

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF MARCH 20, 2018

Item 2, Report No. 10, of the Committee of the Whole, which was adopted, as amended, by the Council of the City of Vaughan on March 20, 2018, as follows:

By approving the following in accordance with Communication C2, from the Deputy City Manager, Community Services and the Director & Chief Licensing Officer, By-Law and Compliance, Licensing and Permit Services, dated March 16, 2018:

- 1) That Council adopt the six [6] recommendations as outlined within Item 2, Report No. 10, Committee of the Whole, March 6, 2018, Review of the City Processes for Protection of Trees; and***
- 2) That recommendation 2) of the Committee of the Whole be deleted and replaced with the following:***
 - 2) That Council direct staff to undertake the necessary consultations with golf course and nursery owners and provide a report back to a future Committee of the Whole on findings and recommendations with respect to amendment of Tree Protection By-law to remove the exemption for golf courses and nurseries from having to obtain a Tree Removal Permit; and***

By receiving the following Communications:

- C1. Mr. Aaron Hershoff, Development Manager, TACC Developments, Applewood Crescent, Vaughan, dated March 14, 2018; and***
- C6. Mr. Duane E. Aubie, Eagles Nest Golf Club Inc., Dufferin Street, Maple, dated March 19, 2018.***

2 REVIEW OF CITY PROCESSES FOR PROTECTION OF TREES

The Committee of the Whole recommends:

- 1) That the recommendation contained in the following report of the Deputy City Manager, Planning and Growth Management, dated March 6, 2018, be approved; and**
- 2) That the proposed Tree Protection By-law be amended to remove the exemption for golf courses and nurseries from the requirement to obtain a Tree Removal Permit.**

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Purpose

The purpose of this report is to seek Council endorsement of the proposed Tree Protection Protocol (Attachment #1) and to authorize staff to make the necessary updates and/or amendments, as required to the Private Property Tree Protection By-law No. 185-2007 and User Fees & Charges By-law No. 022-2018.

Recommendations

1. THAT the Tree Protection Protocol (Attachment#1), BE ENDORSED;
2. THAT Council AUTHORIZE Staff to bring forward a new Tree Protection By-law that repeals and replaces the City's current Private Property Tree Protection By-law No. 185-2007, as amended, and Tree Planting, Trimming or Renewal By-law No. 258-83;
3. THAT Council AUTHORIZE Staff to amend the City's Fees and Charges By-law No. 022-2018, as amended, to introduce new fees relating to Tree Protection Agreements;
4. THAT the Tree Protection Protocol shall not come into effect until the new by-laws, in recommendations 2 and 3, are approved by Council and are in full force and effect;
5. THAT once the Tree Protection Protocol comes into effect, one additional full-time complement be added to the Transportation Services, Parks and Forestry Operations Department to execute the Tree Protection protocols; and
6. THAT the additional complement in recommendation 5 be fully funded from user fees imposed for the administration of Tree Protection Agreements.

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Report Highlights

- The Tree Protection Protocol articulates objectives that are set out on the Term of Council Service Excellence Strategy Map, specifically to “Re-establish the urban tree canopy”.
- The Tree Protection Protocol will be a resource for both City staff and external stakeholders on how to manage the preservation and protection of private and public trees during construction throughout the City.
- The implementation of the Tree Protection Agreement will allow for greater standardization of tree preservation, tree removal, and proposing new landscapes.
- The amendment to the existing Private Property Tree Protection By-law No. 185-2007 and User Fees & Charges By-law No. 022-2018 will be in alignment with the Tree Protection Protocol.

Background

The Protocol addresses the following Council direction:

“... staff review and report on opportunities to identify or improve protocols relating to the requirements for tree inventories, arborist reports and/or on-site inspections to better ensure future protection of large trees, particularly as they are more common in the historic districts ...”.

The Tree Protection Protocol (hereinafter referred to as the “Protocol”) addresses Council’s direction to improve and standardize tree protection processes throughout the City of Vaughan and to respond to a Term of Council Service Excellence Strategy Map priority, specifically to “Re-establish the urban tree canopy”.

The City regulates trees on private property through the City’s Private Property Tree Protection (PPTP) By-law #185-2007 and the Property Standards (PS) By-law #231-2011.

The intent of the PPTP By-law is to provide specific rules that protect trees over a certain caliper size (20 cm), while identifying a permitting process to obtain authorization for their removal. This permitting tree removal process is administrated by the Transportation Services, Parks and Forestry Operations Department. In addition, the Property Standards (PS) By-law includes language that permits the issuance of an Order to Comply for a tree determined to be “unsafe” and/or where conditions “obstruct the safety of the public”. Enforcement of both By-laws is carried out by the By-law and Compliance, Licensing & Permit Services (BLCLPS) Department.

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The City's PPTP By-law sets out penalties for anyone who damages a protected tree and is currently enforced through the issuance of an Order to cease the injury or destruction of the tree or the laying of a charge where warranted. While the imposition of a penalty and the initiation of a prosecution are available options to the BLCLPS Department enforcement staff, the recovery of damages by a property owner (owner of the tree) remains a civil matter that requires the property owner to seek independent legal advice and initiate a civil proceeding against the party that may have been the cause or origin of the damage. This includes the recovery of any related costs (e.g. tree removal expenses). Where disputes arise over a tree having shared ownership, civil proceedings may also include seeking a court order to protect or prevent the removal of a tree located between two neighboring properties/lands.

Pursuant to Property Standards Sections of the *Ontario Building Code Act*, S.O. 1992, C.23, the City of Vaughan PS By-law, Sections 5.1 Maintenance of Yards and 5.3 Planting also provide the ability for an Order to Comply to be issued to address any identified unsafe conditions or where trees obstruct the safety of the public. This includes the ability to prosecute for Failing to Comply with an Order, and remedy the contravention and recover the costs associated with the work through property tax. This authority can be applied to all owners of a tree in cases where shared ownership has been determined.

Bill 68, Modernizing Ontario's Municipal Legislation, introduced new tree protection requirements under the *Municipal Act*, 2001. A municipality is required to amend subsection 270 (1) as follows "the manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality". The City is moving forward to identify standards through the Protocol and By-law updates in order to satisfy these requirements.

Requirement for public notice

Public notice for the fee proposals in this report was given in accordance with section 4(4) of the City's Notice By-law No. 392-2002.

Previous Reports/Authority

https://www.vaughan.ca/council/minutes_agendas/Extracts/26cw0620_17ex_10.pdf

Analysis and Options

Amendments to the existing Planting, Trimming or Removal of Trees By-law No. 258-83, Public Property Tree Protection By-law No. 95-2005, Private Property Tree Protection By-law No. 185-2007, and Private Property Tree Protection By-law No. 205-2007, will help to better regulate and enforce the planting, maintenance and removal of trees on public and private property.

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The Protocol is divided into two sections. The first section delineates the City process for reviewing development applications with the potential to impact existing trees. It also introduces a Tree Protection Agreement, which would allow for greater standardization of the technical requirements as they relate to tree preservation, removal, and replacement. The second section of the Protocol provides a technical guide to assist City staff and developers/landowners to assess how proposed development may impact the viability of existing trees, and how tree protection will influence the design of proposed new development. The Protocol will be a resource for City staff and external stakeholders to manage the protection of private and public trees within the City.

To develop the Tree Protection Protocol, Staff followed a comprehensive communication and engagement plan, and established an internal Technical Advisory Committee (TAC), including representatives from the Development Planning, Urban Design and Cultural Heritage, Policy Planning and Environmental Sustainability, Legal Services, Building Standards, By-law and Enforcement, Development Engineering and Engineering and Transportation Services, Parks and Forestry Operations Departments. The TAC outlined the roles and responsibilities of each City department as they relate to tree protection, and identified how to improve current standards and practices related to tree protection by establishing a City-wide Protocol, to inform the development review and tree permitting process.

Staff presented the Protocol to the York Chapter of the Building Industry and Land Development Association (BILD) in September 2017.

The following is a summary of the highlights of the proposed Tree Protection By-law:

	Summary of proposed Tree Protection By-law
Key Definitions	<p>“Applicant” means a Person (either a natural person or a corporation) seeking to obtain a Tree Removal Permit and shall always include the Owner of the property to which the application pertains.</p> <p>“Tree Protection Agreement” means an agreement made pursuant to:</p> <ul style="list-style-type: none">(i) a development Agreement, Site Plan Agreement or Subdivision Agreement between the City and a Person; or(ii) a permission by the City, including but not limited to a Building Permit or a Cultural Heritage Permit, that identifies all trees on a lot that are to be preserved and sets out any other measures that the City deems appropriate. <p>“Tree Protection Zone” means the minimum setback required, as determined by the Director of Forestry, to maintain the structural integrity of the tree’s anchor roots, based on generally accepted arboricultural principles.</p>

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	Summary of proposed Tree Protection By-law
Applicability	The By-law does not apply to woodlands covered under a York Region By-law, activities undertaken by the City, York Region, School Board or other public authorities, and lawful Activities undertaken under several Ontario Acts.
Prohibitions	<p>No person may, on public property, damage any trees.</p> <p>No person may, on private property, damage any trees with a diameter of more than 20 centimeters without a Tree Removal Permit.</p> <p>A permit is not required for emergency work, pruning, removal of dead branches, damaging or removing trees on rooftop gardens, interior courtyards, solariums, nurseries or golf courses.</p> <p>No person shall undertake any unauthorized activities within a Tree Protection Zone.</p>
Encroachment onto Public Property	The City may prune any tree(s) on private property that encroach onto public property and may also remove any tree(s) deemed decayed or dangerous.
Tree Removal Permit Application (not associated with a development application)	<p>Every Applicant must submit a completed application, pay the prescribed fee, provide a plan showing the tree(s) to be damaged or removed and provide any other information deemed appropriate by the Director of Transportation Services Parks and Forestry Operations.</p> <p>Where a tree straddles a property line between two private lots, the Applicant must provide written consent to the application from the adjoining Owner.</p> <p>A Permit shall be valid for six months, but may be extended in extenuating circumstances.</p> <p>A Permit shall not be granted if the tree(s) is healthy and no alternative planting plan has been provided, the tree(s) is located in an environmentally sensitive area, removal will have a negative impact on erosion or flood control, or if significant vistas will not be adequately preserved.</p>
Duties of Permit Holders	Permit Holders must post their permit on the property, comply with all conditions of said permit (with such requirement extending to the Permit Holder's employees and agents), and comply with all Orders and lawful direction from the City.

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	Summary of proposed Tree Protection By-law
Authority of the Director of Transportation Services Parks and Forestry Operations	The Director of Transportation Services, Parks and Forestry Operations, acting reasonably, may issue, place conditions on, suspend or revoke a Tree Removal Permit(s) and/or provide relief from requirements or require additional measures beyond those of the By-law.
Enforcement Powers	<p>Municipal Law Enforcement Officers may enter on any Lands to ensure compliance with the By-law, a Tree Protection Permit, or an Order or direction.</p> <p>Municipal Law Enforcement Officers may require the production of documents, the provision of information, or access to examine, make tests, and take samples and photographs for the purpose of an inspection.</p> <p>Municipal Law Enforcement Officers may issue an Order requiring a specific remedy and may, pursuant to authorization from the Director of Enforcement, suspend or revoke a Permit.</p>
Offences and Penalties	<p>Every person that contravenes a provision of the By-law is subject to fines as follows:</p> <ul style="list-style-type: none"> (i) Minimum of \$500 and maximum of \$10,000 for every offence; and (ii) Minimum of \$500 and maximum of \$10,000 for every day the offence continues. <p>Where trees are damaged or removed in contravention of the By-law, fines shall apply as follows:</p> <ul style="list-style-type: none"> (i) On a first conviction, a minimum of \$250 per tree and a maximum of \$2,500 per tree; and (ii) On any subsequent conviction, a minimum of \$500 per tree and a maximum of \$5,000 per tree. <p>If the person convicted is a corporation, the maximum fines shall be \$10,000 and \$25,000 respectively.</p> <p>In addition to the above fines, if the convictions above relate to a development, a special fine of \$25,000 per tree damaged or removed shall apply.</p>

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The Tree Protection Protocol is to better protect City and privately-owned trees

The Protocol outlines the processes to protect City-owned and private trees. The Protocol represents the City's standard specifications for tree protection during the land development approval process. The standards also apply to private and City-owned tree removal applications/permits administered by Transportation Services, Parks and Forestry Operations. Higher standards of tree protection may be imposed where warranted in the opinion of the City's Forestry staff having regard to the size, species, location and health of a tree, and any circumstances surrounding the ensuing construction which may require additional tree protection measures. Also, the Protocol provides an appropriate framework to address requirements of new legislation (Bill 68), which implements amendments to the *Municipal Act*. This Protocol can also be used to guide and inform projects led by other levels of government including York Region, Metrolinx, etc.; however, the City is unable to regulate their activities affecting trees on their property.

The Protocol responds to increasing community interest related to the protection and preservation of trees and minimizing loss during land development activities.

The proposed Protocol provides the following:

- a response to new amendments to the *Municipal Act* that require municipalities to adopt and maintain policies regarding the manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality;
- informs projects led or regulated by other levels of government;
- identifies the roles and responsibilities of City departments regarding tree protection, specifically identifying department protocols for tree protection and removal permitting;
- provides direction on the technical report content required for staff to assess how proposed development will impact the viability of existing trees in the landscape, and preservation methods;
- establishes a "Tree Protection Agreement" that will allow for greater standardization of tree preservation, tree removal, and proposing new landscape;
- excludes natural heritage features such as woodlands and Toronto and Region Conservation Authority regulated or owned lands; and
- creates a resource for both City staff and external stakeholders on how to manage the preservation, removal and replanting of trees City-wide.

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The proposed Protocol is intended to achieve the following:

- maintain and re-establish the City's tree canopy;
- align City business processes to ensure consistency in the application of Tree Protection Zones (TPZ);
- increase public awareness about the benefits of the preservation of trees; and
- promote public education and investment in the protection of the City's urban tree canopy.

The Transportation Services, Parks, Forestry Operations Department, in particular the Forestry and Horticulture Division (Forestry) issues private tree removal permits for the infill development application process. Forestry also issues permits for City-owned tree removals for private projects (not subject to a development application), in addition Forestry reviews and provides comments on some Committee of Adjustment, Cultural Heritage, Fill Permit and Draft Plan of Subdivision applications.

Once this Protocol is implemented, Forestry will be reviewing all Arborist Reports submitted as part of the development review processes. Forestry is a technical resource for the City and will be used to protect the City's interest as they apply to trees.

The Development Planning Department, in particular the Urban Design and Cultural Heritage Division, provides approvals under the development application review, Committee of Adjustment, Cultural Heritage and Fill Permit processes. The Parks Development Department have an interest in applications where City-owned trees within public open spaces or parks may be impacted.

The Policy Planning and Environmental Sustainability Department review and provide input on applications that contain natural heritage features such as woodlands. Where applicable, this is undertaken in consultation with the Toronto and Region Conservation Authority. Policy Planning and Environmental Sustainability Staff also review and provide comments on applications that have potential impacts on Species at Risk (as defined by the Endangered Species Act, 2007). The following table identifies tree permitting categories and City department review/approval responsibilities under the new protocol:

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Table 1: Tree Permitting Categories and Responsible Approval Departments

Category		Application Type	Managing Department	Technical Approval Department
Non-Development Application	A	Private Tree Removal Permit	Forestry and Horticulture Division	Forestry and Horticulture Division
Development Application	B	- Draft Plan of Subdivision	Development Planning Department,	Urban Design & Cultural Heritage Division +
		- Site Development	Urban Design & Cultural Heritage Division	Forestry and Horticulture Division
	C	- Zoning By-law Amendment		
		- Official Plan Amendment		
		Cultural Heritage Permit	Urban Design & Cultural Heritage Division	Urban Design & Cultural Heritage Division + Forestry and Horticulture Division
	C	Building Permit	Building Standards Department	Forestry and Horticulture Division
		Committee of Adjustment	Office of the City Clerk	Urban Design & Cultural Heritage Division + Forestry and Horticulture Division
		Fill Permit	Development Engineering and Infrastructure Planning Department	Urban Design & Cultural Heritage Division + Forestry and Horticulture Division

Category A (Non-planning application): Forestry receives an application directly from managing department or applicant.

Category B (Planning application): Tree Protection Agreement is required.

Category C (Planning application): Tree Protection Agreement is not required.

The Tree Protection Protocol introduces the requirement for a Tree Protection Agreement to protect City and privately-owned trees.

A Tree Protection Agreement (Agreement) will be required by the City for developments included in Categories B identified in Table 1 above, (i.e. Draft Plan of Subdivision, Site Development and Cultural Heritage Permit applications). The Agreement will secure the protection of City and privately-owned trees that may be impacted by proposed development.

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The Agreement is intended to secure that the Owner satisfy all conditions of approval of an application including, but not limited to, cash-in-lieu in an amount equal to the cost of planting and TPZ installation and maintenance for two (2) years in order to ensure compliance with approved landscape or replanting plans. Tree protection guarantees (in the form of a Letter of Credit) held by the City shall only be released by the City when all construction activities are complete, compliance with all approval terms and conditions has been verified, there has been no encroachment into the minimum TPZ and the trees are healthy and in a state of vigorous growth. An Agreement fee will be charged to the applicant in accordance with the established City User Fees & Charges By-law.

Financial Impact

The Tree Protection Protocol introduces the requirement of a Tree Protection Agreement for certain Planning applications that will result in increased review and inspection activities.

Staff conducted a resource assessment analysis to validate the need for additional resources to support the successful implementation of the Tree Protection Protocol and administer the Tree Protection Agreements.

Based on the anticipated volume of development applications that would require some form of tree protection, it was determined that one additional full time complement within Forestry would be required upon implementation of the protocols in order to effectively carry out inspection and review requirements. The estimated annual cost of the additional resource and related operational costs would be approximately \$110,000, with one-time set-up costs of approximately \$5,000. A new user fee is recommended to be charged for each Tree Protection Agreement in order to recover the incremental costs associated with the implementation of the tree protection protocol. Based on the estimated number of development applications that would require some form of tree protection, a fee of \$1,600 plus applicable taxes per agreement would appropriately generate sufficient average annual revenues to offset these incremental costs.

Resourcing requirements will continue to be assessed for the affected departments after the protocol comes into effect, including Financial Planning and Development Finance, Development Planning, By-Law and Compliance, Licensing and Permit Services and Transportation Services, Parks and Forestry Operations. Any additional resourcing requirements will be brought forward through future annual budget processes along with any recommended adjustment to the tree protection agreement fee in order to ensure fees are continuing to appropriately recover the costs of administering the protocol.

Broader Regional Impacts/Considerations

Copies of this report and the Protocol will be provided to York Region, York Region Transit and other agencies to inform their related Tree Protection policies and future investments in Tree Protection.

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Conclusion

The Tree Protection Protocol will provide City staff and the development community with the necessary guidance, procedures and standards to protect both City-owned and privately-owned trees during development. Upon approval by Council, the Tree Protection Protocol will be placed on the City's website and cited as a resource at Pre-Application Consultation (PAC) meetings, which will allow future development proponents to reference this document prior to the submission of a development application (s).

The necessary amendments to the Private Property Tree Protection By-law No. 185-2007, Public Tree Protection By-law No. 185-2007 and User Fees & Charges By-law No. 022-2018 will reinforce the Protocol, providing directions for preserving and expanding the existing green canopy as well as standardizing the tree removal and replacement within the City. Therefore, Staff has recommended that the Protocol not be implemented until the proposed amendments to the mentioned By-laws are in full force and effect.

For more information, please contact: Rob Bayley, Manager of Urban Design and Cultural Heritage, ext. 8254.

Attachments

1. Tree Protection Protocol, Urban Design Section, Development Planning Department, 2017.

Prepared by

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(A copy of the attachments referred to in the foregoing have been forwarded to each Member of Council and a copy thereof is also on file in the office of the City Clerk.)