



Tree Preservation Bylaw No. 1365

Consolidated to January 23, 2020

LIST OF AMENDMENTS

BYLAW NO.	ADOPTION DATE	AMENDMENT No.	GENERAL DESCRIPTION
1886	January 14, 2020	#1	Fees and Charges

**TOWN OF SMITHERS
TREE PRESERVATION BYLAW NO. 1365, 2001**

A Bylaw to Regulate and Prohibit the Cutting of Trees

WHEREAS the Council may pursuant to Division 2 of Part 22 of the Local Government Act enact a bylaw to protect and preserve trees.

AND WHEREAS it is Council's intention to regulate the removal and damaging of trees on public lands and on natural environment and hazardous lands designated in the Official Community Plan;

NOW THEREFORE the Municipal Council of the Town of Smithers, in open meeting assembled, hereby enacts as follows:

1. Definitions

In this Bylaw

- a) "A.L.R. Land" means those lands included within the Agricultural Land Reserve established under the Agricultural Land Commission Act, 1979, R.S.B.C. C.9.
- b) "Agricultural Use" means a use providing for the production, keeping or maintenance, for sale, lease or personal use, of plants and animals, including but not limited to forages and sod crops, greens and seed crops, dairy animals and dairy products, poultry and poultry products, livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats or any mutations or hybrids thereof, including the breeding and grazing of any or all such animals; bees and apiary products, fur animals; fruits of all kinds, vegetables, nursery, flora, ornamental and greenhouse products but does not include the production, growing or harvesting of trees.
- c) "Building Envelope" shall mean that part of a lot on which the principal building may be sited under the setback requirements of the Zoning Bylaw, No. 740, 1985 or any successor bylaw, as varied by any variances to a setback distance approved by development variance permit, or the Board of Variance.
- d) "Clear-cut Logging" means the cutting down of trees on a parcel of land but does not include:
 - (i) The cutting down of not more than 3 trees for every full .4 (1 acre) hectares of land in a parcel for any reason in any 12 month period, or
 - (ii) The cutting down of trees required to clear a site for a building, driveway, septic field or utility corridor, or

- (iii) The cutting down of trees which are dead, diseased or damaged by a natural cause.

In this definition a parcel less than .4 (1 acre) hectares in area shall be deemed to be .4 (1 acre) hectares in area.

- e) “Cut Down” means to cut down, kill or remove a tree by any means and includes the topping of a tree and the removal of any branch or trunk of a tree having a diameter of more than 10 (3.9 inches) centimeters.
- f) “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.
- g) “Floodplain” means those lands designated as a floodplain under the Smithers Official Community Plan Bylaw, No. 1335, 2000 or any successor bylaw.
- h) “Natural Boundary” means the visible high water mark at the time of the measurement of any lake, river, stream or other body of water where the presence and action of the water are so common and usual and so long continued in all ordinary years as to mark upon the soil of the bed or bank of the watercourse a character distinct from that of its banks in vegetation as well as in the nature of the soil itself.
- i) “Protected Tree” shall mean:
 - (i) Any tree having a diameter greater than 6 (2.4 inches) centimetres.
- j) “Residential” shall mean the use of a building or buildings as a dwelling or dwellings pursuant to Zoning Bylaw No. 740, 1985 or any successor bylaw.
- k) “Rural Land” means a parcel of land located outside the municipal boundary.
- l) “Tree” means any living, erect, woody plant which is:
 - (i) 5 metres (16.4 feet) or more in height; or
 - (ii) 10 (3.9 inches) centimetres or more in diameter; or
 - (iii) A replacement tree planted pursuant to Section 14 of this bylaw.
- m) “Urban Land” shall include those parcels of land located in the Natural Environment and Hazardous Lands Development Permit Area defined in the Official Community Plan as amended from time to time and all public lands owned by the Town of Smithers including but not limited to the Town’s Perimeter Trail, all municipal parks or highways.

- n) "Urban Lot" shall mean a parcel of land which under the Zoning and Subdivision bylaws of the municipality may not be further subdivided.
- o) "Watercourse" means a depression with a bed of 0.6 (1.96 feet) meters or more below the natural elevation of surrounding land:
 - (i) serving to give directions to a current of water for an average of at least six months of a year according to records kept by the government of British Columbia; or
 - (ii) having a drainage area of two square kilometers or more.

2. Measurement

In this bylaw:

- a) The diameter of a tree shall be determined by dividing the circumference of the trunk measured 1.4 (4.5 feet) metres above the ground by 3.142.
- b) The diameter of a tree having multiple trunks 1.4 (4.5 feet) metres above the ground shall be the sum of:
 - (i) 100 % of the diameter of the largest trunk, and
 - (ii) 60 % of the diameter of each additional trunk.
- c) The location of a tree on a lot shall be measured at the point at which the trunk of the tree meets the ground.
- d) Where the trunk of a tree is growing on a parcel line or other setback line prescribed by this bylaw, the tree shall be deemed to be located on the same side of the line as the majority of the trunk is located.

3. Urban Land

- a) No person shall cut down a protected tree growing on urban land except as directed by the Director of Operational Services or his designate.
- b) Sub-section (a) shall not apply to the removal of a protected tree:
 - (i) Growing on an urban lot less than 2,000 (21,528 sq feet) sq metres in area;
 - (ii) Growing on an urban lot 2,000 (21,528 sq feet) sq metres in area or larger if the removal of the tree is necessary for the purpose of constructing a building or addition to a building;
 - (iii) Required for the construction or installation of a driveway, required off-street parking area, septic tank or field or underground or above ground utility corridor on an urban lot, or

- (iv) Required for the installation of roads or services shown on an engineering drawing approved by the Director of Development Services or designate.
- (v) Required for the installation of an access route or above ground or underground services on the common property of a strata subdivision.
- (vi) Permitted by an approved Development Permit issued by the Town.
- c) No person shall cut down a tree growing on any land designated as a Development Permit Area in the Town of Smithers Official Community Plan under Section 879 (1) (2) of the Local Government Act prior to the issuance of a development permit, unless otherwise exempted.
- d) No person shall cut down a tree shown as “to be retained” on a plan attached to a Development Permit.

4. Streams

No person shall cut down a tree growing within 15 (49.21 feet) metres of the natural boundary of a watercourse, except where a tree or the roots of a tree are blocking a watercourse or reducing its drainage capacity or in a consultative process with Department of Fisheries & Oceans or Ministry of Environment.

5. Steep Slope Areas

- a) No person shall without first obtaining a permit cut down more than 2 trees in any one calendar year growing on any parcel of land designated as Natural Environment and Hazardous Lands in the Official Community Plan as amended from time to time.
- b) The stumps and roots of any tree removed without a permit pursuant to this section shall not be removed from the steep slope areas without specific written permission from the municipality.
- c) Nothing contained in this section shall be construed to authorize the cutting down of any tree which is otherwise prohibited from removal under this bylaw.

6. Significant Trees

- a) The trees identified on Schedule “A” attached hereto are hereby designated as “Significant Trees” pursuant to Section 710 of the Local Government Act because of their importance to the community, including importance for heritage or landmark value or as wildlife habitat.

- b) The Director of Operational Services or designate shall place a plaque or marker on or near each significant tree upon receiving permission to do so from the owner of the property on which the tree grows.
- c) No person shall cut down a significant tree designated under this bylaw unless permitted by an approved development permit.

7. Tree Damaging Activities

- a) No person shall carry out any of the following tree damaging activities in respect to any tree the cutting down of which is prohibited by this bylaw unless a permit is first obtained and the activity is carried out strictly in accordance with the permit:
 - (i) Cutting or damaging the roots of a tree growing inside the drip line;
 - (ii) Placing fill, building materials, asphalt or a building or structure upon land inside the drip line of a tree;
 - (iii) Operating trucks, backhoes, excavators or other heavy equipment over the roots of a tree growing inside the drip line;
 - (iv) Denting, gouging or damaging the trunk of a tree;
 - (v) Removing bark from a tree;
 - (vi) 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;
 - (vii) Removing soil from land inside the drip line of a tree;
 - (viii) 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;
 - (ix) Undermining the roots of a tree growing inside the drip line.
- b) Where the proposed activity will endanger the health or life of the tree, the Director of Operational Services or designate may:
 - (i) Refuse to issue a permit, or
 - (ii) Issue a permit subject to conditions.

8. Permits

- a) Every application for a permit shall be made to the Director of Operational Services or designate and shall be accompanied by a non-refundable application fee and unit tree fee. Tree Removal Permit Fees will be charged in accordance with the Town's Fees and Charges Bylaw, as may be amended from time to time.
- b) The application for a permit shall be made on the form prescribed by the Director of Operational Services and shall be accompanied by a Plan identifying:
 - (i) The location, species and diameter of the trees proposed to be cut down;
 - (ii) The location, species and diameter of the trees in respect to which tree damaging activities are to be carried out;
 - (iii) The location of any proposed construction activities, excavation activities, blasting activities in relation to the tree.
- c) The applicant for a permit shall state on the application form the purpose for which the trees are to be removed.
- d) The applicant shall flag or mark with paint each tree proposed for removal.
- e) The provisions of this bylaw shall not apply to the installation, repair or maintenance of any public works or service carried out by or under the authority of the municipality, provided that whenever it is proposed to cut down a tree or carry out a tree damaging activity described in Section 8 of this bylaw, other than an emergency repair, the proposed work shall first be reviewed and approved by the Director of Operational Services.

9. Permits in Respect to Steep Slope Areas

- a) Every application for a permit pursuant to Section 5 shall be accompanied by a report prepared by a qualified geotechnical engineer, at the applicant's expense, certifying that the proposed tree removal will not create a danger from flooding, erosion, landslip or avalanche.
- b) If the report of the geotechnical engineer requires the construction of works necessary to prevent slippage or erosion, no permit shall be issued unless the applicant provides to the municipality a surety deposit or bond in the form of a certified cheque or irrevocable letter of credit in favour of the municipality in the amount of 120% of the cost of the works as estimated by the geotechnical engineer.

- c) The applicant shall enter into an agreement with the municipality with respect to any surety bonding required.
- d) The applicant shall be responsible for and at his own expense execute all work required by the geotechnical engineer in his report in order to ensure the stability of the slope.
- e) Upon completion of the required works and certification of the geotechnical engineer that the works satisfy his requirements to maintain the stability of the slope, the surety bonding will be released.
- f) The works shall be completed within the period specified on the permit. Should the works not be finalized within the stated period, the municipality may have the works completed at the owner/applicant's expense using the surety bond.

10. Removal of Hazardous Trees

- a) Every owner or occupier of real property shall cause all trees, hedges, bushes or shrubs on the property to be trimmed, removed or cut down if the Council considers that it is:
 - (i) A hazard to the safety of persons;
 - (ii) Likely to damage public property, or
 - (iii) Seriously inconveniencing the public.
- b) The Council may serve upon the owner or occupier of the property notice that the municipality will be entitled to take the required action at the expense of the person given the notice if the person does not take the required action within 5 days service of the notice upon him.
- c) If the person given the notice does not take the required action within 5 days of service, the municipality, by its employees or others, may enter the real property and take the action specified in the notice at the expense of the person given the notice.
- d) If the person referred to in the preceding sub-section does not pay the costs of the action taken on or before December 31st in the year in which the costs were incurred, the costs shall be added to and form part of the taxes payable on the real property as taxes in arrears.

11. Damaged, Dead and Diseased Trees

- a) The owner of a tree which, pursuant to this bylaw, may not be cut down may apply to the municipality for a permit to cut down or prune the tree, and if
 - (i) The tree is dead, dying, severely damaged, unstable or severely leaning and in danger of falling, or
 - (ii) Interfering with, or in such close proximity to utility wires as to be a danger, or
 - (iii) The roots of the tree are interfering with, blocking or damaging a drainage or sewer systems or other improvement, the Director of Operational Services or designate may issue a permit to cut down or prune the tree.
- b) The owner of a tree, which pursuant to this bylaw may not be cut down, may apply to the municipality for a permit to prune the tree and if a qualified landscape designer or certified arborist confirms that the proposed pruning will benefit the tree, the Director of Operational Services may issue a permit to prune the tree.
- c) There shall be no charge for a permit issued under this section.

12. Emergency Removal

Notwithstanding any other provision in this bylaw, a person may cut down a tree or limb of a tree prohibited from removal under this bylaw if

- a) The tree or limb of the tree has been severely damaged by a natural cause, and
- b) The tree or limb of the tree is in imminent danger of falling and injuring persons or property.

13. Replacement Trees

In addition to any other remedy, any person who cuts down or damages a tree in contravention of this bylaw or a permit issued under this bylaw shall:

- a) Plant a replacement tree of the same species in approximately the same location as the tree removed, of a size to be determined in accordance with and within a time period prescribed by the Director of Operational Services or designate.
- b) Water, fertilize and maintain the replacement tree strictly in accordance with the instructions of the Director of Operational Services, or designate.

- c) Provide to the municipality security in the amount of 120% of the total cost of replacing and maintaining the tree for a period 3 years in the form of cash or letter of credit to guarantee performance of the requirements of this section.

14. Removal of Replacement Trees

Subject to Section 3(b), no person shall cut down any tree planted as a replacement tree pursuant to Section 14 of this bylaw.

15. Administration and Enforcement

- a) The Director of Operational Services, the Director of Development Services, the Chief Administrative Officer, Bylaw Enforcement Officer and any municipal employee authorized by one of the aforesaid officials shall have the right to enter at all reasonable times on any property to make an assessment or inspection for any purpose under this bylaw.
- b) No person shall prevent or obstruct or attempt to prevent or obstruct entry of any municipal employee authorized to enter upon property by this bylaw.

16. Offence

- a) Any person who contravenes any provision of this bylaw by doing any act which it forbids or omitting any act which is required to be done is guilty of an offence and is liable on summary conviction to a fine of not less than \$500.00 for each tree unlawfully cut down or damaged, for a first offence, and for each subsequent offence to a fine of not less than \$1,000.00 for each tree unlawfully cut down or damaged.
- b) It shall be an offence under this bylaw for any owner or occupier of land or any person acting under the authority of an owner or occupier to hire, permit or suffer another person to cut down or damage a tree, or do any other act prohibited by this bylaw.

17. This bylaw may be cited for all purposes as "Tree Preservation Bylaw No. 1365, 2001", and comes into effect on the date of adoption.

READ A FIRST TIME THIS 14TH DAY OF FEBRUARY, 2001.

READ A SECOND TIME THIS 14TH DAY OF FEBRUARY, 2001.

READ A THIRD TIME THIS 14TH DAY OF FEBRUARY, 2001.

ADOPTED THIS 28TH DAY OF FEBRUARY, 2001.

The Corporate Seal of the Town of
Smithers was hereto affixed in the
presence of:

S E A L

Brian Northup
Mayor

Wallace Mah
Corporate Administrator/ CAO

**CERTIFIED A TRUE AND CORRECT
COPY** of Bylaw No. 1365, cited as "Tree
Preservation Bylaw No. 1365, 2001"

Wallace Mah
Corporate Administrator (CAO)