

THE CORPORATION OF THE CITY OF NELSON

Municipal Tree Bylaw No. 3232, 2012

A BYLAW TO PROVIDE FOR THE MANAGEMENT AND PRESERVATION OF TREES GROWING ON PUBLIC PROPERTY WITHIN THE CITY OF NELSON

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A BYLAW TO PROVIDE FOR THE MANAGEMENT AND PRESERVATION OF TREES GROWING ON PUBLIC PROPERTY WITHIN THE CITY OF NELSON

WHEREAS the City of Nelson deems it is desirable and expedient to manage and preserve trees growing on public property within the City of Nelson;

NOW THEREFORE, the Council of the Corporation of the City of Nelson in open meeting assembled enacts as follows:

1. **DEFINITIONS**

In this bylaw:

- | | |
|--------------------|---|
| “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 Nelson, including, but not limited to, streets, lanes, boulevards, walkways, easements, or rights-of-way. For trees that are straddling a property line, the tree will be considered to be on the side of the property that it originated on as a seedling |
| “Council” | means the Municipal Council of the Corporation of the City of Nelson |
| “DBH” | means the tree diameter measured at a point 1.2 m (4 ft.) above the natural ground level. This measurement makes a correction for the tree trunk flaring at the base where it joins the root system. The diameter of oval or odd shaped trees will be the circumference divided by 3.1415. For multi-stemmed “clumps” of trees, the diameter will be the diameter of the largest trunk, plus 60% of the diameters of the rest of the stems. |
| “highway” | means every highway within the meaning of the <i>Highway Act</i> 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 Nelson for the purpose of providing off-street parking or for the use of pedestrian or cycle traffic. |

“Operations Department”	means the Operations Department of the City of Nelson
“Director of Operations”	means the Director of Operations of the City of Nelson Operations Department and includes his or her authorized designate(s)
“qualified person”	is a professional engineer, landscape architect or a certified arborist
“certified arborist”	means a person accredited as such by the International Society of Arboriculture
“landscape architect”	means a person registered with the British Columbia Society of Landscape Architects
“professional engineer”	means a professional engineer registered under the Engineers and Geoscientists Act, with experience in geotechnical engineering
“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
“private tree”	means a tree growing on real property owned by a person. For trees that are straddling a property line, the tree will be considered to be on the side of the property that it originated on as a seedling.
“prune”	means to cut, deface, or cause harm to any part of a tree including roots, trunk, branches and leaves
“protection”	means to preserve or retain a tree in its original condition
“remove”	means to cut down, remove or kill a tree or a substantial part of a tree by any means;
“replacement tree”	means a tree that is purchased from a nursery and provided or planted to compensate for the removal of a significant tree. The minimum size of replacement

“significant tree”	trees is 3.0 m (10 feet) in height for conifers and 60 mm (2.5 inches) DBH for deciduous species means a tree that is extensive or important enough to merit special attention and protection
“tree”	means a self-supporting woody plant that is a species of coniferous or deciduous genus. If the woody plant has the potential to grow to a size of 150mm (6 in.) DBH, then it is a tree. If not, then it is a shrub, bush or hedge. For trees that are straddling a property line, the tree will be considered to be on the side of the property that it originated on as a seedling.

2. PROHIBITIONS

- 2.1 No person other than an employee or authorized contractor of the Operations Department shall prune, cut, deface or remove any tree on any property owned or managed by the City without first having obtained a valid Tree Cutting Permit signed by the Director of Operations. The approved pruning, cutting, or removal of any tree must be in compliance with guidelines set by the City of Nelson Operations Department.
- 2.2 The Director of Operations or authorized designate shall not permit the planting of any tree on property owned or managed by the City without the planter having written consent signed by the Director of Operations. The approved planting of any tree must be in compliance with guidelines set by the City of Nelson Operations Department.
- 2.3 The selection of City tree types for planting shall be at the discretion of the Director of Operations or his/her authorized designate(s).

3. EXEMPTIONS

- 3.1 The following practices are exempt from this bylaw:
 - a. the pruning or removal required for safe clearances away from high voltage electrical lines;
 - b. B.C. Land surveyors cutting survey lines having a width of less than 2 m. (6 ft.)

4. GENERAL PROVISIONS

- 4.1 The City of Nelson Operations Department may prune, remove, transplant or otherwise dispose of any City tree or authorize and order the pruning, removal, transplantation or disposal of any City tree if;

- 4.2 After receiving a Tree Risk Assessment from a qualified arborist; it is the opinion of the Director of Operations the tree;
- (a) is dead or suffers from major decay
 - (b) constitutes a hazard to life or property or is a public nuisance;
 - (c) is infected by disease or injurious insects;
 - (d) is planted too close to an abutting tree that it impedes growth of either or both;
 - (e) is interfering with City utility lines such as water, sanitary sewer or storm sewer lines;
 - (f) is suffering from major damage or loss of limbs resulting from:
 - construction, repair, or replacement of utility services, sidewalks, curbs, retaining walls, foundations, roads and property access routes; or emergency repairs to restore utility services;
 - (g) is suffering from irreparable damage from vandalism, rodents, vehicle collision or weather conditions;
 - (h) contravenes a City by-law or regulation
 - (i) is required for driveway access not to exceed 7.32 m (24 ft.) and only on approval of the Director of Operations and further that all costs to be the responsibility of the property owner and the removal is to be in accordance with the procedures of this policy.
 - (j) is required to be removed for thinning and spacing purposes, including accumulated undergrowth as well as mature stock, in order to provide for future plantings and to make way for a new generation of trees.
 - (k) or other mitigating factors at the discretion of the Director of Operations
- 4.3 Whenever practicable, when trees are to be removed for the above reasons, the City will notify nearby residents in writing in advance of the removal.
- 4.4 Whenever practicable, when private trees are ordered to be pruned or removed, the costs of the pruning and/or removal will be charged to the person registered as the owner of the real property.
- 4.5 All City trees shall be deemed to be the property of the City of Nelson. The Director of Operations shall take care, custody and control of City trees in accordance with the City of Nelson Tree Classification Criteria as identified on Schedule "A" of this bylaw and in accordance with Council's Tree Removal and Replacement Policy.

- 4.6 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 Operations Department. No person shall place any building materials or other similar object against a City Tree without first installing adequate shielding to prevent injury to the tree.
- 4.7 Cutting or trimming of trees are permitted only if carried out by a qualified private tree company. Each private company will hold expressed written permission from the Director of Operations.
- 4.8 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.
- 4.9 No person shall attach wire, rope, nails, posters, or any such contrivance to any City tree. The Operations Department may remove from any City tree, any wire, rope, nail, poster, or any such contrivance, that may, in the opinion of the Director of Operations, damage the tree.
- 4.10 The Operations Department may replace any City tree that has died or been removed provided that such replacement, in the opinion of the Director of Operations is desirable.

5. INDEMNITY

- 5.1 For any work done under this bylaw by anyone other than the City of Nelson, its agents or employees, the individual doing the work shall indemnify and hold harmless the City of Nelson, 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.

6. EQUITABLE COMPENSATION

- 6.1 Any person who removes or damages any City tree in violation of this bylaw shall be required to pay the City of Nelson Equitable Compensation as defined in this bylaw. Where damage to or loss of a City tree occurs, due to non-compliance with this Bylaw, equitable compensation for that loss shall be recovered from any person causing the damage or loss and shall be applied to a reserve fund for future tree replacements.

- 6.2 Equitable Compensation for the value of a City tree as appraised by the International Society of Arboriculture Evaluation of Landscaped Trees Procedures shall be required by the City if, in the opinion of the Director of Operations, 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.

7. APPEALS

- 7.1 Any person who is subject to a decision by the Director of Operations may apply to City Council to have the decision reconsidered in accordance with the Council's Administrative Fairness Policy.

8. OFFENCE

- 8.1 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.
- 8.2 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.

9. PENALTY AND ENFORCEMENT

- 9.1 Every person who commits an offence against this bylaw commits an offense punishable on summary conviction and shall be liable to a fine and penalty not exceeding Ten Thousand Dollars (\$10,000.00) for each City tree unlawfully cut down or damaged in addition to the Equitable Compensation as outlined in Section 6 of this bylaw.
- 9.2 Any person designated as a Bylaw Enforcement Officer pursuant to the "Bylaw Notice Enforcement Bylaw No. 3195, 2011" is hereby authorized and empowered to enforce the provisions of this bylaw or bylaw notice or as otherwise provided by this and any other bylaw of the Corporation of the City of Nelson.

10. SCHEDULES

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

Schedule A	City of Nelson Operations Department Tree Classification
Schedule B	City of Nelson Application for a Tree Cutting Permit
Schedule C	International Society of Arboriculture standard Tree Risk Assessment Form

11. CITATION

This bylaw may be cited for all purposes as the "**Corporation of the City of Nelson Municipal Tree Bylaw No. 3232, 2012.**"

12. REPEAL

The City of Nelson "Shade Trees Bylaw No. 129, 1903" and "Hazardous Tree Removal Bylaw No. 2645, 1994" and all amendments thereto are hereby repealed in their entirety.

13. APPLICABILITY

This bylaw applies to lands within the City of Nelson including, but not limited to, streets, lanes, boulevards, walkways, easements, or rights-of-way.

14. EFFECTIVE DATE

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

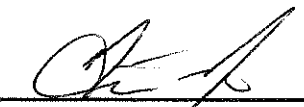
READ A FIRST TIME the 7th day of May, 2012
READ A SECOND TIME the 7th day of May, 2012
READ A THIRD TIME the 7th day of May, 2012

FINALLY PASSED AND ADOPTED the 11th day of June, 2012



Mayor

CERTIFIED A TRUE AND CORRECT COPY OF THE
"Municipal Tree Bylaw No. 3232, 2012"



Manager of Legislative and Administrative Services



Corporate Officer

THE CORPORATION OF THE CITY OF NELSON

Municipal Tree Bylaw No. 3232, 2012

Schedule A

City of Nelson Operations Department Tree Classification Criteria

All trees and treed areas on City property or property managed by the City are the responsibility of the City of Nelson Operations Department.

Class A: Heritage and Rare Trees

High value, usually non-native and planted. Trees in this category merit special considerations for preservation and conservation. The heritage tree component would include many trees in the original core area roughly bounded by Front, Hoover, Falls, and Park Streets, as well as many of the older trees in established parks. Factors to consider when classifying heritage and rare trees include:

Class B: Boulevard, Park and Street Trees

High value, usually non- native and planted.

Class C: Trees in natural and semi-natural areas.

These areas include wildlife corridors, urban/forest interface zones, green spaces and other minimally managed areas.

Trees in this category may be ornamental and planted but are mostly native trees or naturalized exotics, some of which are invasive.

Class D: Trees in any area which merit special considerations

Where there is a recognized ecosystem or landscape function.



CITY OF NELSON

THE CORPORATION OF THE CITY OF NELSON
Municipal Tree Bylaw No. 3232, 2012 : Schedule B

Application for a Tree Cutting Permit

This application must be submitted to the Operations Department of the City of Nelson and shall include all of the following information unless a requirement is waived by the Director of Operations.

Pursuant to Tree Protection By-Law No 3232, 2012 and amendments thereto, application for a tree cutting permit is hereby requested:

1. Full name, address and telephone number of applicant:

2. Full name, address and telephone number of property owner(s) or City of Nelson is the tree is on public property:

3. Purpose of proposed pruning/cutting/removing:

4. Number of trees to be pruned/cut/removed:

The legal description of land, nearby civic address or concise description of location of tree(s), for which this application is made to cut trees. **Attach a site plan** to this application which clearly identifies which tree(s) or groups of trees are to be affected by this application. The site plan should show tree species and sizes of trees involved. The site plan should also show details of proposed replacement trees, if applicable.

Location:

A security deposit by way of cash or letter of credit as required by the bylaw shall be provided to guarantee the provisions and maintenance of all replacement trees in accordance with the bylaw.

In consideration of the City of Nelson granting a Tree Cutting Permit, I/we the undersigned Owner(s)/ Authorized Agent, shall save and hold harmless the City, its officers, agents, servants, and employees from and against any and all suits or claims alleging damage or injury (including death) to any person or property that may occur or that may be alleged to have occurred, in the course of pruning, cutting down, removing or replacing trees, whether such claim shall be made by an employee of the Owner/Authorized Agent, or by a third party and whether or not it shall be claimed that the alleged damage or injury (including death) was caused through a willful or negligent act or omission of any of its sub-contractors, or any of their officers, servants, agents, employees or volunteers; and at its own expense, the Owner/Authorized Agent shall defend any and all such actions and pay all the legal charges, costs and other expenses arising there from.

SIGNED

DATE



CITY OF NELSON

THE CORPORATION OF THE CITY OF NELSON
Municipal Tree Bylaw No. 3232, 2012 : Schedule C

Tree Health and Risk Assessment Form

Assessed by: _____ ISA Certification # _____

Location of the tree _____

Species and DBH _____

Tree Health (Rated from 0-100%) _____

Tree Health Comments _____

RISK ASSESSMENT

Probability of Failure (Rate 1 – 4) _____

Size of Defective Parts (Rate 1-3) _____

Probability of Target Damage (Rate 1-3) _____

Other Risk Factors (Rate 1-2) _____

Describe defects and other risk factors:

Total Risk Factor (Total cumulative rating) _____/12

TREE HISTORY

Has this tree been assessed in the past and if so what was the recommendation?

Have there been any incidents involving this tree? Incident reports or liability claims?

Is there public sensitivity to the tree such as commemoration and if so please note contacts.

ATTACHED PHOTOS

[illegible][illegible]

Personal Information on this form is collected under the Freedom of Information and Protection of Privacy Act. Any questions regarding this collection should be directed to the City Clerk, 101 – 310 Ward St. Nelson B.C. 352-5511

Note: If the applicant is not the registered owner of the property concerned, then the owner's consent must be obtained and submitted with this initial application to the Operations Department

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[illegible]

Permit approved: _____

Director of Operations

Date approved: _____