

SUMMARY:

The Tree Protection bylaw prohibits the removal of a tree in the "Tree Cutting Permit Areas" defined in the bylaw or a Natural Environment/Hazardous Condition Development Permit Area defined in the Official Community Plan, without a permit. The bylaw outlines the permit application procedures and requires that any tree removed under the provisions of this bylaw must be replaced with two trees within one growing season.

This bylaw is a 'consolidated' version and includes amendments up to the date listed in the bylaw heading. It is placed on the Internet for convenience only, is not the official or legal version, and should not be used in place of certified copies which can be obtained through the Office of the City Clerk at City Hall. Plans, pictures, other graphics or text in the legal version may be missing or altered in this electronic version.

CITY OF KELOWNA
BYLAW NO. 8041
REVISED: April 28th, 1998

CONSOLIDATED FOR CONVENIENCE TO INCLUDE BYLAW NO. 8224

A bylaw to regulate the removal of protected trees in Natural Environment/Hazardous Condition Development Permit Areas

The Municipal Council of the City of Kelowna, in open meeting assembled, hereby enacts as follows:

1.0 TITLE

1.1 This bylaw may be cited as "Tree Protection Bylaw No. 8041".

2.0 APPLICABILITY

- 2.1 (a) This bylaw applies to all lands listed in Schedule A - Tree Cutting Permit Areas of this bylaw; and
- (b) to all lands designated as being within a Natural Environment/Hazardous Condition Development Permit Area as established by Kelowna Official Community Plan (1994-2013) Bylaw No. 7600 which are either:
- (i) within a designated stream corridor leave strip as identified in Table 2.1 PUBLIC ROUTES OF ACCESS AND FISH-BEARING STATUS OF STREAMS, and Table 2.2 STREAM CORRIDOR LEAVE STRIP STANDARDS of Kelowna Official Community Plan (1994-2013) Bylaw No. 7600; or
 - (ii) on a slope of 30% or greater.

3.0 DEFINITIONS

3.1 In this bylaw, unless the context otherwise requires:

"certified arborist" means a person accredited as such by the International Society of Arboriculture;

"Council" means the Municipal Council of the City of Kelowna;

"cut down" means to cut down, remove or kill a tree by any means;

"DBH" means a tree diameter at breast height (1 m above grade);

"dangerous or hazardous tree or limb" means a tree or limb identified by a qualified person as being, or likely to become in the immediate future, a danger to people or property;

Consolidated Bylaw No. 8041 – Page 2.

“**dead, diseased or damaged trees or limbs**” means a tree or limb identified by a **qualified person** as being, or likely to become in the immediate future, a danger to people or property;

“**Director of Planning & Development Services**” means the **person** appointed by Council as such and includes his or her lawful deputy;

“**group of trees**” means a tree massing that includes a minimum of 20 trees with a maximum spacing of 5 m between each tree;

“**landscape architect**” means a **person** registered with the British Columbia Society of Landscape Architects;

“**leave strip**” means an area established to protect the riparian zone of all streams identified in Tables 2.1 and 2.2 of Kelowna Official Community Plan (1994-2013) Bylaw No. 7600. Leave strips along stream corridors with banks which have a slope of greater than 10% shall be measured from the top of the bank. **Leave Strips** along streams with moderately sloping banks (less than 10% slope) shall be measured from the normal high water mark. The **Leave Strip** width is as determined in Table 2.2 of Kelowna Official Community Plan (1994-2013) Bylaw No. 7600.

“**owner**” means the registered **owner** of an estate in fee simple, and includes:

- (a) the tenant for life under a registered life estate;
- (b) the registered holder of the last registered agreement for sale; and
- (c) the holder or occupier of land held in the manner mentioned in Sections 356 and 357 of the *Municipal Act*;

“**permit**” means a Tree Cutting Permit issued pursuant to Section 7.0 of this bylaw;

“**person**” means a natural **person**, his heirs, executors, administrators, or assigns, a firm, corporation, municipal or quasi-municipal corporation, society or party school board, hospital board, or other government or government agency;

“**professional engineer**” means a **professional engineer** registered under the *Engineers and Geoscientists Act*, with experience in geotechnical engineering;

“**protected tree**” means any tree with a diameter of 150 mm or more measured 1 m above grade (**DBH**) which is:

- (a) located within a designated stream corridor **Leave Strip** within a Natural Environment/Hazardous Condition Development Permit Area as identified in Kelowna Official Community Plan (1994-2013) Bylaw No. 7600;
- (b) located on a slope with a grade equal to or greater than 30% and which is within a Natural Environment/Hazardous Condition Development Permit Area as identified in Kelowna Official Community Plan (1994-2013) Bylaw No. 7600; or
- (c) any tree located on land listed in Schedule “A” of this bylaw;

“**qualified person**” means a **professional engineer**, **landscape architect** or a **certified arborist**;

Consolidated Bylaw No. 8041 – Page 3.

“replacement tree” means a tree planted on a property to replace a tree which has been removed or damaged on the same property;

“retained tree” means a tree that is shown on a site plan attached to a Tree Cutting Permit as a tree that will be retained;

“stream” means a natural watercourse or source of water supply, whether usually containing water or not, ground water, lake, river, creek, spring, ravine, swamp and gulch, as defined by the *Water Act*;

“tree” means a self-supporting woody plant that is a species of coniferous or deciduous genus which normally grows to a height of five (5) metres or greater, notwithstanding its current size.

4.0 PROHIBITIONS

4.1 Except as authorized by Section 5.0 of this bylaw, no person(s) including owners shall cut down, or allow to be cut down, or damage a protected tree without first obtaining a permit issued pursuant to this bylaw.

4.2 No person shall fail to comply with the Terms and Conditions of a permit issued pursuant to this bylaw.

5.0 EXEMPTIONS

5.1 The following are exempt from the provisions of the bylaw:

BL8224 replaced paragraph 5.1(a):

- (a) the removal or pruning of dead, diseased or damaged trees or limbs by standard arboricultural practices as identified by a qualified person and approved, in writing, by the Director of Planning & Development Services;
- (b) the emergency removal of dangerous or hazardous trees or limbs by standard arboricultural practices as which is to be reported immediately to the Director of Planning & Development Services;
- (c) the pruning or removal of fruit trees;
- (d) commercial tree farms or nursery operations;
- (e) B.C. Land surveyors cutting survey lines having a width of less than 2 m; or
- (f) land that is classified as managed forest land under the *Assessment Act*, located within a licence area under the *Forest Act*, so long as the land continues to be used for the production and harvesting of timber.

6.0 DELEGATION OF AUTHORITY

6.1 Pursuant to Section 715 of the *Municipal Act*, the **Director of Planning & Development Services** is hereby authorized to:

- (a) exempt an application for a **permit** from the requirements of Section 7.1 of this bylaw if the information to be submitted has otherwise been provided to the City of Kelowna;
- (b) establish which of the terms and conditions set out in Section 7.0 of this bylaw necessarily apply to the granting and use of a **permit** to achieve the purpose of that section;
- (c) exempt a **person** from the provisions of this bylaw where satisfied that there are no **protected trees** which may be affected by a proposed development or that there will be insufficient space on the site after development to locate **replacement trees**;
- (d) to serve notice under Section 712 of the *Municipal Act* on a **person** who does not comply with Section 10.0 of this bylaw to provide **replacement trees** that, failing compliance with the notice, the City of Kelowna may take the required action at the expense of the **person** given the notice if the compliance is not achieved within 30 days of service of the notice;
- (e) direct that an assessment or inspection of specified **trees** or sites be undertaken by the municipality for the purposes of Part 22, Division (2) of the *Municipal Act*;
- (f) refuse issuance of a **permit** if a report prepared by a **qualified person(s)** as described in Section 7.1(h) of this bylaw, finds that the proposed cutting may create adverse impact(s);
- (g) revoke a Tree Cutting **Permit** if the **permit** fails to comply with the Terms and Conditions contained in the **permit**.

7.0 PERMIT APPLICATION PROCEDURE

7.1 Every application for a Tree Cutting **Permit** shall be made by the registered **owner** or his agent authorized in writing. The application must be signed by the **owner** or the agent, be submitted to the Planning & Development Services Department and shall include all of the following information unless a requirement is waived by the **Director of Planning & Development Services**:

- (a) a site plan showing the legal boundaries and dimensions of the property;
- (b) the location of each **tree** or **group of trees** on the property with a **DBH** of 150 mm or greater within a **stream corridor leave strip** and/or area of slope with a grade equal to or greater than 30% (tree protection area), including **trees** within two metres of the property line on an adjacent property;
- (c) a site plan clearly identifying which **tree(s)** or **group(s)** of **trees** including type (coniferous or deciduous), size (**DBH**) and number of **trees** which are requested to be **cut down**;
- (d) a site plan clearly identifying which **trees** or **group of trees** including type and size which are to be retained;

- (e) a replacement plan showing the proposed location, size, type and number of proposed **replacement trees**;
- (f) the purpose of the tree cutting;
- (g) the legal description and **owner(s)** of the land;
- (h) a report prepared, to the satisfaction of the City of Kelowna, by a **qualified person(s)** stating whether or not the proposed cutting will create such adverse impact as danger of flooding, erosion, land slip or contamination of watercourses; and
- (i) a **permit** fee of \$50.00. This fee may be waived if applications for a **Tree Cutting Permit** and **Development Permit** relating to the same property are submitted to the **Planning & Development Services Department** concurrently.

7.2 Upon receipt of an application for a **Tree Cutting Permit**, the contents of which complies with Section 7.1 of this bylaw, the **Director of Planning & Development Services** may issue a **permit** with or without conditions, including but not limited to any of the following:

- (a) the replacement of any **protected tree** that is **cut down** with a **tree** or **trees** of a size and species and at such location or locations as the **Director of Planning & Development Services** or his/her designate may specify;
- (b) the posting of security with the City of Kelowna in accordance with Section 8.0 of this bylaw as security for the planting and maintenance of **replacement trees**;
- (c) that the employees and authorized agents of the City of Kelowna be permitted to enter onto the land at any reasonable time to carry out assessments and inspections to determine whether the terms of the **tree cutting permit** are being complied with;
- (d) that a **person** who obtains a **permit** pursuant to the provisions of this bylaw shall comply with all applicable City of Kelowna bylaws and any other applicable land use restrictions that may be registered in the Land Title Office against title to the lands from which **trees** are removed;
- (e) that a **permit** issued pursuant to the terms of this bylaw shall be valid for a period not to exceed one (1) year with the potential for one additional year subject to approval of the **Director of Planning & Development Services**.

8.0 SECURITY DEPOSIT

- 8.1 The applicant is required to submit a security deposit for full and proper compliance with all terms and conditions in the **permit**, including provision of all **replacement trees**, materials and maintenance required for site reinstatement.
- 8.2 The security shall be in the form of a cash deposit or irrevocable letter of credit drawn upon a chartered bank in a form acceptable to the City of Kelowna.
- 8.3 The amount of security shall be 125% of the value of all **replacement trees** and site restoration and clean-up measures required by the City of Kelowna, as estimated by a **qualified person**.

- 8.4 There shall be a 10% holdback of the security deposit for a period of one year after the work has been completed to the satisfaction of the City of Kelowna.
- 8.5 Should the permit holder fail to comply with the terms and conditions of the permit, the City of Kelowna may enter the property and perform such work as is necessary and may retain all or a portion of the security to cover the cost of such work. Should the security be inadequate to cover the costs of such work, the additional costs shall be added to and form part of the taxes payable on the real property as taxes in arrears pursuant to Section 712 of the *Municipal Act*.

9.0 INSPECTION AND ENFORCEMENT

- 9.1 When an application for a permit is made under this bylaw, municipal staff or their appointed representatives may inspect the trees and the site on which they grow and may assess the location, size, condition and species of the trees.
- 9.2 Municipal staff or their appointed representatives may enter on any property subject to this bylaw for the purposes of assessing and inspecting trees under this bylaw to determine compliance with this bylaw.
- 9.3 The City of Kelowna may suspend or revoke any permit if the tree cutting is not being undertaken in accordance with the terms and conditions of the permit.

10.0 REPLACEMENT TREES

- 10.1 Unless this provision is waived or modified by Council or the Director of Planning & Development Services, any tree(s) cut down, removed or altered in accordance with the provisions of this bylaw shall be replaced within one growing season at a ratio of two replacement trees for each tree removed, and shall be planted and maintained on the same parcel as the tree(s) removed.
- 10.2 At least one of the replacement trees must be of the same type (i.e. either a coniferous or deciduous tree) as the tree type being removed. The minimum size of replacement trees shall be 3.0 m (10 feet) in height for conifers and 80 mm (3.2 inches) diameter at breast height (DBH) for deciduous species.
- 10.3 In addition to any penalty that may be imposed under this bylaw, where a person cuts down, removes or damages any tree, or permits any tree to be cut down, removed or damaged, in violation of this bylaw, or in violation of any permit issued under this bylaw, that tree shall be replaced at a ratio of two replacement trees for each tree removed and in accordance with the terms expressed in Section 10.1.
- 10.4 Maintenance requirements shall be specified in the replacement plan and carried out in accordance with the specifications.

Consolidated Bylaw No. 8041 – Page 7.

- 10.5 For the purposes of computing the number of trees needed to satisfy the requirements of Section 10.1, the following cannot be counted as a retained tree or a transplanted tree re-located elsewhere on the site:
- (a) a tree that in the opinion of the **Director of Planning & Development Services**, has been topped or pruned to the extent that it is unlikely to ever attain its natural, characteristic appearance;
 - (b) a tree that in the opinion of the **Director of Planning & Development Services**, is so damaged that it will likely become diseased or die prematurely or other wise pose a dangerous condition that is hazardous to persons or property;
 - (c) a tree that in the opinion of the **Director of Planning & Development Services**, is dead or dying to the extent that it will likely be dead within one year.

11.0 RE-CONSIDERATION

- 11.1 Where an owner (or his authorized agent) of property subject to a decision made by the **Director of Planning & Development Services** pursuant to Section 6.0 of this bylaw is dissatisfied with the decision, the owner or agent may apply to the **Council** for re-consideration of the matter within 30 days of the decision being communicated to them provided:
- (a) such notice may be delivered in person or by facsimile at (250) 470-0697, or sent by registered mail to the office of the City Clerk, 1435 Water Street, Kelowna, B.C. V1Y 1J4;
 - (b) where such notice is sent by registered mail, it shall be deemed to be delivered three (3) working days after the date of posting; and
 - (c) such notice must contain the address for delivery of the person applying for re-consideration, the particulars of the tree or trees involved and the reason why the decision of the **Director of Planning & Development Services** should be re-considered.
- 11.2 The Clerk, upon receipt of the notice, shall advise the owner and any authorized agent in writing, of the date and approximate time that **Council** will re-consider the decision of the **Director of Planning & Development Services**. Such notice shall be given at least seven (7) days prior to the date of the **Council** meeting at which the request for re-consideration will be heard.
- 11.3 At the **Council** meeting, the **Council** may hear from the owner and any authorized agent and any other person interested in the matter under re-consideration who wishes to be heard, and may either confirm the requirement or decision of the **Director of Planning & Development Services** or substitute its own requirement or decision.

12.0 SEVERABILITY

- 12.1 If any section, sub-section, clauses, sub-clause, or phrase of this bylaw is for any reason held to be invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this bylaw.

13.0 OFFENCES AND PENALTIES

- 13.1 No **person** may prevent or obstruct, or attempt to prevent or obstruct, the entry of officials authorized under Section 9.0 upon any property as authorized by this bylaw.
- 13.2 Every **person** who violates a provision of this bylaw commits an offence and is liable on summary conviction to a penalty not exceeding Two Thousand Dollars (\$2,000.00) and the costs of prosecution.
- 13.3 The penalties imposed under this sub-section supplement and are not a substitute for any other remedy to an infraction of this bylaw.
- 13.4 Where more than one **tree is cut down**, removed or damaged in violation of this bylaw, a separate offence is committed in respect to each tree.

14.0 REPEAL

- 14.1 Tree Cutting Permit Bylaw No. 6932 and Bylaw No. 7038, being Amendment No. 1 to Tree Cutting Permit Bylaw No. 6932 are hereby repealed.

BL8224 added a new Section 15 and renumbered the subsequent sections:

15.0 ENACTMENTS

- 15.1 Any enactments referred to herein is a reference to an enactment of British Columbia and regulations thereto, as amended, revised, consolidated or replaced from time to time, and any bylaw referred to herein is a reference to an enactment of the Council of the City of Kelowna, as amended, revised, consolidated or replaced from time to time.

16.0 SCHEDULES

- 16.1 The following schedules are attached to and form part of this bylaw:

Schedule A - Tree Cutting Permit Areas

17.0 EFFECTIVE DATE

- 17.1 This bylaw comes into full force and effect and is binding on all persons as and from the date of adoption.

Consolidated Bylaw No. 8041 – Page 9.

Read a first time by the Municipal Council this 8th day of April, 1997.

Read a second time by the Municipal Council this 8th day of April, 1997.

Read a third time by the Municipal Council this 8th day of April, 1997.

Adopted by a 2/3 majority of the Municipal Council of the City of Kelowna this 14th day of April, 1997.

"Walter Gray"

Mayor

"D.L. Shipclark"

City Clerk

SCHEDULE A

TREE CUTTING PERMIT AREAS

1. Lots 1 to 3 inclusive, Sec. 29, Twp. 29, S.D.Y.D., Plan KAP52409 - Stewart Road West.
2. Lots 1 to 3, 7 to 11, 15 to 53 inclusive, Sec. 29, Twp. 29, S.D.Y.D., Plan KAP52450 - Canyon Ridge Crescent.
3. Lots 54 to 63 inclusive, Sec. 29, Twp. 29, S.D.Y.D., Plan KAP52450 - Mid Ridge Court.
4. Lots 4 to 6 inclusive and Lot 64, Sec. 29, Twp. 29, S.D.Y.D., Plan KAP52450 - Canyon View Court.
5. Lots 12 to 14 inclusive and Park Sec. 29, Twp. 29, S.D.Y.D., Plan KAP52450 - Canyon Falls Court.
6. Lot 65, Sec. 29, Twp. 29, S.D.Y.D., Plan KAP52450 - Westridge Drive.
7. The easterly 85 m of Lot 6, Plan 477, Sec. 25, Twp. 28, S.D.Y.D. except (1) Part Red on Plan B149 and (2) Plans H13734 and 41781 - Lakeshore Road.
8. Lot A, Plan 40598, Sec. 16, Twp. 26, O.D.Y.D. - O'Reilly Road.