

THE CORPORATION OF THE DISTRICT OF PEACHLAND

BYLAW NUMBER 2404

A bylaw to regulate and prohibit the cutting, removal, and damage of trees, the issuance of permits for the same, and the requirement for replacement trees.

WHEREAS the *Community Charter* allows Council, by bylaw, to exercise certain powers to preserve and protect trees within the District of Peachland and to regulate their cutting, removal, and replacement;

AND WHEREAS the District of Peachland considers it in the public interest to ensure that tree removal and cutting of trees be restricted in certain areas of the District;

NOW, THEREFORE, the Council of the District of Peachland, in Open Meeting assembled, ENACTS AS FOLLOWS:

PART 1 – CITATION

- 1.1. This Bylaw may be cited for all purposes as Peachland "Tree Protection Bylaw No. 2404, 2023".

PART 2 – REPEAL

- 2.1. District of Peachland Tree Cutting Bylaw No. 1288, 1995, including all amendments thereto, is hereby repealed.

PART 3 – DEFINITIONS

- 3.1. For the purposes of this Bylaw, all terms shall have the meaning given to them in the *Community Charter* except where otherwise defined.

ALR Land means those lands included within the Agricultural Land Reserve established under the *Agricultural Land Commission Act*.

Certified Arborist means a person accredited as such by the International Society of Arboriculture.

Council means the Municipal Council of the District of Peachland.

Cut means the removal of a tree by any means from the land on which it is growing or the removal of any limb of a tree that requires ascending the tree to complete the removal.

DBH means the diameter of a tree at breast height measured at one metre above grade.

Damage means to take any action that is likely to impact or result in harm to the health or structural integrity of a tree.

Hazardous means a tree assessed to be in a condition (e.g., dead, dying, unstable, root damage, diseased) dangerous to people or property, by a Certified Arborist adhering to WorkSafe BC and International Society of Arboriculture's "Tree Risk Assessment in Urban Areas and the Urban/Rural Interface" Course Manual or an industry-recognized equivalent acceptable to the District.

Heritage Tree means a tree identified as having natural or cultural heritage significance in a District Heritage Inventory or Heritage Register.

Dead, Diseased, or Damaged Trees or Limbs means a tree or limb identified by a qualified professional as being, or likely to become in the immediate future, a danger to people or property.

Director means the person appointed to be responsible for the administration of development applications at the District and includes an assigned designate, as necessary.

District means the District of Peachland.

Drip Line means the area on the ground around the trunk of a tree that contains the outermost twigs and branches of the tree.

FireSmart means standards adopted by the Province to decrease the likelihood of losses and damages to property from wildfire events.

Group of Trees means a tree massing that includes a minimum of 20 trees with a maximum spacing of five metres between each tree.

Invasive Tree means tree species identified as Siberian Elm (*Ulmus pumila*), Russian olive (*Elaeagnus angustifolia*), or Tree of Heaven (*Ailanthus altissima*), in addition to any other species identified by the Invasive Species Council of British Columbia.

Landscape Architect means a person registered with the British Columbia Society of Landscape Architects.

Nest, Active means the nest of a bird that is occupied by a bird and/or its egg(s).

Nest, Inactive means the nest of bird that is unoccupied by a bird and/or its egg(s) outside of the General Nesting Period falling between March 1st and August 31st.

Permit means a Tree Cutting Permit issued pursuant to this bylaw.

Protected Tree means any of the following:

- a) Any tree with a DBH greater than 75 cm, or in the case of a tree with multiple stems, a combined stem DBH of 75 cm or more;
- b) Any replacement tree with a DBH less than 75 cm;
- c) Any retained tree;
- d) Any heritage tree;
- e) Any tree located within a Watercourse Protection Area or Foreshore Protection Area;
- f) Any tree of the following species with a DBH greater than 20 cm:
 - i. Arbutus (*Arbutus menziesii*);
 - ii. Garry Oak (*Quercus garryana*);
 - iii. Pacific yew (*Taxus brevifolia*);
 - iv. Pacific dogwood (*Cornus nuttallii*);
 - v. Yellow cedar (*Cupressus nootkatensis*);
 - vi. Shore pine (*Pinus contorta var contorta*) that lie within the protected shoreline area as defined using Provincial ecosystem zone mapping data;
- g) Any tree that contains the active nest of any bird;
- h) Any tree that contains the nest, whether active or not, of an eagle, peregrine falcon, gyrfalcon, heron, osprey, or burrowing owl; or
- i) Any tree that constitutes the habitat of a protected wildlife species under the provincial *Wildlife Act* or the federal *Migratory Birds Convention Act*.

Qualified Professional means a person in good standing with a legislated self-regulating association in British Columbia who is acting within their area of expertise, including a professional Biologist, Agrologist, Arborist, Forester, Geoscientist, Engineer, and/or Technologist.

Replacement Tree means a tree planted on a property to replace a tree that has been removed or damaged on the same property.

Retained Tree means a tree identified as being retained on a site plan attached to a Tree Cutting Permit.

Tree means a self-supporting woody plant that is a species of coniferous or deciduous genus which normally grows to a height of five metres or greater, notwithstanding its current size.

PART 4 – APPLICABILITY

- 4.1. This bylaw applies to trees which are:
 - (a) on lands owned or in the possession of the District; and
 - (b) on privately-owned lands within the District.
- 4.2. This bylaw does not apply to trees on:
 - (a) Property owned by either the Government of Canada or the Province of British Columbia that are cut or removed by that entity or its authorized agents;
 - (b) ALR lands that are altered, damaged, cut or removed for the purpose of agricultural use;
 - (c) Lands owned or held by the Regional District of Central Okanagan, including regional parks, that are altered, damaged, cut, or removed by the Regional District or its authorized agents in accordance with approved Regional District operations;
 - (d) Parkland owned or held by the District of Peachland that are altered, damaged, cut, or removed by the District or its authorized agents in accordance with approved District operations; and
 - (e) Land owned or held by a public utility and cut for the purpose of safety, maintenance, or operation of the utility's service or infrastructure.

PART 5 – PROHIBITIONS

- 5.1. No person shall damage a tree by cutting or damaging the roots of the tree or blasting, compacting the soil, or placing concrete, or other hard surfacing within the drip line of a tree except in accordance with this bylaw and when one of the following permits is issued:
 - (a) a tree cutting permit under this bylaw for the purposes identified in this section; or
 - (b) a development or building permit that expressly allows for the cutting of trees as a means to carry out the approved work.
- 5.2. No person shall fail to comply with the Terms and Conditions of any permit issued pursuant to this bylaw.
- 5.3. No person shall leave undisposed the waste materials created by the cutting, removal, or damaging of a tree for more than 14 days after such action has taken place, except for properties greater than one hectare in size for which an open burning permit has been issued by the District in accordance with the *Fire & Life Safety and Smoke Control Regulatory Bylaw*, as amended.
- 5.4. Unless exempt under Part 6 or proceeding in accordance with a valid tree cutting permit, no person shall damage any tree, or cause, suffer, or allow the damaging of any tree by any means including, without limitation, the following:
 - (a) cutting, damaging, or undermining the roots of a tree within the drip line;

- (b) cutting the structural or anchoring roots of a tree in any place;
- (c) removing bark from a tree; and/or
- (d) applying chemicals, toxic materials, or other substances to a tree, or any part of a tree, that are harmful or hazardous to a tree or any part of it.

PART 6 – EXEMPTIONS

- 6.1. The following are exempt from the provisions of this bylaw and are not subject to issuance of a tree cutting permit:
- (a) the removal or pruning of dead, diseased, or damaged trees or limbs by standard arboricultural practices, as identified by a qualified professional in a written letter to the District;
 - (b) the emergency removal of dangerous or hazardous trees or limbs by standard arboricultural practices reported immediately to the Director by the end of the next business day after the cutting, providing a written explanation on the hazard(s) posed by the tree and any imminent danger posed to persons or property;
 - (c) the pruning or removal of fruit trees;
 - (d) commercial tree farms or nursery operations;
 - (e) the creation of a survey line corridor less than two metres in width by BC Land Surveyors;
 - (f) the removal or pruning of any tree within 1.5 metres (4.9 feet) of a building or structure to mitigate wildfire risk;
 - (g) the removal of invasive trees; and
 - (h) the removal of trees with a DBH of less than 150 millimeters (six inches).

PART 7 – APPLICATION

- 7.1. An application for a tree cutting permit must be submitted to the Director on a prescribed form issued by the District outlining the following information:
- (a) a statement explaining the reasons for the proposed cutting;
 - (b) the civic address and legal description of the subject parcel(s);
 - (c) if the applicant is not the owner of the parcel, the consent in writing of the registered owner authorizing the applicant to act as the owner's agent;
 - (d) consent of the owner of the adjacent property if any part of the base of the tree to be cut is located on such property;
 - (e) a site plan drawn to an appropriate scale showing:
 - i. the boundaries of the subject parcel;
 - ii. any abutting streets, sidewalks, lanes, and public rights of way;
 - iii. the location of any existing and proposed buildings, driveways, and structures;
 - iv. any natural features within or near the subject parcel;
 - v. the location, species, DBH, and extent of drip line of the trees proposed to be cut and any trees proposed to be retained;
 - vi. any proposed retained, replacement, or protected trees within a ten metre radius of any existing or proposed building or structures, with the ten metre radius clearly delineated around each building and/or structure; and

- vii. any other relevant information.
 - (f) a description of the methods proposed to control any potential drainage, erosion, or other impacts on the property related to the proposed action;
 - (g) a description of the methods proposed to dispose of wood waste and other debris resulting from, or relating to, the proposed action;
 - (h) intended completion dates for the proposed action; and
 - (i) additional information required by the Director, which may include:
 - i. a report prepared by a Certified Arborist certifying that no other arboricultural practices are available as an alternative to the proposed cutting;
 - ii. a survey plan prepared by a British Columbia land surveyor showing the boundaries of any proposed tree retention area(s); or
 - iii. preliminary lot grading and servicing plans.
- 7.2. All information required to be included with an application must be provided at the sole expense of the applicant.

PART 8 – BIRDS AND BIRD NESTS

- 8.1. The removal or modification of any tree with an active nest and/or the nest of an eagle, peregrine falcon, gyrfalcon, osprey, heron, or burrowing owl is prohibited per the *Wildlife Act* and the *Migratory Birds Convention Act*, unless written approval is granted by the Province and/or Federal Government.
- 8.2. The removal or modification of any tree with an inactive nest must be conducted by a qualified professional.

PART 9 – REPLACEMENT TREES

- 9.1. Unless this provision is waived or modified by the Director, any tree(s) cut down, removed, or altered in accordance with the provisions of this bylaw shall be:
 - (a) replaced within one growing season at a ratio of two replacement trees for each tree removed or at a ratio of six replacement trees for each protected tree removed; and
 - (b) planted and maintained on the same parcel as the tree(s) removed.
- 9.2. At least one of the replacement trees must be of the same type (i.e., either a coniferous or deciduous tree) as the tree(s) being removed.
- 9.3. The minimum size of replacement trees shall be 3.0 metres (10 feet) in height for conifers and 80 millimeters (3.2 inches) DBH for deciduous species.
- 9.4. No replacement trees are required if the tree to be removed:
 - (a) has been identified as a fire hazard to property;
 - (b) has been identified as dead, diseased, or damaged by standard arboricultural practices as identified by a qualified professional in a letter submitted to the District; or
 - (c) will allow for the agricultural use of land where a protected tree located on land outside of the Agricultural Land Reserve and zoned as agricultural in the District's Zoning Bylaw prevents such use from occurring.
- 9.5. In addition to any penalty that may be imposed under this bylaw, where a person cuts down, removes, or damages any tree, or permits any tree to be cut down, removed, or damaged, in violation of this bylaw, or in violation of any permit issued under this bylaw, that tree shall be

replaced at a ratio of two replacement trees for each tree removed and in accordance with the terms expressed in Section 9.1.

- 9.6. Maintenance requirements shall be specified in the replacement plan and carried out in accordance with the specifications.
- 9.7. For the purposes of computing the number of trees needed to satisfy the requirements of Section 9.1, the following cannot be counted as a retained tree or a transplanted tree re-located elsewhere on the site:
 - (a) a tree that in the opinion of the Director, has been topped or pruned to the extent that it is unlikely to ever attain its natural, characteristic appearance;
 - (b) a tree that in the opinion of the Director, is so damaged that it will likely become diseased or die prematurely or otherwise pose a dangerous condition that is hazardous to persons or property; and
 - (c) a tree that in the opinion of the Director, is dead or dying to the extent that it will likely be dead within one year.

PART 10 – FIRESMART SETBACKS

- 10.1. For the purposes of incorporating FireSmart principles, the following shall apply:
 - (a) No replacement trees shall be planted within 1.5 metres of any building or structure on a property;
 - (b) Any replacement tree planted within 1.5 to 10 metres of any building or structure on a property shall be a deciduous species. Coniferous tree species are prohibited within this radial area.
 - (c) Any replacement tree planted within 10 to 30 metres of any building or structure on a property shall be sited a minimum of three metres from any existing trees on the site or other replacement trees.
- 10.2. Applications for permits proposing the planting of replacement trees within 1.5 to 30 metres of any building or structure on the property shall be subject to review by the District's FireSmart representative for comment.

PART 11 – TREE CUTTING REGULATIONS

- 11.1. The following requirements apply to activities and works carried out pursuant to a tree cutting permit:
 - (a) each tree to be cut must be clearly identified with survey tape, paint, or via a similar method;
 - (b) tree cutting operations must be limited only to the area specified in the tree cutting permit, which area must be clearly marked with the markings maintained for the duration of the activity;
 - (c) if directed, a tree protection barrier must be installed around the drip line of every tree to be retained, in such a manner that its branches, root systems, and trunk will not be damaged by the tree cutting activity; and
 - (d) the tree protection barrier must be 1.2 metres in height.
- 11.2. Whether or not a tree cutting permit is required:
 - (a) prudent measures must be taken to prevent damage or impairment to paths, sidewalks, lanes, highways, and public property of all kinds, watercourses and adjacent lands and property, and to utilities including, without limitation, water, sewer, and drainage services,

gas, heating, and electrical energy systems, telecommunications and cable transmission systems, and all other related infrastructure and equipment;

- (b) all hazards or potential hazards arising from any tree cutting operations must be adequately fenced or otherwise mitigated to avoid injury to and ensure the safety of persons on or near the site and the public; and
- (c) tree parts and wood waste must be disposed of carefully and promptly, having particular regard to the safety of persons and property, and avoiding any risk of fire, obstruction, and unsightliness.

PART 12 – DELEGATION OF AUTHORITY

12.1. Pursuant to the *Community Charter*, the Director, or designate, is hereby authorized to:

- (a) Exempt an application for a permit from the requirements of this bylaw if the information to be submitted has otherwise been provided to the District;
- (b) Establish the terms and conditions set out in this bylaw that apply to the granting and use of a permit to achieve the purpose of that section;
- (c) Exempt a person from the provisions of this bylaw where satisfied that there are no protected trees that may be affected by a proposed development or that there will be insufficient space on the site after development to locate replacement trees;
- (d) Serve notice under the *Community Charter* to a person who does not comply with this bylaw to provide replacement trees that, failing compliance with the notice, the District of Peachland may take the required action at the expense of the person given the notice if the compliance is not achieved within 30 days of service of the notice; and
- (e) Refuse issuance of a permit if a report prepared by a qualified professional(s) as described in Part 3 of this bylaw finds that the proposed cutting may pose adverse impact(s) to the subject property, adjacent lands, or health of the natural environment.

PART 13 – INSPECTION AND ENFORCEMENT

- 13.1. When an application for a permit is made under this bylaw, employees or authorized agents of the District may inspect the trees and subject property. Such inspection may entail assessment of the location, size, condition, and species of the trees.
- 13.2. Employees or authorized agents of the District may enter on any property subject to this bylaw for the purposes of assessing and inspecting trees to determine compliance with this bylaw.
- 13.3. The Director may suspend or revoke any permit if the tree cutting is not being undertaken in accordance with the terms and conditions of the permit.

PART 14 – SEVERABILITY

- 14.1. If any part of this Bylaw is held to be invalid by a court of competent jurisdiction, then the invalid portion must be severed and the remainder of this bylaw is deemed to have been adopted without the severed portion.

PART 15 – OFFENCES AND PENALTIES

- 15.1. No person shall prevent or obstruct, or attempt to prevent or obstruct, the entry of officials authorized under Part 13 upon any property as authorized by this bylaw.
- 15.2. Every person who violates a provision of this bylaw commits an offence and is liable on summary conviction to a penalty not exceeding ten thousand dollars (\$10,000.00) and the costs of prosecution.

15.3. The penalties imposed under this sub-section supplement and are not a substitute for any other remedy to an infraction of this bylaw.

15.4. Where more than one tree is cut down, removed, or damaged in violation of this bylaw, a separate offence is committed in respect to each tree and is subject to fines for each.

PART 16 – ENACTMENTS

16.1. A reference to an enactment in this bylaw refers to an enactment of the Province of British Columbia unless otherwise indicated, and a reference to any statute, regulation, code or bylaw refers to that enactment as it may be amended, revised, consolidated or replaced from time to time.

READ A FIRST TIME, this 5th day of December, 2023

READ A SECOND TIME, this 5th day of December, 2023

READ A THIRD TIME, this 5th day of December, 2023

ADOPTED, this 23rd day of January, 2024



Mayor



Corporate Officer

Dated at Peachland, BC
This 23rd day of January, 2024.