

TREE PRESERVATION BYLAW

A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to provide for the protection and preservation of trees.

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Schedule A – Significant Trees

Under its statutory power, including sections 8(3)(c), 16, 17, and 258 of the *Community Charter*, the Municipal Council of The Corporation of the City of Victoria enacts the following provisions:

PART 1 – INTRODUCTION

Title

1 This Bylaw may be cited as the "TREE PRESERVATION BYLAW".

Definitions

2 In this Bylaw,

“alter”

means

- (a) to remove the top portion of a tree or tree seedling,
- (b) to remove from a tree or tree seedling any branch, trunk or piece of tree bark that is 10cm (3.9 inches) or more in diameter,
- (c) to cut, damage or destroy by any means the roots of a tree or tree seedling within the protected root zone;

“building envelope”

means that part of a lot on which a building, including an accessory building, may be sited under the setback regulations of the City’s Zoning Regulation Bylaw as varied by a development permit, a development variance permit, a heritage alteration permit or the Board of Variance;

“building envelope line”

means a building’s setback established under the City’s Zoning Regulation Bylaw as varied by a development permit, a development variance permit, a heritage alteration permit or the Board of Variance;

“certified arborist”

means a person currently certified by the International Society of Arboriculture;

“cut down”

means to cut, saw or chop down, kill or otherwise remove a tree or tree seedling by any means;

“Director”

means the City’s Director of Parks, Recreation & Community Development and includes any person lawfully acting under the Director’s authority;

“hazardous” includes:

- (a) unstable or severely leaning and in danger of falling,
- (b) interfering with, or in such proximity to, utility wires as to create a dangerous situation,
- (c) interfering with, blocking or damaging a drainage, water or sewer system or other parts of the improvement;

“lot”

means a parcel of land;

“protected root zone”

- (a) means the area of land surrounding the trunk of the tree that contains the bulk of the critical root system of the tree, as defined on a plan prepared by a certified arborist, that the Director approves,
- (b) where a plan within the meaning of subsection (a) of this definition has not been prepared and approved, means the area of land surrounding the trunk of a tree contained within a circle having a radius which is calculated by multiplying the diameter of the tree by 18;

“protected tree”

means any of the following trees:

- (a) Garry Oak (*Quercus garryana*),
- (b) Arbutus (*Arbutus menziesii*),
- (c) Pacific Yew (*Taxus brevifolia*) over 50cm in height,
- (d) Pacific Dogwood (*Cornus nuttallii*),
- (e) Douglas Fir (*Pseudotsuga menziesii*) over 60cm in trunk diameter,
- (f) Western Red Cedar (*Thuja plicata*) over 60cm in trunk diameter,
- (g) Big Leaf Maple (*Acer macrophyllum*) over 60cm in trunk diameter,

- (h) a significant tree,
- (i) any tree over 80cm in trunk diameter,
- (j) a tree on a steep slope,
- (k) a tree that
 - (i) is retained voluntarily by the owner as part of an application for a permit that would affect the tree, and
 - (ii) is protected by a restrictive covenant in favour of the City;

“protected tree seedling”

means any of the following tree seedlings:

- (a) Garry Oak (*Quercus garryana*),
- (b) Pacific Dogwood (*Cornus nuttallii*),
- (c) Arbutus (*Arbutus menziesii*);

“significant tree”

means any tree identified on Schedule “A” of this Bylaw;

“steep slope”

means any part of a parcel of land where the grade of the incline is 2:1 or greater;

“tree”

means any living, erect, woody plant that is

- (a) 10cm or more in diameter, or
- (b) 5m or more in height, or
- (c) a replacement tree of any size planted as a condition of a tree permit;

“tree permit”

means a permit as issued under this Bylaw;

“tree seedling”

means any young, independent, living, erect, woody plant that has a height of more than 50cm and less than 5m.

Location & measurements of tree

- 3** For the purposes of this Bylaw:
- (a) the location of a tree or tree seedling on a lot must be measured at the point at which the trunk of the tree or tree seedling meets the ground;
 - (b) a tree or tree seedling is considered to be located on the same side of a building envelope line that the major part of the trunk of that tree or tree seedling is located;
 - (c) the diameter of a tree is determined by dividing the circumference of its trunk, measured at 1.4m above the ground, by 3.142;
 - (d) the diameter of a tree having multiple trunks 1.4m above the ground is the sum of
 - (i) 100% of the diameter of the largest trunk, and
 - (ii) 60% of the diameter of each additional trunk.

Bylaw does not apply to public works

- 4**
- (1) This Bylaw does not apply to the installation, repair, or maintenance of public works or services carried out by or under the authority of the City.
 - (2) Works or services referred to in subsection (1), other than emergency repairs, must be reviewed and approved by the Director before they are carried out.

PART 2 – REGULATIONS

Cutting protected or replacement trees

- 5**
- (1) A person must not cut down, alter, or damage, and must not cause or permit the cutting down, altering, or damaging of:
 - (a) a protected tree or protected tree seedling;
 - (b) a replacement tree planted as a condition of a tree permit.
 - (2) Subsection (1) does not apply where a tree permit has been issued to cut down or alter a protected tree, other than a significant tree or a tree growing on a steep slope, or protected tree seedling, in any of the following circumstances:

6

- (a) the protected tree or protected tree seedling is located within the building envelope of a lot and the removal of the tree is necessary for the purpose of constructing a building, an addition to a building or construction of an accessory building;
- (b) cutting down or altering the protected tree or protected tree seedling is required for the construction or installation of any of the following works:
 - (i) a driveway,
 - (ii) any off-street parking required under the Zoning Regulation Bylaw,
 - (iii) municipal or public utilities service connections;
- (c) cutting down or altering the protected tree or protected tree seedling is required or permitted under any of the following provisions of the City's Bylaws:
 - (i) section 85 of the Streets and Traffic Bylaw,
 - (ii) sections 4, 6, or 7 of the Trees and the Insect Control Bylaw.

Cutting or removal on slope

6 A person must not do any of the following without first obtaining a tree permit:

- (a) cut down any trees growing on a steep slope;
- (b) remove the stumps and roots of any trees on a steep slope.

Cutting near watercourse

- 7
- (1) A person must obtain a tree permit before cutting down or altering a tree growing within 15m of the natural boundary of a watercourse.
 - (2) Subsection (1) does not apply where a tree or the roots of a tree are blocking a watercourse or reducing its drainage capacity.

Tree retained by plan, permit, application

8 A person must not cut down a tree shown as "to be retained" on a plan attached to a development permit, building permit, rezoning application or subdivision application.

Significant trees

- 9**
- (1) The trees identified on Schedule A are designated as "significant trees" because of their importance to the community, including importance for heritage or landmark value or as wildlife habitat.
 - (2) The Director may place a marker or tag on or near each significant tree upon receiving permission to do so from the owner of the property on which the tree grows;
 - (3) Despite section 5(1)(a) [*cutting protected tree*], a person may cut down or alter a significant tree only with the permission of City Council.

Construction activity

- 10** A person must not carry out or cause any of the following activities unless a tree permit is first obtained and the activity is carried out strictly in accordance with that permit:
- (a) cutting or damaging the roots of the tree growing inside its protected root zone;
 - (b) placing fill, building materials, asphalt, or a building or structure, or storing or stockpiling of organic material within a protected root zone;
 - (c) operating trucks, backhoes, excavators, or other heavy equipment within a protected root zone;
 - (d) denting, gouging, damaging, or affixing anything to the branches or the trunk of a tree;
 - (e) removing bark from a tree;
 - (f) depositing concrete, washout, or other liquid or chemical substances harmful to the health of a tree, on a protected root zone;
 - (g) removing soil from a protected root zone;
 - (h) blasting operations within a protected root zone;
 - (i) blasting operations outside of a protected root zone that would damage roots or disturb soil inside a protected root zone;
 - (j) undermine a tree's roots growing within its protected root zone.

Pruning & cutting of dying, damaged, unstable trees

- 11** The owner of a protected tree may apply for a tree permit to prune or cut down a tree if it is dead, dying, severely damaged, unstable, or severely leaning and in danger of falling.

Beneficial pruning

- 12** The owner of a protected tree may apply for a tree permit to prune a tree if a certified arborist confirms that the proposed pruning will benefit the tree.

Removing hazardous trees

- 13** (1) Owners and occupiers of real property must cause all trees, hedges, and shrubs on that property to be trimmed, removed, or cut down if the Director considers that the trees, hedges, or shrubs are:
- (a) a hazard to the safety of persons;
 - (b) likely to damage public property; or
 - (c) seriously inconveniencing the public.
- (2) The Director may notify the owner or occupier of real property that the City will take, at the owner's or occupier's expense, the action required under subsection (1) if the owner or occupier does not take that action within five days of receiving the notice.
- (3) The City's employees may enter real property and undertake, at the owner's or occupier's expense, the work referred to in subsection (1) if the owner or occupier does not undertake or complete that work.

Emergency removal

- 14** Despite any other provision in this Bylaw, a person may cut down a tree or limb of a tree that is prohibited from removal under this Bylaw if the tree or limb
- (a) has been severely damaged by a natural cause; and
 - (b) is in imminent danger of falling and injuring individuals or property.

PART 3 – TREE PERMITS

Applying for permit

- 15** The request for a tree permit must be made to the Director and must be accompanied by a plan identifying all of the following:
- (a) the location, species and diameter of the trees proposed to be cut down or altered;

- (b) the location, species and diameter and protected root zones of the trees in respect to which tree-damaging activities are to be carried out;
- (c) the location of any proposed construction activities, excavation activities, and blasting activities in relation to a tree;
- (d) the protected root zone of each tree on the parcel of land;
- (e) the purpose for which the tree is to be cut down or altered.

Marking trees to be cut down or removed

- 16**
- (1) An applicant for a tree permit must flag or mark with paint each tree proposed to be cut down or removed.
 - (2) An applicant for a tree permit must mark all of the following on the ground with paint, stakes, or flagging:
 - (a) the protected root zone of each tree shown on the plan accompanying the application for a tree permit;
 - (b) the boundaries of the areas within the protected root zones on which the proposed excavation, blasting or other tree-damaging activity is to be carried out.

Conditions of permit

- 17**
- (1) The holder of a tree permit must comply with all of the following conditions:
 - (a) before excavation, blasting, construction, or other tree-damaging activity is carried out on the land to which the permit applies, the permit holder must install a fence of at least 1.2m high, or take other protective measures approved by the Director, to separate that land from the remainder of the protected root zone of a tree to which the permit applies;
 - (b) the permit holder must continuously maintain the fence or other protective measure until the completion of the work proposed to be carried out on the land to which the permit applies;
 - (c) the permit holder must post and continuously maintain on the fence or other protective measure an all-weather sign stating "Protected Root Zone – No Entry";
 - (d) if tree roots are cut by excavation, the permit holder must immediately wrap the remaining roots in a root curtain of wire mesh lined with burlap surrounded by posts;
 - (e) the permit holder must continuously keep a root curtain of wire mesh moist throughout the holder's construction process;

- (f) the permit holder may prune and cut a protected tree's branches, limbs, or roots only under the supervision of a certified arborist;
 - (g) if the permit holder cuts down or removes a protected tree or a protected tree seedling, the permit holder must plant and maintain two replacement trees or tree seedlings
 - (i) of the same species and in the same location as that cut down or removed, or of a different species authorized by the Director in accordance with accepted arboricultural practices, and
 - (ii) that have at least one of the following sizes:
 - (A) a height of at least 1.5m planted,
 - (B) a diameter of at least 4cm,
 - (iii) which, if replacements for the tree species *Arbutus menziesii*, must be contained in a #5 pot when acquired from a nursery or a landscaper-supplier.
- (2) For the purpose of ensuring the performance of the requirements set out in paragraph (g), the applicant for a tree permit must provide to the City \$350.00 security in the form of cash or a letter of credit for each replacement tree or protected tree seedling that is required
- (3) A cash security provided under subsection (1) must be refunded to the applicant when the replacement planting requirements under paragraph (g) have been carried out.

Director's powers to issue or refuse permit

- 18** The Director may do any of the following if a proposed activity would endanger the health or life of a tree:
- (a) refuse to issue a tree permit;
 - (b) issue a tree permit subject to conditions;
 - (c) issue a tree permit to allow a tree to be removed.

Permit fee

- 19** (1) An application for a tree permit must be accompanied by a fee of:
- (a) \$30.00 for the first three trees or seedlings;
 - (b) \$5.00 for each tree or seedling that is additional to the first three.

- (2) A fee listed under subsection (1) is not refundable.
- (3) There is no charge for a tree permit issued for the purposes of
 - (a) section 11 [*Pruning & removal of dying, damaged, unstable trees*];
 - (b) section 12 [*Beneficial pruning*];
 - (c) section 13 [*Removal of hazardous trees*];
 - (d) section 14 [*Emergency removal*].

Right of appeal

- 20** (1) The owner or occupier of a real property that is subject to a decision of the Director to grant or refuse a tree permit, or to impose conditions on the granting of a tree permit is entitled to apply to Council to have the decision reconsidered.
- (2) An application for reconsideration must be made in writing to the City's Corporate Administrator.
- (3) There is no charge for an application for reconsideration.

PART 4 – GENERAL

Inspections

- 21** (1) The Director or a City employee authorized by the Director may enter at all reasonable times on any property to make an assessment or inspection for any purpose under this Bylaw.
- (2) A person must not prevent or obstruct, or attempt to prevent or obstruct, an entry authorized under subsection (1).

Recovery of costs and fees from real property taxes

- 22** The costs of fees and actions taken by the City under this Bylaw will be collected by the City in the same manner as real property taxes, and will be added as arrears of taxes if unpaid by December 31 in the year in which the costs are incurred.

Offences and Penalties

- 23** (1) A person who contravenes a provision of this Bylaw commits an offence and is subject to the penalties imposed by this Bylaw, the Ticket Bylaw, and the *Offence Act*.

- (2) The minimum penalty for each protected tree that is cut down, altered, or damaged in contravention of this Bylaw is a fine of not less than
 - (a) \$1,500.00 for a first offence; and
 - (b) \$3,000.00 for a second or subsequent offence.

- (3) The minimum penalty for each protected tree seedling that is cut down, altered, or damaged in contravention of this Bylaw is a fine of not less than
 - (a) \$250.00 for a first offence; and
 - (b) \$250.00 for a second or subsequent offence.

Repeal

38. Bylaw No. 99-103, the Tree Protection Bylaw, is repealed.

READ A FIRST TIME THIS **10th** day of **November,** 2005.

READ A SECOND TIME THIS **10th** day of **November,** 2005.

AMENDED AND
READ A THIRD TIME THIS **24th** day of **November,** 2005.

ADOPTED on the **15th** day of **December,** 2005.

“ROBERT G. WOODLAND”
CORPORATE ADMINISTRATOR

“ALAN LOWE”
MAYOR

