

THE CORPORATION OF THE CITY OF COURTENAY

BYLAW NO. 2461

A bylaw to regulate and prohibit the cutting and removal of trees within the City of Courtenay

WHEREAS the City Council may, by bylaw, exercise certain powers within the City, to regulate cutting and removal of trees and to require their replacement;

WHEREAS the City considers it in the public interest to provide for the protection and preservation of trees, the regulation of their cutting and removal and their replacement;

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

1. Definitions

1.1 In this bylaw,

"**Arborist**" includes a person certified by the International Society of Arboriculture as an arborist or arboriculturist, and any forester, landscape architect or other person holding a professional qualification pertinent to the growing and maintenance of trees;

"**Assessment report**" means a report prepared in accordance with assessment methods to assess the potential impact of a proposed development in a riparian assessment area and which is certified for the purposes of this regulation by a qualified environmental professional.

"**Barrier**" means a device including a fence, guard, frame or any other conspicuous marker which is placed on, around, or near a tree to indicate the tree trunk, roots or branches are not to be cut, removed or damaged;

"**Building Envelope**" means that part of a parcel on which a building permit authorizes the construction of a building or a sewage disposal field;

"**City**" means, as the context requires, the Corporation of the City of Courtenay or the area within the boundaries of the City of Courtenay;

"**Council**" means the Council of the Corporation of the City of Courtenay;

"**D.B.H.**" means the diameter of the trunk of a tree measured at 1.5 metres above the ground at the base of the tree;

"**Director of Planning Services**" means a person appointed by Council as the Director of Planning Services and includes any person under his or her authority.

"**Drip Line**" means a circle on the ground around the trunk of a tree, the radius of which is the distance between the outermost twigs of the tree and the centre point of the trunk, or its vertical extension;

"**Natural Boundary**" means the visible high watermark of any of the bodies of water referred to in section 2.1 where the presence and action of the water are so common and usual and so long continued in all ordinary years to mark upon the soil of the bed of the body of water a character distinct from that of the banks thereof, in respect to vegetation, as well as in respect to the nature of the soil itself;

“Protected Tree” means any of the following trees:

- a) Garry Oak (*Quercus garryana*)
- b) Pacific Dogwood (*Cornus nuttallii*)
- c) trees protected by a restrictive covenant in favour of the City

“Qualified environmental professional” means an applied scientist or technologist, acting alone or together with another qualified environmental professional, if:

- a) the individual is registered and in good standing in British Columbia with an appropriate professional organization constituted under an Act, acting under that association’s code of ethics and subject to disciplinary action by that association,
- b) the individual’s area of expertise is recognized in the assessment methods as one that is acceptable for the purpose of providing all or part of an assessment report in respect of that development proposal,
- c) the individual is acting within that individual’s area of expertise

“Replacement Tree” means a tree planted on a parcel in accordance with section 7 or 9 of this bylaw to replace trees cut, removed or damaged on the same parcel;

“Riparian area high water mark” means, as determined by a qualified environmental professional, the visible high water mark of a stream where the presence and action of water are so common and usual, and so long continued in all ordinary years, as to mark on the soil of the bed of the stream a character distinct from that of its banks, in vegetation, as well as in the nature of the soil itself, and includes the active floodplain.

“Riparian assessment area” means:

- a) for a stream, the 30 metre strip on both sides of the stream, measured from the riparian area high water mark,
- b) for a ravine less than 60 metres wide, a strip on both sides of the stream measured from the riparian area high water mark to a point that is 30 metres beyond the top of the ravine bank, and
- c) for a ravine 60 metres wide or greater, a strip on both sides of the stream measured from the riparian area high water mark to a point that is 10 metres beyond the top of the ravine bank.

“Ravine” means a narrow, steep-sided valley that is commonly eroded by running water and has a slope grade greater than 3:1

“Stream” means any of the following that provides fish habitat:

- a) a watercourse, whether it contains water or not,
- b) a pond, lake, river, creek or brook,
- c) a ditch, spring or wetland that is connected by surface flow to something referred to in point a or b.

2. Tree Cutting Permit

2.1 A permit for cutting and removal of any tree to which this bylaw applies shall be issued by the Director of Planning Services upon application by the owner in accordance with this Section and Section 8.

2.2 For the duration of the permit, the permit shall be displayed in an accessible conspicuous location on the parcel to which it pertains.

- 2.3 The authorization to cut or remove trees shall expire one year after the date of issuance of a permit.

3. Application

- 3.1 This bylaw shall apply to property within the City of Courtenay as follows:
- (a) all protected trees
 - (b) all trees on properties greater than 1 hectare or within a tree permit area designated in Schedule “D”
 - (c) all significant trees as designated on Schedule “E”
 - (d) all trees within 30 metres of Arden Creek, Courtenay River, Morrison Creek, Portuguese Creek, Puntledge River, Tsolum River, Piercy Creek, Millard Creek, Little River, all stream estuaries and Comox Harbour and 15 metres from all other streams, lakes and wetlands
 - (e) All trees in riparian assessment areas.

4. Prohibited Activities

- 4.1 No person shall cut or remove any tree or suffer or permit any such tree to be cut or removed except in accordance with the terms of a permit issued under this bylaw.
- 4.2 No person shall carry out any of the following tree damaging activities in respect to any tree to which this bylaw applies, except where the cutting or removal of the tree in question has been authorized by a permit and in that event none of the following activities shall be carried out to any extent greater than is required to cut or remove the tree in question:
- (a) Cutting or damaging the roots of a tree growing inside the drip line;
 - (b) Placing fill, building materials, asphalt or a building or structure upon land inside the drip line of a tree;
 - (c) Operating trucks, backhoes, excavators or other heavy equipment over the roots of a tree growing inside the drip line;
 - (d) Denting, gouging or damaging 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 land inside the drip line of the tree;
 - (g) Removing soil from land inside the drip line of a tree;
 - (h) Blasting inside the drip line of a tree or outside the drip line so as to damage roots or disturb soil inside the drip line;
 - (i) Undermining the roots of a tree growing inside the drip line;
 - (j) Altering the ground water or surface water level within the drip line of a tree.
- 4.3 No person shall fail to comply with the terms and conditions of a permit issued pursuant to this bylaw.

5. Exemptions

5.1 Section 4.1 of this bylaw does not apply to:

- (a) the cutting and removal of trees other than Significant Trees and trees growing in riparian assessment areas:
 - (i) growing in a building envelope;
 - (ii) required for the construction or installation of a driveway, required off-street parking area, or underground or above ground utility corridor;
 - (iii) required for the construction of a permitted accessory building in respect of which the issuance of a building permit is not required by the City's building bylaw;
 - (iv) required for the installation of roads or services shown on an engineering drawing approved by the Director of Planning Services in connection with the subdivision of land; or
 - (v) required for the installation of an access route or above ground or underground services on the common property of a bare land strata plan;
- (b) the cutting and removal of trees, other than Significant Trees and trees growing in a riparian assessment area, by a British Columbia Land Surveyor when cutting survey lines of a width of less than 2 metres;
- (c) the cutting and removal of trees, other than Significant Trees and trees growing in riparian assessment areas, that is required in the development of parks, cemeteries, or other property by any utility company, City staff, or its contractors to provide a public service or utility;
- (d) any tree that is dead, diseased, damaged or otherwise constitutes an imminent physical hazard to persons or property, provided that the Director of Planning Services is satisfied or that the owner provides to the Director of Planning Services a certified statement of an arborist, that the tree was dead, diseased, damaged or otherwise constituted an imminent physical hazard to persons or property, forthwith after cutting or removing the tree and plants a Replacement Tree in accordance with Schedule "B", if the tree was removed from an area referred to in Section 2.1; or
- (e) normal pruning of trees including pruning by any utility company, City staff or its contractors, in accordance with sound horticultural practice or as required for the safe operation of overhead transmission lines.

6. Tree Removal

6.1 Where the cutting or removal of trees has been authorized by the issuance of a permit, the person undertaking the cutting or removal shall:

- (a) identify with a flag, paint, survey tape or other adequate means each tree to be cut or removed;
- (b) place a barrier around those trees which will not be cut or removed in a manner to ensure that the trunk, branches and root structure of the trees are not damaged by the cutting or removal of the trees in particular shall ensure that none of the activities set out in section 4.2 of this bylaw occurs in respect of such trees;
- (c) dispose of the tree parts other than burning in accordance with Provincial and City regulations; and

- (d) restrict the hours of operation for cutting, removal or disposal to those hours specified in the *City of Courtenay Prevention of Public Nuisances Bylaw No. 1798, 1994*.

7. Replacement Trees

- 7.1 Where the Director of Planning Services has issued a permit to cut and remove a Significant Tree, the owner shall replace the trees cut or removed with trees planted on the same parcel in accordance with the criteria set out in Schedule “C”.
- 7.2 Where a person is required by this bylaw to plant a replacement tree on a parcel and the parcel has been subdivided since the act giving rise to the requirement was committed or the Permit to cut or remove trees was issued, as the case may be, the replacement tree shall be planted on a parcel that has been created by subdivision of the original parcel.
- 7.3 An owner shall plant and maintain every replacement tree in accordance with sound horticultural practice.
- 7.4 An owner may be exempted from a requirement under Section 7.1 to plant replacement trees to the extent only that an arborist certifies in writing to the Director of Planning Services that such planting cannot be carried out in such a way that the survival of any replacement tree and any existing tree in the vicinity is probable.
- 7.5 Where the planting and maintenance of a replacement tree is required pursuant to this bylaw, the owner shall provide to the City security in the amount of \$250.00 in respect of each tree to be planted and maintained, and where the City holds cash as security no interest shall accrue to the owner's account.
- 7.6 In the event that the owner fails to replace or maintain the trees in respect of which security has been provided to the City, the City may without notice to the owner plant or maintain the trees and apply the security to the cost of doing so.
- 7.7 Security held by the City may, upon application by the owner, be returned to the as follows:
 - (a) The security is released less 20 % after the planting of all replacement trees to the satisfaction of the Director of Planning Services;
 - (b) The balance of the security is held by the City for three years, dated from the planting of replacement trees, and is eligible for release upon approval by the Director of Planning Services that each replacement tree remains in a healthy condition.

8. Tree Permit Application and Fees

- 8.1 An application for a Permit to cut and remove a tree to which this bylaw applies, other than a Significant Tree, shall include:
 - (a) Completed Application for Tree Cutting Permit in the form of Schedule “A” signed by the registered owner(s), and, if applicable, written authority for an agent to act on behalf of the registered owner(s) of the property;
 - (b) Tree Cutting and Replacement Plan in the form Schedule “B”, which includes
 - Inventory of existing trees;
 - Identification of trees to be protected, removed and the kind of alteration to be carried out;

demonstrating that consideration has been given to the preservation of important trees as part of the tree cutting plan.

- (c) Application fee as determined by the City of Courtenay Fees and Charges Bylaw No. 1673, 1992 and amendments thereto.
- (d) Security deposit as determined by this bylaw.
- (e) Title search dated no more than five business days prior to the date of the application.
- (f) Site plan showing all property lines, buildings and structures.
- (g) Report by a professional engineer outlining stormwater management plan and sediment control measures which conform with the City's Water Balance Model.
- (h) As the circumstances require, a report by a qualified professional may be required to certify that the proposed cutting or removal will not create an adverse impact including flooding, erosion, land slip or contamination of any stream, unless the Director of Planning Services waives the requirement for such a report.
- (i) As the circumstances require, a statement of an arborist may be required to certify that a tree is dead, diseased, damaged or otherwise constitutes a physical hazard to persons or property.
- (j) For tree cutting and removal in riparian assessment areas, the City of Courtenay must receive notification from the Ministry of Environment that Fisheries and Oceans Canada and the Ministry have been:
 - i. Notified of the development proposal and tree cutting; and
 - ii. Provided with a copy of an assessment report prepared by a qualified environmental professional that
 - a. Certifies that he or she is qualified to carry out the assessment;
 - b. Certifies that the assessment methods have been followed; and
 - c. Provides their professional opinion that
 - If the development proposal and tree cutting is implemented as proposed there will be no harmful alteration, disruption or destruction of natural features, functions and conditions that support fish life processes in the riparian area; or
 - If the streamside protection and enhancement areas identified in the report are protected from the development and the measures identified in the report as necessary to protect the integrity of those areas from the effects of the development are implemented by the developer, there will be no harmful alteration, disruption or destruction of natural features, functions and conditions that support fish life processes in the riparian area.

9. Inspections and Assessments

9.1 The Director of Planning Services or person authorized by the Director of Planning Services may assess, inspect or cause an inspection to be made of any tree to which this bylaw applies, in the following circumstances:

- (a) where land is subject to an application for subdivision, approval of a servicing plan prior to subdivision, a development permit, a development variance permit, a temporary commercial or industrial use permit, or a building permit;
- (b) when replacement trees have been planted as required by this bylaw;

- (c) when any protected tree is threatened by any activity or is in danger of being cut, removed or damaged;
 - (d) when directed by resolution of the Council; and
 - (e) to ascertain whether the provisions of this bylaw are being observed.
- 9.2 For the purposes of any inspection or assessment herein the Director of Planning Services or person authorized by the Director of Planning Services may enter onto any land at all reasonable times.

10. Offence

- 10.1 Every person who violates any of the provisions of this bylaw or who suffers or permits any act or thing to be done or omits to do anything required to be done in contravention or in violation of any of the provisions of this bylaw, is guilty of an offence against this bylaw and is liable to the penalties hereby imposed.
- 10.2 Each day that a violation is permitted to exist or continues shall constitute a separate offence.
- 10.3 When more than one tree is cut, removed or damaged, or more than one tree is not replaced or maintained in accordance with a Permit issued pursuant to this bylaw, a separate offence is committed in respect of each such tree.

11. Penalty

- 11.1 Every person who contravenes, causes or authorizes or permits any act or thing to be done in contravention of, or neglects or refrains from doing anything required to be done by any of the provisions of this bylaw, terms and conditions of a permit, or an order issued pursuant to this bylaw commits an offence and is liable to:
- (a) A fine of up to \$20,000 and not less than \$500 for each offence; each day that the offence continues is deemed a separate offence.
 - (b) In addition, the City may seek legal compensation for any legal fees incurred.
 - (c) If any works for which a permit is required by this bylaw are commenced without a permit issued by the Director of Planning Services, the applicant for the proposed works shall pay double the fee prescribed as set out in this bylaw.
- 11.2 In addition to any penalty that may be imposed under this bylaw where an owner cuts, removes or damages, or suffers or permits any tree to be cut, removed or damaged in contravention of this bylaw, or in excess of any permission, or in violation of any terms and conditions of a Permit issued under this bylaw:
- (a) the owner shall submit a Tree Cutting and Replacement Plan to the Director of Planning Services for approval;
 - (b) the Tree Cutting and Replacement Plan shall be subject to Section 9 of this bylaw;
 - (c) the Tree Cutting and Replacement Plan shall specify the location and the species of Replacement Trees, which need not be the same species as the tree removed, except if the tree removed was Garry Oak, Arbutus or Dogwood then it shall be replaced with Garry Oak, Arbutus or Dogwood respectively; and
 - (d) the owner shall replace each tree cut, removed or damaged at a ratio of two replacement trees for each such tree.

11.3 An owner may be exempted from a requirement under Section 6.2 to plant Replacement Trees to the extent only that an arborist certifies in writing to the Director of Planning Services that such planting cannot be carried out in such a way that the survival of any replacement tree and any existing tree in the vicinity is probable.

12. General Provisions

12.1 All Schedules referred to herein form part of this bylaw.

Schedules: "A" Application Form
"B" Tree Cutting and Replacement Plan
"C" Replacement Trees
"D" Tree Cutting Permit Areas
"E" Significant Trees

12.2 The provisions of this bylaw are severable and the invalidity of any part of this bylaw shall not affect the validity of the remainder of this bylaw.

13. Title

13.1 This bylaw may be cited for all purposes as **“Tree Management and Protection Bylaw No. 2461, 2006”**

134. Repeal

14.1 “City of Courtenay Tree Management and Protection Bylaw No. 2422, 2005” and all amendments thereto are hereby repealed.

Read a first time this 1st day of May, 2006

Read a second time this 1st day of May, 2006

Read a third time this day of 1st day of May, 2006

Finally passed and adopted this 8th day of May, 2006

Mayor

Manager of Corporate Administration

TREE MANAGEMENT & PROTECTION BYLAW NO. 2461, 2006
SCHEDULE A

APPLICATION FOR TREE CUTTING PERMIT

APPLICANT INFORMATION	DESCRIPTION OF PROPERTY
Name(s): _____	Civic address: _____
Address: _____ _____	_____
City: _____ Postal Code: _____	Legal Description: _____
Phone: _____ Fax: _____	_____
E-mail: _____	_____
IF APPLICANT IS NOT THE OWNER OF PROPERTY:	
Owners Name: _____	Owner's phone/e-mail: _____
Owner's Address: _____	

PROPERTY INFORMATION
Lot size and dimensions (metric): _____ Zoning: _____
Existing Use: _____

TREE CUTTING INFORMATION
Number, size (approximate height and diameter) and type of tree(s) to be cut: _____ _____ _____
Reason for cutting or removal of trees : _____ _____ _____
Method of access to site during cutting: _____ _____ _____
Barrier methods proposed to protect trees which will remain standing: _____ _____ _____

APPLICANT/AGENT AUTHORIZATION

I enclose with this application:

- Schedule B – Tree Cutting and Replacement Plan
- Application fee in accordance with the City of Courtenay Fees and Charges Bylaw No. 1673, 1992
- Security deposit as set out in the bylaw
- Title search dated no more than five business days prior to the date of the application
- Existing tree inventory and development plan, including trees to be protected, removed and the kind of alteration to be carried out
- Required reports from a qualified professional as specified in Section 7 of this bylaw.

I/We will abide with the provisions of the "Tree Management and Protection Bylaw No. 2461, 2006" and all amendments hereto regarding tree cutting permit applications and inspections.

Signature of Registered Owner

Date

Signature of Agent (if necessary)

Date

TREE MANAGEMENT & PROTECTION BYLAW NO. 2461, 2006
SCHEDULE B

TREE CUTTING AND REPLACEMENT PLAN

INSTRUCTIONS

In the space provided below (or on a separate piece of paper) please draw to approximate scale a plan which identifies:

- | | |
|---|---|
| <input type="checkbox"/> All property lines and | <input type="checkbox"/> Location, species and D.B.H of trees proposed to be cut or removed |
| <input type="checkbox"/> Any abutting streets, lanes or public access rights of way | <input type="checkbox"/> Location, species and D.B.H of trees proposed to be retained |
| <input type="checkbox"/> Location of existing buildings on the subject parcel | <input type="checkbox"/> Location of proposed replacement trees |
| <input type="checkbox"/> Proposed development/subdivision plan | |

Note: Protected trees of all sizes must be identified, however, except in riparian assessment areas, trees having a D.B.H of less than 20 centimeters need not be identified.

TREE MANAGEMENT & PROTECTION BYLAW NO. 2461, 2006

SCHEDULE C

REPLACEMENT TREES

Where replacement trees are required to be provided pursuant to Section 9.1 of this bylaw, such replacement trees shall be provided and planted as follows:

- (a) Every tree planted to replace a deciduous tree that has been cut or removed shall be a deciduous tree and shall be planted in accordance with Table 1 of this schedule.
- (b) Every tree planted to replace a coniferous tree that has been cut or removed shall be a coniferous tree and shall be planted in accordance with Table 1 of this schedule.
- (c) Every replacement tree shall be spaced from existing trees and other replacement trees in accordance with sound horticultural practices so as to best ensure survival of the replacement and existing trees, and
- (d) The owner of the property on which the trees were cut or removed shall replace each tree cut, removed or damaged at a ratio of two replacement trees for each tree cut, removed or damaged.

Table 1:

Class of Tree Cut, Removed or Damaged	D.B.H of Tree Cut, Removed or Damaged	Minimum Height of Replacement Tree	Minimum D.B.H of Replacement Tree
Deciduous	20-30 cm		6 cm
	30-40 cm		8 cm
	40-50 cm		9 cm
	50-60 cm		10 cm
	Over 60 cm		11 cm
Coniferous	20-30 cm	3.5 m	
	30-40 cm	4.0 m	
	40-50 cm	5.0 m	
	50-60 cm	5.5 m	
	Over 60 cm	6.0 m	

TREE MANAGEMENT & PROTECTION BYLAW NO. 2461, 2006
SCHEDULE D

TREE CUTTING PERMIT AREAS

TREE MANAGEMENT & PROTECTION BYLAW NO. 2461, 2006

SCHEDULE E

SIGNIFICANT TREES

Property	Type	Number	Location
1. Rem. Lot 9, Plan 3015, Comox Land District 4640 Headquarters Road	Douglas Fir (psendotsuga menziesii)	Three(3)	In the northern portion of the subject property approximately 15 metres from the property line along the Island Highway and approximately 22 metres from the lot line fronting the southern side of Plan 456-R
2. Lot 1, Plan 59504 Comox Land District 1640 Burgess Road (Foursquare Gospel Church)	Douglas Fir (psendotsuga menziesii)	Seventy-Five (75)	In the portion of the property 60 metres from the northern boundary.
3. Lots 12 & 13, District, Lot 158, Plan 1911 Lerwick Nature Park	All trees with a D.B.H. of 20 centimetres or more		Entire property
4. Lot B, Section 42, Comox District, Plan 15464 3401 Island Highway (Millard Nature Park)	All trees with a D.B.H. of 20 centimetres or more		Entire property
5. Lot 2, Plan 66069 & Rem. Lot D, Plan VIP56042 Hurford Hill Nature Park	All trees with a D.B.H. of 20 centimetres or more		Entire property