

**DISTRICT OF PORT HARDY
BYLAW NO. 24-2005**

**A BYLAW TO PROTECT TREES
IN CERTAIN AREAS OF PORT HARDY**

WHEREAS Section 8(3)(c) of the *Community Charter* allows a local government to prohibit and/or regulate the cutting of trees;

AND WHEREAS the Council of the District of Port Hardy wish to regulate the cutting of trees on District property and in sensitive areas of the District which have been and are identified in this bylaw and in other areas which may be identified as being sensitive when a subdivision or building permit are applied for;

NOW THEREFORE the Council of the District of Port Hardy in open meeting assembled, ENACTS as follows:

1. TITLE

This Bylaw may be cited for all purposes as "District of Port Hardy Tree Protection Bylaw No. 24-2005".

2. APPLICATION

This Bylaw applies to the areas within the boundaries of the District of Port Hardy.

3. DEFINITIONS

In this Bylaw, unless the context otherwise requires:

Accessory Building means

- a) a building, the use or intended use of which is ancillary to that of the principal building situated on the same site, but excludes an additional dwelling already existing; or
- b) a building which is ancillary to the principal use being made of the site on which the building is located.

Administrator means the Chief Administrative Officer or a designated employee of the District of Port Hardy.

Council means the Council of the District of Port Hardy

Cut Down or Cutting means to remove a tree by any means or the undertaking of any action which results in the death of a tree or could reasonably be expected to result in the death of a tree.

Dangerous tree means a tree which could reasonably be expected to present an imminent hazard to the safety of persons or to the public or to private property.

Highway means any public street, road, lane, bridge or viaduct, but does not include a

private right-of-way on private property or a walkway.

Land Use Envelope means that part of a lot on which a building is to be sited according to the requirements of the Zoning Bylaw.

Maintenance means the routine upkeep of landscaped areas and public or private service corridors and includes but is not limited to pruning, weeding, mowing, irrigation and the prevention and treatment of diseases and insect infestations.

Municipality means the District of Port Hardy.

OCP means the District of Port Hardy Official Community Plan Bylaw together with any amendments thereto.

Permit means a permit issued by the Administrator in accordance with this Bylaw to allow a tree to be cut down under conditions stipulated in the permit.

Principal Building means a building or structure accommodating the principal use of the site.

Private Service Corridor means land accommodating the servicing of a building with any water, sewer, energy or communication system directly to or from the point of use to or from any highway, Municipal or other right-of-way, easement or Municipal property.

Replacement Tree means any tree required to be planted pursuant to this Bylaw, to replace a tree cut down in contravention of this Bylaw.

Tree means a replacement tree, or any live standing woody plant which is one and one half (1.5) metres or more in height and capable of growing to a height of ten (10) metres or more.

Visible High Water Mark means the uppermost visible mark on the land adjacent to any lake, river, stream or other body of water where the presence and action of water are so common and usual as to mark the soil or vegetation in a manner distinct from that of the surrounding land.

Zoning Bylaw means the District of Port Hardy Zoning Bylaw together with any amendments thereto.

4. SENSITIVE & PROTECTED AREAS

The following areas are considered sensitive. In response this Bylaw will regulate or prohibit the cutting of trees in the following areas:

Lot A, Plan 31577
Lot 1, Plan 47942
Lot A, Plan 1667

Lot 1, Plan 33088
Lot 4, Plan 27270
Lot 14, Plan 26949

Plan 349SP
Lot 11, Plan 27270
Plan 22815

Block A, NW $\frac{1}{4}$, Section 28 Block B, NW $\frac{1}{4}$, Section 28

5. CONDITIONS

- a) No cutting of trees will be allowed on developed parks by an applicant.
- b) Only landowners or tenants of lands adjacent to lands owned by the Municipality may apply to cut trees on the adjacent municipal property.

- c) Areas on Municipal property considered for a tree-cutting permit are undeveloped lands.
- d) On Municipal lands, the following trees may be cut:
 - i) All softwood trees under twelve and one half (12.5) cm measure at the butt thirty and one half (30.5) cm above ground level. Examples are pine, cedar and fir.
 - ii) Any and all varieties of alder.
 - iii) All underbrush
- e) No hardwood trees, such as maple, may be cut.
- f) Consent from other property owners within 100 metres of the subject application may be required.
- g) Council may delegate the review of tree cutting permit applications to the Joint Advisory Planning/Harbour Commission, with final approval to be made by Council.
- h) Tree cutting applications shall be reviewed by the Administrator
- i) All tree cutting is to be done by a qualified professional who will provide proof to the District that he has a minimum of Two Million (\$2,000,000) Dollars liability insurance and that such insurance names the District as "additional insured".

6. EXCEPTIONS

This Bylaw does not apply to:

- a) trees identified for cutting by the Ministry of Forests due to disease or past infestation;
- b) dangerous trees;
- c) trees required to be cut down to meet any B.C. Hydro or Workers' Compensation Board safety regulation;
- d) trees required to be cut down to allow the creation and maintenance of a public service corridor or highway;
- e) municipal employees, or their agents, during the discharge of duties that involve maintenance, surveying of the creation and upkeep of walkways and trails;
- f) British Columbia land surveyors during the discharge of their duties;

7. PERMITS

The Administrator may issue a permit to cut down a tree in the areas identified in Section 4 of this Bylaw. Every application for a permit made to the Administrator shall be accompanied by a non-refundable application fee as set out in the District of Port Hardy Rates Bylaw. The application for a permit shall contain:

- a) the name, address and signature of the property owner or agent;
- b) the legal description of the property containing the trees proposed to be cut down;

- c) the purpose for the proposed removal of trees;
- d) a plan identifying the location of the property's boundaries, structures and natural features;
- e) a plan identifying the location, type and diameter of the trees proposed to be removed;
- f) a plan identifying the general location, type and diameter of trees, or groups of trees, remaining on the property that are within thirty (30) metres of any tree that is to be cut;
- g) a plan identifying the location of any proposed development on the property.

The applicant shall mark with ribbon or paint each tree or area of trees proposed to be removed. The Permit issued shall be valid for six (6) months and may be extended for an additional six (6) months upon written request to the Administrator

8. REFUSAL OF PERMITS

The Administrator shall refuse to issue a Permit to cut trees in the protected areas identified in Section 4 of this bylaw if:

- a) removing the trees could reasonably be expected to present a hazard to the safety of persons or to the public or to private property.
- b) the area from which trees are proposed to be removed is to be totally clearcut without an approved plan for reforestation or residential development, unless exempted in Section 5 of this Bylaw.
- c) the trees are on a slope greater than twenty per cent (20%).
- d) removing the trees could affect the stability of the bank of any watercourse or increase siltation in a watercourse.
- e) removing the trees could result in a significant loss of shade to a watercourse.
- f) removing the trees could have a negative impact on the quality of a watercourse as a fish habitat.

9. DAMAGED, DEAD AND NUISANCE TREES

Notwithstanding Section 7 of this Bylaw, the Administrator may, upon application, issue a Permit to cut down a tree which:

- a) is severely damaged or unstable.
- b) has roots that are interfering with, blocking or damaging a drainage or sewer disposal system, water system, or principal or accessory building.
- c) has roots that are blocking a watercourse or reducing the drainage capacity of a water course.

There shall be no charge for a permit issued under this section.

10. STOP WORK

The Administrator may revoke a Permit and order immediate suspension of tree cutting authorized by this Bylaw, when a person has acted contrary to this Bylaw. The Administrator shall inform the property owner of the reason for the revocation of the Permit, in writing, within forty-eight (48) hours of such revocation.

11. REPLACEMENT TREES

Any person cutting a tree in contravention of this Bylaw shall replace that tree:

- a) with two trees if the tree cut down was within five (5) metres, measured horizontally from the visible high water mark of a watercourse.
- b) with one tree if the tree cut down was five (5) metres or more, measured horizontally, from the visible high water mark of a watercourse.

A replacement tree shall be planted in approximately the same location as the tree it is replacing and shall be of the same or most similar species. A replacement tree shall be of a height no less than one and one-half (1.5) metres after planting. If a replacement tree dies within a period of two (2) years after being planted it shall be replaced.

12. RECONSIDERATION

An owner or occupier of real property that is subject to a decision of the Administrator under this Bylaw may have the Municipality reconsider the decision by applying in writing to the Administrator and shall include in the application:

- a) the name, address and signature of the property owner or agent;
- b) the legal description of the property;
- c) a plan showing the property's boundaries and structures;
- d) the surrounding natural features and the trees removed or proposed to be removed;
- e) the method of tree removal; and
- f) the relief being sought.

13. ASSESSMENTS AND INSPECTIONS

The Administrator shall have the authority to direct any officer, employee or agent of the Municipality to enter without notice, upon private property at all reasonable times when required in order to perform inspections and assessments on property:

- a) that is under suspicion of being the location of tree cutting contrary to this Bylaw;
- b) that is identified in an application as the location for a Permit according to Section 6 of this Bylaw; and
- c) that contains replacement trees planted less than two (2) years previous.

14. GENERAL PROVISIONS

Should any provision of this Bylaw be declared by any Court to be invalid the outcome shall not affect the validity of this Bylaw, as a whole or parts thereof, other than the provisions(s) declared to be invalid. All schedules referred to in this Bylaw are incorporated into and form part of this Bylaw.

15. CONTRAVENTION AND PENALTIES

- (a) Every person who violates any of the provisions of this bylaw, or who suffers or permits any act or thing to be done in contravention of this bylaw or who neglects or refrains from doing anything required to be done by any of the provisions of this bylaw shall be deemed to be guilty of an infraction hereof and shall be liable to the penalties imposed. Each tree that is cut down contrary to this Bylaw constitutes a separate offence.

- (b) Any person found guilty of an infraction of any of the provisions of this bylaw shall, upon summary conviction, be liable to a minimum fine of One Hundred Dollars (\$100), which shall be recoverable and enforceable upon summary conviction in the manner provided by the Offence Act.

16. SEVERABILITY

If a court of competent jurisdiction declares any portion of this bylaw invalid, then the invalid portion must be severed and the remainder of the bylaw is deemed valid.

17. REPEAL District of Port Hardy Bylaw No. 13-99 is hereby repealed.

READ A FIRST TIME ON THE 13TH DAY OF SEPTEMBER, 2005.
READ A SECOND TIME ON THE 13TH DAY OF SEPTEMBER, 2005.
READ A THIRD TIME ON THE 13TH DAY OF SEPTEMBER, 2005.

ADOPTED ON THE 11TH DAY OF OCTOBER 2005.

DIRECTOR OF
CORPORATE SERVICES

MAYOR