SUBJECT: City of Hamilton Public Trees By-law (PW06034a) - (City Wide)  
Public Works, Infrastructure & Environment Committee Outstanding Business Item “O”

RECOMMENDATION:
That the following recommendations be approved in addition to those contained within Report PW06034:

(a) That Section 4(2) of the proposed City of Hamilton Public Tree By-law be deleted.

(b) That Section 1(1)(q) be deleted from the proposed City Hamilton Public Tree By-law.

(c) That Section 1(1)(v) of the proposed City of Hamilton Public Tree By-law be deleted and replaced with:

“Planning and Economic Development Department refers to the Planning and Economic Development of the City of Hamilton and includes its successor.”

(d) That By-law 4513-99 (Dundas) as amended be further amended by deleting and replacing Section 3(e) with the following:

“Trees overhanging onto private land from abutting private lands are specifically included under the control of this By-law.”

(e) That Section 1(d) of the City of Hamilton Street Tree Planting Policy - Planning and Design (Report PW06034, Appendix “B”) be deleted and replaced with:

“Curb Face Sidewalk Setback: Tree plantings adjacent to curb face sidewalks must achieve a minimum setback of 1.0 m from the back of the walk (and remain in the road allowance)"

(f) That Section 1(d) of the City of Hamilton Street Tree Planting Policy - New Developments (Report PW06034, Appendix “D”) - the Planting Layout Regulations be deleted and replaced with:
“Curb Face Sidewalk Setback: Tree plantings adjacent to curb face sidewalks must achieve a minimum setback of 1.0 m from the back of the walk (and remain in the road allowance).

(g) That Section 1(j) of the City of Hamilton Street Tree Planting Policy - New Developments (Report PW06034, Appendix “D”) - the Planting Layout Regulations be deleted and replaced with:

“Tree Spacing: Larger, maturing trees should be spaced a minimum of 10 m apart and smaller maturing trees a minimum of 6 m apart.”

(h) That the Public Tree Removal Provisions - General Application Section of the City of Hamilton Street Urban Reforestation Policy - Municipally Owned Lands (Report PW06034, Appendix “E”) be deleted and replaced with:

“Any person, contractor, owner, or Department of the City of Hamilton shall ensure that the required permission is sought before undertaking the removal of any public trees. If permission is granted, the requestor shall be responsible for paying the total removal and replacement cost (as applicable) for each tree removed as outlined in the “Tree Removal Estimation” equation and the “Tree Replacement Estimation” equation below.

Any person, contractor, owner, or department of the City of Hamilton who damages or injures a public tree on public property shall be responsible for paying the replacement and removal cost of each tree (as applicable) as outlined in the “Tree Removal Estimation” equation and the “Tree Replacement Estimation” equation below.

Any person, contractor, owner, or department of the City of Hamilton who removes a public tree shall be responsible for reimbursing the Forestry and Horticulture Section for the replacement cost of each tree as outlined in this policy.”

(i) That the Public Tree Removal Provisions - Related to Landscape Budgets Section of the City of Hamilton Street Urban Reforestation Policy - Municipally Owned Lands (Report PW06034, Appendix “E”) be deleted and replaced with:

“(b) If the approved landscaping budget for tree planting is less than the cost for tree replacement costs (as calculated based on the estimation equation below), the contractor, developer or department will be required to pay the variance between the approved budget allocation and the costs for tree replacement to the Forestry and Horticulture Section.”

(j) That the notification requirements of the City of Hamilton Public Tree Removal Policy - (Report PW06034 Appendix “G”) be deleted and replaced with:

"2. Where trees are still in leaf, but have been approved for removal in accordance with the terms of the by-law and associated policies, a registered letter will be sent to the owner advising of the tree removal. A second registered letter will be sent to the affected property owner should the tree fail to be removed within six months of the date of the original registered letter."
(j) That the proposed City of Hamilton Public Tree By-law and the City of Hamilton Urban Reforestation Policy shall not apply to site plan or consent applications that have received conditional approval or approval prior to the date of the enactment of the proposed Public Tree By-law, provided that the existing public trees are removed within one year of the enactment of the Public Tree By-law and associated policies.

(k) That the proposed City of Hamilton Public Tree By-law and the City of Hamilton Urban Reforestation Policy shall not apply to any subdivision applications with complete engineering submissions submitted prior to the enactment of the Public Tree By-law and associated policies, or where previous approval has been obtained from the City under the current tree by-law, provided the existing public trees are removed within one year of the enactment of the Public Trees By-law and associated policies.

(l) That all lands dedicated to the City of Hamilton for road and roadway widening purposes as a condition of all Planning Act approvals, be exempt from the City of Hamilton Public Tree By-law and the City of Hamilton Urban Reforestation Policy

(m) That the first paragraph of the City of Hamilton Street Urban Reforestation Policy - Municipally Owned Lands (Report PW06034 Appendix “E”) policy be amended to read:

“This policy forms part of the City of Hamilton Forestry Management Plan. In addition to the regulations listed in By-law 06###, and in the City of Hamilton Public Tree Removal Policy, the provisions of this policy shall apply to all public trees on public property under the jurisdiction of the City of Hamilton, except in those circumstances where exemptions as outlined in Report PW06034a under the Transition Policy and Additional Exemptions Section have been permitted. All definitions listed under Section 1 of By-law 06### are deemed to have the same meaning and application in this policy. It should be noted that reimbursement for the total removal and replacement cost shall be sought by the Public Works Department.

(n) That Outstanding Business Item O referred from the Public Works, Infrastructure & Environment Committee meeting of February 20, 2006, be removed from the Outstanding Business List.

_______________________
Scott Stewart, C.E.T.
General Manager
Public Works
EXECUTIVE SUMMARY:

At the March 6, 2006 meeting of the Public Works, Infrastructure and Environment Committee, the Committee approved the following motion:

(a) That Item 7.2 respecting City of Hamilton Public Trees By-law be referred back to staff for review and report back to the next Public Works, Infrastructure and Environment Committee Meeting addressing the Committee’s input.

(b) That the rural components of the By-law and policies be referred to the Agriculture and Rural Affairs Committee for review and comment.

This report serves to address the concerns raised at the meeting.

BACKGROUND:

The information/recommendations contained within this report have City wide implications and serve to address the various issues and concerns raised through the Committee’s review of Report # PW06034 respecting the consolidated Public Trees By-law and to provide supplementary recommendations as required.

Authority of the Director

The provision for “Authority of the Director” as outlined in the provision of the proposed By-law was challenged vis à vis “policy changes”. Staff has reviewed the “Authority of the Director” as outlined in the By-law and in keeping with the suggested amendment, recommends that Section 4(2) be struck from the By-law. Staff will report to Council as it relates to changes to any policies associated with the Forestry Management Plan. All requests for policy changes will be subject to the approval of Committee and/or Council.

Natural Areas

The issue of site specific policy protection for natural areas was raised (relative to the Dundas By-law 4586-99). Staff has reviewed the matter and prefers the generic provision within the Public Tree By-law and the Parks By-law to control tree planting/removal, grounds maintenance, and encroachment on City property for ease of administration. As such, staff recommends that By-law 4586-99 be repealed given that the regulatory provisions of this particular By-law are mirrored in both the proposed City of Hamilton Public Tree By-law and the City of Hamilton Parks By-law (01-219).

Similarly, within the framework of the new Public Tree By-law, regulations governing the planting of trees on public property have been addressed (refer to Sections 11, 12, and 13 of the proposed draft By-law). Additionally, the City of Hamilton Parks By-law 01-219 Section 8(b) prohibits the breaking, injuring, defacing, moving, or removal, in whole or in part of any flowers, plant material, trees or other vegetation or any building, structure, equipment or other property of the City. Staff believes that these provisions parallel those outlined in Dundas By-law 4502-99. As such, there is no need to maintain a region specific By-law.

Dundas By-law 4502-99

Concerns were raised relative to repealing By-law 4502-99 and its references to preferred species for tree planting, and the notification/consultation with the Business Improvement Areas (BIA), and Heritage District Advisory Committees (HDAC).
To address these concerns, and in the interest of ensuring that By-law 4502-99 is repealed in order to streamline and consolidate the By-laws and policies of the former municipalities into one comprehensive document, staff will continue consult with affected Business Improvement Areas (BIA) and Heritage District Advisory Committees (HDAC) when undertaking the planting of any trees in their areas (as has been the practice in the past). Staff will work with the BIA and HDAC in the selection of trees (from the approved list of tree species for the City of Hamilton) as suited to the streetscape and community characteristics of a given area.

**Dundas By-law 4513-99**

By-law 4513-99 prohibits the injury or destruction of trees in areas in the Town of Dundas predominantly on private property. Concerns were raised relative to a Section 3(e) which references trees overhanging onto private land whether they are on public land or on an abutting private property area as falling under the jurisdiction of the By-law. The reference to public land was an oversight by staff, and will be included in the list of repeals in the new City of Hamilton Public Tree By-law. The wording of Section 3(e) will be reworded to exclude reference to those trees on “public land”.

**Transition Policy and Additional Exemptions**

In Report PW06034, under the “Relevant Consultation Section”, staff advised that: “Representatives from the Hamilton Home Builder’s Association have requested an exemption from this By-law (and associated policies) whereby they would not be required to compensate the City for any trees that are removed, injured or destroyed on those lands which are conveyed to the City to serve for the creation of a future roadway in the development of a new subdivision. As currently written, all parties (including employees and agents of the City) are required to compensate the City when they are responsible for the removal, injury or destruction of any public tree. Providing an exemption (either to internal or external parties) would set an unfair precedent and nullify the uniformity and streamlined regulations that the By-laws and associated policies seek to impose. As such, staff is not supportive of this request.”

Additionally, Report PW06034 stated that “The representatives from the Hamilton Home Builder’s Association has also inquired as to the implementation of this By-law and associated policies (related to development plans which have been submitted for approvals). Staff supports the full implementation of the By-law and related policies immediately upon Council approval with the exception of currently approved applications.”

Generally, concerns were raised relative to the implementation of the Public Trees By-law and whether it will be applied retroactively or whether the City intends to include a transition provision. In particular, concerns were raised for those applications that are either approved or at a stage where complete engineering submissions have been submitted to the City for approval, or in some instances, where City approval has already been given to remove City trees under the existing tree by-laws. It was subsequently agreed that applying the proposed City of Hamilton Public Trees By-law would be unfair and may cause undue financial hardships to developers.
As such, staff has prepared the following transition plan relating to the adoption and implementation of the City of Hamilton Public Trees By-law recommending exemptions in the following circumstances:

1. That the proposed City of Hamilton Public Tree By-law and the City of Hamilton Urban Reforestation Policy shall not apply to site plan or consent applications that have received conditional approval or approval prior to the date of the enactment of the proposed Public Tree By-law, provided that the existing public trees are removed within one year of the enactment of the Public Tree By-law and associated policies.

2. That the proposed City of Hamilton Public Tree By-law and the City of Hamilton Urban Reforestation Policy shall not apply to any subdivision applications with complete engineering submissions submitted prior to the enactment of the Public Tree By-law and associated policies, or where previous approval has been obtained from the City under the current tree by-law, provided the existing public trees are removed within one year of the enactment of the Public Trees By-law and associated policies.

3. That all lands dedicated to the City of Hamilton for road and roadway widening purposes as a condition of all Planning Act approvals, be exempt from the City of Hamilton Public Tree By-law and the City of Hamilton Urban Reforestation Policy.

City of Hamilton Street Tree Planting Policy - Rural Roadways - (Report PW06034 Appendix “C”)  
It was requested that the City of Hamilton Tree Planting Policy - Rural Roadways be referred to the Agricultural and Rural Affairs Advisory Committee for review. This policy was referred to the March 23, 2006 meeting of this Committee for their consideration. Concerns relative to tree trimming and dead limb removal, and planting trees in the road allowance and the potential for salt damage was discussed with staff. Interest was also expressed in allowing for trees to be planted on private property (in a rural context only). Staff is not supportive of this proposal given that it will create ambiguities as to tree ownership and responsibility for maintenance, as well as further complicating the application of the proposed new by-law and associated policies as they only have force and effect over public trees on public property. Staff recommends that all tree planting, whether done in the urban or rural setting, be done solely on public property.

City of Hamilton Street Tree Planting Policy - New Developments (Report PW06034 Appendix “D”)  
Concerns were raised relative to the spacing requirements for driveway setbacks. The current policy requires a minimum setback of 1.5 m from driveway and alleyway entrances. A request was made by the Hamilton Home Builder’s Association to have this setback requirement amended to a minimum setback of 0.8 m from driveway and alleyway entrances. Staff does not support this amendment given that the proposed spacing is inadequate for tree planting and may result in the future upheaval of the driveway/alleyway by the developing/developed root system of the tree. Staff, in conjunction with the Planning and Economic Development Department will monitor development intensification and its influence on tree planting requirements as impacted by lot size.
The current policy also requires that larger maturing trees should be spaced at 10 m apart and smaller maturing trees 6 m apart. The Hamilton Home Builder’s Association has requested that this wording be amended so that larger maturing trees will be spaced at a “minimum” of 10 m apart and smaller maturing trees at a “minimum” of 6 m apart. Staff is supportive of this recommendation and will incorporate the amended wording into the final draft of the City of Hamilton Street Tree Planting Policy - New Developments.

City of Hamilton Reforestation Policy - Municipally Owned Lands (Report PW06034 Appendix “E”)

The Hamilton Home Builder’s Association has requested that staff consider including an abridged replacement valuation which considers the health, quality, and species of the tree which was removed. These factors would contribute to the compensation valuation for tree replacement. If a tree was of poor healthy or quality, or an undesirable species, the tree replacement valuation would be discounted. While this has been applied in some circumstances in the past, staff is not supportive of the inclusion of the abridged replacement valuation.

Under the provisions of the new Public Tree By-law, tree removals when considered “Necessary for the Public Interest” (Section 18) has been expanded (from that of the By-laws of the former municipalities) to allow for tree removal when:

“(a) A tree is decayed in whole or in part;

(b) A tree that has failed, or in its current physiological condition has the potential to fail, and by its failure, or potential failure, poses a direct and immediate threat to public property or to individuals using public property;

(c) A tree that is a source, host, or infested with any pest which directly or indirectly causes irreversible damage to the long-term health, vitality, longevity, and integrity of a tree;

(d) A tree whose structural value, or integrity, as determined by the Director, has been seriously compromised by construction, weather related events, or by pruning;

(e) A tree planted along a highway which obstructs or impedes the safe use of the same;

(f) A tree whose root system has been proven to compromise the structural integrity of the foundation of any building;

(g) A tree of poor quality, or undesirable species whose removal is required to facilitate new street tree plantings.”

Under the expanded parameters for tree removal not requiring financial compensation, there is greater flexibility for the removal of trees that are unhealthy, or of undesirable species. Under the new By-law and policies, individuals would not be charged the replacement cost associated with the removal of these trees.

Tree replacement charges will only be charged to those individuals seeking the removal of any tree for reasons which are outside the scope of “Necessary for the Public
Interest”. In these cases, a uniform cost calculation procedure for tree replacement will be applied without exception.

Given that the parameters for tree removal are more comprehensive, that the requirements for financial compensation for tree replacement values are not being applied for the removal of trees which are unhealthy, or considered of compromised value, and that the City is moving toward streamlined policies and uniform guidelines, staff does not recommend the implementation of the abridged compensation valuation.

City of Hamilton Public Tree Removal Policy - Authority for Tree Removal (Report PW06034 Appendix “G”)

Various concerns have been raised relative to the removal of public trees and the proposed authority structure providing consent for the removal of trees.

As written, the policy provides authority for tree removal to the Director where the total number of trees to be removed is less than 25 trees, and to Council where the total number of trees to be removed is greater than or equal to 25 trees.

At the meeting of the Public Works Infrastructure and Environment Committee, two alternative amendments were suggested for consideration:

(a) That requests for the removal of less than 25 trees be referred to Committee for approval as “consent Items” and that removal of greater than or equal to 25 trees be referred to Committee as an item for approval;

(b) That the proposed removal criteria as outlined in the policy (Appendix G to Report PW060354) remain status quo in the provision of authority for removal, but that the Ward Councillor be consulted and advised when the number of trees to be removed from a specific area is 5 trees or more.

Staff is concerned that alternative amendment (a) does little to streamline the process timelines for report preparation requirements. This alternative would achieve efficiencies if a reporting model similar to the “Intersection Control List (utilized by the Traffic Section) is adopted therein eliminating the requirement for formal reports, and decreasing related timelines.

In the event that alternative amendment (b) is selected, staff suggest that the “threshold number” remain consistent with the parameters outlined in the policy. If the Director is granted the authority to allow for the removal of less than 25 trees, then the Ward Councillor will be notified on projects affected by the Director’s determination.

Appendix “G” - City of Hamilton Public Tree Removal Policy - Notification Requirements

Requests have been made to have the policy amended to ensure that:

- Written notice is provided every time a tree is to be removed, including the location of the tree, action to be taken, and the date of removal
- Written notification be provided to the property owner within one month of the date of the tree being removed

The current policy provides that:

“1. Notice of tree removal will be provided to the affected property owner on the date of inspection by personnel of the Forestry and
Horticulture Section, the Developer, or a contractor working for the City of Hamilton. Personnel of the Forestry and Horticulture Section, the Developer, or a contractor working for the City of Hamilton will speak with the affected property owner at the time of the inspection. Failing this, written notice of tree removal will be left at the residence as well as appropriate departmental contact information for follow-up.

2. Where trees are still in leaf, but have been approved for removal in accordance with the terms of the by-law and associated policies, a registered letter will be sent to the owner advising of the tree removal. A second registered letter will be sent to the affected property owner should the tree fail to be removed within six months of the date of the original registered letter.”

Staff is not supportive of the recommended amendments, and supports the notification requirements as listed in the original policy (attached as Appendix G to Report PW060354). It is not operationally or administratively feasible to provide notice within the suggested timeframes. The section is not properly resourced to meet the demands that this amendment would impose.

Additional Amendments to the Proposed Public Tree By-law and Associated Policies

Staff is also recommending that the following amendments be included in the By-law:

1. That the definition of “Municipal Waste” is to be struck from the proposed By-law;
2. That the definition of “Planning and Development Department” be changed to the “Planning and Economic Development Department”

Staff is recommending that the following amendments be made to the policies:

City of Hamilton Street Tree Planting Policy - Planning and Design (Report PW06034 Appendix “B”)

That Section 1(d) be amended to read: “Curb Face Sidewalk Setback: Tree plantings adjacent to curb face sidewalks must achieve a minimum setback of 1.0 m from the back of the walk (and remain in the road allowance)

City of Hamilton Street Tree Planting Policy - New Developments (Report PW06034 Appendix “D”)

That Section 1(d) of the Planting Layout Regulations be amended to read: “Curb Face Sidewalk Setback: Tree plantings adjacent to curb face sidewalks must achieve a minimum setback of 1.0 m from the back of the walk (and remain in the road allowance).

City of Hamilton Street Urban Reforestation Policy - Municipally Owned Lands (Report PW06034 Appendix “E”)

1. That the first paragraph of the policy be amended to read:
   “This policy forms part of the City of Hamilton Forestry Management Plan. In addition to the regulations listed in By-law 06###, and in the City of Hamilton Public Tree Removal Policy, the provisions of this policy shall apply to all public
trees on public property under the jurisdiction of the City of Hamilton, except in those circumstances where exemptions as outlined in Report PW06034a under the Transition Policy and Additional Exemptions Section have been permitted. All definitions listed under Section 1 of By-law 06### are deemed to have the same meaning and application in this policy. It should be noted that reimbursement for the total removal and replacement cost shall be sought by the Public Works Department.

2. That the Public Tree Removal Provisions - General Application Section be amended to read:

“Any person, contractor, owner, or Department of the City of Hamilton shall ensure that the required permission is sought before undertaking the removal of any public trees. If permission is granted, the requestor shall be responsible for paying the total removal and replacement cost (as applicable) for each tree removed, plus an additional administrative fee.

Any person, contractor, owner, or department of the City of Hamilton who damages or injures a public tree on public property shall be responsible for paying the replacement and removal cost of each tree (as applicable), plus an additional administration fee, as outlined in the “Tree Removal Estimation” equation and the “Tree Replacement Estimation” equation below.

Any person, contractor, owner, or department of the City of Hamilton who removes a public tree shall be responsible for reimbursing the Forestry and Horticulture Section for the replacement cost of each tree, plus an additional administration fee, as outlined in this policy.”

3. That subsection (b) of the Public Tree Removal Provisions Related to Landscape Budgets Section be amended to read:

“If the approved landscaping budget for tree planting is less than the cost for tree replacement costs (as calculated based on the estimation equation below), the department will be required to pay the variance between the approved budget allocation and the costs for tree replacement to the Forestry and Horticulture Section.”

Homeowner Education Initiatives

Staff will undertake an education initiative with the goal of informing residents of the various considerations that should be undertaken when selecting a tree for their property. Potential education initiatives may include such things as posting relevant information on the City of Hamilton web site, the creation and distribution of various pamphlets, brochures, and other like materials.

**ANALYSIS/RATIONALE:**

The analysis/rationale is listed in Report PW06034.

**ALTERNATIVES FOR CONSIDERATION:**

Alternatives for consideration are listed in Report PW06034.
FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial, staffing and legal implications are listed in Report PW06034.

POLICIES AFFECTING PROPOSAL:

The policies affected by this report include:

- By-law 4586-99 (Dundas)
- By-law 4502-99 (Dundas)
- By-law 4513-99 (Dundas)
- The City of Hamilton Street Tree Planting Policy – Planning and Design
- The City of Hamilton Street Tree Planting Policy – New Developments
- The City of Hamilton Reforestation Policy – Municipally Owned Lands

RELEVANT CONSULTATION:

Staff consulted with the Planning and Economic Development Department and Legal Services in the drafting of this report.

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes  ☐ No
Public services and programs are delivered in an equitable manner, coordinated, efficient, effective and easily accessible to all citizens.

Environmental Well-Being is enhanced. ☑ Yes  ☐ No
Ecological function and the natural heritage system are protected.

Economic Well-Being is enhanced. ☑ Yes  ☐ No
Hamilton's high-quality environmental amenities are maintained and enhanced.

Does the option you are recommending create value across all three bottom lines?  ☑ Yes  ☐ No

Maintenance of ecological integrity through careful stewardship, rehabilitation, and protection of diverse species of the urban forest is one objective realized by the harmonization process and the implementation of the City of Hamilton Public Tree by-law and associated policies. The regulation and protection of trees planted on public property will enable the City to build on existing environmental strengths, while enhancing natural and urban areas. Green corridors bring nature into the City while helping to promote improved air quality. The harmonization process will enhance the quality of life for Hamiltonians while seeking to make every effort to protect healthy municipal trees. Sustainable development of the urban forest is central to a cleaner and greener City.

Do the options you are recommending make Hamilton a City of choice for high performance public servants?  ☑ Yes  ☐ No