

Proposing a New Tree Protection Bylaw

ISSUE

City of Saskatoon Policy C09-011, [Trees on City Property](#) (Policy) and corresponding processes have not been sufficient to prevent damage to and the loss of public trees, primarily due to the lack of an effective form of recourse or enforcement. This report outlines key components of a proposed tree protection bylaw. A tree protection bylaw will help improve protection, growth, and preservation of public trees, as well as improve the City of Saskatoon's (City) ability to protect the urban forest.

RECOMMENDATION

That the Standing Policy Committee on Environment, Utilities, and Corporate Services recommend to City Council:

1. That the proposed changes to tree protection, be approved;
2. That the City Solicitor be instructed to draft a tree protection bylaw;
3. That the City Solicitor be permitted to make any consequential amendments that may be identified with respect to other bylaws; and
4. That the City Clerk undertake amendments to Council Policy C09-011, Trees on City Property, as required, in conjunction with the tree protection bylaw, and based on the proposed changes, as outlined in this report.

BACKGROUND

At its October 31, 2022 meeting, City Council approved the City's [Pathway to a Sustainable Urban Forest: Implementation of the Urban Forest Management Plan 2022-2031](#). Protecting the Urban Forest is one of five key action areas to implement the Urban Forest Management Plan, including multiple recommendations with specific focus on the following actions:

- “4.1 Develop a new tree protection bylaw for trees on City property and update existing Council Policy C09-011, Trees on City Property;
- 4.2 Develop a formalized tree protection process that ensures clarity and balance for stakeholders who conduct work near City trees; and
- 4.3 Update and consolidate tree protection specifications for work that takes place near City trees.”

Approach to Bylaw Development

The following content recommended by Administration for inclusion in a tree protection bylaw for public trees was informed by:

- 1) Research of municipal best practices;
- 2) Engagement with developers, home builders, internal stakeholders and subject matter experts;

- 3) Financial considerations;
- 4) Compatibility with current processes; and
- 5) Alignment with strategic priorities.

Municipal Review

Many cities across North America have enacted bylaws to regulate the protection of public trees, including multiple Saskatchewan municipalities (e.g., Regina, Martensville, and Weyburn). The Parks Department researched bylaws and practices from over 20 other jurisdictions to help inform the planned approach for a tree protection bylaw in Saskatoon (see Appendix 1). Most bylaws include tree permitting for work that takes place close to trees; a prohibition against damage to municipally owned trees; incorporation of fines and stop work orders; and requirements for the payment of compensation when trees are injured or destroyed. It is important to note that municipalities in different provinces have different enabling legislation and not all aspects of bylaws from other municipalities can be replicated in Saskatoon.

Engagement

Engagement on a tree protection bylaw took place in February and March 2022 and involved 766 participants (see Appendix 2 for the complete report). Engagement results (internal and external) identified tree protection in public spaces as very important. Additionally, 77% strongly support and 15% support the creation of a bylaw to improve protection of trees on City property. Engagement results also identified support for the following:

- 1) Continue practice of not removing trees for aesthetic or nuisance reasons including casting shade; blocking views; shedding leaves, fruit, or seeds; or damage caused by tree roots;
- 2) Tree protection should extend to natural areas and areas slated for future neighbourhood development; and
- 3) Clear expectations to comply with any new regulations.

Current Processes

Trees on City property are impacted by a number of public and private infrastructure projects. Currently, the City processes which incorporate requirements for tree protection, include: demolition, building relocation, crossing permits, boulevard gardening, civic infrastructure (e.g., curb, road, and sidewalk repair and construction), utility installation and maintenance, and major projects. Appendix 3 outlines current processes that impact public trees and indicates how tree protection processes will improve with a tree protection bylaw.

DISCUSSION/ANALYSIS

Purpose and Application

The purpose of creating a tree protection bylaw (Bylaw) is to sustain the health, beauty, and safety of the City's urban forest by:

- 1) Providing an effective mechanism to protect and preserve trees on City property;

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- 2) Preventing or minimizing destruction, loss, and damage to public trees during development, construction, maintenance, and other activities;
- 3) Specifying the City's tree protection requirements, prohibited activities, and compensation for trees, on City property, that are injured or removed; and
- 4) Ensuring preservation of suitable locations for trees on City property.

The Bylaw will identify the General Manager of the Community Services Division, or designate, as the authority that will be responsible for the administration and enforcement of the Bylaw including the issuance of permits, providing approvals and prohibiting activity, outlining tree protection requirements, and imposing penalties.

The Bylaw will apply to all trees on City property in a manner consistent with the current Policy. It will outline acceptable work in and around public trees and align with the Policy and will not include tree pruning, removal, or relocation for views from private property; constructing driveways; moving buildings or equipment; visibility of commercial signage; casting shade; shedding leaves, seeds or fruit; or damage by tree roots unless determined, by Administration, as necessary.

General Prohibited Activity

The Bylaw will prohibit anyone from causing or permitting injury, destruction, or removal of a tree without prior approval. This will include prohibiting work or placement of heavy equipment or materials on the boulevard near a tree that may damage the tree without prior approval. Approval may be subject to conditions, including payment of the tree's appraised value, removal and replacement costs, and/or replanting costs. To prevent injury, the Bylaw will also prohibit placing items (e.g., signs) on public trees, as well as allow for the removal of unauthorized items, or where possible, require the removal of unauthorized items.

The Bylaw will prohibit tree planting on City property without approval. Approval criteria will include identifying appropriate species and minimum distances from other infrastructure for planting on City property. Approval will be required if members of the community wanted to plant trees in parks and open spaces.

Permits

Permits are common in most tree protection bylaws as the form of approval for damaging or working near trees. They specify what may be done to a tree or how work is to take place around trees. Upon submission of a tree protection plan, which identifies measures to reduce harm to trees, a permit can be issued. The person to whom a permit is issued must comply with the terms of the permit.

Permits will ensure protection of future planting opportunities by establishing setback distances away from proposed infrastructure. For example, planting trees three metres from some infrastructure including driveways, buildings, and utilities. By establishing required setbacks, not only does this reduce injury to the existing tree by reducing damage to critical roots, it also enables tree replacement in that same site in the future.

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Infrastructure projects that impact trees tend to be in two distinct categories: those that impact multiple trees, and those that impact few trees at a single location. Given the differing number of trees and the differing impacts, these will be reflected in two different types of permits:

1. Tree Permit

Tree permits will be applied to most development and infrastructure projects that impact a few trees at a single location (e.g., infill development, driveways, park development, and landscaping). Permits will include conditions and timeframes for site access. Conditions will include installation of anti-compaction measures (rubber mats, plywood) and installation of protective barriers to protect branches, roots, and the trunk. Permits may also require tree replacement and/or compensation if a given project is incompatible with the existing trees and the project receives City approval to remove or injure a tree. The Bylaw will enable an administrative fee to support the permit process.

2. Blanket Multi-Tree Permit

Multi-tree permits will typically apply to projects that are likely to impact many trees along a right of way or in a natural area (e.g., sidewalk renewal or installation of utilities). This permit will relay expectations for tree protection over the course of a season and ensure contractors and subcontractors are following a consistent, approved tree protection process when working around public trees.

To align with other municipal services, tree permitting could be completed in the ePermitting platform, which is the system being used to facilitate Building and Development Permit workflows, but more exploration is needed to understand the best options.

Situations Where the Bylaw Will Not Apply

The approval process will encompass all work adjacent to trees on City property, but the Bylaw will not apply to some trees and situations, including:

- Trees on land owned by the City that will be developed by private developers and sold by the City to become private property (such as land slated to become private residences in new neighbourhoods);
 - The Bylaw will not apply in this situation so that there is alignment with private developers developing private land who will not be restricted by the Bylaw with respect to trees on that private land;
- Volunteer trees (those grown from seed or suckers) on City property in alleyways that are immediately adjacent to private property;
- Public trees in areas that have superseding management plans (e.g., South Saskatchewan River Valley) that have been approved by the Parks Director or designate, and which outline specific tree protection, management, and replacement measures unique to those areas.
- Landscaping adjacent to public trees that does not involve heavy equipment (e.g., hand digging, mowing).

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- Situations where a municipal bylaw cannot prohibit an entity from doing work due to provincial or federal legislation.

Compensation

Any funds related to compensation will be directed to the deferred tree replacement account. The Deferred Tree Replacement Account is a reserve fund established through the Policy, which states, in part:

“The City will establish a fund to retain any monies received for compensation with respect to trees on City Property and the fund will be utilized for the purposes of tree replacement or enhancement of the urban forest.”

When conflicts cannot be mitigated through communication and collaboration and the City grants approval for trees to be relocated, injured, or removed, the Bylaw will enable the City to require compensation. The value of a tree will be defined by a compensation formula in the “Guide for Establishing Values of Trees and other Plants”, as adopted by the International Society of Arboriculture. Monetary compensation requirements will be reduced based on City-approved replacement tree planting and the installation of planting infrastructure, such as irrigation on City property.

Penalties

While the Bylaw will help the City address non-compliance issues and effectively collect compensation, when necessary, the City’s enforcement approach will prioritize education and collaboration as the primary courses of action. However, the Bylaw will still specify fine/penalty amounts, ticketing for certain offences (e.g., failure to install adequate tree protection), and allow for the issuance of orders to remedy contraventions, including stop work orders when imminent dangers exist (e.g., a risk of tree failure). In cases where it is warranted, the Bylaw will provide clear language for applying penalties and pursuing legal action in cases where intentional damage to trees has occurred.

Update to the Council Policy, C09-011, Trees on City Property

The Policy will be amended to outline requirements for work the City does around trees on City property. Similar to the bylaw, the Policy will require City departments engaging in work that will or may damage City trees to first acquire approval of the General Manager of Community Services or their designate including determination of a dead, dying, infected or infested tree. The Policy will authorize the General Manager of Community Services or designate to determine situations where a City department is not required to seek approval or may provide blanket approval. Additionally, the General Manager or designate will identify through a process similar to that outlined in the bylaw, situations where compensation may be required.

Updates to the Policy will ensure that it is consistent with the proposed tree protection bylaw.

FINANCIAL IMPLICATIONS

Based on current tree protection practices and potential impacts of the Bylaw, Administration anticipates 375 to 550 tree permit applications per year. Additional tracking in 2023 will help to further refine the estimated number of permits and the overall operational impact of the Bylaw.

The Bylaw will require both capital and operating resources for effective implementation. This will include existing resources that will be redirected to support the Bylaw and related processes (e.g., education and issuance of permits). Administration estimates there will be a need for additional resourcing, which may include one additional Forestry Technician.

A fee for permitting can be implemented to help offset the cost implications of the Bylaw. However, as part of the phase in, Administration is recommending there be no fee to help encourage stakeholder participation, assess resource needs, and address any challenges with the new process.

If City Council approves the development of a tree protection bylaw, a future report will be brought forward detailing the existing funding sources, reallocation of staff, and new resources needed, which would be considered during the 2024/25 Business Plan and Budget review process.

COMMUNICATION AND ENGAGEMENT

Communication resources will be necessary to properly implement the Bylaw. A communication plan will need to be developed with a focus on education that clearly outline the elements of the bylaw and associated processes. As was indicated during public engagement in 2022, key stakeholders will need to clearly understand the expectations and the necessary tree protection processes.

OTHER IMPLICATIONS

Environmental Implications

Climate change is one of the biggest risks to Saskatoon's green network, which includes the urban forest. Climate change projections for the region indicate an increased risk for the urban forest, specifically through more pests, higher temperatures and changing precipitation patterns like drought and storms. Further, deterioration of the City's urban forest may increase the likelihood of the urban heat island effect, which can create temperatures on hard surfaces, like pavement, that are considerably hotter than the air.

Protecting trees with better and more effective tools can, in turn, provide the following environmental benefits:

- 1) Improve air quality by absorbing pollutants and capturing airborne particulates on leaf and stem surfaces;
- 2) Reduce air temperature through shading and evapotranspiration;
- 3) Improve water quality by slowing the movement of stormwater to drains and sewers, thereby reducing pollutant loading;

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- 4) Reduce flooding and soil erosion by absorbing rainwater in soils and roots and capturing it on leaf and stem surfaces;
- 5) Mitigate climate change through atmospheric carbon storage and sequestration and reducing energy consumption through shading and windbreak; and
- 6) Provide wildlife habitat and ecological connectivity.

A Triple Bottom Line review is in Appendix 4.

There are no privacy or social implications identified.

NEXT STEPS

Upon approval by City Council of the proposed recommendations, the Parks Department will work with the City Solicitor to draft the necessary bylaw and with the City Clerk to modify the Policy to complement the new Bylaw. Other City bylaws, such as The Traffic Bylaw, make reference to City trees and the City Solicitor will prepare consequential amendments to those bylaws, if necessary.

The next report, in the first quarter of 2023, will update City Council on the progress associated with development of the draft Bylaw and provide detailed information on the capital and operating resources required to effectively implement and operate the bylaw beginning in 2024. It is anticipated the Bylaw will be complete and provided for City Council consideration in fourth quarter of 2023. Administration will explore options to support the permitting process, continue to educate and update stakeholders on tree protection specifications, and plan for a phased-in approach to bylaw implementation.

APPENDICES

1. Review of Tree Protection Bylaws in Other Municipalities
2. Engagement Report – Proposing a New Tree Protection Bylaw
3. Current Tree Protection Processes
4. Triple Bottom Line Review – Proposing a New Tree Protection Bylaw

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