

THE CORPORATION OF THE CITY OF ROSSLAND

BYLAW NO. 2769

A BYLAW TO REGULATE AND PROHIBIT THE CUTTING DOWN, DAMAGING AND REMOVAL OF TREES.

WHEREAS the *Community Charter* authorizes Council to enact bylaws to preserve and protect Trees within the City, and to prohibit and regulate their cutting down and removal, and to require their replacement;

AND WHEREAS the Council of the City of Rossland considers it in the public interest to provide for the protection, preservation, regulation and replacement of Trees within the municipality;

THEREFORE the Council of the City of Rossland, in open meeting assembled, enacts the following:

1. CITATION

1. This Bylaw may be cited for all purposes as “City of Rossland Tree Management Bylaw No. 2769, 2021”.

2. DEFINITIONS

1. In this Bylaw:

“Applicant” means the **Owner** of a **Parcel** of land or a person authorized by the Owner to make application under this Bylaw.

“Bylaw Enforcement Officer” means a person or persons appointed from time to time by resolution of the City Council pursuant to Section 36 of the *Police Act*, to enforce regulatory bylaws of the municipality.

“Certified Tree Risk Assessor” means a Certified Arborist with additional current training and certification in tree risk assessment as determined by the International Society of Arboriculture.

“City” means the Corporation of the City of Rossland.

“Council” means the City Council of Rossland.

“Development Approval” includes the approval of a rezoning, a subdivision, the issuance of a development permit, temporary use, highway access or building permit.

“Development Period” means the time between adoption of this Bylaw and the completion of all buildings, works and services that are the subject of a **Development Approval** granted after the enactment of this Bylaw for a Parcel subject to this Bylaw.

“Diameter” means the diameter of the trunk of a **Tree**, measured 1.3 metres above the average level of the undisturbed grade at the base of the **Tree**.

“Drip Line” means a line around a **Tree** formed by the intersection of the ground and a vertical line extending down from tips of the outermost branches of the **Tree**.

“Hazard Tree” means a tree identified in writing by a **Certified Tree Risk Assessor** as having defects sufficient to significantly increase the likelihood that all or part of the Tree will fall resulting in a risk of personal injury or property damage.

“Manager” means the person appointed by the **City** as the Manager of Planning and Development Services and includes any employee of the **City** directed by the **Manager** to undertake any of the Manager’s responsibilities under this Bylaw.

“Owner” means the registered owner in fee simple of a **Parcel** of land.

“Occupancy Permit” means a permit to occupy a residential structure issued pursuant to the City of Rossland Building Bylaw No.2716, 2019.

“Permit” means a permit issued by the Manager under authority of this bylaw.

“Ravine Setback” means any land within 6 metres of the top of the banks of any ravine formed by a creek, stream or other watercourse.

“Replacement Tree” means a **Tree** required to be planted in accordance with this Bylaw.

“Retained Tree” means a **Tree** identified in a **Tree Management Permit** as a **Tree** that is not to be cut, removed or damaged.

“Significant Tree” means a **Tree** identified by the **Council** as significant because of its importance to the community, including importance for heritage or landmark value, or identified as significant by a Certified Arborist as wildlife habitat.

“Sound Arboricultural Practice” means in accordance with American National Standards Institute (ANSI) Publication, A300-Tree Care Operations and the companion Best Management Practices Series of the International Society of Arboriculture (ISA);

“Tree” means a woody perennial plant having a single trunk or stem which has a diameter of at least 20 centimetres (8 inches) when measured at a height of 1.4 metres above the undisturbed grade of the land where the Tree is located;

“Tree Protection Fence” means a sturdy protection barrier or temporary fence at least 1.2 metres in height, installed around the **Drip Line** of a Retained Tree.

“Qualified Professional” means a person in good standing with a legislated self-regulating association in British Columbia who is acting within the individual’s area of expertise as a professional Biologist, Agrologist, Arborist or Forester.

2. All references in this Bylaw to enactments include references to those enactments as they may, from time to time, be amended or repealed and replaced.

3. APPLICATION

1. Unless otherwise exempted by this Bylaw, this Bylaw applies to all lands within the boundaries of the City of Rossland.

4. PROHIBITIONS

1. Unless specifically exempted under this bylaw, a person must not:
 - a) Cut or remove any Tree or Replacement Tree, or cause the death of any Tree or Replacement Tree, except pursuant to and in accordance with the terms of a valid and subsisting Permit;
 - b) cause any damage to any Tree or Replacement Tree including by:
 - i. cutting or damaging the roots of a Tree inside its drip line;
 - ii. undermining the structure or roots of a Tree inside its drip line.
 - c) Falsify or otherwise misrepresent information on an application for a Permit;
 - d) Alter a Permit;
 - e) Remove, alter, conceal, or otherwise interfere with a Stop Work Order;
 - f) Fail to comply with the terms, conditions, restrictions or requirements of this Bylaw, or a Permit;

5. EXEMPTIONS

1. A Permit is not required to cut or remove a Tree in the following circumstances:
 - a) from a Parcel that is 930 sq. m. (10,000 square feet) in size or less that is and zoned for residential use, and upon which a residential dwelling is situated exists, unless the Tree proposed to be cut or removed is:
 - i. a Significant Tree;
 - ii. on a slope where the grade of the slope at the location of the tree is greater than 20 percent;
 - iii. within 10 meters of a Knotweed [*Fallopia japonica*] plant;
 - iv. a Replacement Tree,

- b) that must be removed in order to permit the construction and safe occupancy of buildings authorized by a building permit.
- c) that must be removed for the installation of roads, driveways, or utility services shown on drawings that have received construction approval by the City in respect of a building permit, highway access permit, or subdivision approval.
- d) as necessary for the purposes of a farm operation as that is defined in the *Farm Practices Protection (Right to Farm) Act*;
- e) pursuant to works undertaken by or for the City;
- f) by a utility under the *Utilities Commission Act*, a utility owned or operated by the Province of British Columbia, or a federally regulated utility, but only where that cutting or removal is done for the purpose of safety, maintenance or operation of the utility's infrastructure;
- g) that has been severely damaged by natural causes and poses an imminent danger of injuring a person or property;
- h) That is a Hazard Tree.
- i) that comes within the scope of section 21 of the *Private Managed Forest Land Act*;
- j) that is subject to a tree farm license, permit or other authority or tenure under the *Forest Act*.
- k) That is on a golf course provided that the Tree is subject to a Golf Course Management Plan approved by the City.
- l) That is on Ski terrain provided that the Ski Terrain is subject to of Resort Master Plan approved by the City and within in bounds territory area of skiing.
- m) That is in an area identified for wildfire hazard reduction in a City approved Fuel Management Prescription or a City approved Firesmart Plan.

6. TREE MANAGEMENT PERMIT

1. An application for a Permit in relation to a phased development shall only for one phase of the development.
2. Notwithstanding any other provision of this bylaw, the terms granting a permit shall provide that:

- a) on parcels five (5) hectares or less, no more than 10% of the total trees on the parcel will be harvested in any one year and cumulatively no more than 50% of the trees over a 10-year period;
- b) on parcels over five (5) hectares, no more than 5% of the total trees on the parcel will be harvested in any one year and cumulatively no more than 50% of the trees over a 10-year period;

Application Requirements

3. Every application for a Permit shall be made in writing to the Manager using a form that may be provided by the City and shall include:
 - a) a non-refundable application fee in the amount as by the City's *Fees and Charges Bylaw*.
 - b) the following documents, plans and information relating to the proposed tree cutting or removal:
 - (i) a plan drawn to approximate scale identifying:
 - A. the boundaries of the Parcel;
 - B. all Highways that abut the Parcel from which the Tree is to be cut or removed;
 - C. the location of all existing buildings and structures on the Parcel;
 - D. the location, species and diameter of each Tree on the Parcel to be cut or removed;
 - E. the location, species and diameter of each Tree on the Parcel to be retained;
 - F. the location, species and diameter of each Replacement Tree;
 - G. a survey showing the topography of the Parcel in 1 meter vertical increments and the location of any hydrographic features on the Parcel;
 - (iii) the civic address, if available, and legal description of the Parcel;
 - (iv) the consent in writing of the Owner of the Parcel, if different from the Applicant, authorizing the Applicant to act as the Owner's agent;
 - (v) the methods proposed for control of drainage and erosion impacts during and after the cutting or removal of the Tree;
 - (vi) the proposed methods for disposal of woodwaste and other debris;
 - (vii) the proposed methods of noise and dust control during the Tree cutting or removal operation;
 - (viii) the proposed commencement and completion dates for Tree cutting or removal;
 - (ix) where the site of the Tree cutting or removal is on a Parcel adjacent to or that contains any part of a watercourse, a survey plan prepared by a BC Land Surveyor or professional engineer showing the top-of-bank of such watercourse;
 - (x) where the Tree cutting or removal is for a Hazard Tree, a report prepared by a Certified Tree Risk Assessor certifying that the Tree has defects sufficient to significantly increase the likelihood that all or part of the Tree will fall resulting in a risk of personal injury or property damage.

4. Notwithstanding the requirements set out in section 6.3(b), if requested by the Manager, the Applicant shall provide a report prepared by a professional engineer, professional biologist or Certified Tree Risk Assessor Arborist with experience in, as the circumstances require, geotechnical engineering, hydrology or tree management, certifying that the proposed cutting or removal of the Tree will not result in flooding, erosion, land slip or contamination of a watercourse.

Protection of Retained Trees

5. Prior to any alteration of a Parcel, including the construction, demolition, excavation, or installation of works and services, the Owner of a Parcel must install a Tree Protection Fence around all Retained Trees at such locations and in such a manner as to ensure that the Retained Trees are not damaged by the cutting or removal.
6. The Tree Protection Fence must be constructed prior to the issuance of the Permit.
7. Every Owner of a Parcel where a Tree Protection Fence is installed must ensure that the Tree Protection Fence:
 - a) is maintained in good condition throughout the Development Period;
 - b) remains in place until the end of the Development Period, unless the Manager is satisfied that the Tree Protection Fence is no longer necessary and has authorized, in writing, its removal.

Replacement Trees

8. Except as may be provided by section 5 of this Bylaw, the Owner of a Parcel shall, plant on the Parcel from which a Tree is cut or removed two (2) Replacement Trees for each Tree that is cut or removed from the Parcel, in accordance with the following:
 - a) The Replacement Tree shall be planted within 12 months of the cutting down or removal of the Tree;
 - b) If coniferous, the Replacement Tree shall have a minimum height of 1.5 metres measured from the ground;
 - c) If deciduous, the Replacement Tree shall have a minimum diameter of 7 centimetres, measured at the base of the Tree;
 - d) The drip line of each Replacement Tree must be at least 2.5 metres away from any other Tree, structure, Highway, or utility;
 - e) every Replacement Tree shall be planted in accordance with the current BCSLA (British Columbia Society of landscape architects) or BCLNA (British Columbia Landscape & Nursery Association) Landscape Standards;

- f) Replacement Trees shall meet current BCSLA or BCLNA standards related to choice of species;
- 9. Replacement trees shall be maintained in accordance with Sound Arboricultural Practices to the satisfaction of the Manager for 12 months after the Replacement Tree has been planted.
- 10. A Replacement Tree is not required if the Tree that has been cut or removed is a Hazard Tree.
- 11. An Applicant for a Permit must provide to the Manager a Tree Replacement Plan specifying the proposed number, location, species and size of Replacement Trees and a proposed maintenance regime. If a Tree Replacement Plan will be for more than ten Replacement Trees, the Tree Replacement Plan must be prepared by a Qualified Professional.
- 12. In the case of any Replacement Tree that is not alive 12 months after being planted, the Owner shall replace the Replacement Tree with a new Replacement Tree in accordance with this bylaw.
- 13. Upon completion of the planting of a Replacement Tree, the Owner must confirm, or if the number of Replacement Trees is greater than ten, have a Qualified Professional certify, to the Manager in a form approved by the Manager, that the Replacement Tree or Trees, as the case may be, has been provided in accordance with this bylaw.
- 14. At the request of an owner, as an alternative to providing a Replacement Tree, the Manager may do one of the following:
 - a) Approve payment to the City of \$300 for each Replacement Tree that is not planted, with those funds to be placed into the City's Climate Action Reserve Bylaw No. 2737, 2020. If such payment is approved and paid, the Owner is not obligated to provide security or directly carry out the work for which the payment is made.
 - b) Require that the Replacement Tree be planted by the City on City owned property in a location designated by the Manager.

Tree Cutting and Removal

- 15. On receiving a complete application, along with full payment of applicable fees, the Manager may issue a Permit for the cutting or removal of Trees, or both, and may attach any terms, conditions, restrictions, and requirements to the permit as considered necessary or advisable for ensuring continuing compliance with this Bylaw, including but not limited to:
 - (a) sequence and timing of Tree Removal to avoid or mitigate impacts, including but not limited to timelines for completion of the works identified in the permit;

- (b) co-ordination of geotechnical recommendations by a Qualified Environmental Professional or Professional Engineer;
 - (c) frequency of onsite monitoring of works and associated inspection reports undertaken by a Qualified Professional and submitted to the Manager;
 - (d) requirements to mitigate impacts to bird nesting;
 - (e) requirements for notice and for an onsite meeting prior to works commencing;
 - (f) requirements to uphold erosion and sediment control and Tree protection, and
 - g) require Replacement Trees as required by the bylaw.
16. Upon issuance, the holder of a Permit must promptly display a copy of the Permit on the subject Parcel in a location where it can be readily observed from an adjacent Highway or other place specified by the Manager.
17. The Manager may refuse, suspend, or cancel a Permit if:
- a) the application is in contravention with this Bylaw, another bylaw of the City; a Provincial Act or Regulation or a Federal Act;
 - b) the cutting or removal would create a hazard to any adjacent property or other Tree in the vicinity; or
 - c) the Manager is not satisfied that the standards and requirements of this Bylaw or the Permit are being met.

7. MAINTAINANCE AND SECURITY FOR TREE MANAGEMENT PERMITS

1. Where any Replacement Tree is required as a condition of a Permit, the Applicant must provide to the City a security deposit, which:
 - a) must be in the form of a cash deposit or an automatically renewable, irrevocable letter of credit drawn upon a chartered bank in the form acceptable to the City;
 - b) must be in the amount of \$300 for each Replacement Tree.
2. The funds held in the security deposit may be used by the City to recover the cost to the City of any damage to improvements or works owned or held by the City that have been damaged by a person acting under or in connection with the Permit. Where the security deposit is drawn upon, the Owner or Applicant must, within 3 days of being notified, replenish the security deposit to the amount required in section 7.1.
3. If the Owner fails to plant the required number, size and type of Replacement Trees in the specified locations within one year after receiving written direction from the Manager to

do so, or after a planting date as otherwise agreed upon, the City may deposit the securities in the Climate Action Reserve Fund.

8. ADMINISTRATION

General

1. The Manager is responsible for the administration of this bylaw.
2. In reaching a decision under this bylaw, the Manager may retain the services of an independent Qualified Professional, at the cost of the Applicant, to review any report provided by the Applicant. The Manager may rely on either report in determining whether to issue, refuse, suspend, revoke, or cancel a Permit, and in determining any conditions, restrictions and requirements to be imposed as a condition of issuing a Permit.

Inspection and Enforcement

3. The Manager and Bylaw Enforcement Officer are authorized to enforce this Bylaw and for that purpose, to enter onto real property in accordance with the *Community Charter*.
4. When an application for a Permit is made under this Bylaw, the Manager and Bylaw Enforcement Officer may inspect or cause an inspection to be made of any Tree and the Parcel on which a Tree is located to assess the location, size, condition and species of the Tree.
5. The Manager and the Bylaw Enforcement Officer may enter at all reasonable times on any Parcel that is subject to this Bylaw to ascertain whether the provisions of this Bylaw are being observed.
6. If a person has caused or allowed a Tree or Replacement Tree to be cut, damaged or removed in contravention of this Bylaw or contrary to a Permit, or if the information supplied by an Applicant is inaccurate, incomplete or erroneous, without limiting other enforcement action under this Bylaw, the Manager may:
 - a) issue a notice of violation of this Bylaw or the Permit;
 - b) issue and post at the parcel a Stop Work Order. If a Stop Work order is issued a person must stop all activities related to the Tree cutting or removal immediately.

Expiry

7. A Permit application is valid for 6 months from date of application. If required information for the Permit application has not been submitted within 6 months, the application will be closed.
8. A Permit shall be valid for a period of 12 months from the date of issue.

Reconsideration

9. If a decision is made by the Manager to refuse, suspend, revoke or cancel a Permit, the Owner or Applicant may ask Council to reconsider the decision.
10. All requests for reconsideration under section 8, shall be made in writing and delivered to the Chief Administrative Officer within thirty (30) days of an Owner or Applicant receiving notice of the decision.
11. Council may confirm, set aside or modify the decision of the Manager.

9. OFFENCES AND PENALTIES

1. Any person who contravenes or violates any provision of this bylaw or of any Permit, or who suffers or allows any act or thing to be done in contravention or violation of this bylaw or any Permit, or who fails or neglects to do anything required to be done under this bylaw or any Permit, commits an offence.
2. Where an offence is a continuing one, each day that the offence is continued shall constitute a separate offence.
3. Where one or more Tree is cut or removed or damaged, other than as authorized by this bylaw, or more than one tree is not replaced or maintained in accordance with a Permit, a separate offence is committed in respect of each such Tree.
4. Any Person who causes, permits or allows anything to be done in contravention or violation of this Bylaw, or who neglects or fails to do anything required to be done pursuant to this Bylaw, commits an offence against this Bylaw and is liable upon summary conviction to pay a fine of not more than \$50,000, plus the costs of prosecution, and any other penalty or remedy available under the Community Charter and Offence Act.
5. This Bylaw may be enforced by bylaw notice pursuant to the Bylaw Notice Enforcement Bylaw No. 2749, 2021, as amended or replaced.

10. REPEAL

1. City of Rossland Tree Retention Bylaw No. 2389, 2008 and any of its amendments are hereby repealed.

11. SEVERABILITY

1. If any section, subsection, sentence, clause or phrase of this Bylaw is for any reason held to be invalid by the decision of any court of competent jurisdiction, the invalid portion shall be severed and the part that is invalid shall not affect the validity of the remainder.

12.ENACTMENT

1. This Bylaw shall come into force and effect upon adoption of this bylaw.

READ A FIRST TIME
READ A SECOND TIME
READ A THIRD TIME
FINALLY ADOPTED

this 7th day of September 2021
this 7th day of September 2021
this 7th day of September 2021
this 20th day of September 2021



Mayor
Kathy Moore



Chief Administrative Officer/
Corporate Officer
Bryan Teasdale

