



POLICY REPORT DEVELOPMENT AND BUILDING

Report Date: March 31, 2014
Contact: Anita Molaro
Contact No.: 604.871.6115
RTS No.: 10539
VanRIMS No.: 08-2000-20
Meeting Date: April 15, 2014

TO: Vancouver City Council

FROM: General Manager of Planning and Development Services

SUBJECT: Urban Forest Strategy Action Item 1 - Repeal of Section 4.5 of the Protection of Trees By-Law

RECOMMENDATION

THAT Council repeal Section 4.5 (issuance of one additional tree permit) of the Protection of Trees By-law No. 9958 to remove the provision allowing for the removal of one tree per year, and make housekeeping amendments to clarify the responsibility of owners and other persons, to comply with the By-law, in order to better protect trees on private property and the urban tree canopy; and

FURTHER THAT the Director of Legal Services be directed to bring forward the By-Law generally as set out in Appendix A.

REPORT SUMMARY

This report seeks Council approval to repeal Section 4.5 of the Protection of Trees By-law. The provisions in this section provide for private property owners, including owners of development sites, to obtain one tree permit each year to remove one healthy tree per site, regardless of the reasons. Vancouver's urban forest includes all trees on public and private property in the City. One of the key priority action items of the Urban Forest Strategy is to find ways to protect and enhance a healthy, mature forest canopy, including trees on private property. While Vancouver possesses a magnificent urban forest and has seen thousands of new trees planted since the approval of the Greenest City Action Plan, Vancouver's city-wide canopy cover has been declining over the past few decades. Almost all of the canopy decline has occurred on private property, and almost half of the trees removed were done so under Section 4.5 of the Protection of Trees By-law.

A review of tree permits issued between 1996 and 2013 reveals that 23,492 healthy trees were removed on non-development and development sites under Section 4.5. This accounts for 47% of the total number of trees removed in the City since 1996. Repealing Section 4.5 now will help to ensure that further loss to the City's urban forest canopy is prevented. It is anticipated that further amendments to the Protection of Trees By-law later this year may be necessary to address other initiatives and directions.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

- 1994: Adoption of the City's first Private Property Tree By-law No. 7347.
- 2009: Repeal of By-law No. 7347 and adoption of the Protection of Trees By-law No. 9958 which incorporated the previous By-law along with Tree Retention, Relocation, and Replacement Guidelines into a single document.
- 2011: Greenest City 2020 Action Plan.
- 2012: Council directed staff to develop an Urban Forest Strategy to ensure that Vancouver has a healthy urban forest, which is to include options for protecting healthy mature trees on private property.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The General Manager of Planning and Development Services recommends approval of the foregoing.

REPORT

Background/Context

Urban Forest Strategy 2014

Vancouver's urban forest includes all trees on public and private property in the City. It is well known that the urban forest plays important environmental and social roles such as mitigating climate change, cleaning the air, stabilizing the soil, managing stormwater retention, supporting biodiversity and improving the health and well-being of its citizens. Council's Greenest City 2020 Action Plan articulated the goal of creating the world's most spectacular urban forest and the planting of 150,000 new trees by 2020.

In October 2012, Council directed staff to develop an Urban Forest Strategy. In May 2013 the City retained a consultant to help staff develop the Strategy. The following three key action areas have been identified: a) find ways to protect and enhance a healthy, mature canopy; b) plant strategically; and c) better manage the urban forest asset. One of the consultant's major findings is that, like many other cities across North America, Vancouver's city-wide canopy cover has been declining over the past two decades. As the city's urban forest declines, so do the benefits it provides.

Protection of Trees By-law No. 9958

The Vancouver Charter gives the City authority to create regulations for the purpose of protecting trees on private property. The current Protection of Trees Bylaw No. 9958, applies

to any tree located on private property and regulates their removal, relocation, replacement and maintenance. A person must not cut down, kill, relocate a tree on a site, or plant a replacement tree except in compliance with the By-law and the tree permit issued for the site. Generally, the By-law applies to any tree that has a trunk or stem with a diameter of 20 cm or greater, measured 1.4 metres above the ground. The conditions of a tree permit require the owner to plant replacement trees in accordance with the provisions in Section 6 of the By-law.

Section 4.4 specifies the conditions under which a tree permit to remove a tree on a property may be issued. Tree permits are issued if trees are:

- Hazardous.
- Within a building envelope described under a development or building permit.
- Interfere with, block or damage drainage or sewage systems.
- Close to or interfere with utility wires as to be a danger and topping or pruning a tree to avoid interference is not an option.
- Cause damage to property including roofs and sidewalks.
- Dying or likely to suffer from disease.

One Tree Removed Per Year Provision - 1996

In 1996, By-law No. 7347, the City's first Private Property Tree By-law, was amended to include a provision that one tree may be removed from a property in every twelve month period without the Director of Planning being satisfied as to whether the tree was located within a building envelope, the tree was dead or dying, the tree was interfering with or in close proximity to utility wires as to be a danger, or the roots of the tree was interfering with, blocking or damaging a drainage or sewer system.

Strategic Analysis

Section 4.5 - Issuance of One Additional Tree Permit Per Year

This report seeks Council approval to repeal Section 4.5 of the Protection of Trees By-law. Presently, staff issue over the counter tree removal permits as an outright entitlement use under Section 4.5, as it provides for the removal of one tree per year including trees on development sites, regardless of the reasons. Specifically, Section 4.5 states that the Director of Planning *must* issue a tree permit to remove a tree from a site if during the previous 12 months, a person had not removed any tree from the site. Moreover, exceptions are made in cases where an arborist (or other professional as the case may be) certifies that any trees that might have been removed twelve months preceding the date of application complied with conditions set out in 4.4 (e.g., hazardous, diseased, dying).

It is well known that mature large stature trees provide distinctive neighbourhood identity, increased real estate values and a broad spectrum of quantifiable environmental goods and services. Mature tree removals are often neighbourhood-sensitive. Replacement trees are valuable but they do not substitute for the benefits of mature healthy trees.

By repealing Section 4.5, owners and builders of non-development and development sites would no longer have the right to remove healthy trees from properties. Tree permit issuance will be linked to proper justification and rationale by qualified arborists and other professionals.

Tree Protection By-laws in other municipalities

Generally, private property tree protection by-laws in most Lower Mainland municipalities protect trees that measure 20 to 30 centimetres in diameter at chest height. The definition and requirement for protected trees vary, however a review of other local municipal tree protection by-laws reveals that no other jurisdiction has a provision that permits owners to remove a healthy mature tree each year

If the Bylaw change is approved, there may be some workload shifting from processing non-qualified tree removal permits to reviewing and processing qualified tree removal permits. This may increase the number of arborists' reports that staff must review, and increase the number of on-site inspections to ensure compliance and enforcement with the requirements of the Protection of Trees By-law.

At present, there are two areas of the City where staff with expertise in tree inspections work - in Planning and Development Services and in the Arboriculture branch of the Park Board. The Corporate Management Team will review and decide the optimal location of this expertise to manage any incremental workload related to this regulatory change.

Number of tree removed under Section 4.5 between 1996 and 2013

A review of tree permits issued between 1996 and 2013 (Appendix B) reveal that out of a total of 49,593 trees that were removed, 23,492 (47%) were removed under the provisions of Section 4.5. As well, the number of trees that have been removed each year under Section 4.5 has steadily increased between 1996 and 2013. In 1996, 84 trees were removed under Section 4.5, and in 2013, 1,805 trees were removed.

Other Housekeeping Amendments

This report provides an opportunity to remove redundancy, improve consistency, clarify and update some of the language in sections of the by-law. The amendments will clarify for the public, developers, and all parties who may be doing work on a property that in all cases, for enforcement purposes, the applicant is the "owner" and that responsibility for protecting trees rest with the owner of the property. Notwithstanding that an owner may use the services of an "agent" to apply for a permit to carry out the work. The intent of the updated sections would not be changed. The proposed amendments are outlined in Appendix A.

Next Steps

- Following Council approval of the amendment, tree permits will no longer be issued to owners under Section 4.5. Tree permit issuance will need to comply with the conditions set out in Section 4.4 (hazardous, diseased, dying, etc.).
- All tree removal permit applications will be processed under the provisions of Section 4.4. With a Section 4.4 application a review by a City Inspector will be undertaken. The City will be examining the use of digital technology as well as site visits to assess the tree under the criteria in the Bylaw. An arborist report will be required. Replacement tree inspection will also take place.

- Staff will post a bulletin about the changes to the By-Law on the City website; provide information bulletins in the Development Services Department; and, place a notice in the Vancouver Matters section of the Vancouver Courier.

No other changes to the Tree Protection By-law are required at this time. However, once the Urban Forest Strategy is endorsed by Council, there will be other action items brought forward along with any further bylaw amendments necessary to enhance the protection and overall health of our tree canopy in the City.

Financial

Approval of the recommendation in this report will have financial implications for 2014 and future years as additional resources may be required to support the permit processing requirements and replacement tree inspections.

Additional 2014 staff costs to implement the bylaw adjustments recommended in this report are currently estimated at up to \$140,000, and can be managed through reprioritization of the existing 2014 budget. Estimated 2015 full year costs of \$285,000 will be reviewed by the senior team and will be brought forward as part of the 2015 operating budget process.

Personnel Implications

At present, there are two areas of the City where staff with expertise in tree inspections work - in Planning and Development Services and in the Park Board. The Corporate Management Team will review and decide the optimal approach in the near term and the long term to locate this expertise to manage any incremental workload related to this regulatory change.

Environmental

The proposed amendment will help to ensure that unnecessary removal of otherwise healthy and mature trees on private property is halted. Their protection will help to retain and enhance Vancouver's urban forest and comply with Council directions to protect and enrich the natural environment and green space.

CONCLUSION

This report seeks Council approval to repeal Section 4.5 (issuance of one additional tree permit per year to remove healthy trees on private property). The proposed change will help to preserve, protect and strengthen Vancouver's urban forest and tree canopy for the future. Moving forward with the proposed amendment will help avoid further unnecessary loss of trees from the urban canopy. The proposed amendment is in keeping with the directions from the Greenest City Action Plan to protect and enhance nature and green space, particularly as they relate to the important role trees play in creating and maintaining a healthy ecosystem, cooling the city, staffing implications, and enriching neighbourhoods.

* * * * *

BY-LAW NO. _____

A By-law to amend Protection of Trees By-law No. 9958
regarding miscellaneous text amendments

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. This By-law amends the indicated provisions of the Protection of Trees By-law.
2. In Section 1.2, Council:
 - a) adds, in the appropriate alphabetical order:

“required construction access” means the approved location of access to a construction site, for movement of equipment and materials, as determined by the Chief Building Official;”;

and
 - b) in the definition of “protection barrier”, at the end of paragraph c), strikes out “,”, and adds “or as otherwise approved by the Director of Planning,”.
3. In section 4, Council:
 - a) strikes out section 4.5;
 - b) renumbers sections 4.3 and 4.4 as 4.4 and 4.5;
 - c) after section 4.2, adds:

“Responsibility of Owner to Comply with By-law

4.3 1) An owner:

 - a) shall comply with this By-law;
 - b) shall ensure that all work is carried out in accordance with this By-law; and
 - c) may delegate the authority to apply for a permit on behalf of the owner, to an agent, in writing.

2) The issuance of a permit, the acceptance of plans and supporting documents submitted for a permit, or the making of inspections by the City of Vancouver shall not relieve the owner from the full responsibility for complying with this By-law.”;

- d) in renumbered section 4.4, Council strikes out "applicant" and substitutes "owner or the agent on behalf of the owner";
- e) in renumbered subsection 4.4 (b), strikes out "4.4, 4.5 or 4.6" and substitutes "4.5 or 4.6";
- f) at the end of renumbered section 4.4, adds:

 "(e) if the applicant is not the owner, confirmation in writing that the applicant is acting on behalf of the owner and as agent for the owner.";
- g) in renumbered section 4.5, re names subsections (b), (c), (d), (e), (f), and (g) as (c), (d), (e), (f), (g) and (h) respectively;
- h) after subsection 4.5 (a), adds:

 "(b) the location of the tree is within the required construction access, as determined by the Chief Building Official;"
- i) strikes out re numbered subsection 4.5 (d), and substitutes:

 "(d) an arborist certifies that:
 - (i) the tree interferes with utility wires or required construction access, or
 - (ii) the tree is so close to utility wires or required construction access that it creates a hazard, and
 - (iii) pruning the tree to reduce the interference or hazard would weaken or mutilate the tree.";
- j) after subsection 4.5 (h), adds:

 "(i) the conditions on the permit include the recommended construction practices to protect trees during and after construction that are contained in the arborist's report referred to in section 7.2 of the By-law.";
- k) in section 4.6, strikes out "sections 4.4 and 4.5" and substitutes "section 4.5";
- l) in sections 4.7 and 4.8, strikes out "tree permit holder" add "and the owner"; and
- m) in section 4.9, strikes out "a tree permit holder" and substitutes "a tree permit holder or an owner", and in subsection 4.9 (b) strikes out "the tree permit holder" and substitutes "the owner".

4. In section 7, Council:
 - a) in section 7.1, strikes out "applicant" and substitutes "the owner or the applicant on behalf of the owner,";
 - b) in section 7.2, strikes out "applicant" and substitutes "the owner of the applicant on behalf of the owner,";
 - c) in subsection 7.2 (a), strikes out the words "proposed retention";
 - d) in subsection 7.2 (e), strikes out "an undertaking from the arborist" and substitutes "an undertaking from the arborist and the owner";
 - e) strikes out section 7.5 and substitutes:

"7.5 The owner shall:

 - a) install a protection barrier for each retention tree located on the site, on adjacent property within two metres of any boundary of the site and on any street adjacent to the site, before demolition, excavation or construction begins on a site;
 - b) ensure that the protection barrier meets the requirements for a protection barrier in this By-law, throughout the course of demolition, excavation and construction on the site; and
 - c) maintain the protection barrier in good repair continuously throughout the course of demolition, excavation and construction on the site.";
 - f) re numbers sections 7.6, 7.7, 7.8, 7.9 and 7.10, as 7.7, 7.8, 7.9, 7.10 and 7.11;
 - g) after section 7.5, adds:

"No construction without protection barrier

7.6 No person shall carry out demolition, excavation or construction on a site unless there are protection barriers in place as required by this By-law.";
 - h) in renumbered section 7.8, strikes out "7.5" and substitutes "7.5 and 7.6".
5. In section 11.1, Council strikes out "a tree permit holder" wherever it occurs and substitutes "a tree permit holder or an owner".
6. A decision by a court that any part of this By-law is illegal, void or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.
7. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this day of , 2014

Mayor

City Clerk

EXPLANATION

**Protection of Trees By-law amending By-law
Re: Miscellaneous text amendments**

On April 15, 2014, Council resolved to amend the Protection of Trees By-law to remove the provision allowing for removal of one tree per year, in order to protect the urban tree canopy and to make housekeeping amendments to clarify the responsibility of owners and other persons, to comply with the By-law to facilitate protection of trees on private property. Enactment of the attached By-law will implement Council's resolution.

Director of Legal Services
April 15, 2014

Tree Permits Issuance Between 1996 and 2013

Year	# of Trees Removed Annually	# of Trees Removed under Section 4.5		Notes:
		#	%	
1996	470	84	18%	* The number of development site approvals varies year to year affecting the percentage of permits under Section 4.5 as compared to total permits issued.
1997	2,012	975	48%	
1998	1,782	910	51%	
1999	2,253	1,201	53%	
2000	1,928	1,011	52%	
2001	2,020	1,155	57%	
2002	2,693	1,451	54%	
2003	2,660	1,286	48%	
2004	2,974	1,419	48%	
2005	3,039	1,449	48%	
2006	2,906	1,474	51%	
2007	2,648	1,319	50%	
2008	3,062	1,488	49%	
2009	2,868	1,500	52%	
2010	3,532	1,644	47%	
2011	3,690	1,681	46%	
2012	4,131	1,640	40% *	
2013	4,925*	1,805	37% *	
Total	49,593	23,492	47%	