Strategic on types of trees	• Resources
• Ensure trees are replaced on private property	• Technology
• Trees provide character and healthy vibrancy	• Public perception
	• Education
	• COVID

Following the first breakout session summary, a second team breakout session was held that aimed to take the results of the first breakout session and identify good, better and best ideas for improvement. The ideas were focused to ensure that they were aligned with the City’s strategic priorities, they were relevant to solve the original challenges identified in “what is stopping us?”, and that the ideas were feasible, such

that there are resources and technical capabilities to make it happen. The themes identified during the second breakout session are summarized in

Table 2 below:

Table 2: Breakout Session No.2 Summary

<b>Brainstorming Session: Good, Better, Best Ideas</b>	
• Implement declarations	• Enhance the webpage
• Streamline / simplify the permit process	• Make the process understandable and transparent
• Updating the permit forms	• Make less punitive
• Eliminate Steps	• Education
• Use photographs or video instead of inspections	• Utilize and prioritize technology
• Make less punitive	• Adjust fees
• Hire Students/resources	

In addition to the above breakout sessions, a number of questions were raised at the Council Workshop regarding additional statistics. Those additional statistics have been included herein. A summary of all statistics for the 2020 year is provided in the following sections.

### **Development Permit Applications**

Development Tree Permit Applications are received through the consolidated pre-building permit application process. These applications are taken in by the Residential Development Technologists in the Community Planning Department and circulated to Forestry for review and comment on all submissions.

As of December 31, 2020, Forestry received a total of 265 Development Tree Permit Applications. Applications received included projects that pertained but not limited to:

- Decks
- Pergolas and Gazebos
- Cabanas
- Additions
- New Residential Dwelling

- New Garages

Out of the 265 Development Tree Permit Applications, Forestry issued 196 Tree Permits as of February 12, 2021 which resulted in 28 tree injuries (i.e., where an action that causes the physical, biological or chemical damage to a tree outside of good arboricultural practice within the minimum tree protection zone), and 112 tree removals; 18 of which were exempt. The remaining 69 applications were either cancelled/withdrawn (11), or are still in progress/on-hold (58). Several of the permits issued for projects (120) were clearance permits, whereby no trees were removed or injured, but through the review process, methods were implemented to protect trees. This provided a proactive approach to tree preservation compared to a reactive approach in the event that injury or removal was required. A summary of the impact to the overall City canopy as a result of Development Tree Permits is illustrated in Figure 1.

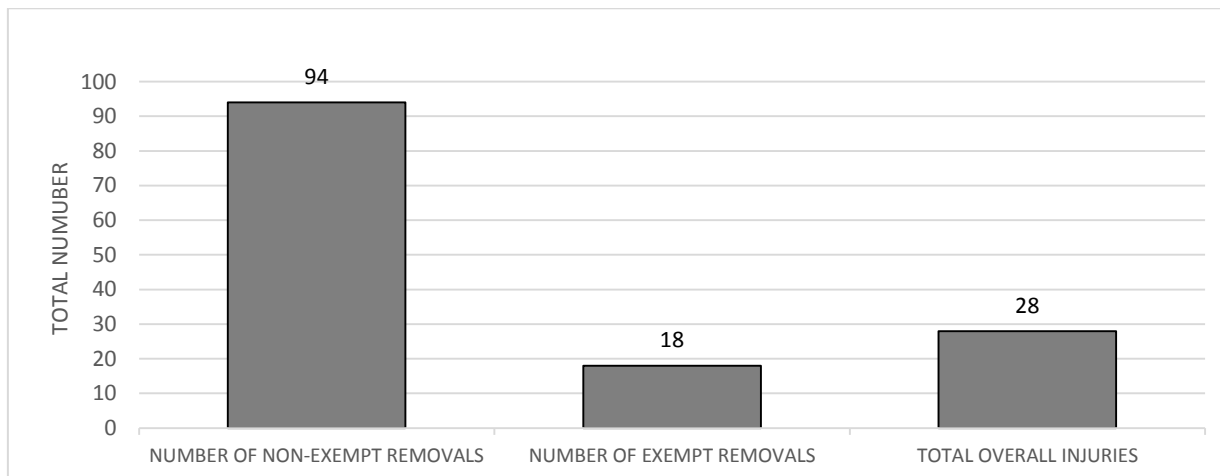


Figure 1: 2020 Development Permit Impact Summary

On average it took 59 days to complete the review of a Development Tree Permit Application from the time the application was circulated to Forestry, to the point of permit issuance. A number of factors affected the length of review which included but not limited to the ongoing backlog as a result of the COVID-19 pandemic and delay in staff hires, missing documents (e.g., Arborist Reports, Tree Preservation Plans, Site Plans), changes to project scope, and the installation of tree protection requirements. A summary of permit issuance per month is provided in Figure 2 below. Reviewing the 12-month period, the average number of applications received was equal to 22 per month. When reviewing the primary spring - summer months between May and September, the average number of applications received was 28 per month.

To provide an update in the 2021 year with full staff compliment, the average time between an application to time of permit issuance is 30 days.

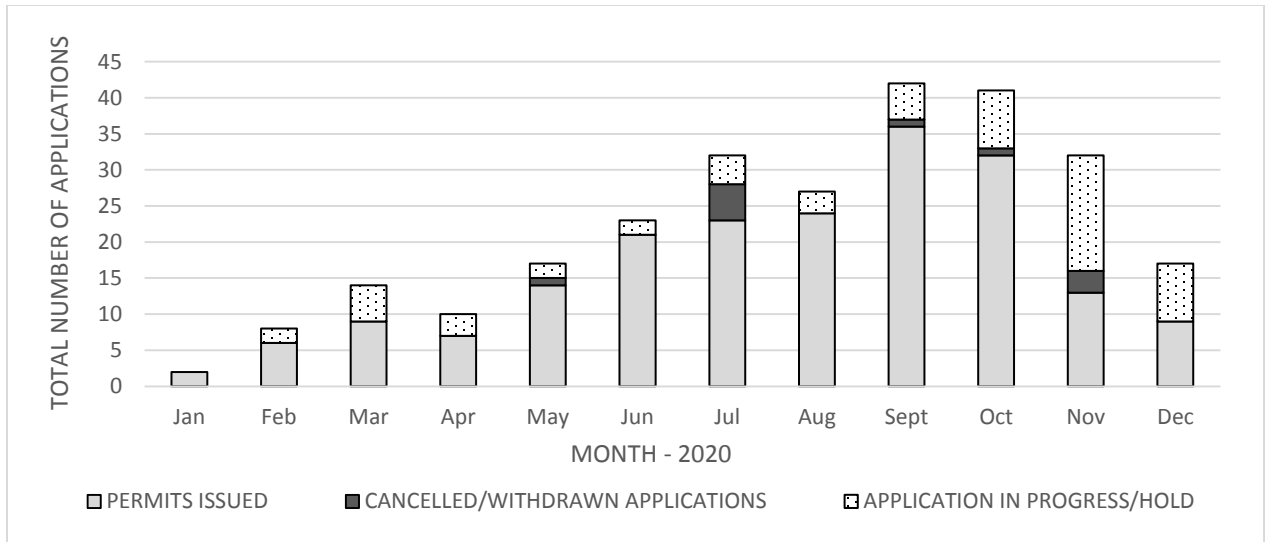


Figure 2: Number of Development Tree Permits (Consolidated Process)

### Non-Development Permit Applications

Non-Development Tree Permit Applications were received through a web-based application on the Forestry webpage, taken in over the phone or received by mail. As of December 31, 2020, Forestry received a total of 1,003 Non-Development Tree Permit Applications. Applications received included projects that pertained but not limited to:

- Pools;
- General tree removals;
- Dead, Terminally Diseased, and those trees within two (2) m of an Occupied Building;
- Imminently Hazardous trees;
- Landscaping;
- Patios; and
- Driveways

Out of the 1,003 Non-Development Tree Permit Applications, Forestry issued 758 Tree Permits as of February 12, 2021; 464 (61%) of those were clearance (exemption) permits. Of the remaining 245 applications, 73 were either cancelled/withdrawn, and 172 are still in progress. The 758 Tree Permits issued resulted in 41 tree injuries and 1,128 tree removals. Of those removed, 735 (65%) were exempt from fees and compensation due to its' status/condition in accordance with the By-law (e.g., dead, terminally diseased, or within two (2) m of an occupied building).



Similarly, the review of these applications provided a proactive approach to confirm that the trees proposed for removal were dead, or terminally diseased, as a number of applicants that applied for permits were not qualified professionals (e.g., Arborists) and City staff acted in this role on their behalf. A summary of the impact to the overall City canopy as a result of Non-Development Tree Permits is illustrated in Figure 3.

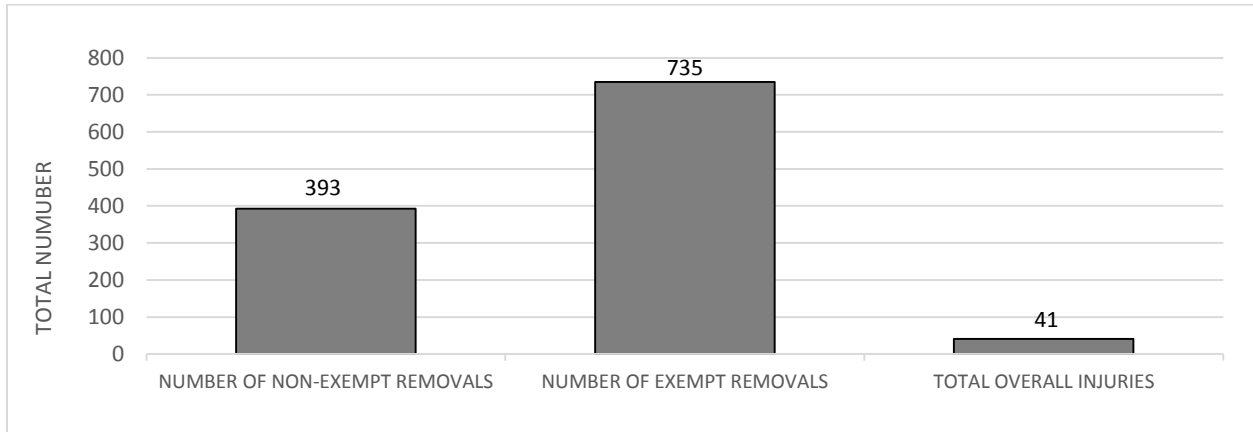


Figure 3: 2020 Non-Development Permit Impact Summary

On average, it took 44 days to complete the review of a Non-Development Tree Permit Application from the time the application was received by Forestry, to the point of permit issuance. As noted previously, a number of factors affected the length of review, which are similar to those reasons provided for Development Applications. A summary of permit issuance per month is provided in

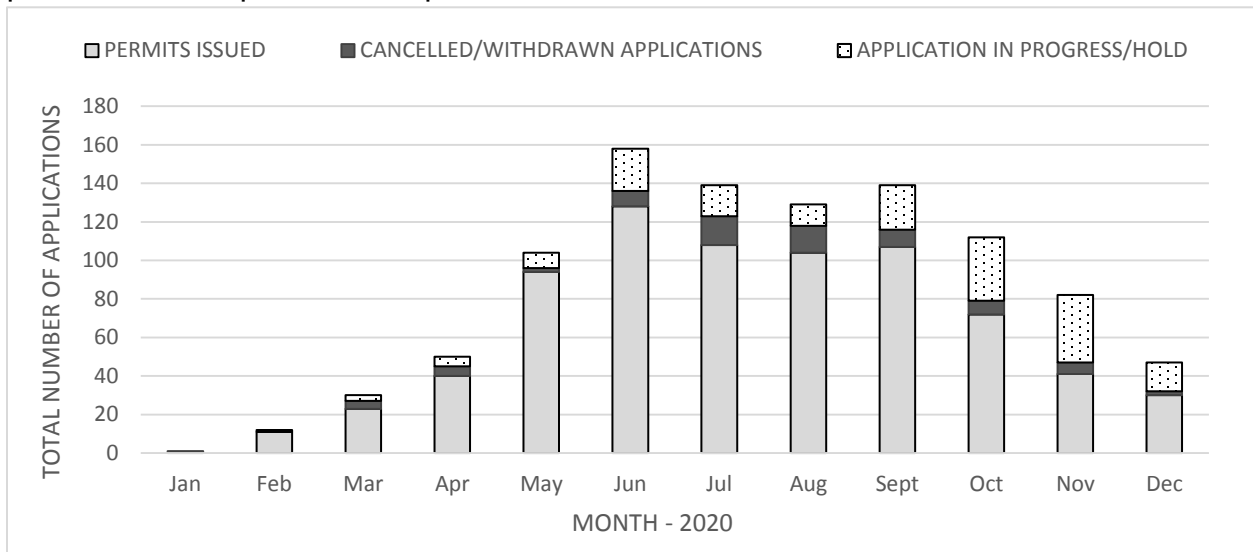


Figure 4 below. Reviewing the 12-month period, the average number of applications received was equal to 84 per month. When reviewing the primary spring - summer months between May and September the average number of applications received was 134 per month. To provide an update in the 2021 year with full staff compliment, the average time between an application to time of permit issuance is 30 days.

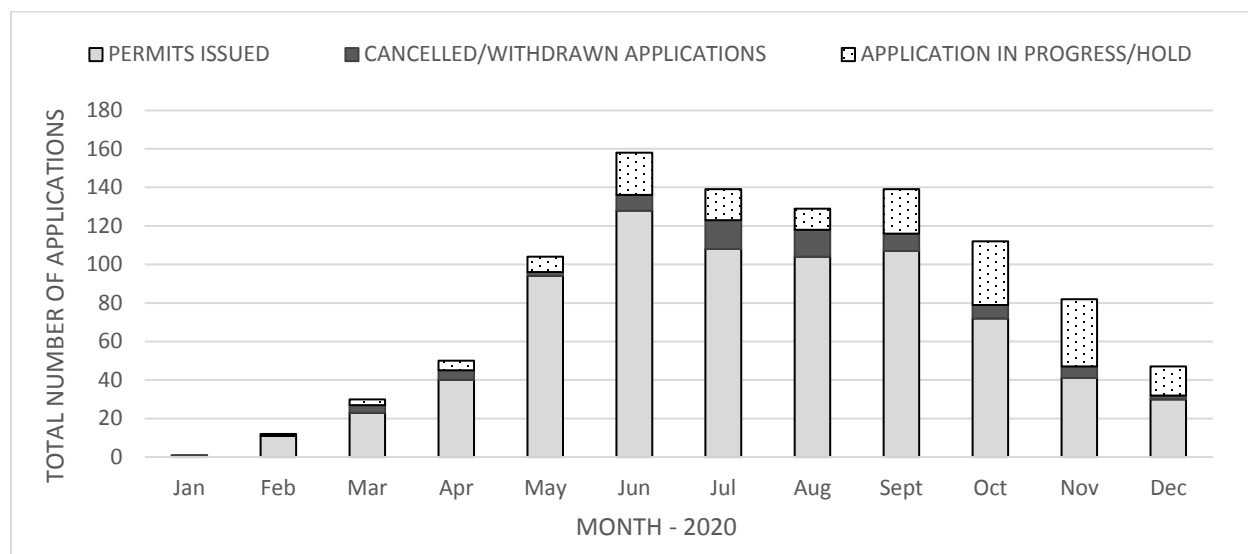


Figure 4: Number of Non-Development Tree Permits

### Additional Statistics

As noted, a request for additional statistics related to the Private Tree By-law was received during the Council Workshop. This information is intended to gain a better understanding of the administration of the Private Tree By-law. In addition, this information has also been relied on for process improvement considerations. Statistics related to removals that are exempt of fees, removal size analysis for permissible trees, and removals based on species are detailed below.

### Removals – Permit Fee Exempt Statistics

Currently the Private Tree By-law provides exemptions for hazardous trees, trees that are dead, those that are terminally diseased, and those that are within two (2) m of an occupied building. A summary of removals that are exempt of permits recorded from both the Development and Non-Development Permit streams is illustrated in Figure 5. The majority of exemption removals were associated with trees that were terminally diseased (e.g., Ash (*Fraxinus spp.*)), followed by those that were dead, those within two (2) m from an occupied building, and finally those that were considered hazardous or at risk of failure. It is important to note, that the majority of trees removed as part of the two (2) m exemption were not removed for any maintenance purpose, which was the original intent of the clause.

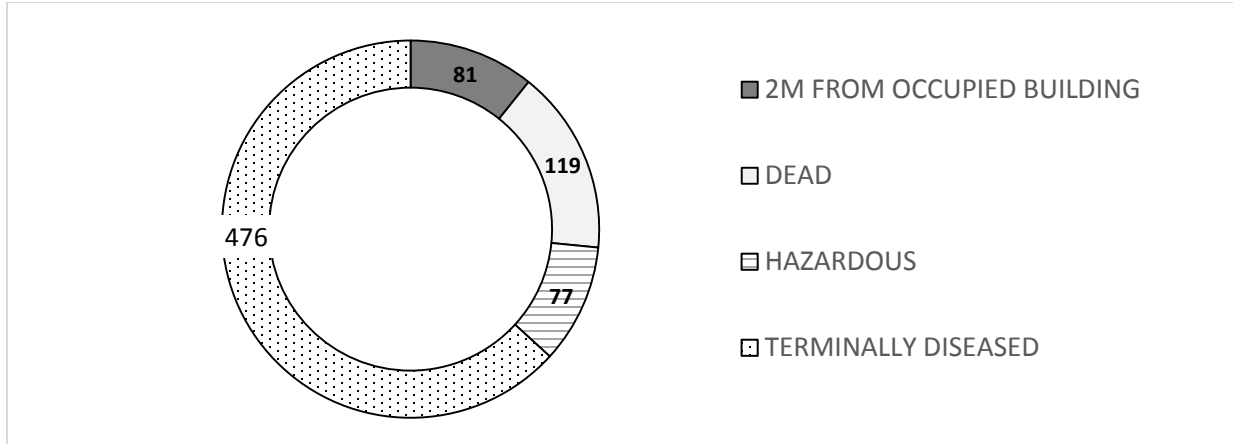


Figure 5: Tree Removal Quantities Exempt of Permit Fees & Compensation

**Permittable Removal Size Analysis:**

A review of the size of removals was completed, with the majority of removals recorded in the 20 to 40 cm range. Figure 6 summarizes tree removals based on diameter class of removals that were subject to permit fees and compensation, as well as those removals that were two (2) m from an occupied building. This was done to provide a representation of those trees removed that were not subject to a structural or health related reason.

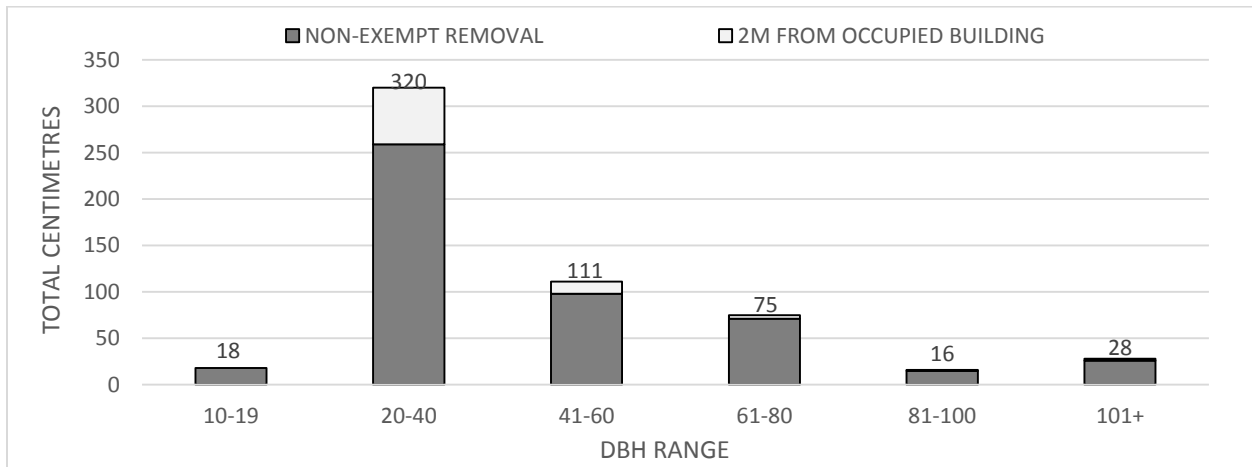


Figure 6: Summary of removals that were neither dead, terminally diseased or considered high risk or hazardous

**Removed Trees Species Analysis**

A large number of species removed during the 2020 year were Ash (*Fraxinus spp.*) trees, which is to be expected given the large number of terminally diseased removals. Additional commonly removed trees include those associated with the Maple, Cedar

and Spruce varieties. A summary of the top ten tree species removed within the Urban Boundary is illustrated in Figure 7.

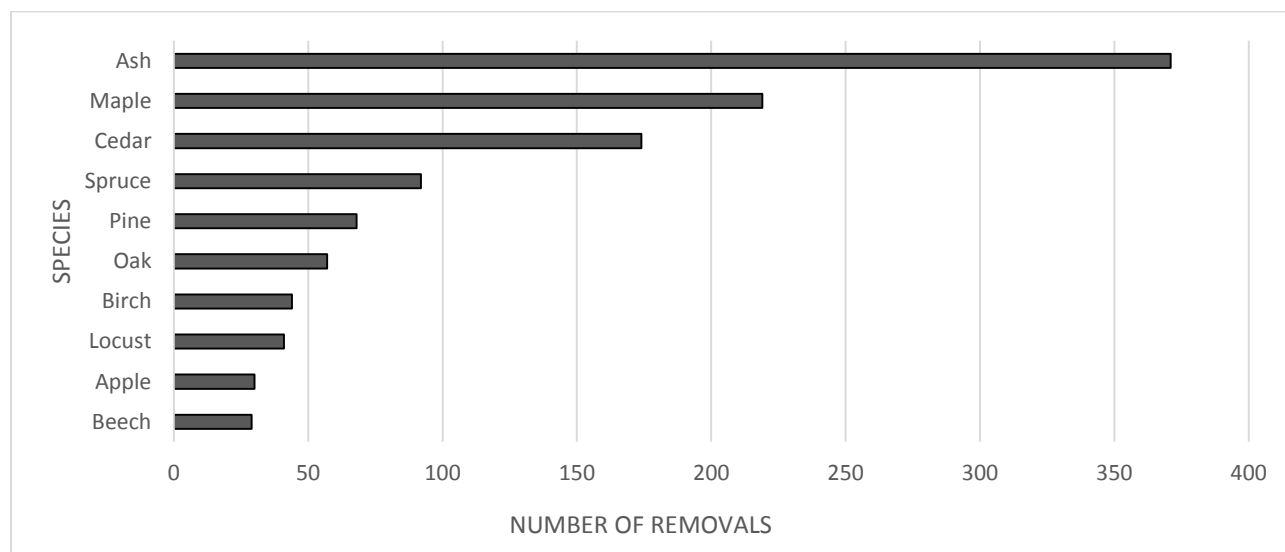


Figure 7: Overview of Tree Species affected by the Private Tree By-law

### Replacement Tree Planting

As part of the Private Tree By-law, trees of permissible size are required to be replaced, either through the planting of replacement trees, or by providing compensation as cash-in-lieu. Compensation is calculated based on the overall health and structure of the tree as well as its size (DBH). In general, for every 10 cm removed, one (1) tree is required to be replaced. The cash-in-lieu value is \$400/tree, which will be used towards planting trees elsewhere in the City, earmarked for tree planting on private property. More often than not, applicants chose to replant versus cash-in-lieu, with a total of 1,015 trees required to be replanted. This is equivalent to a cash-in-lieu value of \$406,000. The replacement timeframe provided to applicants was one (1) year from the date of permit issuance and therefore, a number of site inspections will be required in 2021 to ensure those trees proposed for replanting have been installed. The majority of trees proposed for replanting are of the Cedar (*Thuja occidentalis*) variety. Cedars although compliant with provisions of the By-law in terms of meeting the minimum size requirements of a tree, they do not significantly contribute to positive canopy growth, especially in instances where a large mature deciduous tree is removed and replaced.

The cash-in-lieu payments received for replacement plantings was \$57,400, which based on a \$400 per tree amount, shall provide for 143 trees. The funds collected are transferred annually to a reserve fund, which will be drawn upon by Forest Planning and Health staff for tree planting initiatives on private property.

### **Other Forestry Related Tasks and Workload Indicators**

The Forest Protection Section oversees both the Private and Public Tree By-law. There are a number of projects that currently take place outside of the two (2) permit streams where user fees are collected that require Forestry review and as such Forest Protection staff resources. A summary of other types of applications that are received by the Forest Protection staff is provided in the following sections. This allows for an overview of where resource time is spent by Staff that is not associated with the current Development and Non-Development Permit applications (with the exception of some demolitions).

### **Demolitions and Committee of Adjustment**

The Private Tree By-law 02-2020 has had implications on other applications received by the City including Demolition Building Permits and Committee of Adjustment (CofA) submissions, as it increased the amount of time for review compared to the previous time spent only reviewing the Public Tree By-law (68-2013). As of December 31, 2020, Forestry received notification of 99 CofA applications, 40 Pre-Consultation (CofA) requests and 65 demolition applications. It is important to note, fees associated with CofA applications are collected through Community Planning for the Community Design and Development service review and contained within that department. No fees are collected by departments for demolition clearance reviews, fees are only collected by the Building Department at the time of application for the Demolition/Building Permit. There are instances where a tree permit may be required for a demolition, where the demolition activities will result in an injury or destruction (removal) of a tree, but generally the occurrences of those removals or injuries are limited, as the trees can be protected until the actual development of the subject lot occurs. As those demolitions were reviewed in conjunction with the Development Tree Permit Applications, permits issued in 2020 for Demolitions were filed under those application types.

Resource time for review of these submissions, and permit issuance (demolition only) will be continually monitored and assessed to identify resources requirements. As demolitions are often tied to the consolidated pre-building permit process, the review of these submissions does often tie into timing and processing associated with the overall project (i.e., demolition and new build).

### **Site Plan, Plan of Subdivision and Municipal Consent**

Site Plan, a Plan of Subdivision under sections 41, 51 or of the *Planning Act* have certain exemption from the Private Tree By-law relative to conditions in accordance with the *Municipal Act*, Section 135 (12)(d). Although there are certain exemptions, these files generally require review and resource time relative to the Public Tree By-law 68-2013 and work associated with City lands and the municipal right-of-way. A summary of

those application types received in the 2020 year is provided in Table 3, for a total of 95. The approximate time to review each application type is between a half (1/2) day to two (2) full days. It is important to note, that this approximate timeframe provides an overview of resource time needed to complete reviews based on application type, and is not reflective of actual time spent per application. For example, this does not account for time associated with answering questions from residents, applicants, councilors, consultants, and internal staff. Further evaluation into the time dedicated to these reviews is required to provide a greater understanding of the resources required.

Similarly, municipal consent permits albeit pertain to the municipal right-of-way, may have implications on public trees, but also on trees on private property depending on the proposed activity (e.g., servicing or driveway widening). A total of 315 municipal consent permits were issued in 2020.

The review of Planning application types relative to the Forestry requirements is currently a task undertaken by Engineering Services staff due to the limited capacity of Forest Protection staff and volume of applications received. Municipal Consent Applications are taken in by Engineering Services staff, and Forest Protection is contacted as required. In each of these instances, Forest Protection staff provide commentary on applications where necessary and on all applications that require injury or removal requests for City-owned trees. Where there is a proposal to remove City-owned trees, Forest Protection staff are required to submit a report to Council for their approval. Again, no fees are collected for that associated resource time. There may be an opportunity to optimize this process in the future, whereby Forest Protection staff could provide expertise in these types of review, and include an application review fee as part of the development application fee review (currently under review with Planning Staff). The inclusion of a fee would assist in offsetting costs for staff time and resources needed, and is aligned with other departments established processes.

Table 3: Summary of 2020 Planning Act Applications

<b>Application Type</b>	<b>2020 Applications</b>
Site Plan (SP)	19
Minor Modification (MM)	3
Minor Development (MD)	6
Official Plan Amendment (OP)	3
Rezoning Subdivision (RZ)	4
Subdivision (SD)	1
Development Consultation – for Site Plans (DC)	32
Development Planning Consultation for Official Plan Amendment, Rezoning and Subdivision (DPC)	27

## **Engineering Services**

Forest Protection Staff also assist in review of projects undertaken by Engineering Services and provide commentary as required. This review largely pertains to provisions with respect to the Public Tree By-law as these types of projects typically reside on municipal owned land.

## **By-law Infractions**

As of December 31, 2020, a total of 71 By-law infractions occurred within the Urban Boundary pertaining to both the City Public and Private Tree By-law that Forest Protection staff responded to and reviewed. Infractions were reported either through inter-city departments, residents, or through review of properties by Roads Parks and Forestry staff. There are currently no fees collected as part of these infractions for the time spent on-site to review the damage that has occurred, nor the time spent for drafting notices, orders, or proceeding with Part III charges under the *Provincial Offences Act*. Resource time for review of these infractions requires consideration as part of the program to make sure adequate resources are available to ensure there is a timely review of these infractions and that these matters are rectified in accordance with the specific By-law(s).

## **Strategy/process**

Since the implementation of the current Private Tree By-law, staff have compiled additional information in the interest of achieving process efficiencies and greater effectiveness of the Private Tree By-law, which will lead to greater customer service and experience long term. Examples of these improvements include providing greater clarity and increasing authorities of the Manager with respect to enforcement within the By-law; amendments to the current fee schedule; and further investment in the AMANDA software system for improved reporting and analytics. A summary of recommended improvements are as follows:

## **Future Process Improvements**

### **Technological Improvements**

#### **AMANDA**

Forestry staff have consulted with the AMANDA team on improvements to the AMANDA software system for permit generation. Improvements will optimize the method for entering in data which can be used to measure Key Performance Indicators (KPIs). Implementation of such improvements will be linked to future corporate updates of the AMANDA system. Many municipalities utilize AMANDA for their By-law and have found great efficiencies made through its use. The timeline for implementation is currently under review with IT.

### CRM

The City is implementing Customer Relationship Management (CRM) for Road, Park and Forestry inquiries in 2021. With the implementation of CRM, the introduction of Knowledge Based Articles (KBA) will be created. The introduction of these KBAs as well as website improvements will assist applicants/residents in obtaining information on the Forest Protection program and requirements.

### **Administrative Improvements**

#### Permit Intake

Forestry continually reviews options to improve its Permit Application Forms. Through proposed changes to the forms, Forestry will be implementing mandatory fields, and the option for photographs to be sent. With the implementation to CRM and changes to the website and e-form process, these changes are scheduled to be implemented in late spring early summer 2021. The addition of mandatory fields and photographs will ensure material necessary for review is obtained at the onset of the application process, which will improve the efficiency of the review, particularly for some of the exemption permit applications (e.g., terminally diseased Ash trees). Through consultation with other municipalities it was noted that there may be some challenges with the use of photographs due to photo quality. As such, instructions for how the photographs shall be taken will be provided, and ultimately, Forest Protection staff will still reserve the right to inspect trees where photographs have been submitted.

#### Declarations

Forestry will be implementing a declaration form. This declaration form will be used in instances where an individual claims that there are no trees on their subject lot, inclusive of the municipal right-of-way, or on adjacent lots that may be subject to their project. The benefit of implementing a declaration would allow for residents and/or applicants to have a shorter process time, whereby, Forestry staff would not need to complete a full review of the application nor conduct a site visit. Similar to photographs, the investigation of the use of a declaration was made with other municipalities and it was noted there are risks with its use, and may result in an increase in By-law related infractions. Forestry staff are targeting implementation of a declaration form in Q2.

### **Recommendations: By-law Amendments**

As a commitment to Council, Forestry has reviewed the existing By-law and reviewed it against the experiences from the past year and has determined that improvements to the document are necessary in order to provide greater clarity. This will assist in streamlining the process and improve efficiency overall for both staff and the customer. As such, in keeping with the spirit of providing greater clarification and simplifying the process, a full update of the existing By-law is recommended by staff. This will allow for



a clean document without noted amendments providing a greater ease of understanding for the general public and other applicants. The recommended Private Tree By-law is in a form found, within Appendix A. A summary of key changes identified within the By-law includes:

- Clarification to existing definitions
  - Example: Replacement Tree(s);
- Clarification to sections of the By-law;
- Removal of protection of trees between not more than five (5) trees between 11 and 19 cm diameter-at-breast-height (DBH);
  - This provision was rarely used in 2020 and was largely applicable to hedges. Removal of this provision will assist in ease of understanding of the By-law, and will help simplify the process.
- Removal of the exemption of permit fees and compensation for those trees within two (2) m from an occupied building;
  - The intent of this exemption was to allow for maintenance activities. This is recommended to be removed given that for the most part no actual maintenance activities were being performed and this resulted in a number of healthy trees (81) being removed with no fees or compensation. Where maintenance activities are warranted, Forestry will review the applicability for permit fees and compensation requirements as needed depending on proposed work relative to the tree. Provisions are already in place for emergency works. In addition, the removal of this exemption provision will help streamline the process and limit the confusion of its applicability.
- Requiring protection for replacement plantings;
  - A large number of trees are being removed with replacement trees proposed for planting to compensate for loss in canopy coverage. It is important to ensure protection of those trees to ensure they are not removed. The minimum size of trees to install is currently 30 mm caliper for deciduous trees and 125 cm in height for coniferous trees. It would be quite some time before each of those trees reached 20 cm to warrant protection under the By-law. Providing protection for those trees designed to regenerate the canopy overtime is in keeping with the goal and intent of the By-law.
- Identification of a review process;
  - The City already has an informal review process where matters can be escalated for review. The identification of this process within the By-law will be added to provide clarification and assist in transparency.
- Introduction of administrative monetary penalties (AMPs);

- The introduction of AMPs will allow a more efficient process for charges related to Tree By-law infractions and result in reduced reliance on charges applied through the Court system.

Notwithstanding the above, Forestry has provided a comparison table (Table 4) to review the proposed changes relative to other municipal Private Tree By-laws. The focus of this comparison is for the introduction and/or identification of items and the elimination of items.

Table 4: Municipal By-law Comparison (Private Tree By-law)

<b>City of Burlington</b> Proposed Introduction/Elimination Private Tree By-law	<b>Oakville</b>	<b>City of Toronto</b>	<b>City of Mississauga</b>
Elimination of the provision for regulating the injury, removal or destruction of more than (5) trees between 11 and 19cm in one calendar year.  Protection provision will now apply only to trees 20 cm DBH or greater	Protection starts at 15cm	Protection starts at 30cm for private trees	Protection is where 3 or more trees greater than 15cm DBH are to be removed
Elimination of the exemption clause for trees within 2m of an Occupied Building	No such provision in place to exempt trees within a certain distance of a building	No such provision in place to exempt trees within a certain distance of a building	No such provision in place to exempt trees within a certain distance of a building
Introduction of Protection of Replacement Tree Plantings	No provision is in place	Yes - Provision is in place	No provision is in place
Identification of a Review Process	Yes – Identification of an Appeal Process	Yes – Identification of an Appeal Process	Yes – Identification of an Appeal Process
Introduction of Administrative Monetary Penalties	Process implemented	No such provision	No such provision

### **Recommendations: Fee Structure**

Based on a review of the permit applications received, the types of permits issued, and time spent on applications, Forestry reviewed the existing fee structure and the overall goal of the Private Tree By-law. The current fee structure results in the same permit fee applied per property no matter the number of removals or injuries occurring, but only a compensation relative to the number of removals. This allowed for the same permit fee to be charged for the resource time utilized when reviewing an application with one (1) tree removal to that where five (5) trees were being removed. There was also a considerable amount of time reviewing applications that were withdrawn/cancelled, or where measures were taken to prevent injury and removal through the installation of protection fencing. As the program was originally intended as a net neutral fee for service funded program, the time spent on these applications would be considered lost revenue. When considering the time spent on these applications, it is important to note its value. This effort was seen as a proactive approach compared to a reactive approach to tree protection. The review of these applications, although lost revenue in 2020, provided an opportunity to educate the public on the Private Tree By-law and on trees themselves. The review also allowed for measures to be taken to avoid removal, and injuries through the installation of tree protection measures. Notwithstanding, if changes are not made to the current fee structure, a cost increase to the program budget is expected in 2021. Additional details on financials are provided in the subsequent sections of this Report and in Table 8.

#### Replacement Planting

Given the number of replacement plantings to be installed (1,015) in 2021, and experiences learned from other municipalities, Forestry recommends obtaining a security deposit for trees that are to be planted as part of the conditions outlined on their permit. Applicants will have one (1) year to install plantings and notify the City with the submission of photographs and invoice/receipts. In the event that no notification is provided, or plantings are not installed, the security deposit held will be retained and used to plant trees elsewhere within the City, with the primary focus tied to private property planting initiatives.

As this is a new program, the review of replanting success is unknown. Based on experiences understood in consultation with other municipalities, the review of replacement tree planting is a large undertaking for staff to visit multiple locations with subsequent follow ups in conjunction with the current applications received. In addition, it was noted by some municipalities that replanting's were not being installed, which was not in keeping with the goal of the program to maintain or increase canopy coverage. This also led to an increase in By-law infractions and time spent issuing notices, orders etc. to ensure the trees were planted, or cash-in-lieu fees were collected. Although there may be challenges and staff resource time required to implement a deposit and

refund program, Forestry staff believe the benefits associated with the implementation of this process will outweigh the challenges.

The following Table 5 is a summary of the recommended fee structure to be implemented and what is recommended to be reflected in the Rates and Fees By-law, included as Appendix B of this report:

Table 5: Recommended Fee Structure

<b>Fee Type</b>	<b>Cost</b>	<b>Estimated Quantity</b>	<b>Total</b>
<b>Application Fee</b>	\$100	569	\$56,900
<b>Permit Per Tree (1<sup>st</sup> Removal) Construction/Project Related</b>	\$550	84	\$46,200
<b>Permit Per Tree (1<sup>st</sup> Removal) General</b>	\$350	193	\$67,550
<b>Permit Per Tree (2<sup>nd</sup> and Subsequent Removal) General and Construction/Project Related</b>	\$750	276	\$207,000
<b>Permit Per Tree (Injury)</b>	\$275	69	\$18,975
<b>Cash-in-lieu of Replacement Compensation Per tree / Security Deposit</b>	\$400		-
<b>Permit Extension/Renewal/ Transfer Fee</b>	30% of original total permit fee		-
<b>Compliance Inspection Fee</b>	\$945		-
<b>Estimated Total</b>			\$396,625 (\$396,600)

### Options Considered

As part of the development of the recommendations above, several options were considered by Forestry staff. A summary of options considered is provided below:

#### By-law Amendments Additional Options Considered

- **Option 1: Do nothing (no changes)**
  - The do-nothing option poses a risk, as it will retain the existing By-law and some changes identified with respect to enforcement structure and clarity to definitions will remain unchanged.
- **Option 2: Make Changes after One Year (Recommended)**

- This option provides the opportunity to make the necessary improvements identified through the lessons learned over the past year and through the analysis of the data collected.
- **Option 3:** Consider aligning the administration of the City Public Tree By-law 068-2013 and Private Tree By-law 02-2020 into one By-law
  - The amendments to the Private Tree By-law must be prioritized. The Public Tree By-law will be reviewed into 2021 and 2022 to align it more closely with the Private Tree By-law.

### **Fee Structure Additional Options Considered**

- **Option 1:** Do nothing (no changes)
    - Risk of do nothing is a net cost to the corporation of \$417,200 based on the number of permits issued in 2020 under the Development and Non-Development permit streams where exemptions did not apply.
  - **Option 2:** Fee for Service 0% Tax Supported
    - Risk of higher fees to the community
  - **Option 3: 30% Tax Supported (Recommended)**
    - Provides a tax supported and user fee program
  - **Option 4:** Fully 100% Tax Supported
    - Large net cost to the corporation
- 

### **Financial Matters:**

The current fee structure represents a fee per property based on the permit stream (Development or Non-Development). The current fee structure is as follows:

- Development Related Application: \$680 + HST per property;
- Non-Development Related Application: \$390 + HST per property;
- Cash-in-lieu of Replacement Compensation (Cash in Lieu): \$400 per tree

The original intent of permit fees was to compensate for staff time for application review. Through discussions with the City's legal department to obtain legal interpretation of various provisions of the existing Private Tree By-law, it was determined that there were limitations based on the wording within the By-law and the Rates and Fees By-law respectively.

An original program budget for 2020 was established based on the immediate hiring of five (5) staff. With the delay in staff hiring until late in Q3 and partly into Q4, the net cost experienced was not quite as high as it could have been. Due to delays with staff hiring due to the COVID-19 pandemic, actual expenditure in 2020 was lower. A summary of the 2020 expenditure, revenue and tax levy impact is provided in Table 6.

Table 6: 2020 Financial Summary

<b>Financial Item</b>		<b>Actuals</b>
<b>Original Expenditure Budget</b>		\$535,900
<b>Actual Expenditure Budget</b>		\$272,075
<b>Total Revenue</b>	Permit Revenue Development	\$40,910
	Permit Revenue Non-Development	\$117,335
<b>Tax Levy Impact</b>		\$113,830

In order to identify ways of achieving a cost neutral operation, Forestry compared the permit structure within other municipalities in southern Ontario. Staff also compared whether or not those programs are fully, partially or not tax supported. Findings revealed that each program is run differently, with different fee structures, with a summary provided in Table 7. Overall, through discussions with other municipalities it is apparent that most municipalities are supported by the tax levy to some extent.

Table 7: Other Municipal Programs (Private Tree By-law)

Municipality	Provisions	Fees	Compensation	Tax Supported (Yes or No)
Town of Oakville	<ul style="list-style-type: none"> <li>• 15cm or greater</li> </ul>	<ul style="list-style-type: none"> <li>• \$55 for first tree (15 to 24 cm DBH)</li> <li>• \$355 for each additional tree or tree(s) 24cm DBH +</li> <li>• \$750 for second tree associated with development</li> </ul>	<ul style="list-style-type: none"> <li>• 1 tree per 10cm DBH of healthy tree removed.</li> <li>• \$300 per compensation tree</li> <li>*deposit held</li> </ul>	<ul style="list-style-type: none"> <li>• Yes</li> </ul>
City of Toronto	<ul style="list-style-type: none"> <li>• 30cm or greater</li> </ul>	<p>Non-construction:</p> <ul style="list-style-type: none"> <li>• \$123.55 per tree</li> <li>• Boundary/Neighbour Tree: \$257.91 per tree</li> </ul> <p>Construction:</p> <ul style="list-style-type: none"> <li>• \$369.61 per tree</li> <li>• Boundary/Neighbour Tree: \$773.77 per tree</li> </ul>	<ul style="list-style-type: none"> <li>• 1:1 or 3:1 ratio</li> <li>• \$583 per compensation tree</li> </ul>	<ul style="list-style-type: none"> <li>• Yes</li> </ul>
City of Mississauga	<ul style="list-style-type: none"> <li>• Three (3) or more trees 15cm or greater</li> </ul>	<ul style="list-style-type: none"> <li>• \$434.40 base permit fee</li> <li>• \$98.09 for each additional tree 15cm +</li> </ul>	<ul style="list-style-type: none"> <li>• 1:1 for 0-49cm</li> <li>• 2:1 for 50cm +</li> <li>• Compensation amount determined by the City</li> <li>*deposit held</li> </ul>	<ul style="list-style-type: none"> <li>• No</li> <li>** program is under review</li> </ul>



Based on the results of other municipalities, Forestry reviewed several options and has provided a summary of four (4) options for consideration in Table 8, below. The 2021 City budget was estimated using the current fee structure and revenue achieved in 2020. The tax levy impact for the Forest Protection program in 2021 is estimated to be \$183,500.

The recommended option (Option 3) and estimated tax impact would not be identified until the future 2022 budget, whereby, the revenue and data collected in 2021 using the new fee structure, will be used to create the 2022 budget.

It is important to note that when the Private Tree By-law is operating successfully, healthy trees would not be removed, nor injured. As a result, it can be assumed that permit revenue would be lower, yielding an increased net cost to the City.

Table 8: Summary of Financial Options

	<b>Expenditure</b>	<b>Estimated Recoverable</b>	<b>Estimated Tax Levy Impact</b>
<b>2020 Actual Costs</b>	\$272,075	\$158,245	\$113,830
<b>2021 Approved Operating Budget</b>	\$583,500	\$400,000	\$183,500
<b>Option 1: Do Nothing</b>			
<b>Permit Fee (Development) \$680 Per Property</b>		\$51,600	
<b>Permit Fee (Non-Development) \$390 Per Property</b>		\$114,700	
<b>Estimated Totals</b>	\$583,500	\$166,300	\$417,200
<b>Option 2: Fee for Service 0%Tax Supported*</b>			
<b>Administration Fee Revenue</b>			
<b>Major Construction Application Fee \$450</b>			
<b>Minor Construction Application Fee \$245</b>		\$175,900	
<b>General Tree Removal Application Fee \$125</b>			
<b>Permit Fee Revenue</b>			
<b>Permit Fee Per Tree (1<sup>st</sup> Removal) \$600</b>			
<b>Permit Fee Per Tree (2<sup>nd</sup> + Removal) \$800</b>		\$407,700	
<b>Permit Fee Per Tree Injury \$400</b>			
<b>Estimated Total</b>	\$583,500	\$583,600	-

	Expenditure	Estimated Recoverable	Estimated Tax Levy Impact
<b>Option 3: 30%Tax Supported (Recommended)</b>			
<b>Administration Fee Revenue</b>			
Application Fee \$100		\$56,900	
<b>Permit Fee Revenue</b>			
Permit Fee Per Tree (1 <sup>st</sup> Removal) Construction/Project Related \$550			
Permit Fee Per Tree (1 <sup>st</sup> Removal) General \$350			
Permit Fee Per Tree (2 <sup>nd</sup> and Subsequent Removal) Construction/Project Related/General \$750		\$339,700	
Permit Fee Per Tree Injury \$275			
<b>Estimated Total</b>	<b>\$583,500</b>	<b>\$396,600</b>	<b>\$188,900</b>
<b>Option 4 (Fully 100% Tax Supported)</b>			
<b>Administration Fee Revenue</b>			
		\$ -	
<b>Permit Fee Revenue</b>			
		\$ -	
<b>Estimated Total</b>	<b>\$583,500</b>	<b>\$ -</b>	<b>\$583,500</b>

*\*Based on the 2021 approved base budget and the tax support of \$183,500, there is a net tax levy benefit with Option 2.*

### **Total Financial Impact**

Based on the recommended option, the estimated expenditure is \$583,500; revenue is estimated at \$396,600 for 2021 with a net cost of \$188,900 against the tax levy.

### **Source of Funding**

As recommended herein, the Private Tree By-law will be funded through user fees and tax levy. This program is estimated to recover 70% of annual operating costs (\$396,600) through the administration of permit fees (administrative inclusive). The remaining annual cost of \$188,900 would be funded annually through the tax levy. This cost recovery is contingent upon approval of the amended fee structure.

### **Other Resource Impacts**

Not applicable.

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### **Climate Implications**

Trees contribute towards the City's climate change goals both through their role in climate mitigation, sequestering carbon, adaptation by reducing the heat island effect, promoting infiltration and interception of rainwater, and improving air quality. Trees also improve the overall environment through their aesthetic qualities, providing habitat, reducing noise pollution, contributing to stress reduction, as well as screening and privacy.

These benefits accrue to both private properties and the community at large.

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### **Engagement Matters:**

#### **Rural Boundary**

As part of staff directions to report back to the Committee of the Whole regarding further consultation with Rural Residents and the City Private Tree By-law, Forestry staff has reinitiated consultation with the Burlington Agricultural and Rural Affairs Advisory Committee (BARAAC). A meeting was held on the evening of November 12, 2020. Information provided to the BARAAC included an update of the current City Private Tree By-law in the Urban Boundary as well as to notify the BARAAC that the City's Forestry section has plans to continue to engage the BARAAC on the subject matter into 2021 in addition to consultation with rural residents through virtual Public Information Centers (PIC)s (as needed due to the COVID-19 pandemic). The BARAAC provided

commentary to reiterate their position on the implementation of a Private Tree By-law within the Rural Boundary such that it is not necessary given the other legislative requirements already implemented in these areas through but not limited to the *Niagara Escarpment Development Act*, *Conservation Authorities Act*, and Halton Region Tree By-law 121-05 that regulates woodlands greater than 0.5 hectares and properties partially or wholly within the Regional Greenlands system (now referred to as the Natural Heritage System). Forestry sought for a better understanding on tree management practices not only for those with active farmlands, but for those rural properties that are not actively engaged in farming practices. Conclusions of the meeting were such that Forestry would do a more thorough review of other policy implications and engage other legislative commenting bodies, with particular focus on Halton Region and regional staff.

### **City Legal Department**

Forestry staff have been consulting regularly with the City's legal department on the Private Tree By-law 02-2020 and proposed changes in order to ensure authorities and enforcement matters are addressed.

### **Planting Initiative**

Forestry will be looking to implement a planting initiative in 2021 to utilize funds collected as cash-in-lieu of replacement in accordance with the directive provided by Council (SD-36-19) (Appendix D). The goal of this initiative is to allow residents access to funds collected to plant trees on their private property. Program specifics with respect to procurement and liability (insurance) are still being detailed. It is anticipated that this program will be finalized and formally launched in 2022.

Staff also continue to investigate the feasibility of developing a community matching fund for naturalization programs on private property.

### **General Public**

Forestry plans to continue providing a service to the general public and is planning to update the Forestry webpage(s) to provide additional insights and clarity on the Forest Protection Section program, as well as other Sections of Forestry including Forest Planning and Health and Forest Operations. Additional changes to the website will be made through the implementation of CRM and the introduction of KBAs.

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### **Conclusion:**

Forestry have completed a review of the Private Tree By-law since its implementation on January 27, 2020. The recommendations herein, are in keeping with the original

intent of the By-law to help protect the urban forest as a community resource and to increase and maintain the urban canopy as part of the Vision to Focus Plan and the City's declared climate emergency. The proposed recommendations will assist in clarification to the Private Tree By-law and program as a whole, which will provide improvements to process and efficiency for both staff and the customer.

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Respectfully submitted,



Melissa Torchia

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**Appendices:**

- A. Draft Private Tree By-law XX-2021
- B. Proposed changes to page 35 of Schedule A to the City's Rates and Fees By-law 92-2020
- C. Amending By-law to the City's Rates and Fees By-law 92-2020
- D. Forestry Related Staff Directive Updates

**Report Approval:**

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Counsel.