

BY-LAW 2011-243

**A BYLAW OF THE CITY OF GREATER SUDBURY TO AUTHORIZE,
REGULATE AND PROTECT THE PLANTING, MAINTENANCE,
PROTECTION AND REMOVAL OF TREES ON MUNICIPAL RIGHTS OF WAY**

WHEREAS Council of the City of Greater Sudbury deems it advisable to authorize, regulate and protect the planting, care, maintenance, protection and removal of trees on municipal rights of way;

**NOW THEREFORE THE COUNCIL OF THE CITY OF GREATER SUDBURY
HEREBY ENACTS AS FOLLOWS:**

Definitions

1. In this By-law:

“By-law Enforcement Officer” means a police officer, By-law enforcement officer, special constable and any other public officer engaged in the enforcement of this bylaw;

“City” means the City of Greater Sudbury or the geographic limits of the City as the context requires;

“City personnel” includes the City’s employees, contractors and agents;

“destroy” means to ruin or harm a tree by cutting, burning or girdling the tree or roots, interfering with the roots or uprooting, interfering with the water supply, applying one or more chemicals, improper pruning, compacting of soil or re-grading within the drip line of a tree or by other means including causing irreversible injury to a tree which may result from accident or design and “destroyed”, “destroying” and “destruction” have similar meaning;

“diameter” means the measurement of the trunk of a tree at a height of 1.2 metres above the existing grade of the ground adjoining its base;

“General Manager” means the City’s General Manager of Infrastructure Services and includes his or her authorized designate;

“Hearing Committee” means the Hearing Committee authorized pursuant to the City’s Procedure By-law, as amended or replaced from time to time;

“injury” means lasting damage to a tree which has or is likely to have the effect of inhibiting or terminating its growth and “injure”, “injured”, “injuring” have similar meaning;

“maintenance” includes all work or operations related to trimming, pruning, spraying, injecting, fertilizing, treating, cabling and bracing a tree and “maintain”, “maintaining” and “maintained” have similar meaning;

“owner” includes the person holding registered title to land and the person for the time being managing or receiving the rent or paying the municipal taxes on the land in question, whether on his, her or its own account or as agent or trustee of any other person or who would so receive the rent if such were let, and shall also include a lessee or occupant of the land, but where the person holding registered title to land is a condominium corporation, the Owner is the corporation and not its members;

“person” includes any individual, firm, partnership, association, corporation, company or organization of any kind;

“pruning” means the removal of the live branches or limbs of a tree and “prune” or “pruned” have similar meanings;

“remove” means to cut down a tree and “removal” and “removed” have similar meanings;

“right of way” means every road, road allowance and laneway under the City’s authority or jurisdiction, whether opened or unopened and includes the travelled portion of the road, shoulders, curb, ditch, boulevard and sidewalks and all other land between the lateral limits;

“right of way tree” means any tree, where any part of the diameter of the tree is on the right-of-way; and

“tree” means any species of woody perennial plant, including its root system, which has reached or can reach a minimum height of four hundred and fifty (450) centimetres at physiological maturity.

Scope

2. This By-law applies to right of way trees in the City.

Administration

3.-(1) The administration of this By-law is assigned to the General Manager who is also delegated the authority to make all decisions required of the General Manager under this By-law and to perform all administrative functions identified herein and those incidental to and necessary for the due administration of this By-law;

(2) Any Owner may submit to the General Manager a request for the planting, maintenance, or removal of a right of way tree located on the right of way adjacent to the property of the Owner and shall use such form, provide such information and supporting documentation as the General Manager may require to investigate the request and make a determination. The initial request may be made in writing, or orally through the City’s 3-1-1 system, or if available through an on-line process.

(4) Subject to Subsection 5(1), the General Manager shall direct the planting, maintenance and removal of right of way trees in accordance with priorities and processes established by the General Manager from time to time.

(5) The General Manager may delegate the performance of any one or more of his or her functions under this By-law to one or more persons from time to time as the occasion requires and may impose conditions upon such delegation and may revoke any such delegation.

Right of Entry – Remove, Plant, Maintain Trees

4. The General Manager may authorize or direct City personnel together with such Persons and such equipment or facilities as may be necessary, to enter onto land adjacent to a municipal right of way as necessary to inspect, conduct tests on, maintain, remove, or plant a right of way tree.

Approval to Plant Required

5.-(1) The General Manager shall direct the planting of right of way trees by authorized City personnel and in accordance with Schedule “A”.

(2) No Person shall plant a tree of a species on Schedule “B” in a location which is in whole or in part on a right of way.

(3) No Person shall plant, or permit to be planted, a tree in a location which is in whole or in part on a right of way without the prior written approval of the General Manager.

(4) A Person having approval of the General Manager to plant a tree on a right of way shall not plant, or permit to be planted, a tree contrary to any conditions of the approval.

(5) Where a right of way tree is not planted in accordance with this By-law, the Owner of the land adjacent to the right of way on which the right of way tree is planted shall be deemed to have planted the right of way tree or authorized or caused the right of way tree to be planted.

Removal of Unauthorized Tree

6.-(1) Where an Owner has planted or is deemed to have planted a tree contrary to Section 5, the General Manager may give notice in writing to the Owner, at the address shown on the tax roll for the Owner’s property, directing the Owner to remove the tree by the date specified in the notice.

(2) In the event that the Owner does not remove the tree by the date specified in the Notice, the General Manager may cause the tree to be removed and may enter onto the Owner's property without notice to remove the tree. The cost of removing the tree shall be a debt owing by the Owner to the City.

Maintenance of Right of way trees

7-(1) The General Manager shall direct the maintenance of right of way trees by authorized City personnel.

(2) No Person shall prune or engage in other forms of maintenance of a right of way tree without the prior written approval of the General Manager.

Prohibition – Damage to Right of Way Trees

8.-(1) No Person shall:

- (a) injure a right of way tree or engage in an activity likely to injure a right of way tree;
- (b) destroy a right of way tree or engage in an activity likely to destroy a right of way tree;
- (c) affix a poster, notice or sign to a right of way tree;
- (d) affix any guy line or other fastening or fixture to a right of way tree;
- (e) use a right of way tree to secure or support any object, structure or animal;
or
- (f) remove or interfere with any fence, tree guard or other protective device placed around a right of way tree.

(2) Nothing in Subsection 8(1) shall prohibit the removal of a right of way tree by authorized City personnel.

Removal of Trees - Dead or Damaged

9. The General Manager may authorize the removal by City personnel of any right of way tree or branch thereof which the General Manager has determined to be dangerous, damaged, decayed, broken, diseased, dying or dead.

Removal – Healthy Tree

10.(1) The General Manager may authorize the removal of a healthy right of way tree by authorized City personnel where the General Manager determines it to be necessary for municipal purposes or for the purpose of construction or installation of other public utilities, including hydro, gas, cable and telephone.

(2) The General Manager shall, after input from the Ward Councillor, consider an application for the removal of a healthy right of way tree in accordance with Schedule “C” attached hereto and the General Manager shall have the authority to make a final decision, subject to an appeal to the Hearing Committee pursuant to Subsection 11(2).

Notice of Decision

11-(1) The General Manager shall advise the applicant seeking the removal of a healthy right of way tree of his or her decision.

(2) In the event that the applicant is not satisfied with the General Manager’s decision to not remove a healthy right of way tree the applicant shall be entitled to appeal the decision to the Hearing Committee.

(3) In appropriate circumstances, where more than one property is affected by an application to remove a healthy right of way tree the General Manager shall give notice of the appeal to the affected adjoining Owners.

Removal – Process – Right of Entry

12.-(1) No Person shall remove a right of way tree without the prior written approval of the General Manager, except in accordance with Subsection 6(1).

(2) The General Manager may authorize or direct City personnel together with such persons and such equipment or facilities as may be necessary, to enter onto land lying along a municipal right of way as required for the removal of a right of way tree.

Replacement Tree

13. Where the General Manager has authorized the removal of a right of way tree, he or she shall direct the planting of a replacement right of way tree unless the General Manager determines that it is inappropriate in the circumstances to do so.

Offences, Penalties and Costs

14.-(1) Every Person who contravenes any of the provisions of this By-law and any director or officer of a corporation who concurs in such contravention is guilty of an offence and on conviction is liable to a fine as provided for in the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended.

(2) The levying and payment of any fine as provided for under the *Provincial Offences Act* shall not relieve a Person from the necessity of paying any costs or charges for which such Person is liable under this By-law.

(3) Any unpaid costs or charges levied upon a Person under this By-law shall be a debt owing by the Owner to the City and may be added to the Person's tax roll in accordance with the *Municipal Act, 2001*.

(4) No Person shall make a false or intentionally misleading recital of fact, statement or representation in any application form required by this By-law.

(5) This By-law may be enforced by any By-law Enforcement Officer.

(6) No Person shall hinder or obstruct, or attempt to hinder or obstruct, any Person exercising a power or performing a duty under this By-law.

Short Title

15. This By-law may be referred to as the "Right of Way Trees By-law".

Schedules

16. The following schedules are incorporated into and form a part of this By-law:

Schedule "A" - Planting Right of Way Trees

Schedule "B" - Species Not to be Planted on Right of Way

Schedule "C" - Removal of Healthy Right of Way Trees on Request of Applicant

By-law Review

17. Prior to the fifth anniversary of the passage of this By-law and every five years thereafter, the General Manager shall report to Council with any recommended changes to this By-law after consultation with Greater Sudbury Utilities Inc. and with representatives from each of the following City departments, divisions or sections: Roads Division, Parks Services, Legal Services, By-law Enforcement Services; Building Services; Planning Services.

Repeals

18. By-law 2009-250, as amended, of the City of Greater Sudbury is hereby repealed.



Conflict

19. Where a provision of this By-law conflicts with the provisions of another By-law in force in the City, the provision that establishes the higher standard to protect the health, safety and welfare of the general public shall prevail

Enactment

20. This By-law shall come into force and take effect immediately upon the final passing thereof.

READ AND PASSED IN OPEN COUNCIL this 9th day of November, 2011

 Mayor
 Clerk

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PLANTING RIGHT OF WAY TREES

1. The General Manager may authorize the planting on a right-of-way or partly on a right of way of one of the following species of tree:

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

2. Generally one tree will be planted on a standard 50 foot lot.

3. Two trees may be planted on a corner lot.

4. Despite Sections 2 and 3 of this Schedule, the General Manager shall not authorize the planting of a right of way tree in a location where:

- (a) as a result of existing or proposed infrastructure or other circumstances in the area, it is unlikely that a tree will grow successfully or it is likely that any tree planted will be injured or have to be removed;
- (b) as a result of soil and drainage conditions, setback of buildings from the right of way, existing plants and trees, and similar considerations, the proposed location is not suitable for a tree;

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PLANTING RIGHT OF WAY TREES

- (c) the surface of the land is or may become water impervious, negatively impacting the health of any tree planted; or
- (d) the surface of lands covered by water impervious surfaces such as asphalt, concrete, stone or brick may be damaged by the roots or trunk of a tree planted in the area.

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SPECIES OF TREES NOT TO BE PLANTED ON A RIGHT OF WAY

1. No Person shall plant and the General Manager shall not authorize the planting of a tree of the following species on a right of way or partly on a right of way:

Manitoba Maple

Walnut

Butternut

Chestnut

Poplars (all types)

Willows (all types)

Cherry

Silver Maple

Elm all types, except Elm - prospector

Evergreens (all types)

Any fruit bearing tree

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**Removal of Healthy Right of Way
Trees on Request of Applicant**

1. Action to be taken:

Problem	Action Prohibited Species on Schedule B	Action Species other than Prohibited Species on Schedule B
Allergic reactions to tree / sap/ insects / pollen.	Tree will not be removed.* [exception-see below]	
Stress to homeowner caused by fear or dislike of trees and/or branches being blown down in a windstorm; Or Trees drop things on 'their' property such as seeds, fruit, leaves, twigs, sap and insects which require cleanup.	If tree may cause 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 General Manager on consultation with the Ward Councillor, may authorize the removal of the tree.	Tree will not be removed.* [exception-see below]
Trees attract unwanted critters such as wasps, bees, caterpillars, birds, insects, chipmunks, squirrels, etc.	Tree will not be removed.* [exception-see below]	
Roots in sewer, weeping tile or foundation.	If the applicant proves to the satisfaction of the General Manager that sewer lines are being blocked by the roots of the healthy right of way tree, the General Manager, in his or her discretion may arrange to have the sewer re-lined at the City's expense or alternatively arrange to have the tree removed. If the applicant proves to the satisfaction the General Manager that there are roots from the healthy right of way tree in the applicant's weeping tiles or foundation, the General Manager may in his discretion authorize the removal of the tree.	
Tree causes soil shrinkage: roots ruin lawn, tripping hazards, tree at risk of falling.	If the applicant proves by way of a soils report or other evidence satisfactory to the General Manager that hazardous conditions have resulted from soil shrinkage caused by the healthy right of way tree, the General Manager may authorize the removal of the tree.	
Damage by a tree of a Prohibited Species on Schedule B to a house, lawn, vehicles or driveway.	Where it will solve the problem, the tree will be pruned and placed on a future priority list for removal. Where damage cannot be mitigated, the General Manager may authorize the removal of the tree.	Not applicable.

* The tree may be removed if the Owner can prove to the General Manager's satisfaction that the tree poses a health risk, or is causing serious and ongoing damage to property. In those circumstances, subject to Clause 3 of this Schedule, the homeowner shall bear 50% of: (a) the full cost of the removal and; (b) at the City's option, the replanting of another accepted species of tree.

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**Removal of Healthy Right of Way
Trees on Request of Applicant**

2. Replacement of Tree:

Where the General Manager authorizes the removal of a healthy right of way tree for any of the reasons noted above, it shall be placed on a list and removed within twelve months. The removed tree may be replaced at a future date, in accordance with Schedule "A".

3. Owner May Retain Own Contractor:

Despite any requirement in this By-law that work be performed by City personnel, the Applicant may retain his or her own contractor for:

- a) the removal of the tree; and
- b) if directed by the General Manager, the replacement of the tree pursuant to section 13 of this Bylaw,

provided that the contractor's accreditation is approved in advance by the General Manager. In this circumstance, the Applicant shall bear the full cost of removal and replacement.