

CITY OF PARKSVILLE

BYLAW NO. 1484

A BYLAW TO REGULATE THE PRESERVATION, REMOVAL AND REPLACEMENT OF TREES WITHIN THE CITY OF PARKSVILLE

WHEREAS the *Community Charter*, including Sections 8(3)(c), 16, 17, 258 and 260 authorizes Council to preserve trees, regulate the cutting and removal of trees, to require the replacement of trees cut down and to allow for enforcement in relation to these matters;

NOW THEREFORE the Council of the City of Parksville in open meeting assembled hereby enacts as follows:

1. TITLE

This bylaw may be cited for all purposes as the City of Parksville "Tree Management Bylaw, 2012, No. 1484".

2. REPEAL

City of Parksville "Tree Management Bylaw, 2006, No. 1415" and all amendments thereto are hereby repealed.

3. DEFINITIONS

In this bylaw, unless the context otherwise requires, the following means:

- (a) "Building Permit" means a permit for the construction of a building or structure issued under the City of Parksville's building bylaw and amendments thereto.
- (b) "Certified Arborist" means a person holding a current certification of "certified arborist" issued by the International Society of Arboriculture (ISA).
- (c) "Covenanted Tree" means a tree or plant that is required to be retained or required to be planted pursuant to a covenant granted to the City under Section 219 of the Land Title Act R.S.B.C. 1996 Ch. 250, pursuant to a comprehensive development plan forming part of the City's zoning bylaw or as a condition of the approval of the subdivision of land under the Land Title Act.
- (d) "Council" means the Council of the City of Parksville.
- (e) "Cut Down" means to cut down, remove or kill a tree by any means including the topping of a tree or the removal of any branch or trunk of a tree having a diameter of more than 10 centimetres (3.9 inches).

- (f) "Damage" means to carry out any activity that may kill or injure a tree and includes:
- (i) The topping of or removal of branches from a tree other than in accordance with accepted ISA arboricultural practice;
 - (ii) The cutting or shattering of the roots of a tree within its dripline other than in accordance with accepted ISA arboricultural practice;
 - (iii) The scraping, gouging or denting of a tree's trunk, branches or roots within its dripline;
 - (iv) The compaction of the soil within a tree's dripline or within an area required to be enclosed by a protection fence pursuant to a tree cutting permit by the placement of soil, fill, heavy equipment, vehicles or building or other materials thereon or by the movement of vehicles or equipment thereover;
 - (v) The depositing within a tree's dripline of any toxic or harmful substances;
 - (vi) The placement of soil or other material within a tree's dripline or within an area required to be enclosed by a protection fence pursuant to a tree cutting permit to a depth of greater than 20 centimetres (7.8 inches);
 - (vii) The removal of soil within a tree's dripline.
- (g) "Hazardous Tree" is a tree which is considered, by a certified arborist, to be in imminent danger of falling.
- (h) "Demolition Permit" means a permit for the demolition of a building or structure issued under the City's building bylaw and amendments thereto.
- (i) "Diameter" of a tree means the diameter of the tree's trunk or, in the case of a multi-stemmed tree, the sum of the diameters of the three largest trunks or stems measured 1.4 metres (4.5 feet) above the ground level at the base of the tree.
- (j) "Director" means the City's Director of Community Planning or their deputy or designate.
- (k) "Dripline" means a circle on the ground at the base of a tree which has as its centre the centre of the tree's trunk and as its radius the distance from the centre to the end of its outermost branch.
- (l) "Landscape Architect" means a member in good standing of the British Columbia Society of Landscape Architects.
- (m) "Lot" means an area of land designated as a separate and distinct legal parcel on a subdivision plan approved and registered in the Land Title Office pursuant to the provisions of the Land Title Act R.S.B.C. 1996 Ch. 250.

- (n) "Occupancy Permit" means a permit or approval to occupy a building or structure issued or given under the City's building bylaw.
- (o) "Protected Tree" means:
 - (i) Any tree, the diameter of which is greater than 50 centimetres (20inches);
 - (ii) A covenanted tree;
 - (iii) A tree located within 30 metres (98.4252 feet) of the natural boundary of a watercourse or top of a slope of 30% or more;
 - (iv) Specifically excludes all Populus sp. and Alder trees;
 - (v) An Eagle or Great Blue Heron nesting tree.
- (p) "Pruning" means the selective removal of branches from a tree in accordance with accepted ISA arboricultural practice.
- (q) "Replacement Tree" means a tree that is planted pursuant to a tree cutting permit or a notice issued under Section 6.
- (r) "Residential Lot" means a lot designated for single or two family residential use under the City's zoning bylaw.
- (s) "Retained Tree" means a tree that is shown on a tree plan as a tree that will be retained.
- (t) "Tree" means any living, erect, woody plant which is:
 - (i) 5 metres (16.3 feet) or more in height; or
 - (ii) 10 centimetres (3.9 inches) or more in diameter; or
 - (iii) A replacement tree planted pursuant to Section 6 of this bylaw; or
 - (iv) A replacement tree planted as a condition of a permit issued under this bylaw.
- (u) "Tree Cutting Permit" means a permit issued under Section 4.
- (v) "Tree Plan" means one or more plans, including a survey plan prepared by a BC licensed surveyor showing the legal boundaries and dimensions of the site to which it relates and the location and diameter of each protected tree on the site or within 2 metres (6.562 feet) of the boundary of the site and containing the following information:
 - (i) The type (coniferous or deciduous) of each protected tree;
 - (ii) Each protected tree proposed to be retained;
 - (iii) Each protected tree proposed to be cut down;
 - (iv) The previous location and type of each protected tree that was cut down within the three (3) month period immediately preceding the date the tree plan is submitted;

- (v) The location, species and size of all proposed replacement trees; and
 - (vi) The location and timing of any propose demolition, excavation or construction on the site.
- (w) "Water Course" means any natural or man-made depression with well-defined banks and a bed of zero point six (0.6) metres or more below the surrounding land serving to give direction to or containing a current of water at least six months of the year and includes the sea or any lake, river, stream, creek, spring, ravine, swamp, gulch, surface source of water supply or source of groundwater supply.

4. REGULATIONS

1. Except as permitted by this bylaw, no person shall damage a protected tree and no person shall cut down a protected tree unless that person holds a valid tree cutting permit.
2. A tree cutting permit is not required:
 - (a) For pruning;
 - (b) For the emergency removal of a protected tree that has been so severely damaged or has been rendered so unstable by wind, snow or other severe weather event, that it is in imminent danger of falling and injuring persons or damaging property and the person who cuts down the tree immediately advises the Director of that action;
 - (c) By the City to cut down a protected tree located in a City park in accordance with normal park maintenance procedures and in consultation with the City's certified arborist;
 - (d) To cut down or damage a protected tree where necessary for the construction, installation, maintenance, repair, replacement or removal of:
 - (i) Public roads, lanes, paths, sidewalks and boulevards,
 - (ii) Rail lines,
 - (iii) The sewer, water and gas mains and ancillary works of the City, any other governmental authority or any public utility,
 - (iv) Public drainage, dyking or flood control works,
 - (v) The electrical, telephone and telecommunication lines, cables, poles, supports, conduits and ancillary works of any public utility;
 - (e) To cut down a protected tree that is within the area bounded by the exterior walls or face, or a protected tree as defined in Sections 3(o)(i) or 3(o)(iv) that is within 1.5 metres (4.921 feet) of the exterior walls or

face of any building or structure or planned building or structure for which a building permit has been issued.

3. An application for a tree cutting permit shall be made to the Director in the form prescribed by the Director accompanied by:
 - (a) Payment of a non-refundable application fee in the amount of 75.00 per tree.
 - (b) Where the applicant is not the owner of the land on which the protected tree or trees proposed to be cut down or damaged are located, the signed written consent of the owner authorizing the applicant to make the application on behalf of and as agent of the owner;
 - (c) A tree plan including photographs;
 - (d) A report prepared by a certified arborist in regard to any protected tree or trees proposed to be cut down or damaged, including an impact assessment on remaining trees and providing an assessment of the tree or trees' health, hazard potential and the feasibility of the retention of the tree or trees in accordance with the standard procedures prescribed by the International Society of Arboriculture;
 - (e) The applicant shall securely attach to each protected tree or cluster of protected trees required to be shown on the plan referred to in Section 4(3)(c) a clearly visible plastic tag or survey tape for identification purposes.
4. Upon receipt of an application that complies with Section 4(3), the Director may issue a tree cutting permit, with or without conditions as provided for in Section 3 where:
 - (a) It is proven to the satisfaction of the Director that:
 - (i) The tree is a hazardous tree, and
 - (ii) Removal of the tree is reasonably necessary in accordance with accepted ISA arboricultural practice in accordance with the actual written recommendations of a certified arborist retained by the applicant;
 - (b) Removal of the protected tree or trees is necessary to accommodate the construction or installation of an authorized driveway, required off-street parking area or utilities services.
 - (c) Wherever in this bylaw trees may be cut or removed the applicant must comply with the regulations as set out in Schedule "A" attached hereto and forming part of this bylaw.

5. The Director may attach conditions to a tree cutting permit, including any of the following:
 - (a) The replacement of any protected tree that is cut down or was cut down within the three (3) month period immediately preceding the date the tree plan was submitted under Section 4(3);
 - (b) The erection of protection fences at such locations and the maintenance of those protection fences for such periods of time, as the Director may specify;
 - (c) The posting of security with the City in accordance with Section 4(6) as security for the planting and maintenance of replacement trees;
 - (d) That employees and/or authorized agents of the City be permitted to enter onto the site at any reasonable time to carry out assessments and inspections to determine compliance with the tree cutting permit.

6. The security to be provided pursuant to Section 4(5)(c):
 - (a) Shall be the greater of \$1,000; or
 - (i) An amount equal to 120% of the cost of the replacement trees as reasonably estimated by a certified arborist or landscape architect retained by the applicant,
 - (ii) Shall be in the form of a non-interest bearing cash deposit or an irrevocable unconditional letter of credit issued by a chartered Canadian bank;
 - (b) Shall be provided to the City before the tree cutting permit is issued;
 - (c) May be held by the City until the conditions in the tree cutting permit have been satisfied and a period of one year from the planting of all replacement trees has elapsed as confirmed by the City;
 - (d) Shall in the case of a letter of credit, be renewed as necessary so that it remains in effect through the time period specified in subsection (c);
 - (e) May be used by the City to pay or offset any costs and expenses incurred by the City in taking any action under Section 6(3) from the non-compliance with the terms and conditions of the tree cutting permit or the requirements of this bylaw.

7. Protection fences shall be:
 - (a) Not less than 1.2 metres (3.937 feet) in height;

- (b) Made of plastic snow fencing securely mounted on wooden posts or wooden or chain link fencing mounted on wooden or metal posts;
 - (c) Erected on or outside of the dripline of the protected tree or trees around which they are required to be erected or as otherwise directed or permitted by the Director;
 - (d) Erected prior to the commencement of any demolition, excavation or construction; and
 - (e) Securely mounted at all times during the period that they are required to be maintained pursuant to Section 4(10) or a tree cutting permit.
8. A tree cutting permit shall, insofar as it permits the permit holder to cut down or damage a protected tree or trees will be valid only for a period of six months from the date of its issuance.
9. If the permit holder fails to comply with the terms and conditions contained in a tree cutting permit the Director may revoke the permit.
10. Every application made to the City for the issuance of a demolition permit or a building permit on a residential lot shall be accompanied by a tree plan.
11. The person making an application referred to in Section 10 shall:
- (a) Before the demolition permit or building permit is issued, securely attach to each protected tree or cluster of protected trees on the lot a clearly visible plastic tag or survey tape; and
 - (b) Erect and maintain in place around all protected trees on the lot, until all demotion or construction works authorized by the demolition permit or building permit have been completed, protection fences that comply with Section 7.

5. EXEMPTIONS

1. The Director may exempt a person from the requirements of
- (a) Section 4(1) where:
 - (i) A scheme of tree removal, retention and replacement, or any one or more of them, for the site was previously made a part of a comprehensive development plan or development permit for the site under the City's zoning bylaw, or
 - (ii) A scheme of tree removal, retention and replacement, or any one or more of them, for the site was previously made a condition of the approval of the subdivision of land pursuant to the Land Title Act which created the site;

- (b) Section 4(3)(c) or Section 4(10) where the Director is satisfied that such trees can be readily identified on the site from other information provided by the applicant.

6. TREE REPLACEMENT

1. Every replacement tree required to be planted pursuant to this bylaw or a tree cutting permit shall be healthy and reasonably capable of surviving and shall be planted in accordance with accepted ISA arboricultural practice.
2. Every replacement tree required to be planted pursuant to this bylaw or a tree cutting permit shall be properly and adequately maintained in accordance with accepted ISA arboricultural practice.
3. If a person fails to plant or maintain any replacement tree as required by a tree cutting permit or this bylaw or otherwise fails to comply with the terms and conditions of the tree cutting permit the City, by its employees or agents may enter upon the land in respect of which the replacement tree is required to be planted and maintained or the tree cutting permit was issued and take such action as it deems appropriate to remedy such failure.
4. A person who cuts down a protected tree in contravention of this bylaw, or who damages a protected tree in contravention of this bylaw which results in the protected tree being cut down shall, in addition to any other penalty that may be imposed under this bylaw, upon receiving written notice from the Director to do so, immediately plant a replacement tree of the same species in approximately the same location as the tree cut down.
5. A replacement tree planted pursuant to subsection 4 shall:
 - (a) In the case of coniferous species, be not less than 2 metres (6.562 feet) in height;
 - (b) In the case of deciduous species:
 - (i) Be a single tree not less than 6 centimetres (2.5 inches) in diameter.
6. The employees or agents of the City may enter onto any land to carry out assessments or inspections of that land and the protected trees thereon:
 - (a) At any time after a tree cutting permit has been applied for or issued in respect of that land and until all of the terms and conditions contained in that tree cutting permit have been satisfied;
 - (b) For a period of one year from the planting of any replacement tree on that land;

- (c) At any time for the purpose of determining whether there has been a contravention of this bylaw or to determine compliance with the requirements of this bylaw.

7. DELEGATION OF AUTHORITY

- 1. Pursuant to Section 154(1) of the *Community Charter*, Council delegates to the Director, the power of Council under Section 8(3)(c) of the *Community Charter* to issue or refuse to issue a tree cutting permit under this bylaw, including the powers of Council to require the applicant provide a security deposit as provided in Section 4(6) of this bylaw.

8. RIGHT TO APPEAL

- 1. The owner or occupier of land that is subject to:

- (a) A requirement imposed under Section 4(3)(c);
- (b) A condition imposed under Section 4(4);
- (c) A decision under Sections 4(9) or 7(1);

may apply to Council to have the matter reconsidered.

- 2. An application under subsection 9(1) shall:

- (a) Be made in writing;
- (b) Set out:
 - (i) The applicant's name, address and telephone number,
 - (ii) The address of the site,
 - (iii) The requirement, condition or decision to be reconsidered,
 - (iv) The reasons why the applicant objects to the requirement, condition or decision;
- (c) State whether the applicant wishes to personally appear before Council when Council reconsiders the matter;
- (d) Be signed by the applicant; and
- (e) Be delivered to the Corporate Officer.

- 3. Council shall reconsider the matter at a regular Council meeting within a reasonable time after receiving an application for reconsideration.

- 4. Written notice of the time and place of the Council meeting at which Council will reconsider the matter shall be forwarded by regular mail to the applicant at the applicant's address shown in the application for reconsideration and the

applicant shall be entitled to attend such Council meeting and make submissions.

5. Written notice provided in subsection 4 may be provided through the applicant's email address at the applicant's request.

9. PENALTIES

1. No person shall prevent or obstruct or attempt to prevent or obstruct entry of any City employee authorized to enter upon property by this bylaw.
2. Any person who violates any of the provisions of the bylaw or who suffers or permits any act or thing to be done in violation of any of the provisions of this bylaw is guilty of an offence punishable on summary conviction and is subject to a fine of not more than \$10,000.
3. The cutting or damaging of each protected tree shall constitute a separate offence.
4. Each offence is a ticketable offence.

READ A FIRST TIME this 5th day of September, 2012

READ A SECOND TIME this 5th day of September, 2012

READ A THIRD TIME this 5th day of September, 2012

RECONSIDERED AND FINALLY ADOPTED this 17th day of September, 2012

Original signed by Chris Burger

Mayor

Original Signed by Debbie Comis

Corporate Officer

SCHEDULE "A"

- A.1 Wherever in this bylaw trees may be cut or removed the following regulations apply:
- (a) All works are to be carried out in strict accordance with the Workers Compensation Board Regulations.
 - (b) All works pertaining to removal and felling shall only be performed under the guidance of a certified arborist or landscape architect.
 - (c) If, in the opinion of the Director of Operations, the works will encroach on public properties the owner/applicant will be required to:
 - (i) Show proof of liability insurance in the amount of five million dollars (\$5,000,000.00) with the City of Parksville named as an additional insured;
 - (ii) Notify the Operations Department a minimum of 48 hours in advance of the intention to carry out the works;
 - (iii) Provide a plan showing the intended method of safeguarding the users of the public owned property during the works that is acceptable to the Director of Operations;
 - (iv) Provide a refundable bond in the amount of one thousand dollars (\$1,000.00), acceptable to the Director of Finance, to cover damages incurred to the public owned lands;
 - (v) Remove any and all debris associated with the works on the same day as the works are carried out to the satisfaction of the Director of Operations.

Schedule "A" attached to and forming part of Bylaw No. 1484

Original Signed by Debbie Comis
Corporate Officer