

SUMMARY:

The Municipal Properties Tree bylaw provides regulations for the control and management of trees located on city-owned property. Under the terms of the bylaw no person shall remove, transplant, prune, deface or otherwise injure a tree on city-owned property without the written permission of the City of Kelowna Parks Department. The bylaw also requires that no person may plant a tree on city-owned property without first receiving the permission of the Parks Department.

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CITY OF KELOWNA
BYLAW NO. 8042
REVISED: January 17, 2005

Municipal Properties Tree Bylaw

A bylaw to provide for the management, improvement and operation of the Urban Forest of any property held or managed by the City of Kelowna.

The Council of the City of Kelowna enacts as follows:

1.0 TITLE

1.1 This bylaw may be cited as "Municipal Properties Tree Bylaw No. 8042".

2.0 APPLICABILITY

2.1 This bylaw applies to all lands owned or managed by the City of Kelowna.

3.0 DEFINITIONS

3.1 In this bylaw, unless the context otherwise requires:

"**boulevard**" means the portion of a **highway** between the curb lines or the lateral lines of a roadway and the adjoining property or roadway and includes curbs, sidewalk, medians and ditches;

"**City tree**" means any **tree** located on property owned or in the control of the City of Kelowna;

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

"**highway**" means every **highway** within the meaning of the Highway Act and every road, street, lane or right-of-way designed or intended for or used by the general public for the passage of vehicles and every place or passageway owned or operated by the City of Kelowna for the purpose of providing off-street parking or for the use of pedestrian or cycle traffic;

"**Parks Division**" means the **Parks Division** of the City of Kelowna;

"**Parks Manager**" means the **Parks Manager** of the City of Kelowna **Parks Division** and includes his or her authorized designate;

"**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;

"**remove**" means to cut down, **remove** or kill a **tree** or a substantial part of a **tree** by any means;

"tree" means a self-supporting woody plant that is a species of coniferous or deciduous genus.

4.0 PROHIBITIONS

4.1 No person other than an employee or authorized contractor of the **Parks Division** shall plant or prune any tree on any property owned or managed by the City without first having obtained the written permission of the **Parks Manager**.

4.2 The **Parks Manager** or authorized designate shall not permit the planting of any tree on property owned by the City except in compliance with guidelines set by the City of Kelowna **Parks Division**.

4.3 The selection of City tree types shall be at the discretion of the **Parks Manager** or his/her authorized designate.

5.0 EXEMPTIONS

5.1 The City of Kelowna **Parks Division** may remove, transplant or otherwise dispose of any City tree or authorize the removal, transplantation or disposal of any City tree if in the opinion of the **Parks Manager** the tree:

- (a) constitutes a hazard to life or property or is a public nuisance;
- (b) is infected by disease or injurious insects;
- (c) is planted too close to an abutting tree that it impedes growth of either or both;
- (d) interferes with the lines, poles, pipes, sewer lines, traffic control devices or other public utilities; or
- (e) at the discretion of the **Parks Manager**.

6.0 GENERAL PROVISIONS

6.1 All City trees shall be deemed to be the property of the City of Kelowna and the care, custody and control of such trees shall be with the **Parks Manager**.

BL9329 amended sub-paragraph 6.2:

6.2 The **Parks Manager** or his/her designate shall take care, custody and control of City trees in accordance with the City of Kelowna Urban Forest Policy as identified on Schedule "A" and the Tree Removal and Replacement Policy as identified in Schedule "B" of this bylaw.

6.3 No person shall remove, deface, trim or in any way injure, impair or interfere with any City tree except as expressly authorized to do so by the **Parks Division**.

6.4 No person shall place any building materials or other similar object against a City Tree without first installing a proper guard to prevent injury to the tree.

6.5 Cutting or trimming of trees are permitted only if carried out by a qualified private tree company which holds expressed written permission from the **Parks Manager**.

- 6.6 Any signs erected on or attached to private property shall be located in a manner which in no way interfere with **boulevard trees** and will not necessitate pruning or thinning in excess of normal practice.
- 6.7 No person shall attach wire, rope, nails, posters, or any such contrivance to any **City tree**.
- 6.8 The **Parks Division** may remove from any **City tree**, any wire, rope, nail, poster, or any such contrivance, that may, in the opinion of the **Parks Manager**, damage the tree.
- 6.9 The **Parks Division** may replace any **City tree** that has died or been removed provided that such replacement, in the opinion of the **Parks Manager** is desirable.

7.0 INDEMNITY

- 7.1 For any work done under this bylaw by anyone other than the City of Kelowna, its agents or employees, the individual doing the work shall indemnify and hold harmless the City of Kelowna, its agents and employees from any and all claims, risks, actions and causes of action howsoever arising from or out of the work done by such individual.

8.0 EQUITABLE COMPENSATION

- 8.1 Any person who removes or damages any **City tree** in violation of this bylaw shall be required to pay the City of Kelowna Equitable Compensation as defined in Section 8.2 of this bylaw.
- 8.2 Equitable compensation for the value of a **City tree** as appraised by the International Society of Arboriculture's Evaluation of Landscaped Trees Procedures, shall be required by the City if in the opinion of the **Parks Manager** a **City tree** has been irreparably damaged or has been removed without prior authorization. Repairable tree damage shall be appraised and the reduced tree value and/or cost of the repair will be considered as equitable compensation.

9.0 RECONSIDERATION

- 9.1 Any person who is subject to a decision by the **Parks Manager** may apply to the **Parks Manager** to have the decision reconsidered by:
- (a) delivering notice of such request to the City of Kelowna Parks Department, 1359, K.L.O. Road, V1W 3N8 Kelowna B. C., or by facsimile to (250) 861-8793;
 - (b) such notice must be delivered within thirty (30) days of the decision of the **Parks Manager**;
 - (c) such notice must contain the address for delivery of the person applying for reconsideration, the particulars of the tree or trees involved and the reason why the decision of the **Parks Manager** should be reconsidered.

10.0 SEVERABILITY

- 10.1 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.

10.2 Nothing in this bylaw shall be construed or applied to necessarily require or excuse non-compliance with any provisions of any Act or Bylaw.

11.0 OFFENCE

11.1 Every person who violates any provision of this bylaw, or who allows any act or thing to be done or omits to do anything required to be done is guilty of an offence against this bylaw and is liable to the penalties imposed under this bylaw.

11.2 Where more than one tree is cut down, removed or damaged in violation of this bylaw, a separate offence is committed in respect of each tree.

12.0 PENALTY

12.1 Every person who commits an offence against this bylaw is liable to a fine and penalty not exceeding Two Thousand Dollars (\$2,000.00) for each City tree unlawfully cut down or damaged in addition to the Equitable Compensation as outlined in Section 8.0 of this bylaw.

13.0 SCHEDULES

BL9329 amended sub-paragraph 13.1:

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

Schedule A - City of Kelowna Parks Division Urban Forest Policy Statement; and

Schedule B - City of Kelowna Parks Division Tree Removal and Replacement Policy

14.0 EFFECTIVE DATE

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

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 the Municipal Council of the City of Kelowna this 14th day of April, 1997.

"Walter Gray"

Mayor

"D.L. Shipclark"

City Clerk

Schedule A

**City of Kelowna Parks Division
Urban Forest Policy Statement**

All trees and treed areas on City property or property managed by the City are the responsibility of the City of Kelowna Parks Division.

The City of Kelowna Parks Division is responsible for the total management of all trees and natural treed areas (urban forest) on City properties which includes the administration, procurement, planting, maintenance, protection and preservation of City trees.

Where damage to or loss of a City tree occurs, due to non-compliance with the City of Kelowna Municipal Properties Tree Bylaw No. 8042, equitable compensation for that loss shall be recovered from any person causing the damage or loss and shall be applied to future tree replacements.

The purpose of this policy is to enhance the urban forest on Municipal property by:

- Establishing a proactive Tree Program to manage the Municipal urban forest in a proper arboricultural and cost effective manner by providing innovative leadership and services designed to preserve and improve the natural beauty of the urban forest.
- Ensuring that all trees on City properties are adequately protected from unnecessary destruction, loss or damage caused by any person. As per the City of Kelowna Municipal Properties Tree Bylaw No. 8042 and the City of Kelowna Landscape Tree Evaluation Procedure, where salvage is not possible, equitable compensation and/or replacement will be applied for all such affected trees.
- Establishing a tree reserve fund with funds received for tree losses and/or damage to be used for the procurement and planting of trees in subsequent years. Any reserve not used shall be carried forward to the next year and used according to policy.
- Co-ordinating all City tree planting programs including boulevards and roadway landscaping; parks and facility development; and naturalization and beautification programs to ensure species diversity and recommended species for planting.

Background

The City of Kelowna has made a commitment to care and preserve **City trees**. The first step towards implementing the commitment was the inventory of heritage trees in the Inner City area of Kelowna prepared in 1992 and the Rutland area in 1993. The next step in the process would be to establish an Urban Forestry Policy.

Urban Forestry

Urban Forestry is the sustained planning, planting, protection, maintenance and care of trees, forests, greenspace and related resources in and around cities for public benefit.

Benefits: Trees are of great importance to urban dwellers. Trees reduce air pollution by fixing carbon dioxide and certain other combustible gases. They control urban dust by gathering particles on their leaves, branches and trunks. Their leaves dampen background noise and take up many urban odours.

Environmental Benefits: Trees slow rainwater as it falls to the ground, thus reducing erosion and runoff and helping in the absorption of water into the soil. Trees absorb rainwater and release it back into the atmosphere (through transpiration) at a rate of approximately 400 litres per day. Trees provide shade, absorb heat during the day and effectively moderate ambient temperature during heat waves.

Energy and Economic Impacts: By intercepting up to 90% of the sun's summer rays, well sited stands of leafy trees can reduce air conditioning costs in buildings. If planned correctly, they can also act as wind screens to cut winter heating requirement. Greenery also enhances property values, thereby improving the property tax base.

Social Benefits: Trees can enhance community spirit and civic pride, aid in stress reduction by aesthetic appeal, provide buffer screens and arterial roadway enhancement and promote a common ground for the interaction between cultural and economic groups through "Partners in Parks" initiatives.

The urban forest should have the same recognition of its importance as other utilities city dwellers depend upon; hence, the urban forest should be considered as "green infrastructure".

Schedule B

**City of Kelowna Parks Division
Tree Removal and Replacement Policy**

REASON FOR POLICY

To clarify the City's tree removal bylaw on public lands, and the authority required to grant permission for removal. This policy deals with removal requests from the public as well as requests from City departments, businesses or external agencies.

POLICY

Trees on City property are protected against unauthorized damage by the Municipal Trees Bylaw No. 8042 and will only be removed if they meet one of the two sets of removal criteria outlined below. Trees removed from urbanized city boulevards or formal parks will be replaced at a minimum two for one ratio, either on-site or at a more suitable location in the City of Kelowna.

REMOVAL CRITERIA

Criteria #1:

Trees on City property may be removed, transplanted or replaced at public expense if in the opinion of the Urban Forestry Supervisor the tree:

1. Constitutes a hazard to life or property or is a public nuisance;
2. Is infected by disease or injurious insects that are a significant threat to the tree or nearby trees, or require the use of chemicals or treatments that are incompatible with the City's Integrated Pest Management Program;
3. Is planted too close to an abutting tree that it impedes growth of either or both;
4. Is documented to damage existing lines, poles, pipes, sewer lines, traffic control devices or other public utilities, and the problem can not be corrected by trimming or root pruning; or
5. At the discretion of the Parks Manager or his delegate.

Criteria #2:

If a tree does not meet criteria #1, a person may apply in writing to the Urban Forestry Supervisor for permission to remove a tree, if all of the following conditions are met:

1. The tree is not a significant neighbourhood asset, and removal does not harm the public interest;
2. Removal must be conducted by a City approved contractor (with the proper insurance and licenses) according to specifications provided by the City; and
3. Equitable compensation is paid for the value of the tree as determined by a tree appraisal, as well as all removal costs. Replacement costs may also be required, at the discretion of the Urban Forestry Supervisor. Funds received from compensation will be used to replace the tree at a minimum 2:1 ratio and any remaining funds will be placed into a tree planting reserve.

Some factors for consideration of this type of removal request include:

- Heritage value of the tree (including inclusion on the city's 1992 heritage tree inventory list). Removal of a tree on the heritage list must receive prior approval from the Parks Committee, unless it is imminently hazardous;
- Value of the tree to the neighbourhood (as determined from neighbour comments);
- Whether the tree was planted as part of a uniform boulevard or park planting (e.g. removal of individual trees will affect the character of the area);
- The size and species characteristics. Some species are short-lived or more prone to problems and/or high maintenance costs. Recognized scientific references, such as Matheny and Clark (1994)¹ and the International Society of Arboriculture Tree Failure Database will be used as a guide; and
- If the removal is for the purpose of improving "gray infrastructure" (e.g. new construction, road or utilities infrastructure) and no alternatives exist, then the benefits of removal will need to be weighed against the loss of green infrastructure. A plan to replace or improve "green infrastructure" may be a condition of approval.

¹ N.P. Matheny and J.R. Clark. 1994. A Photographic Guide to the Evaluation of Hazard Trees in Urban Areas. Second Edition. International Society of Arboriculture, Urbana, Illinois.