

Policy Discussion Papers - Decision Requested



Request for Recommendation

Regulation of Trees Within Municipal Road Right-of-Ways

Presented To:	Priorities Committee
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Recommendation

That Council adopt the recommendations as outlined in the report from the General Manager of Infrastructure Services dated July 2, 2009 and the necessary By-Law be prepared and that a budget option be proposed for the 2010 Operating Budget to carry out necessary repairs that may be required to preserve the life of any tree.

Finance Implications

It is recommended that a budget option be proposed for the 2010 Operating Budget to carry out necessary repairs that may be required to preserve the life of any tree.

Signed By

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PROPERTY MAINTENANCE

Chapter 709

TREES - PLANTING - CARE - REMOVAL

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Article 1 INTERPRETATION

- 709.1.1 **City - defined**
"City" means the geographical limits of the City of Sudbury.

709.1.2 Commissioner - defined

"Commissioner" means the Commissioner of Community Services of The Corporation of the City of Sudbury or his/her designate.

709.1.3 Corporation - defined

"Corporation" means The Corporation of the City of Sudbury.

709.1.4 Council - defined

"Council" means the Council of The Corporation of the City of Sudbury.

709.1.5 Tree - defined

"tree" includes a growing tree or shrub planted or left growing on either side of a highway for the purpose of shade or ornament.

Article 2**GENERAL PROVISIONS****709.2.1 Money - appropriated - expended - by Council**

The Council may annually appropriate and expend out of its current revenues, such sums of money as shall be requisite for the purchase and planting, caring for, trimming and removing of trees upon the streets in accordance with this Chapter.

709.2.2 Proposed street reconstruction - requirements

Any proposal for future street reconstruction shall illustrate those trees which are required to be removed due to the said construction together with a report on the types of trees being removed and the number and size of trees which will replace those being removed and notice of the removal of trees shall be given to the abutting owners in accordance with the *Municipal Act*.

Article 3**GENERAL PROHIBITIONS****709.3.1 Nuisance - obstruction of highway**

No tree shall be so planted that the same is or may become a nuisance or obstruct the reasonable user of the highway. By-law 84-2, 10 January, 1984.

709.3.2 Species - varieties

No person shall plant on any highway in the City any tree of any of the following species or varieties:

Butternut, Cherry, Chestnut, Manitoba Maple, Walnut, Poplar (all kinds) and Willows (all kinds). By-law 84-2, 10 January, 1984; By-law 90-175, 11 September, 1990.

709.3.3 Destruction - injury - any tree

Except as herein provided, no person shall destroy or injure or cause or permit any activity which may destroy or injure any tree.

709.3.4 Attach - object - to tree - without consent

No person shall attach any object or thing to a tree located on any highway or public place except with the consent of the Commissioner.

709.3.5 Removal - tree - without permission

No person shall remove or cut down any tree growing upon a highway except with the written permission of the Commissioner.

Article 4**COMMISSIONER - AUTHORITY****709.4.1 Municipal arborist - duty - enforce Chapter**

The Commissioner shall be the municipal arborist for the Corporation and shall have supervision and care over all trees now and hereafter planted or growing on any public highway, and it shall be his/her duty to enforce the provisions of this Chapter.

709.4.2 Master Tree Plan - formulated

The Commissioner may formulate a Master Tree Plan specifying the species of trees to be planted on each of the public highways and other public lands in the City, having regard to the needs of the residents of the municipality including safety, aesthetic considerations, noise and pollution control, recreation and the protection of wild life, water and soil.

709.4.3 Location - trees - determination

Any tree planted upon a highway shall be located at such distance from the street line or from the sidewalk or from any other tree planted or growing on the same highway as may be determined by the Commissioner.

709.4.4 Planting - prohibited - reasons

The Commissioner may refuse to permit the planting of trees, or the planting of any one or more species or variety of trees, upon a highway of the Corporation, or part thereof, by reason of the nature of the pavements, walks, sewers or other works thereon, or the use to which the lands abutting the property of the Corporation are put, or in consequence of the extent and nature of the traffic thereon, or the insufficient breadth thereof, or by reason of the existence of rock or unfertile soil thereunder, or where the planting of trees thereon would be impracticable or dangerous to traffic or constitute a nuisance upon the property of the Corporation.

709.4.5 TREES - PLANTING - CAKE - REMOVAL 709.4.10

709.4.5 Species - variety - to be planted - determination

Where all or more than one-half the total number of trees planted on any highway or on one side thereof are of a certain species or variety, the Commissioner may require that all trees proposed to be planted on such highway or upon one side thereof, shall be of the same species and variety as the trees, or the greatest number of the trees already planted thereon. By-law 84-2, 10 January, 1984.

709.4.6 Species - variety - to be removed

The Commissioner is authorized to remove or cause to be removed any tree of the following genera and species:

- (a) Acer - Acer Negundo - Manitoba Maple - Acer Saccharinum - Silver Maple;
- (b) Populus - all Poplar species;
- (c) Salix - all Willow species;
- (d) Ulmus - Ulmus Pumila - Chinese Elm;
- (e) Cone-bearing Evergreens - all species. By-law 90-175, 11 September, 1990.

709.4.7 Trees - on any highway - planting

The Commissioner may plant or cause to be planted, trees upon any highway.

709.4.8 Prohibited trees - removal

The Commissioner may remove without notice any of the species of tree referred to in Section 709.3.2 growing on a highway in the City or planted thereon contrary to this Chapter.

709.4.9 Public interest - removal - any tree

When the Council considers it necessary in the public interest to cause any tree planted upon a highway to be removed and has passed a by-law to cause any tree planted upon a highway to be removed, the Commissioner shall give ten (10) days notice of the intention of the Council to remove such tree to the owner of the tree.

709.4.10 Decayed - dangerous tree - removal - no notice

The Commissioner may cause any decayed or dangerous trees to be removed without notice.

709.4.11 TREES - PLANTING - CARE - REMOVAL 709.5.1

709.4.11 Nuisance - removal - tree - Corporation expense

The Commissioner shall cause the removal of healthy trees on property of the Corporation at the expense of the Corporation when a property owner produces a soil report or other evidence satisfactory to the Commissioner that shows that the trees on the property of the Corporation are responsible for soil shrinkage and existing or possible subsequent sewer or foundation damage.

709.4.12 Obstructing tree - removal - conditions

If the owner of a property that abuts property of the Corporation is denied proper access to the use of his/her property by the existence of healthy trees on the property of the Corporation, the Commissioner may approve the removal of the healthy trees on the condition that the owner of the abutting property replaces the trees, at his/her own expense.

709.4.13 Public services - construction - removal - tree

The Commissioner may approve in writing the removal of healthy trees on the property of the Corporation for the construction of public services including water, sewer, hydro, gas and telephone.

709.4.14 Trim trees - branches over highway

The Commissioner may trim or caused to be trimmed trees planted upon a highway or upon private property where the branches extend over a highway.

709.4.15 Notice - given to adult - posted

Any notice required to be given hereunder may be given by leaving it with a grown-up person residing on the land or if the land is unoccupied by posting it in a conspicuous place on the land. By-law 84-2, 10 January, 1984.

Article 5 ENFORCEMENT

709.5.1 Fine - for contravention

Every person who contravenes any of the provisions of this Chapter is guilty of an offence and shall, upon conviction thereof, forfeit and pay a penalty of not more than five thousand dollars (\$5,000), exclusive of costs and every such fine is recoverable under the *Provincial Offences Act*. By-law 91-13, 15 January 1991.

709.5.2 TREES - PLANTING - CARE - REMOVAL 709.6.2

709.5.2 Order - prohibiting continuation - repetition
 When a person has been convicted of an offence under this Chapter, the Provincial Offences Court or any Court of competent jurisdiction thereafter may, in addition to any other penalty imposed on the person convicted, issue an Order prohibiting the continuation or repetition of the offence or the doing of any act or thing by the person convicted directed towards the continuation or repetition of the offence.

Article 6
REPEAL - ENACTMENT

709.6.1 By-law - previous
 By-law 3730, "A By-law Respecting the Planting, Care and Removal of Shade Trees", is hereby repealed.

709.6.2 Effective date
 This Chapter comes into force and takes effect upon the date of final passing of the enabling by-law. By-law 84-2, 10 January, 1984.

Regulation of Trees Within Municipal Road Right-of-Ways

RECOMMENDATION

That Council adopt the recommendations as outlined in the report from the General Manager of Infrastructure Services dated July 2, 2009 and the necessary By-Law be prepared and that a budget option be proposed for the 2010 Operating Budget to carry out necessary repairs that may be required to preserve the life of any tree.

Background:

Council requested a review and report on the existing Tree By-Law and tree services provided by the City. At Council's request, a committee was formed to review the current and proposed Tree By-Law governing trees within municipal road right-of-ways. The Tree Committee was made up of Councillors Barbeau, Gasparini and Dutrisac along with the appropriate Staff.

Issues:

Requests for forestry service including tree removals and pruning of trees on municipal road right-of-ways are received through the City's 311 system, recorded and forwarded to the Tree Warden for assessment. If the tree is healthy, any request for removal has historically been denied. The current By-Law (attached as Appendix 'A') allows for removal of any species of trees if decayed and dangerous and certain trees for soil shrinkage and proven damage to sewers and foundations, all at the discretion of the General Manager of Infrastructure Services. The City removes approximately two hundred (200) trees annually for these reasons. The current By-Law provides for fines for contravention of the provisions of the By-Law of up to \$5000.

Some of the issues that have been identified in dealing with municipal trees are:

- A. The criteria used to decide if and when to remove trees
- B. Problems involving tree roots and homeowner issues
- C. Species of trees and number of trees recommended to be planted
- D. Location of trees to be planted
- E. Fees charged for tree services and fines levied for By-Law infractions

The Committee met with Staff and in addition to the issues identified above the Committee requested a clear and simple mechanism to deal with healthy trees that individual property owners want removed.

F. *Removal of healthy trees*

Each of these issues has been reviewed and recommendations provided herein to assist Council in selecting a Tree By-Law appropriate for the City of Greater Sudbury.

The specific issues are discussed below and recommendations are shown in bold.

A. Criteria:

The purpose of this By-Law is to preserve public trees. The time it takes to grow trees to maturity and their contribution to a clean and healthy environment, through reduction of carbon dioxide and provision of life to many species warrants their protection.

This being said, all trees eventually reach their natural life span and die, become decayed, damaged or hazardous and will require removal. If trees are removed, replacement trees are recommended, however due to their smaller size, cannot approach the positive environmental impact of the mature tree for many decades.

The current By-Law allows for tree removal by the General Manager of Infrastructure Services. It only allows for removal of trees which are dead, damaged beyond repair, decayed to a degree making them unsafe, are no longer viable to maintain or proven to have damaged sewers and foundations.

The recommendations in this report are intended only for trees on City right-of-way frontage of residential and commercial lots on publicly maintained roads. Reforestation efforts outside of the right-of-way and trees planted on designated parkland are excluded from this By-Law.

B. Problems Involving Tree Roots and Homeowner Issues:

The Committee of Council identified the need to address the public concern of problems with healthy trees.

Most requests from residents wanting the removal of a healthy tree fall into one (1) of five (5) categories:

1. Allergic reactions to trees/sap/insects/pollen.
2. Stress caused by fear or dislike of trees and/or branches being blown down in a wind storm.
3. Tree drops things on 'their' property such as seeds, fruit, leaves, twigs, sap and insects which require clean up.
4. Trees attract unwanted critters such as wasps, bees, caterpillars, birds, insects, chipmunks, squirrels etc.
5. Tree taking up too much space; is too big, roots in sewer, weeping tile, basement, roof, damaging driveway, house, lawn, vehicles

In each of the above cases a Section Representative, (usually the Tree Warden) inspects the tree and makes a formal written assessment of which a copy is left with the homeowner and the original is placed on file and added to a priority list for action if warranted. Many complaints are received from new home purchasers moving in to properties with trees in their front yards, expecting to be able to remove the trees to re-landscape. Long term residents may also complain that they did not mind the trees when they were small but now have issues with large trees.

C. Species of Trees:

The list of species currently approved for planting and species no longer recommended for planting on residential lot frontage within the road right-of-way and the general reason why they are not recommended is as follows:

Species of trees currently approved for planting but not limited to are:

- **Ash** – fall gold, green
- **Locust** – shade master
- **Maple** - amur, tatarian, royal red, sugar
- **Hackberry**
- **Hawthorn** - thornless
- **Flowering Crab** – spring snow
- **Oak** – burr, red
- **Japanese Lilac**
- **Linden** - pyramidal
- **Elm** - prospector
- **Mayday**
-

New species may be approved for planting as they become available.

Prohibited species of trees not approved for planting include:

- **Manitoba Maple** – too big, dirty, many insects, not aesthetically pleasing
- **Walnut/Butternut (under review)/Chestnut** – large hard fruit, odour, disease
- **Poplars (All types)** – too big, fragile, large root systems
- **Willows (All types)** – large root systems, many insects
- **Cherry** – fruit, black knot fungus
- **Silver Maple** – too big, dirty, brittle
- **Elm (All types including Chinese Elm)** – susceptible to Dutch Elm Disease
- **Evergreens (All types)** - too large, large base impedes visibility (under review)
- **All fruit bearing trees** – messy, dirty, attract wasps and bees

These non-approved species will be updated in the new Tree By-Law.

D. Location:

Trees require space, both above and below ground. The average horizontal space required by a tree is approximately equal to the girth of the canopy of the mature tree (the drip line), however, select species could have root systems up to half the volume of the tree. The space available for the City trees on road right-of-ways in developing areas is governed by lot frontage, set back distance of the home from the road, soil and drainage conditions. **Generally, a standard 50-foot lot will receive one tree and a corner lot may receive two (2) trees.**

Other obstacles may also interfere with available space and in some instances make it undesirable or improbable to successfully plant trees due to future excavations for infrastructure maintenance purposes which could seriously injure or kill the tree. These obstacles include overhead and underground hydro, telephone, cable, and gas services, underground water, storm and sanitary sewer service chambers and lines, existing trees on adjacent lots that do or will, require more space than is available on the lot planted.

Areas where the surface is or may become water impervious such as asphalt, concrete or stone/brick boulevards, medians, sidewalks, driveways, parking lots and laneways, further impact the health of trees. These surfaces may potentially be damaged from the growth of the trunk or roots seeking surface water.

As the City of Greater Sudbury is geographically large and diverse, it supports rural communities within bounds. The same requirements to maintain a tree canopy in high density residential areas where trees quickly become scarce may not need to apply in the same form to rural areas that may have “hundreds of acres of trees in their back yard”, however caution should be applied to protect trees as development occurs. Tree issues often occur in other areas of jurisdictions (not road right-of-way) such as park properties, rivers, streams and lakes or large tracts of publicly held land.

E. Fees:

That requests for review/response/service to a tree(s) on municipal property be free of charge as it is now. However, other municipalities have various fee structures which Council may wish to consider at a future date.

F. Removal of Healthy Trees:

The Committee felt that most problems with healthy trees were related to species no longer approved by the City. Therefore Staff are recommending the following changes for non-approved species of trees only:

PROBLEM	ACTION
<i>Allergic reactions to trees/sap/insects/pollen.</i>	<i>Trees will not be removed for these reasons regardless of the species</i>
<i>Stress caused by fear or dislike of trees and/or branches being blown down in a wind storm.</i> <i>Or</i> <i>Trees drop things on ‘their’ property such as seeds, fruit, leaves, twigs., sap and insects which require clean up.</i>	<i>For a non-approved species of tree, that may cause potential damage to a house and/or occupant due to proximity, lean and size (age) of tree, and is causing stress to homeowners and all other means to save the tree have been exhausted, (i.e. pruning, volunteers to clean fruit, etc.), the Councillor in consultation with the General Manager of Infrastructure Services may have the tree removed.</i>
<i>Trees attract unwanted critters such as wasps, bees, caterpillars, birds, insects, chipmunks, squirrels, etc .</i>	<i>Trees will not be removed for these reasons regardless of the species</i>
<i>Tree taking up too much space; is too big, roots ruin lawn, roots in sewer, weeping tile, basement, roof.</i>	<i>This action will apply for all species of tree.</i> <ul style="list-style-type: none"><i>• Underground damage to house by roots via sewer line or weeping tiles:</i><i>• If sewer lines are being blocked by roots from the City’s tree, the City shall have the sewer re-lined at its cost and place the nuisance tree on a future priority list for replacement.</i><i>• If weeping tiles are proven to be damaged by the roots of the City’s tree, the tree will be removed and replaced with an acceptable species.</i>
<i>Damage by a non-approved species of tree to house, lawn, vehicles or driveway.</i>	<i>Where it will solve the issue, the tree will be pruned and placed on a future priority list for removal and replacement.</i> <i>Where damage cannot be mitigated, the tree will be removed and replaced with an acceptable species.</i>

It is expected that these trees would be removed within a six (6) to twelve (12) month period based on current requests however the General Manager may have it removed sooner should circumstances dictate.

All trees removed shall be replaced with a new one of the currently approved species.

For all similar requests involving healthy trees of the species currently approved, the property owner will be required to obtain approval from the City's Planning Committee.

Recommendations:

That changes be made to the existing By-Law by our Legal Department to update it to cover the entire City of Greater Sudbury and institute the following recommendations:

- A formal (existing) "Request for Tree Service" form be required, completed and submitted to the Tree Warden by the homeowner or through the 311 service number for review/response/service.
- ***Non-approved species of trees will be removed after all other means to save the tree have been exhausted as per the criteria set out above;*** if they pose a danger that cannot be remedied; for the maintenance and construction of roads and sidewalks where other options are not available or upon recommendations from the City Solicitor for reasons seriously affecting City liability.
- The property owner will be required to apply to the City's Planning Committee for removal of a healthy tree of a currently approved species where not provided for in the By-Law.
- That a By-Law Review Committee be formed from representatives of the Roads, (including Tree Warden) Parks, Legal, By-Law, Building Controls, Planning Services Sections and Greater Sudbury Utilities Inc. to review the By-Law and Recommend changes, if required, on a minimum five (5) year cycle.
- That any person wanting to plant trees on municipal property must make application to the Tree Warden on the "Request for Tree Service" form provided including species and location, and receive approval before proceeding. This is required to add the tree to the City's inventory as once planted on municipal property it becomes the property and responsibility of the City.
- ***That where a non-approved species of tree is causing a problem for the homeowner, it shall be put on a replacement list and it shall be removed within six (6) to twelve (12) months and replaced with an approved species of tree at a future date.***
- ***That a budget option be proposed for the 2010 Operating Budget to carry out necessary repairs that may be required to preserve the life of any tree.***
- ***That additional costs for this new Policy would be taken from the Tree Reserve Fund. The Tree Reserve Fund was established to maintain tree development and maintenance of trees in subdivisions from a deposit required from the Developer to the City.***
- ***It is recommended that a formal By-Law be prepared by Legal Services incorporating recommendations outlined in this report.***