

## Policy Discussion Papers - Decision Requested

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### Request for Recommendation

#### Tree Policy

Presented To:	Priorities Committee
Presented:	Wednesday, Oct 08, 2008
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Type:	Policy Discussion Papers - Decision Requested

#### Recommendations

That Council adopt this Policy as outlined in the report from the General Manager of Infrastructure Services dated October 1, 2008 and that the necessary By-Law be prepared.

#### Finance Implications

Should Council approve the formation of the Forestry Claims Committee, it is recommended that a budget option of \$25,000 be proposed for the 2009 Operating Budget to resolve such claims.

#### Signed By

**Report Prepared By**

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Advisor

*Digitally Signed Oct 2, 08*

**Division Review**

Robert Falcioni, P.Eng

Director of Roads and Transportation

*Digitally Signed Oct 2, 08*

**Recommended by the Department**

Greg Clausen, P.Eng

General Manager of Infrastructure  
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**Recommended by the C.A.O.**

Mark Mieto

Chief Administrative Officer

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## **Background:**

Council requested a review and report on the existing By-Law and tree services provided by the City. The existing Tree By-Law and Forestry employees emerged from the former City of Sudbury. The By-Law is dated 1984 (see Appendix 'A') and has existed unchanged since 1991. Staff have reviewed this By-Law as well as similar By-Laws governing trees in other municipalities across the country and are recommending it be replaced with an updated By-Law. A sample of one is attached as Appendix 'D'. Tree By-Laws fall under Part 3 of the Municipal Act, 2001, Sections 135 to 147.

## **Issues:**

Requests for Forestry service including tree removals and pruning of trees on City property are received through the City's 311 system, recorded and forwarded to the Tree Warden for assessment. If the tree is healthy, the request is generally denied. The current By-Law does allow for removal of decayed and dangerous trees and certain trees (Section 709.4.6 of By-Law) for soil shrinkage, 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 (see Appendix 'C').

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

- The criteria used to decide if and when to remove trees.
- Problems involving tree roots and personal vices.
- Species of trees and number of trees recommended to be planted.
- Location of trees to be planted.
- Fees charged for tree services and fines levied for By-Law infractions.
- Trees outside of the road right-of-way.

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

## **Criteria:**

The overriding principle 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, 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 recommendations in this report are intended for applications to City right-of-way

frontage of residential and commercial lots on publicly maintained roads. Reforestation efforts outside of the right-of-way by Organizations such as VETAC and the Junction Creek Stewardship Committee and trees planted on designated parkland are excluded from this By-Law.

## **Problem Areas:**

Most requests from residents wanting to remove 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 ruin lawn, roots in sewer, weeping tile, (Appendix 'B' explains the problems with roots in pipes and foundations), basement, roof, eavestrough, paint, siding, driveway, other private trees, shrubs and flower beds.

In addition, the City's own development by widening roads and adding sidewalks can impact mature trees in the road right-of-way. In each of the above cases a Department Representative, (usually the Tree Warden) inspects the site 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. If the homeowner is not satisfied with the decision they can appeal to the Manager for a review. The decision of the Manager is final. Many complaints are received from home purchasers moving in to properties with trees in their front yards, expecting 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, providing a true indication of how important a By-Law is to preserve the tree canopy within the City.

## **Species:**

Species of trees have been reviewed over the years to minimize the problem areas listed above as much as possible. This does not mean the City removes existing mature species no longer recommended but that these species are not replaced as they decline/die. Another factor of tree selection is lot size. Lot size in general has been shrinking in urban areas, thus providing less space for trees/root systems.

The list of species currently planted 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 are as follows:

**Species of trees currently planted are:**

**Ash** – fall gold, mountain, green

**Locust** – shade master

**Maple** – amur, tatarian, royal red, sugar

**Hackberry**

**Hawthorn** – thornless

**Flowering Crab** – royalty, spring snow, dolgo

**Oak** – burr, red

**Japanese Lilac**

**Linden** – pyramidal

**Elm** – prospector

**Mayday**

**Species of trees not recommended nor approved 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)

One (1) tree is planted per 12.3 m (40 ft) of lot frontage. Corner lots may be suitable for a tree on both street frontages. Location, surface soil and ground conditions (rock/wetland) also have an impact on the decision of what species, if any tree can be planted on the lot. Smaller lots may also be able to support a tree, however trees selected may be of smaller species type. Larger lots may be able to support more trees of a larger species selection.

Council may also wish to consider whether property owners have a choice to have or not have a tree planted on municipal property in front of their residence by the City. Currently residents are given a choice whether they want a tree planted or not. They are offered one of the recommended species based on other trees planted near by (looking for diversity) and soil/lot conditions.

Although the City may have the right to plant a tree, some property owners for health or other reasons, may not desire a tree planted. The Tree Warden reviews those lots not yet planted annually to see if there is any change to the situation. A change in the situation could be generated by new homes being constructed, change in ownership of the property, damage or poor health of tree(s) planted. None of the above is meant to prevent any homeowner from requesting the City to plant a tree on municipal property adjacent to their

property, however the current budget only allows for approximately eighty (80) new trees annually outside of the Subdivision Reserve Fund. Requests are taken, logged and processed on a first call basis.

The Subdivision 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 for each lot frontage being developed.

### **Location:**

Trees require space, both above and below ground. The average 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 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.

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 many urban and rural communities within its bounds. The same requirements to maintain a tree canopy in high density urban 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. Although the principles recommended in the proposed By-Law could still apply, other factors may need to be considered and are therefore not recommended to be covered by this By-Law at this time.

Examples include:

- trees along waterways which may be governed by provincial and federal regulations
- large tracts of land where natural forces (windstorms, snowfall) and wildlife (bears, porcupine, moose) may cause damage not warranting the same or any response by the municipality

- re-greening efforts of various groups on municipal property may plant species suitable to meet their goals that may conflict with those included in this proposed By-Law

## **Recommendations:**

It is recommended that changes be made to the existing By-Law by our Legal Department to update it and institute the following principles:

- 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.
- Healthy trees are not removed from the municipal property for any reason, except where required by law (hydro/utilities), 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 corporate liability.
- Requests for tree removal that may include potential liability to the City can be forwarded to the Forestry Claims Committee consisting of the Operations Manager, Claims Manager, and a representative of the Legal Department. The written decision of this Committee is to be forwarded to the General Manager of Infrastructure Services. The intent of this Committee is to assess potential liability, if any, for Forestry related claims supported by a report from a Professional Engineer relating to, but not limited to such issues as roots in weeping tile, sewers, basement walls, driveways and lawns. This Committee would have the authority to resolve claims that are supported by an Engineer's report. It is recommended that a budget option of \$25,000 be proposed for the 2009 Operating Budget to resolve such claims, becoming an operating budget item. Staff does not recommend Council become involved in the liability claim process at this stage, however, Council can ask for a report from the General Manager of Infrastructure Services on any issue. For the purposes of this By-Law, the decision of the General Manager of Infrastructure Services or his designate is final for each application.
- That requests for review/response/service to a tree(s) on municipal property be provided free of charge as it is now. However, other municipalities have various fee structures as listed in Appendix 'C' which Council may wish to consider.
- 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 responsibility of the City.

- It is recommended that a formal By-Law be prepared by Legal Services incorporating the recommendations outlined in this report. A sample draft By-Law is attached for Council's review (Appendix 'D').

**APPENDIX "A"**

**PROPERTY MAINTENANCE**

**Chapter 709  
TREES - PLANTING - CARE - REMOVAL**

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SUDBURY

709.1

JANUARY 1991



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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 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 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 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.

### Walkways, Driveways, Patios and Roots

The roots of trees can lift concrete or pavement when the hard surface treatment is located too close to the trunk of a tree

When planting a tree, make sure to leave enough room for the trunk to grow. To avoid damaging your walkway, driveway or patio at least 1.5m (5ft.) is recommended. Beyond this distance tree roots are not the cause of any heaving and cracking.

Heaving and cracking of walkways, driveways or patios is usually caused by the expansion and contraction caused by the winter freeze thaw cycles.

Further north there might be only one freeze thaw cycle per winter. In Toronto our climate is particularly difficult. We can have a number of freeze thaw cycles in one winter.

After each freeze thaw cycle the cracks and the heaving get a little worse. This is all happening while the roots are quietly dormant underground until after the spring thaw when they start to grow again. The roots then grow into the additional growing space created by the cracking and heaving.

Please do not blame trees and their roots for breaking and clogging water or drain pipes, or damaging foundations or cracking and heaving walkways, driveways or patios.  
**They didn't do it!**

Roots are **not** harmful. But trees **are** helpful.

*Please ask us to plant a tree on your street*

**Call Urban Forestry at 416- 338- 8733**

*Broken or clogged drain pipes?  
Water coming through  
the basement walls?  
Cracked or heaving walkway  
or driveway?*

***The problem is not  
the roots!  
Let's get to the  
root of the problem!***



- ① The three most important things that roots need and want are: **soil, air and water**. The easiest and best place for them to find these three essentials is at the surface of the ground in your yard and your neighbour's yard.

That is why the roots of a tree, planted in good soil, will not grow deeper than 60cm to 90cm (2ft. to 3ft.) below the surface. The roots may extend out from the trunk as much as 3 times the length of the longest branch. Within this area you would find many tiny fibrous roots that are within the top 30cm (12") of soil. It is these tiny fibrous roots that take in the water, air and nutrients that nourish the tree.

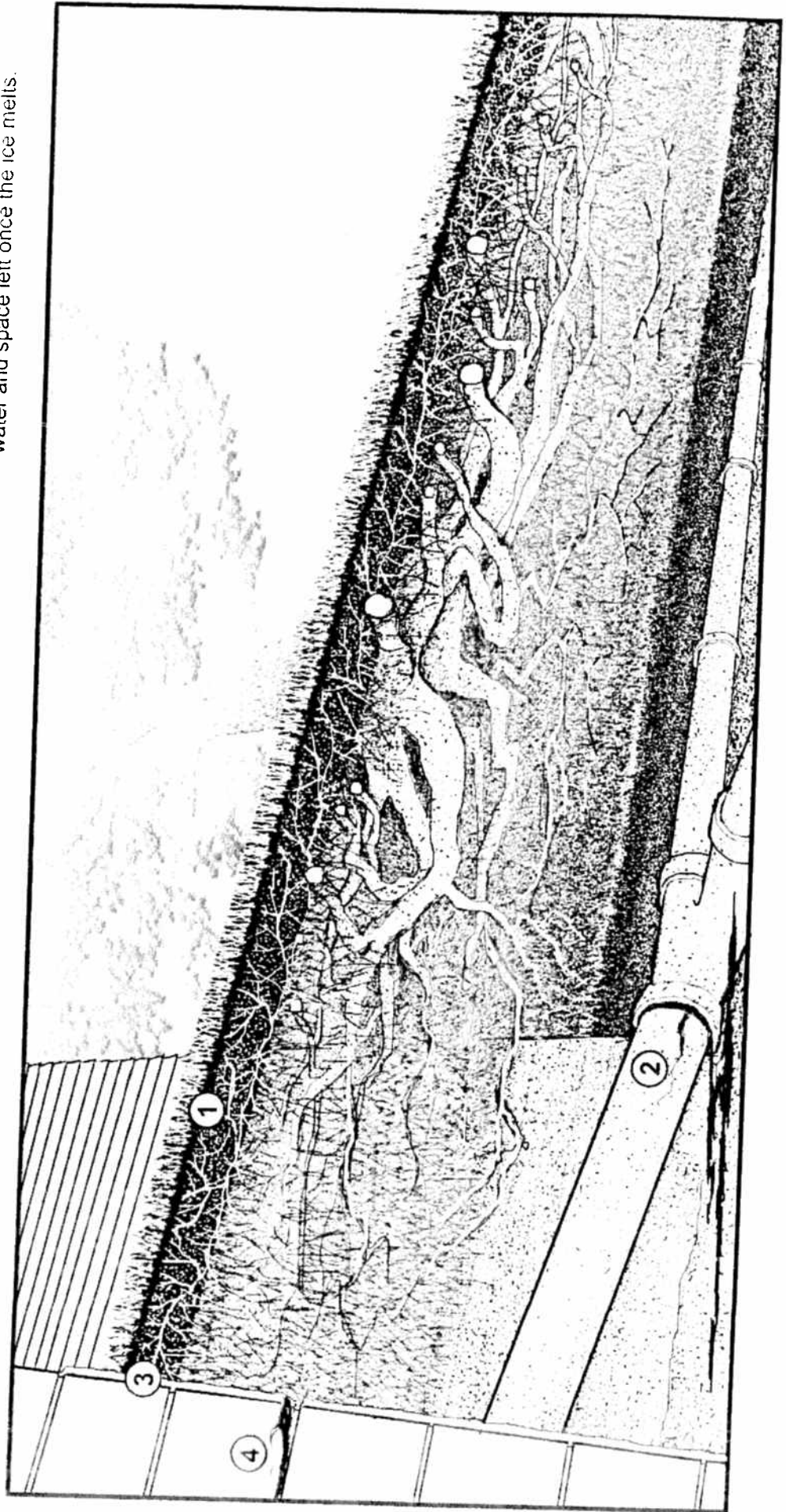
- ② However if there is a broken drain or water pipe the roots will be attracted to the leak since it provides water and air. Without a break or leak there would be no water or air to attract the roots. The roots do not cause the breaks. They are only taking advantage of the break or leak caused by something else such as aging pipes or faulty joints.

- ③ The area where soil meets the foundation of a house can also provide a place where roots can find soil with a bit of air and water.

- ④ If there are cracks in the foundation water can collect there. This may attract roots. The cracks get bigger because of the freeze thaw cycles of our winters. Water expands when it freezes. The ice has the force capable of causing cracking and heaving of concrete.

Water and ice can do much damage which is why it is important to keep foundation walls waterproofed.

Roots are not capable of causing cracks or making existing cracks bigger. They are only taking advantage of the air, water and space left once the ice melts.





## APPENDIX “C”

Name of City	Application Fees	Fines
Vancouver	\$55 removal for 1 <sup>st</sup> tree \$156 removal for each subsequent tree	\$500 up to \$20,000
Halifax	None	\$100 up to \$5,000
Toronto	\$100 per tree non construction \$300 per tree construction	\$500 up to \$100,000
Victoria	\$30 removal for 1 <sup>st</sup> tree \$5 removal for each subsequent tree	1,500 -1 <sup>st</sup> tree \$3,000 for each subsequent tree
Regina	\$300 plus costs	Private up to \$2,000 Corporate up to \$5000
Ottawa	N/A	Private \$1,000 per tree – 1 <sup>st</sup> conviction 2,500 per tree, subsequent conviction Corporate \$5,000 per tree – 1 <sup>st</sup> conviction \$100,00 per tree, subsequent conviction
London	None	Up to \$10,000 – 1 <sup>st</sup> conviction Up to \$20,000 – 2 <sup>nd</sup> conviction
Sudbury	None	Up to \$5,000

## APPENDIX “D”

### THE CORPORATION OF THE CITY OF GREATER SUDBURY

#### BY-LAW NUMBER \_\_\_\_\_

A By-Law to authorize, regulate, and protect the planting, care, maintenance, protection, and removal of trees on municipal right-of-ways, and walkways within the City of Greater Sudbury.

This By-Law deals with trees on residential and commercial lots on public property only within a public road right-of-way.

#### **Definitions:**

“**City**” means the geographical limits of the City of Greater Sudbury.

“**Corporation**” means the Corporation of the City of Greater Sudbury.

“**Council**” means the elected Council of the City of Greater Sudbury.

“**General Manager of Infrastructure Services**” a person or their designate duly authorized by Council to carry out the intent of the By-Law.

“**Owner**” means the registered owner of the land or their agent; or anyone acting under the direction of the owner or their agent.

“**Site**” means the area of land containing any tree(s) proposed to be injured, destroyed, removed, or planted.

“**Tree**” means a woody plant or shrub on City of Greater Sudbury property, on either side of a highway, park, walkway or building. The term includes the whole and/or all parts of: the roots, branches, trunk, and crown.

“**Right-of-Way**” means every road, road allowance, and laneway under the Corporation’s authority whether opened or unopened within the City of Greater Sudbury. The road allowance includes all of the property that makes up the road including the traveled portion of the road, shoulders, curb, ditch, boulevard, and sidewalks, within the road allowance.

“**Municipal Property**” means any and all land owned by the Corporation of the City of Greater Sudbury, including highways.

“**Municipal Tree**” is any tree that has more than fifty percent (50%) of the diameter of its trunk 0.5 m above the ground on municipal property.

**“Review Committee”** means a committee made up of representatives from various Departments having a stake in preserving trees in the City. These Departments are (but not limited to) By-Law, Building Controls, Roads Operations, Parks, Legal, Planning and Greater Sudbury Utilities Inc.

**“Private Property”** means any and all land in Greater Sudbury which is not Municipal Property.

**“Private Tree”** is any tree that has more than fifty percent (50%) of the diameter of its trunk, 0.5 m above the ground on private property.

**“By-Law”** means this By-Law as it may be amended from time to time. The recitals to this By-Law are considered integral parts of it.

### **Recitals:**

Subsection 11(5) of the Municipal Act, 2001 provides authority to municipalities for the control and regulation of parks, including trees with parks.

Sections 135 through 141 of the Municipal Act 2001 provides authority to municipalities to regulate the cutting of, planting of, and general maintenance of trees.

Sections 62 and 137 of the Municipal Act, 2001 authorizes the imposition of penalties for the commission of an offence under a Tree Regulatory By-Law.

Section 138 of the Municipal Act, 2001 authorizes the imposition of penalties for the commission of an offence under a Tree Regulatory By-Law.

### **Intent:**

The intent of the By-Law is to preserve and protect rather than remove public trees wherever possible and expedient. Healthy trees are not removed from municipal property for any reason, except where required by law (hydro/utilities), have a danger to the public that can not be remedied, for the maintenance and construction of roads, sidewalks, and drainage ways upon recommendation from the City Solicitor for reasons seriously affecting corporate liability.

Roadway and ditch brushing and maintenance activities along the road right-of-ways shall not apply to this By-Law.

### **Authority in Implementing this By-Law:**

Council or their designate (General Manager of Infrastructure Services) is assigned the authority for the implementation of the By-Law.

### **Planting and Transplanting:**

The General Manager of Infrastructure Services or designate is authorized to plant, transplant or remove any and/or all trees on municipal property in accordance with this By-Law.

### **Care and Maintenance:**

The General Manager of Infrastructure Services or designate is authorized to care for and maintain all trees on municipal property. Care and maintenance includes pruning, fertilizing, support systems, and preventative measures as deemed necessary to protect trees from insects or disease.

### **General Provisions:**

#### **Money Appropriated by Council:**

Council may annually appropriate and expend out of its current revenues, such sums of money for the purchase and planting, caring for, trimming, and removal of trees upon municipal property.

#### **Proposed Street Reconstruction:**

Any proposal for street reconstruction shall illustrate those trees which are required to be removed due to the said reconstruction 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.

#### **Removal of Municipally Owned Trees:**

The General Manager of Infrastructure Services or designate is authorized to remove trees which are dead, damaged beyond repair, decayed to a degree making them unsafe, are no longer viable to maintain or pose a hazard to the public. In implementing this section, the Manager shall regard the intent of the By-Law.

#### **Removal of Nuisance Trees:**

In the case of tree(s) causing soil shrinkage when a property owner produces a soil report or engineering report showing evidence, the City will attempt to remedy the property by restoring the area to a safe condition. If this is not possible in the opinion of the General Manager of Infrastructure Services, the tree may be removed. The General Manager of Infrastructure Services or designate may approve the removal of nuisance trees on municipal property.

### **Review of Removal Decision:**

Residents upon receiving a written response to a request for service they are not satisfied with may apply to a Council member to present their case to Council and have Council vote in support or against the removal of such tree.

### **Prohibited Species of Trees:**

No person shall plant on residential and commercially zoned property within the municipal road allowance any tree(s) of any of the following species or varieties: Manitoba Maple, Walnut, Butternut (under review), Chestnut, Poplars (all species), Willows (all species), Cherry, Chinese Elm and all Elm species susceptible to Dutch Elm Disease, Evergreens (under review) and Silver Maple.

### **Objects Attached to Trees:**

No person shall attach, tack, or paste, any bill, note, sign, poster, or any other thing to or around a tree on municipal property.

No person shall use any part of a municipal tree to secure or support any object, structure, or animal.

### **Protective Devices:**

No person shall remove or interfere with fences, boxes, tree guards, or other protective devices placed around municipal trees without prior permission.

### **Municipal Policies and Programs:**

The above two sections do not operate to prohibit activities that are sanctioned by Council or policies or programs for beautification or other. For example, the stringing of Christmas lights, Christmas wreaths, or other such decorations must be placed so as not to damage the tree(s) or pose a safety hazard.

### **Requests for Service:**

Requests for service are made on the "Request for Tree Service" form supplied by the City or through the 311 service number. The first request by the public for service is provided free of charge. Subsequent requests for similar service on the same tree(s) within one year require a \$50 non-refundable deposit with the request for service. This would not apply to citizens reporting dangerous situations involving trees requiring immediate attention such as municipal trees damaged by wind storms.

### **Private Property - Entry To:**

The General Manager of Infrastructure Services or designate has the right to enter onto private property without permission of the owner to inspect a tree(s) if there is a hazard or potential hazard, which may impact the city in anyway.

### **Species Variety to be Removed:**

The General Manager of Infrastructure Services or designate is authorized to remove or cause to be removed any of the species listed as prohibited: Manitoba Maple, Walnut, Butternut, Chestnut, Poplars (all species), Willows (all species), Cherry, Chinese Elm and all Elm species susceptible to Dutch Elm Disease, Evergreens (under review) and Silver Maple with just cause and considering the intent of the By-Law.

### **Planting Trees on Private Property:**

No person shall plant a tree on private property that is within nine (9) metres of any intersection of a street, or within two (2) metres of a property line that is adjacent to the street.

Every owner shall ensure that every tree on their property that overhangs municipal property shall be pruned so that the branches are at least four and a half (4.5) metres above the ground.

No person shall plant a tree on private property that will grow into the utility lines except that of service lines to the dwelling.

### **Planting Trees on Municipal Property:**

That any person wanting to plant trees on municipal property must make application to the Tree Warden on the form provided, including species and location, and receive approval before proceeding.

### **Destroy, Remove, or Prune a Municipal Tree:**

It is an offence to destroy or remove a municipal tree without prior permission.

It is an offence to willfully damage or prune a municipal tree. If in any way the damage or pruning may cause the tree to die or cause it to be removed the owner is liable for the replacement of such tree with one as close to the same size as possible as may be recommended by the Tree Warden. The owner shall also bear the cost of removal of the tree(s) and the cost to replace the tree(s) on the recommendation of the Tree Warden.

The damages and costs payable for the above two sections of this By-Law are in addition to and not in substitution for the payment of any penalty imposed by a Court of Law for the commission of an offence under the By-Law or any other applicable

### **Removal of Decayed or Dangerous Tree:**

The General Manager of Infrastructure Services or designate may remove without notice any decayed or dangerous tree.

### **Public Services:**

The General Manager of Infrastructure Services or designate may approve in writing the removal of healthy trees on municipal property for the construction of public services including water, sewer, hydro, gas, and telephone.

### **Severability:**

If a court of competent jurisdiction should declare any Section of this By-Law to be invalid, illegal, or unenforceable, that Section of this By-Law will be considered to be severed from the By-Law, and that the remainder of the By-Law shall be valid and shall remain in force and effect.

### **Penalty Provision:**

Any person who contravenes any provision of the By-Law and found to be guilty of an offence and on conviction is liable:

- a) On a first conviction, to a fine of not more than \$5,000.
- b) On a second conviction, to a fine of not more than \$50,000.

The above fines shall be doubled if applied to a business/corporation that is found guilty of an offence and convicted.

### **Order Prohibiting Continuation or Repetition:**

When a person/business/corporation 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/business/corporation convicted, issue an order prohibiting the continuation or repetition of the offence on the doing of any act or thing by the person/business/corporation convicted directed towards the continuation or repetition of the offence.