



Town of Newmarket  
395 Mulock Drive P.O. Box 328,  
Newmarket, Ontario, L3Y 4X7

Email: [info@newmarket.ca](mailto:info@newmarket.ca) | Website: [newmarket.ca](http://newmarket.ca) | Phone: 905-895-5193

February 7<sup>th</sup>, 2022

## Memorandum

### Private Tree Protection By-law – Follow Up

At the Special Committee of the Whole held on January 24, 2022, Council requested additional information regarding the Private Tree Protection By-law. In addition, the staff report recommendations were amended. This memo provides the additional information as well as outlining the impacts and consequences of the amended recommendations.

#### Amended Report Recommendations

On January 24, 2022, at the Special Committee of the Whole, Town Council amended the recommendations of Staff Report 2022-01. Provided below is a summary of the proposed amendments. For Council's reference, the amended portions of the recommendations are in **bold** and any recommendations not amended have been omitted for brevity.

5. That the applicable fees be set as follows:
  - a. **administration fee based on number of trees removed**
    - i. **1 tree removed \$100**
    - ii. **2-4 trees removed \$300**
    - iii. **5-10 trees removed \$1000**
    - iv. **11+ trees removed \$5000**

Recognizing the importance of minimizing the financial burden on residents, while balancing the protection of tree canopy in our community, Town staff have amended the proposed administration fee to reflect Council's direction. It is relevant to note that Town staff anticipates the majority of applications received will be for the removal of one or two trees. In this scenario, the costs associated to operate this program may not be fully recovered. However, staff will pilot this program for two years and collect data to determine overall budget impact. Staff will report back to Council at that time, unless otherwise directed by Council.

b. review fee: \$100/tree for cost recovery;

c. **No fee for dead, dying, hazardous, or trees causing property damage;**

Staff have received Council's direction and has amended the By-law as follows:

If a tree is deemed to be dead, dying, or hazardous, the applicant does not have to pay the Administration Fee or the per tree Review Fee and does not have to replant any trees or pay cash-in-lieu of compensation.

If a tree is deemed to be causing property damage the applicant does not have to pay the Administration Fee, however they will pay the per tree Review Fee and replant or pay compensation. As removal of the tree would be non-construction related, the compensation amount would be calculated at a 1 to 1 ratio and the cash-in-lieu amount would be the flat rate of \$300 per tree not planted.

For clarity and consistency in properly assessing "property damage", staff are recommending the following definition be included in the proposed by-law:

**"Property Damage"** applies to trees within 2m of an occupied building, where a Tree is causing or will in the near future cause structural damage that cannot be mitigated other than by cutting or removing the protected Tree, as certified by a Professional Engineer and/or Building Inspector and assessed by the Director.

Staff have added the following provisions to the By-law:

No Administration Fee will be required where:

- a) a **Private Tree Permit** is issued to remove a tree that is dead or hazardous, as determined by the **Director**;
- b) a **Private Tree Permit** is issued to remove a **Tree** that is causing **Property Damage**; or
- c) a **Person** is directed or ordered to remove a **Tree** pursuant to any other Town by-laws enacted.

By adding the proposed definition and provisions to the by-law, staff are confident that a clear and consistent approach can be taken when evaluating trees that may be dead, hazardous, or negatively impacts structures or infrastructure throughout the community.

6. That a cash-in-lieu amount of **\$300 for non-construction applications, and \$450 per 6cm of tree for construction applications**, be collected if replanting cannot cover all of the prescribed compensation amount, and this amount be reviewed annually;

Staff understand that it is Council's desire to replace the compensation amounts proposed in the By-law; which provided for no compensation required for dead or hazardous trees, 100% compensation for tree removal related to a permit and 200% compensation for nuisance tree removal.

The By-law has been amended to outline compensation calculated as:

1. One tree replanted for one tree removed, if the reason for removal is not construction related and that a flat rate of \$300 will be collected per tree that cannot be replanted.
2. If the tree is removed for construction reasons, the compensation is calculated using the Aggregate Inch Method and the cash-in-lieu amount is set at \$450 per 6cm tree not planted.
3. No compensation is required for trees removed if they are deemed to be dead, dying or hazardous.

The amended recommendations state different amounts of compensation for construction and non-construction related applications. As such staff have added the following definition to the By-law:

**“Construction”** as defined under the Occupational Health and Safety Act, as amended.

The one for one replacement method (non-construction) would allow for the replacement of a large mature tree such as a 100-centimeter sugar maple with a 6-centimeter ivory silk lilac. The size of trees significantly contributes to the overall canopy cover and environmental benefits. With the reduction of the individual tree through the single tree replacement formula and without mitigation through additional trees, staff would anticipate that this approach could contribute to the decline of the overall tree canopy. However, staff will pilot this program for two years and collect data to determine the overall impact on the canopy targets. Staff will report back to Council at that time, unless otherwise directed by Council.

Staff offer the following as illustration of the impact of the one to one replacement on the Town’s tree canopy. These scenarios match the cost analysis presented below; a, b and c are scenarios where the one to one replacement is used when trees are removed for non-construction related reasons. Scenario d represents tree removal for a pool permit and therefore the aggregate inch replacement method is used.

- a) Removal: one 20 cm tree = 9.23 square meters canopy  
Replacement: one 6 cm tree = 2.57 square meters canopy
- b) Removal: one 100 cm tree = 126.27 square meters canopy  
Replacement: one 6 cm tree = 2.57 square meters canopy
- c) Removal: two 20 cm trees = 18.46 square meters canopy  
Replacement: two 6 cm trees = 5.14 square meters canopy
- d) Removal: one 20 cm tree = 9.23 square meters canopy  
          one 30 cm tree = 16.51 square meters canopy  
          one 40 cm tree = 25.89 square meters canopy  
          Total = 51.63 Square meters canopy  
Replacement fifteen 6cm trees = 38.55 square meters canopy

9. That Staff bring forward amendments to the AMPS and Fees & Charges By-laws at the same time as the Private Tree Protection By-law, **as amended**; and

All proposed amendments have been included in the Town's Fees and Charges By-law. Staff has also amended the AMPS By-law to increase the set fine amount to \$5,000 for Heritage Trees.

10. **That staff bring forward options to Council regarding incentives for tree planting and increasing tree canopy; and,**

This report will be brought forward at a later date.

11. **That all associated fees be waived until July 1, 2022, with education and enforcement being effective immediately;**

During the January 24, 2022 Special Committee of the Whole meeting, Council and staff deliberated on the feasibility of accepting applications following the adoption of the By-law. Council recommended waiving fees at the onset to support an expedited application process. However, staff has since developed an application process and is confident that administrative and operational requirements will be met in order to begin accepting applications on February 18, 2022, two weeks after the By-law is adopted. For this rationale, staff are recommending that applicable fees not be waived at the onset and the program be delivered as proposed effective February 18, 2022. Education and enforcement would still begin immediately, as soon as the By-law is adopted.

Please confirm the motion as waiving administration and review fees until July 1, 2022 or allow staff to collect fees as of February 18, 2022.

### **Additional Information Requested**

During the Special Committee of the Whole, Council requested additional information on the following items.

1. **Proposed exemption for cemeteries**

Staff met with the representative from the Newmarket Cemetery. Based on the discussion at the Special Committee of the Whole and subsequent discussion with Newmarket Cemetery, staff have amended the By-law to provide an exemption for cemeteries, specifically the By-law now states:

Section 3.6 This By-law does not apply to work or tree removal undertaken by a not-for-profit cemetery corporation.

2. **Additional information on jurisdictional scan**

| Municipality  | Permits Processed Annually | Compensation (Payment in lieu)  | Compensation Based on Aggregate Inch   |
|---------------|----------------------------|---|--|
| Aurora        | 30-35                      | <ul style="list-style-type: none"> <li>Aggregate Inch Replacement method (based on supply and installation costs of the same species)</li> <li>Installed cost is 2.5 x the cost of nursery stock</li> <li>Cost includes delivery, planting, mulching, and 1 year guarantee</li> </ul> | Yes  |
| Markham       | 700-900                    | <ul style="list-style-type: none"> <li>\$300.00 per tree (non-development related)</li> <li>\$600.00 per tree (development related)</li> </ul>  | No.<br>Amended By-law will move to aggregate inch replacement method.  |
| Richmond Hill | 300                        | <ul style="list-style-type: none"> <li>\$547 per tree</li> </ul>  | No<br>120% of replacement tree cost  |
| Vaughan       | No Data                    | <ul style="list-style-type: none"> <li>\$550.00 per tree</li> <li>Cost for deciduous and coniferous trees reviewed annually</li> </ul>  | <ul style="list-style-type: none"> <li>20cm-30cm DBH = 1 Replacement Tree Required</li> <li>31cm-40cm DBH = 2 Replacement Trees Required</li> <li>41cm-50cm DBH = 3 Replacement Trees Required</li> <li>Over 50 cm DBH = 4 Replacement Trees Required</li> </ul> |
| Peterborough  | No Data                    | <ul style="list-style-type: none"> <li>\$550.00 per tree</li> </ul>   | Provided by City   |
| Oakville      | 1500                       | <ul style="list-style-type: none"> <li>\$300.00 per tree</li> </ul>   | Yes<br>1 tree for every 10 cm of tree removed  |
| Burlington    | 1200                       | <ul style="list-style-type: none"> <li>\$400.00 per tree</li> </ul>   | Yes<br>1 tree for every 10 cm of tree removed  |
| Guelph        | No Data                    | <ul style="list-style-type: none"> <li>\$500.00 per tree</li> </ul>   | No Data  |
| Toronto       | No Data                    | <ul style="list-style-type: none"> <li>\$583.00 per tree</li> </ul>   | Ratio<br>3:1 Construction<br>1:1 Non-Construction  |

### 3. Estimated costs of an application.

These different scenarios illustrate how application fees are calculated:

- a) Application for one 20cm tree removed, non-construction, no re-planting  
Administration fee (\$100) + Review fee (\$100) + Compensation (\$300) = **\$500.00**
- b) Application for one 100cm tree removed non-construction, no-replanting  
Administration fee (\$100) + Review fee (\$100) + Compensation (\$300) = **\$500.00**
- c) Application for two 20 cm tree causing property damage, no replanting  
Administration fee (\$0) + 2 review fees (\$100 each) + 2 compensation amounts (\$300 each) = **\$700.00**
- d) Application for three trees, 20cm, 30cm and 40cm removed for a pool permit

| Dbh | # tr | Repl Tr. | Administration Fee | Review Fee | Compensation | Sub-Tot        |
|-----|------|----------|--------------------|------------|--------------|----------------|
| 20  | 1    | 3        | \$300              | \$100      | \$1,350      | \$1,450        |
| 30  | 1    | 5        |                    | \$100      | \$2,250      | \$2,350        |
| 40  | 1    | 7        |                    | \$100      | \$3,150      | \$3,250        |
|     |      | 15       |                    |            |              | <b>\$7,350</b> |

Staff are not able to offer cost estimates on tree removal or Arborist reports as the range can be significant due to variations in context and situations (including but not limited to size, location, terrain, required equipment, and staffing). The costs associated with tree removals and Arborist reports are outside the control of the Town and cannot be guaranteed to applicants by the Town.

### 4. Additional information on removing trees without impacting nesting birds

There is a provincial regulation that prohibits the removal of a tree between typically April 21 - July 31 for this area, unless it has been inspected by a qualified person, in this case an Arborist, to confirm there are no nesting birds. This will be a standard condition of all Private Tree Permits.