



Meeting 2007 June 18

COUNCIL REPORT

ENVIRONMENT COMMITTEE

*HIS WORSHIP, THE MAYOR
AND COUNCILLORS*

SUBJECT: TREE BYLAW REVIEW (BYLAW NO. 10482)

RECOMMENDATIONS:

1. **THAT** Council approve amendments to the Burnaby Tree Bylaw, as outlined in Section 4.0 of this report.
2. **THAT** Council authorize staff to pursue further research and development of proposals for possible additional tree protection initiatives, as outlined in Section 5.0 of this report.

REPORT

The Environment Committee, at its Open meeting held on 2007 June 12, received and adopted the *attached* report providing an overview of the Burnaby Tree Bylaw. The Committee advised that the Tree Bylaw fulfills the intended mandate for which it was created, providing a tool to assist in the protection of trees on single and two family developments within the city. However, issues of compliance, enforcement alternatives, bond management and supporting procedural changes have been identified. These issues are based on experience in administering the bylaw and responding to inquiries from the community since its inception in 1996.

The Committee noted that the proposed amendments to the Tree Bylaw would increase both the effectiveness of the Tree Bylaw and the ability of staff to promote appropriate tree replacement in residential development projects through the provision of supplemental tools for staff to encourage and enforce timely compliance.

:COPY – CITY MANAGER DIRECTOR PLANNING & BUILDING DIRECTOR ENGINEERING DIR. PARKS, REC. & CULTURAL SERV. DIRECTOR FINANCE CITY SOLICITOR

To: His Worship, the Mayor and Councillors
From: Environment Committee
Re: Tree Bylaw Review (Bylaw No. 10482)
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The Committee concluded by proposing that staff be authorized to pursue further research and development of proposals for potential future expansion of tree protection initiatives. The further research would include a comparison of municipal tree bylaws throughout the Lower Mainland, with special interest paid to how each addresses issues of neighbourhood aesthetics and benefits, landmark tree protection, habitat continuity, habitat protection and stormwater retention.

Respectfully submitted,

Councillor Dan Johnston
Chair

Councillor Pietro Calendino
Vice Chair

Councillor Lee Rankin
Member

TO: CHAIR AND MEMBERS
ENVIRONMENT COMMITTEE **DATE:** 2007 June 07

FROM: DIRECTOR PLANNING AND BUILDING **FILE:** 42000 – 01
Ref: *Burnaby Tree Bylaw*

SUBJECT: TREE BYLAW REVIEW (Bylaw No. 10482)

PURPOSE: To provide a review of the Burnaby Tree Bylaw.

RECOMMENDATIONS:

1. **THAT** Council be requested to amend the Burnaby Tree Bylaw, as outlined in Section 4.0 of this report.
2. **THAT** Council be requested to authorize staff to pursue further research and development of proposals for possible additional tree protection initiatives, as outlined in Section 5.0 of this report.

REPORT**1.0 INTRODUCTION**

The *Tree Bylaw* was enacted by Council on 1996 November 12 in response to increasing community concerns about the unnecessary removal of trees on single and two family lots during the construction of new dwellings or demolition of existing dwellings and the amendment of the Municipal Act to give municipalities the power to regulate tree protection. A review of the tree protection issue received by Council on 1998 April 20 revealed a continuing tension between community interests to retain existing trees, and reluctance among many property owners and residential developers to protect trees or to plant replacement trees.

At the 2005 July 25 Council meeting, Council received a delegation that raised concerns about the effectiveness of the *Burnaby Tree Bylaw* for protecting trees on private property. In response to the delegation's concerns, at its 2005 August 15 meeting, Council received a report on the *Burnaby Tree Bylaw* (1996). That report indicated that staff would undertake a review of the application of the bylaw. This report presents the results of the review undertaken.

2.0 CURRENT BURNABY TREE BYLAW AND TREE PROTECTION POLICIES

The *Tree Bylaw* and several other policies and procedures are in place that require or encourage tree retention and replacement by private and public land owners. These policies include the City's Tree Management Policy for Public Lands (1989), the tree protection measures provided by riparian area protection regulations administered by the Environmental Review Committee, and tree retention and landscape tree planting as part of landscape plans submitted to satisfy CD rezoning processes.

1995 March 22, the Draft Tree Bylaw Proposal report was received by Council. This report recommended the current Tree Bylaw based on the following four principles:

- **A Balanced Approach**

The bylaw should provide a balance between allowing for the reasonable use and enjoyment of private property and yet address public concerns about the need to protect trees.

- **Reasonable Cost**

The bylaw should not impose an unreasonable and onerous financial burden on land owners or on the City in administering the bylaw.

- **Simplicity and Effectiveness**

The bylaw should be easily understood by the public and capable of effective enforcement.

- **The Urban Forest**

The bylaw should recognize that trees on private and public lands are an important component of the urban forest and ecology of the City.

The following provides a brief description of the existing Tree Bylaw and other measures used to require or encourage tree retention.

2.1 Burnaby Tree Bylaw

The *Tree Bylaw* was adopted in 1996 to address concerns about tree removal on private residential property at the time of property redevelopment. The bylaw has successfully balanced the community interests for tree protection and the removal of trees for development and building on single and two family residential properties.

The bylaw was enacted in response to increasing community concerns about the unnecessary removal of trees on single and two family lots during the construction of a new residence or the demolition of an existing residence. The bylaw was created with the intention of striking a balance between tree retention and site needs for new development.

The *Tree Bylaw* provides the City with the ability to review trees on a development site and to require suitable existing trees be retained during

development. When trees are removed with permit, the *Tree Bylaw* requires replacement trees. No permit is required to prune trees on private property. As well, emergency pruning or removal of a hazard tree requires no permit. Tree replacement is secured by funds on deposit with developers and landowners.

The *Tree Bylaw* defines a "protected tree" as: a tree located on a residential lot with diameter greater than 20.3cm (8"); a covenanted tree; a tree or plant within 15m of a watercourse or ravine top of bank; a tree on a Cemetery (P4) lot; or a replacement tree that has been replanted in respect of the Bylaw. A permit is not required to cut down a protected tree within 1.5 m of the footprint of a building, or to remove a tree on a residential lot if the existing house is more than one year old, and an application for a demolition permit is not received for that house within the following three months. In most cases, therefore, trees on residential lots are not protected from removal if the existing house is more than one year old.

The *Tree Bylaw* applies to single and two family (R) zoned properties. Tree protection on other properties (RM, C, M, P) relies on tree retention and landscape plans submitted in relation to the development of these properties. Tree protection on City owned properties, including parks and street boulevards is governed by the *Burnaby Tree Management Policy*.

Overall, the *Burnaby Tree Bylaw* has been successful in its intent to strike a balance between community desires for tree retention during residential development, and the ability of individual owners to manage and maintain landscaping on their private property.

2.2 Other Private Lands

For lands other than single and two family properties, during the development approval processes, the retention of trees and other existing vegetation is encouraged through the requirement of a detailed landscape plan for rezoning of a site to the Comprehensive Development District. These landscape plans include a tree survey, and management procedures for protection of vegetation and trees to be retained on the development site.

Restrictive covenants are used to protect identified specimen trees or areas of mature trees to be protected. Financial security is taken based on the assessed value of the trees to ensure that the trees are adequately protected during construction. This is retained for one year after construction is completed and the City is sure that the trees planted and retained are in good condition. If, on inspection, trees are damaged or in poor condition, compensation is required to be undertaken prior the security deposit being returned to the developer. All landscaping on Comprehensive Development sites is protected once a landscape plan has been approved and accepted.

Trees lining watercourses on both public and private properties are managed through the administration of the *Fish Protection Act*. Under this Act and regulations there to, and S.6.23 of the Zoning Bylaw, and according to the *City of Burnaby's Guidelines for Building near Water courses*, riparian vegetation, including trees, is protected or planted along watercourses as determined through the Environmental Review Committee process. Riparian areas and associated landscaping are protected by covenant and security bonding taken as a precondition for approval of development considered through the ERC process.

2.3 Public Lands

The City's tree management practice for public lands was established in the *Tree Management Policy for Public Lands* (1989). Tree management on City Park lands and along road rights of way provides for the removal of trees which are considered to be unhealthy or potentially hazardous to adjacent private property or to the public. Under this policy, trees are not to be removed or topped for the purpose of preserving or improving views or to eliminate either leaf litter or shading. Park and Public Use District (P3) zoning designations, as well as park dedications, have also been used to protect large forested areas and ravines.

3.0 BYLAW IMPLEMENTATION STATISTICS AND DISCUSSION

The following tables summarize the results of the implementation of the *Tree Bylaw* since its creation in 1996.

Table 1 summarizes the number of tree permits issued in the City of Burnaby since 1996. For the purposes of this discussion, replacement trees are those trees which are required to be planted as part of the Tree Bylaw permit on properties following the completion of construction.

Table 1: Number of Tree Permits Issued, Trees Removed and Replacement Trees Planted by Year (as of 03/15/2007)

YEAR	Sites Requiring Tree Permits	Total # of Trees Protected	Total # of Trees Removed	Total # of replacement Trees
1997	170	153	451	158
1998	118	145	400	103
1999	150	229	461	128
2000	196	156	755	211
2001	195	294	716	173
2002	293	358	1,132	291
2003	304	363	1,135	325
2004	296	342	1009	282
2005	245	160	816	264
2006	248	240	799	277
Total	2,215	2,440	7,674	2,212

The number of tree permits issued has generally increased over the last 10 years, in line with development activity, with a total of 2,215 permits issued. The number of protected and replacement trees each total 2,440 and 2,212 respectively. On average, two trees remained or were planted on properties which underwent development during this period. Trees removed under permit during the 10 years since the bylaw went into effect allowed for development of the lots in accordance with the prevailing single and two family zoning.

Table 2 summarizes the success of tree replacement requirements as part of the bylaw over the last 10 years.

Table 2: Tree Replacement Success by Year (as of 03/15/2007)

YEAR	Total Required Replacement Trees	Trees Planted to Date	% Unplanted to Date
1997	158	134	16%
1998	103	90	13%
1999	128	112	13%
2000	211	178	16%
2001	173	148	15%
2002	291	232	21%
2003	325	263	19%
2004	282	182	36%
2005	264	110	58%
2006	277	0	100%
Total	2,212	1,449	35%

Timing of tree replacement has been observed to occur on average between one and three years following the issuance of a tree permit. Three years is considered to be a reasonable time for a developer or homeowner to complete the development or building process, and provide for planting of the required replacement trees. Sites where trees are not planted after 3 years are considered to be in non-compliance with the Bylaw. The number of trees remaining unplanted between 1997 and 2003 average 17%, approximately 33 trees not planted as replacement trees per year. Those properties where development began in 2004 are still in the building process and are not considered to be in non-compliance.

Table 3: Tree Replacement Compliance Percentages by Year (as of 03/15/2007)

YEAR	Sites Requiring Tree Permits	Files in Compliance	% Non-compliance To Date
1997	170	152	11%
1998	118	110	7%
1999	150	138	8%
2000	196	179	9%
2001	195	181	7%
2002	293	258	12%
2003	304	258	16%
Sub-total	1426	1276	11%
2004	296	227	24%
2005	245	108	66%
2006	248	0	100%
Total	2,215	1,503	32%

The number of tree permit sites attaining Bylaw compliance has varied over the last 10 years. Those files which have not reached compliance after three years following completion of the development undertaken are considered in non-compliance. The number of non-compliant files, between the years of 1997 and 2003, are approximately 20 non-compliance files per year, an average of 10% per year, for each of those 7 years.

While there are opportunities to plant additional trees throughout the city, ongoing development requires a tradeoff between maintaining tree cover and expanding residential and commercial spaces. The numbers above do not reflect the numbers of trees maintained and planted in City parks, the addition of street trees, natural tree growth, or those planted by property owners outside of the tree permit process.

4.0 IDENTIFIED BYLAW ISSUES AND RECOMMENDATIONS

Staff responsible for the implementation and administration of the bylaw have identified a number of issues that can be addressed to improve the effectiveness of the Bylaw with regards to tree selection, bond management, enforcement, and scope of the bylaw. These issues are based on their experience administering the bylaw and responding to inquiries the community.

The identified issues are discussed below together with recommendations for bylaw amendments. The recommendations seek to increase the effectiveness of the bylaw and improve the ability of staff to implement timely and appropriate tree replacement in residential development projects.

4.1 Original Principles of the Tree Bylaw

As previously outlined, the *Tree* Bylaw is based on the following 4 principles:

- **A Balanced Approach**

The bylaw should provide a balance between allowing for the reasonable use and enjoyment of private property and yet address public concerns about the need to protect trees.

- **Reasonable Cost**

The bylaw should not impose an unreasonable and onerous financial burden on land owners or on the City in administering the bylaw.

- **Simplicity and Effectiveness**

The bylaw should be easily understood by the public and capable of effective enforcement.

- **The Urban Forest**

The bylaw should recognize that trees on private and public lands are an important component of the urban forest and ecology of the City.

It is the view of staff that these 4 principles should continue to provide the foundation for the City's *Tree Bylaw*, albeit accommodating the current pressures of development within an increasingly urban setting.

4.2 Regulatory Issues and Recommendations

The following amendments to the *Tree Bylaw* are proposed to provide additional tools for staff to encourage and enforce compliance. Proposed changes to the size of trees that can be planted is expected to generally encourage greater compliance, as well as enhance tree diversity and habitat. In addition, issues of bond management and enforcement are central to the effectiveness of the bylaw, and are generally intertwined. As such, the proposals for changes to bond management procedures seek to address apparently abandoned bond funds, as well as to support Bylaw enforcement efforts.

4.2.1 Tree Selection

Replacement tree species selection was identified as a significant issue by staff. Tree replacement requirements, stipulated in Section 14 of the Bylaw, apply to the removal of a protected tree or other contravention of the bylaw. Replacement tree size and species can be prescribed by staff where tree replacement is a condition of a tree cutting permit. By practice, the prescribed replacement tree sizes specified in the Bylaw have become the recommended replacement tree standard for all replacement trees.

Due to the tree sizes prescribed in the bylaw, coniferous species not less than 3m (9.843 ft.) in height, and deciduous species, not less than 8cm (3.15 in.) in diameter, two tree species, Cedar and Cherry trees, are planted most commonly due to their availability and affordability in the required size at most garden centers. As a result, a narrow variety of species of trees are planted, limiting the diversity of the available habitat potential of trees in residential areas, and potentially increasing the threat of wider tree loss from disease.

By providing for an option in the Bylaw for smaller replacement trees, a larger, more affordable selection of appropriate tree species for replacement planting would be able to be used. This larger selection of available varieties would provide for greater food and habitat values for birds, more diversity of plantings, and improve overall bylaw compliance.

As such, it is recommended that Section 14 of the *Tree Bylaw* be amended to allow for:

Replacement trees are to be at least the following sizes. Coniferous trees at a height of 6' (2m), and deciduous trees at a diameter of 2" (5 cm).

2 replacement trees having a diameter of 1" (2.5 cm) would be appropriate for planting in lieu of a larger deciduous tree, as specified above, if the species selected is only available at a smaller size (i.e. fruit trees, commonly requested, tend to only be available as small diameter trees).

The following list outlines the tree species most commonly available in the 1" diameter size: Ornamental Cherry, Dogwood (Florida, Kousa, and Pacific) Crab Apple, Hawthorn, all forms of Magnolia, some Maple (Japanese, Vine, Amur, David's, Paperbark), Stewartia, Japanese Snowbell, and fruit trees of all sorts.

4.2.2 Enforcement and Bond Management

The taking and retention of tree planting bonds (cash on deposit) is the primary tool used to enforce tree Bylaw retention and planting requirements. Staff have, however, identified the following challenges with bond management:

First, bond refunding does not occur in 10% of cases due to a lack of compliance with the Bylaw, or a lack of contact with the builder after full compliance with bylaw requirements has occurred. The issue of delayed or ignored tree replacement is made more complicated by ownership transfer following property sale as responsibility for tree replacement remains with the developer who provided the bond, while control of access to the property rests with the new owner. As a result, the bonds are essentially abandoned and remain on deposit with the City.

Second, there is not a mechanism to encouraging the timely compliance with the bylaw, as funds are simply held pending completion of the required tree planting or remediation. This, in of itself, leads to a greater likelihood that bonds will be abandoned, as outlined above.

Third, there is no means or process to provide for the closure or cashing out of abandoned bond funds. Abandoned bond funds simply remain on deposit with the City.

To address these inter-linked issues, staff are proposing:

- To reduce the likelihood of bond funds being abandoned and to achieve a greater level of compliance with the bylaw, by establishing a specific time limit of 1 year after issuance of the occupancy permit for installation of replacement trees.
- To establish a time limit of 1 year following the issuance of the occupancy permit, and without other notification of delay by the developer, after which the tree permit would be considered to be non-compliance. At that point, the

bond (cash on deposit) would be retained by the City and transferred to a City operating account.

- To provide for the expenditure of abandoned bond funds retained by the City by:
 - First, making the abandoned bond funds available to the current property landowner, after planting of the required replacement trees as required under the permit. This would give the option for the current owner to bring the property into compliance and to receive compensation in terms of the return of the bond amount to that current owner.
 - Second, should the current owner be unwilling to plant the replacement trees in exchange for the bond amount, those specified funds would be expended from the account by City crews to plant replacement street trees within City road rights-of-way in areas of the City, with preference given to planting in the immediate neighbourhood of the subject tree permit.

To achieve these objectives, it is recommended that Section 7 of the *Tree Bylaw* be amended the same or similar to the following:

After 1 year following issuance of the occupancy permit, outstanding bonds will be considered to be deemed to have been abandoned and may be used by the City to undertake other tree replacement or management activities.

5.0 CONCLUSION

The *Tree Bylaw* fulfills the intended mandate for which it was created, providing a tool to assist in the protection of trees on single and two family developments within the city. However, issues of compliance, enforcement alternatives, bond management and supporting procedural changes have been identified by staff. These issues are based on experience in administering the bylaw and responding to inquiries from the community since its inception in 1996.

The proposed amendments to the *Tree Bylaw* contained in this report would increase both the effectiveness of the *Tree Bylaw* and the ability of staff to promote appropriate tree replacement in residential development projects through the provision of supplemental tools for staff to encourage and enforce timely compliance.

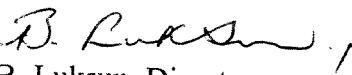
Currently, the bylaw does not address tree protection on private single and two family residential properties that are not in the development process, or other tree management issues such as neighbourhood aesthetics, landmark tree protection, habitat protection and stormwater retention.

To: Environment Committee
From: Director Planning and Building
Re: Tree Bylaw Review (Bylaw No. 10482)
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Recently, many municipalities have undertaken a tree bylaw review processes to develop approaches to address a broader range of tree management issues. This has resulted in the expansion of the scope and intent of tree bylaws. While it is recognized that many of these initiatives would have implications in terms of development impacts and draw on City administration resources, it is proposed that staff be authorized to pursue further research and development of proposals for potential future expansion of tree protection initiatives.

This further research would include a comparison of municipal tree bylaws throughout the Lower Mainland, with special interest paid to how each addresses issues of neighbourhood aesthetics and benefits, landmark tree protection, habitat continuity, habitat protection and stormwater retention.

The existing Bylaw would continue to provide tree protection on private single and two family residential lots during the development process. With the approval of Committee and Council, staff will investigate additional potential tree management measures which fit with the original Tree Bylaw principles.


B. Luksun, Director
PLANNING AND BUILDING

BM/jc/sa

Copied to: City Manager
Director Engineering
Director Parks, Recreation & Cultural Services
Director of Finance
City Solicitor
City Clerk