

Amendments to the Right of Way Trees By-law (2011-243)

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Prepared by:	Bailey Chabot Planning Services
Recommended by:	General Manager of Growth and Infrastructure

Report Summary

This report and presentation provides a recommendation regarding the repeal and replacement of the Right-of-Way Tree By-law, 2011-243, as well as the creation of a street tree policy, which will lead to enhanced administrative efficiency.

Resolution

THAT the City of Greater Sudbury directs staff to prepare a new by-law to prohibit and regulate the destruction or injury of street trees as outlined in the report entitled “Amendments to the Right of Way Trees By-law (2011-243)”, from the General Manager of Growth and Infrastructure presented at the Operations Committee meeting on June 20, 2022.

Relationship to the Strategic Plan, Health Impact Assessment and Community Energy & Emissions Plan (CEEP)

Regular review of the Right-of-Way Tree By-law (2011-243) is consistent with the asset management and service excellence goals of the Strategic Plan. Specifically, strategic Objective 1.5 - Demonstrate Innovation and Cost-Effective Service Delivery aims to ensure “regular service reviews that examine options for improving service levels and/or reducing the City’s net costs”.

The proposed changes are expected to indirectly address CEEP Goal #1 and #8: achieve energy efficiency and emissions reductions by creating compact, complete communities, and achieve 35% active mobility transportation mode share by 2050. Street trees can provide effective shade and act as a windbreak, which can reduce energy bills, while the same shade improves the active transportation network for pedestrians and cyclists. Finally, street trees can contribute to stormwater management and climate change resilience.

Financial Implications

There are no financial implications associated with this report.

Background

Municipalities in Ontario are permitted to create by-laws that “may prohibit or regulate the destruction or injuring of trees” pursuant to section 135 of the *Municipal Act*. Greater Sudbury’s Right-of-Way Tree By-law (2011-243) (the By-law) was adopted in 2011. The purpose of the By-law is to “authorize, regulate and protect the planting,

care, maintenance, protection and removal of trees on municipal rights-of-way”. The By-law includes several provisions related to the planting and maintenance of right-of-way trees, prohibitions, removals, and outlines the appeal process. Section 17 specifically directs that every five years from the passing of the By-law that a report shall be made and include any recommended change to the By-law. This report represents the ten-year review.

Review

The focus of this review is to streamline the administration of the by-law to enhance efficiency and to increase public access to helpful information on street trees, which is consistent with Objective 1.5 of the Strategic Plan. The review was undertaken collaboratively by staff from the Planning Services Division and the Linear Infrastructure Services Division that is responsible for the administration of the by-law.

Opportunities for efficiencies include the following:

1. The appeal process for refusal to remove a healthy street tree – Currently, appeals are heard and decided on by the Hearing Committee. The process lacks appeal forms specific to the Street Tree By-law making appellants reliant on staff to guide them through the appeal process. Staff must prepare a report that outlines the rationale for their refusal. Both parties must be present when the appeal is before the Hearing Committee. This process is lengthy and is challenging for both staff and appellants.
2. The listing of permitted and prohibited species within Schedules A & B of the by-law – The By-law currently includes an exclusive list of approved species for planting, as well as an explicit list of prohibited species. While identifying appropriate and inappropriate species for the local context is necessary, listing them within the By-law limits staff in their ability to exercise good judgement and requires an amendment to the By-law as the lists need to be modified due to emerging insect and disease concerns or introduction of new suitable varieties.
3. The creation of a policy document that provides direction to staff and the public – Currently there are no supporting documents beyond the By-law. A policy document allows for standards to be established and maintained and provides a resource for residents.

To identify appropriate solutions to the above identified issues, staff undertook a survey of 30 Ontario municipalities and one in Alberta (Calgary). The municipalities surveyed were varied in size and location to best understand trends. Ontario municipalities surveyed included: Toronto, Mississauga, Hamilton, Whitby, Vaughan, Newmarket, North Bay, Thunder Bay, Sault Ste. Marie, Barrie, Timmins, and others. Of the 30 municipalities, 14 had by-laws relating directly to trees in the public rights-of-way.

Table 1 Survey of municipalities with Street Tree By-laws

Option	Option Included	Option Not Included
An existing appeal process to allow for reconsideration of staff decisions	4	10
The identification of permitted and/or prohibited species within the by-law	4	10
A policy/manual/webpage to support the administration of the by-law and provide information to the public on the care and maintenance of trees	10	4

Only 4 of 14 municipalities set out a process for which members of the public can appeal the decisions of staff members (Table 1); the other 10 municipalities did not offer an option of appeal and staff decisions are binding. Four municipalities explicitly listed the permitted and/or prohibited tree species within their respective tree by-laws. Finally, most municipalities (10) had policies, manuals, or other substantive information to support their street tree by-laws and/or to inform the public.

Proposed Solutions and Rationale

To achieve a streamlined by-law and to address issues listed above, staff are proposing the following solutions:

1. Amend the appeal process by:
 - a. Creating a standard Street Tree By-law appeal form that outlines the required information to consider an appeal.
 - b. Removing the Hearing Committee as the appeal body and directing any appeals to the General Manager, Growth and Infrastructure. This allows for a more efficient review process and maintains operational matters at a staff level.
2. Removing references to species of tree that are permitted/prohibited to be planted in the right-of-way. The list of permitted and prohibited species would be included in a policy document that can be regularly reviewed and updated at the staff level, which allows staff to respond to changes in emerging trends in arboriculture.
3. Adopt the more accessible wording “street tree” in place of “right-of-way tree”.
4. Refine the By-law to remove sections that can best addressed through a Street Tree Policy (Appendix ‘A’). The Street Tree Policy would include educational information for the public, standards for planting and maintenance, lists of permitted and prohibited species, as well as any required forms.

To address these proposed changes, staff is recommending the repeal and replacement of the By-law with a new Street Tree By-law. The proposed Street Tree By-law can be found in Appendix ‘B’.

Municipal Act

The Municipal Act authorizes municipalities to create by-laws that “may prohibit or regulate the destruction or injuring of trees” (section 135).

Conclusion/Next Steps

The proposed repeal of the Right-of-Way Tree By-law, 2011-243 and its replacement with the proposed Street Tree By-law would enact the solutions outlined within the report. The addition of the proposed Street Tree Policy would allow for the creation and management of standards, act as a resource for residents, and allow staff to adapt to changes in arboriculture on an operational basis. The proposed changes would align with Objective 1.5 of the Strategic Plan. It is recommended that the City of Greater Sudbury repeal Right-of-Way Tree By-law, 2011-243 and replace it with the proposed Street Tree By-law, 2022-XXX and direct staff to finalize and publish the proposed Street Tree Policy.

References

1. Right of Way Tree By-law, 2011-243 <https://www.greatersudbury.ca/linkservid/090F9B07-0862-D9A3-73190FC3EB92626D/showMeta/0/>
2. The Municipal Act, 2001. <https://www.ontario.ca/laws/statute/01m25#BK155>