

THE CORPORATION OF THE CITY OF PENTICTON
BYLAW NO. 2001-26

BEING A BYLAW OF THE CORPORATION OF THE CITY
OF PENTICTON TO PROVIDE FOR THE MANAGEMENT,
IMPROVEMENT AND OPERATION OF THE URBAN FOREST
OF ANY PROPERTY HELD BY THE CITY OF PENTICTON

The Municipal Council of The Corporation of the City of Penticton in open meeting assembled ENACTS as follows:

1. This Bylaw may be cited for all purposes as the "Municipal Properties Tree Bylaw No. 2001-26 (2001)".
2. DEFINITIONS
 - a) "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.
 - b) "Certified Arborist" means a person certified by the International Society of Arboriculture who is trained in the art and science of planting, caring for and maintaining individual trees.
 - c) "City tree" means any tree located on property owned by the City of Penticton.
 - d) "Dripline" means width of the crown of the tree, as measured by the lateral extent of the foliage.
 - e) "Hazardous Tree" means a tree containing significant structural defects which are likely to lead to failure and possibly cause injury or death.
 - f) "Heritage Tree" means a significant tree which has been identified in this bylaw as important to the community due to its age and outstanding characteristics.
 - g) "Highway" includes every highway within the meaning of the Highway Act 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 passage way owned or operated by the City of Penticton for the purpose of providing off-street parking or for the use of pedestrian or cycle traffic.
 - h) "Owner" means and includes the owner, agent, occupier or lessee of any private property located within the City.
 - i) "Parks" shall include all publicly owned greenspaces including greenbelts.
 - j) "Parks Division" means the Parks Division of the City of Penticton Parks, Recreation and Culture Department designated by the Corporation of the City of Penticton whose jurisdiction falls within Parks and Greenbelt areas.

-
- k) "Parks Supervisor" means the Parks Supervisor for the City's Parks Division or the Parks Supervisor's delegate as appointed by Council.
 - l) "Urban Forest" means tree, trees or forest located on any property owned or held by the City.
 - m) "Wildlife Trees" means any standing dead or live tree with special characteristics that provide valuable habitat for the conservation or enhancement of wildlife.

3. DELEGATION OF AUTHORITY

- a) All City trees shall be deemed to be the property of the City of Penticton and the care, custody and control of such trees shall be with the Parks Supervisor pursuant to Section 715 of the Local Government Act.

4. PROHIBITIONS

- a) No person shall plant any tree on any property owned by the City without first having obtained the written permission of the Parks Supervisor.
 - i) The Parks Supervisor or authorized designate shall not permit the planting of any tree on property owned by the City except in compliance with standards set by the City of Penticton Parks Division.
- b) No person shall remove, excavate, destroy, cut, deface, trim, use any chemical or fertilizer on or in any way injure, impair or interfere with any City tree except as expressly authorized in writing to do so by the Parks Supervisor or, in the case of cutting or trimming, if carried out by a qualified private tree company which holds expressed written permission from the Parks Supervisor or his/her authorized designate.
- c) No person shall attach wire, rope, nails, lighting, posters or any such contrivance to any City tree, without the expressed permission of the Parks Supervisor or designate.
 - i) The Parks Division may remove from any City tree, any wire, rope, nail, lighting, poster or any such contrivance, that may, in the opinion of the Parks Supervisor, damage the tree or cause nuisance.

5. EXEMPTIONS

- a) The City of Penticton Parks Division may cut down, destroy, remove, transplant or otherwise dispose of any City tree or authorize to cut down, destroy, remove, transplant or otherwise dispose of any City tree if in the opinion of the Parks Supervisor:
 - i) the tree constitutes a hazard to life or property or is a public nuisance,
 - ii) the tree is infected by disease or injurious insects,

- iii) the tree is planted too close to an abutting tree that it impedes growth of either or both,
 - iv) the tree interferes in any way with utility lines, poles, pipes, sewer lines, traffic control devices or other public or private utilities.
- b) This Municipal Tree Bylaw does not apply to the operations of the Public Works Department. Any tree or trees affected through activities of the Public Works Department will be managed following written policies and procedures.

6. REPLACEMENT TREES

- a) The Parks Division may replace any City tree that has died or been removed by the City, provided that such replacement, in the opinion of the Parks Supervisor is desirable.

7. TREES BROKEN, UPROOTED OR HAZARDOUS

- a) If a tree on private property falls apart or is uprooted and the tree or portions of the tree fall on City property, the private property owner of the tree shall be responsible for the removal of the tree or portions thereof from the city property. If the owner fails to remove the tree or portions thereof within five (5) calendar days, the Parks Division may remove the tree or portions thereof from City property and charge all costs incurred to the owner. In cases where tree hazard abatement or removal must be undertaken at once for safety reasons, the Parks Division may direct its immediate removal.
- b) If a City tree is located both on City property and on private property the Parks Division may remove the said tree if the tree is broken, uprooted or diseased and/or constitutes a hazard to the safety of the public. The cost of such removal shall be jointly shared by the City of Penticton and the private property owner.
- c) A privately owned tree or parts of a tree that is considered a hazard by City Council or their authorized delegate (Parks Supervisor) and may likely cause damage to public property or cause injury to the public should be removed by the owner or occupier of the said property. If not removed in five (5) days after receipt of notice by registered mail to the owner or occupier of the property, the Parks Division may remove the tree (s) or part(s) of a tree and charge all costs to the owner.

8. PROTECTION OF TREES

All trees on any street or other publicly owned property near any excavation or construction of any building structure or street work, shall be protected with "see through" fencing erected around the tree at the dripline distance.

All building material, soil, debris, equipment and machinery shall be kept outside this barrier of protection.

No person shall excavate any ditches, tunnels, trenches or drive within the dripline of any City owned tree without first obtaining a written permit from the Parks Supervisor.

All new developments on City property, which contain trees, are to include an Arborist's Report tree survey.

9. PROTECTION OF DESIGNATED HERITAGE/WILDLIFE TREES

To assure the protection and longevity of all City owned Heritage/Wildlife trees in the best interest of the public and visitors in the City of Penticton.

A list of City owned Heritage trees is recorded in Appendix A and will be updated annually.

All Municipal owned Heritage/Wildlife trees are considered significant for their Historic Landmark, Uniqueness, Rarity and/or Wildlife Habitat value.

10. INDEMNITY

Where any work done under this bylaw by any person or persons, other than the City, its agents or employees, the person or persons doing the work shall indemnify and save harmless the City and its agents and employees from any and all claims, risks, actions and causes of action whatsoever arising from or out of the work done by such individual.

11. EQUITABLE COMPENSATION

Equitable compensation for the value of a City tree as appraised by the International Society of Arboriculture's Valuation of Landscape Trees procedures shall be required by the City if, in the opinion of the Parks Supervisor, a City tree has been irreparably damaged or any tree removed without prior authorization. Repairable tree damage shall be appraised and the reduced tree value/or cost of the repair will be considered as equitable compensation.

12. COST RECOVERY

- a) The Council may require an owner, agent, lessee or occupier to remedy any condition that contravenes this bylaw in such a manner as the Council may direct and may impose appropriate fines and costs in case of failure to remedy such condition.
- b) Should the owner, agent, lessee or occupier fail, neglect or refuse to remedy the condition, the Council may cause any work to be deemed necessary to be done to remedy it.
- c) The Council may charge the cost of any work done by the City to remedy the condition to the owner, agent, lessee or occupier and, in default of payment:
 - i) recover the cost as a debt due to the municipality; or

- ii) charge the cost against the land involved as taxes due and owing in respect of that land as a means of recovering the cost; and
- iii) make any other provisions that the Council considers necessary to recover the cost of any work done by the City.

13. OFFENCE

- a) 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.
- b) Where more than one City tree is cut down, removed or damaged in violation of this bylaw, each incident shall be deemed to be a separate offence under this bylaw.

14. PENALTY

Every person who commits an offence against this bylaw is liable to a fine and penalty not exceeding Two Thousand Dollars (\$2,000.00) for each City tree unlawfully cut down, removed or damaged, in addition to the equitable compensation valuation method used.

15. RECONSIDERATION

Any person who is subject to a decision by the Parks Supervisor or his/her designate may apply to Council to reconsider the decision by notifying the City Clerk in writing and:

- a) Such notice shall be delivered in person to the Office of the City Clerk, 171 Main Street, Penticton, B.C. or by facsimile at (250)490-2402 or sent by registered mail to 171 Main Street, Penticton, B.C., V2A 5A9;
- b) Such notice shall be delivered within thirty (30) days of the decision of the Parks Supervisor. If sent by registered mail, it shall be deemed to have been delivered three (3) working days after the date of mailing;
- c) Such notice shall contain the address for delivery of the person applying for consideration, the particulars of the City tree or trees involved and the reason why the decision of the Parks Supervisor should be reconsidered;
- d) The City Clerk, upon receipt of the notice, shall notify the applicant in writing, in person, by facsimile or by registered mail, of the date and time the Council will reconsider the decision of the Parks Supervisor, such notice shall be received by the City Clerk not less than seven (7) days before the date of the hearing;
- e) At the reconsideration hearing, the applicant may address Council and Council may question the applicant and may require the Parks Supervisor or his/her

authorized designate to be present to provide information and answer any questions from the Council or the applicant;

- f) Should the applicant not appear at the reconsideration hearing, the Council may proceed with the hearing in the absence of the applicant.

16. SEVERABILITY

- a) Where 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 decision that it is invalid shall not affect the validity of the remainder of this bylaw;
- b) Nothing in this bylaw shall be construed or interpreted to necessarily require or excuse non-compliance with any provisions of any Act or other bylaw;
- c) This bylaw supercedes any other bylaw with the respect to the management of Municipal trees in the City of Penticton.

READ A FIRST time this 7th day of May, 2001
READ A SECOND time this 7th day of May, 2001
READ A THIRD time this 7th day of May, 2001
RECONSIDERED, FINALLY PASSED and ADOPTED
this 22nd day of May, 2001

Mayor

City Clerk

Certified a true copy of Bylaw
No. 2001-26 as adopted.

City Clerk

APPENDIX "A"LIST OF PENTICTON'S HERITAGE/SIGNIFICANT TREES**CITY OWNED TREES IN BOLD**

1. Row of Maple Trees along Main Street at Pen-Hi (20 trees)
2. Maple Tree at Martin & Eckhardt, (1906) (1 tree)
3. Argyle/Eckhardt/Woodruff, (1910) (1 tree)
- 4. Latimer Street (4 trees)**
5. Young St. & Orchard Trees (2 London planes-Sutton owner)
6. London Plane Tree at Orchard & Elm (1 tree)
7. Copper Beech @ 1425 McMillan Avenue (1 tree)
- 8. Fir Trees @ Lakeview Cemetery (25 trees)**
9. Haven Hill, (1914), (1 tree)
- 10. Maples at the Library parking lot and north end, (1909) (2 trees)**
11. Trees at the Cleland Home, 152 Upper Bench Road, (1910) (20 trees)
12. Middle Bench Road by Uplands School, (1910) (5 trees)
13. Middle Bench & Johnson Road (1 tree)
14. Derrington-Apples, (1920 – 1930)
15. Maples on Farrell Street (4 trees)
16. Maples on Abbott Street, (1910) (6 trees)
17. Maples on Norton Street, (1910) (5 trees)
18. Cambie Street, (1910) (1 tree)
19. Hospital Grounds? (15 trees)
20. BC Government Building (12 trees)
21. Queens Park School, (1955) (1 tree)
- 22. Gyro Park, (1920's) (8 trees)**
- 23. Westminster & Power Street Elms (55 trees)**
- 24. Skaha Main Park (Grove of Ponderosa Pines)**
25. #77 Van Horne Street (1 fir only)
- 26. Fairview Cemetery, (1902) (1 tree)**
27. Edmonton Avenue (4th lot in from Main Street on south side (1 tree)
- 28. Robinson Property (several trees – to be determine)**
- 29. Esplanade Area (1 fir)**
- 30. 138 Granby Avenue (Manitoba Maple)**
31. 654 Victoria Drive (Butternut), Gordon Kerr
32. 187 Cosser, near Fairview (1 large fir)