

CITY OF KELOWNA
BYLAW NO. 8041
REVISED: October 3,
2022

CONSOLIDATED FOR CONVENIENCE TO INCLUDE BYLAW NO. 8224

**A bylaw to regulate the removal of protected trees in
Natural Environment/Hazardous Condition Development
Permit Areas**

The Municipal Council of the City of Kelowna, in open meeting assembled, hereby enacts as follows:

1.0 TITLE

1.1 This bylaw may be cited as “Tree Protection Bylaw No. 8041”.

BL12025 amended Section 2.0

2.0 APPLICABILITY

This bylaw applies to

- a. all lands designated as being within a Natural Environment/Hazardous Condition Development Permit Area as established by the Kelowna Official Community Plan, as amended, which are either within a Riparian Management Area or on a slope of 30% or greater and
- b. trees within covenant areas

BL12025 amended Section 3.0

3.0 DEFINITIONS

3.1 In this bylaw, unless the context otherwise requires:

“**certified arborist**” means a **person** accredited as such by the International Society of Arboriculture;

“**City**” means the City of Kelowna;

“**Council**” means the Municipal **Council** of the City of Kelowna;

“**cut down**” means to **cut down**, remove or kill a tree by any means;

“**DBH**” means a **tree** trunk diameter measured at breast height (1 m above grade). For multi-stemmed trees this measurement is equal to the cumulative total of the DBH of the three largest stems;

“**damage**” means any action which will cause a tree to decline in health or die, including, but not limited to: ringing or removing bark, poisoning, burning, topping (unless branches are weak/diseased), raising/lowering the grade within a **Tree Protection Zone**, stockpiling material or driving within a **Tree Protection Zone**, cutting roots, excavation impacting roots, or excessive pruning (exceeding 25% of live branches within a 12 month period);

“**dangerous or hazardous tree or limb**” means a **tree** or limb identified by a **qualified person** as being, or likely to become in the immediate future, a danger to people or property;

“**dead, diseased or damaged trees or limbs**” means a **tree** or limb identified by a **qualified person** as being, or likely to become in the immediate future, a danger to people or property;

“**Director of Planning & Development Services**” means the **person** appointed by **The City** as such and includes the person’s lawful designate;

“**drip line**” means a circle in the ground around a tree trunk that corresponds to and is directly below the tips of the tree’s outermost branches;

“**fruit tree**” means any tree, fruiting or flowering, of the *Genus Malus, Prunus, Pyrus* or *Cydonia*;

“**invasive tree**” means Siberian Elm (*Ulmus pumila*), Russian olive (*Elaeagnus angustifolia*), and Tree of Heaven (*Ailanthus altissima*) in addition to any other species identified by the Provincial invasive species authority;

“**landscape architect**” means a **person** registered with the British Columbia Society of Landscape Architects;

“**owner**” means the registered **owner** of an estate in fee simple, and includes:

- (a) the tenant for life under a registered life estate;
- (b) the registered holder of the last registered agreement for sale; and
- (c) the holder or occupier of land held in the manner mentioned in Sections 356 and 357 of the *Municipal Act*;

“**permit**” means a Tree Cutting Permit issued pursuant to this bylaw;

“**person**” means a natural **person**, his heirs, executors, administrators, or assigns, a firm, corporation, municipal or quasi-municipal corporation, society or party school board, hospital board, or other government or government agency;

“**protected tree**” means any tree within the lands to which this bylaw applies with a diameter of 100 mm or more measured 1 m above grade (100 mm DBH).

“**qualified person**” means a registered professional forester, **landscape architect** or a **certified arborist**;

“**replacement tree**” means a tree required to replace a tree which has been removed or damaged;

“**retained tree**” means a **tree** that is shown on a site plan attached to a Tree Cutting Permit as a **tree** that will be retained;

“**Riparian Management Area**”: means an area of sufficient width to include any significant natural attribute and adjacent ecosystem (e.g. vegetation, water features, fish and wildlife habitat, escarpments, terraces, steep valley sides and cliffs) adjacent to a water course, linking aquatic to terrestrial ecosystems and includes both existing and potential riparian vegetation and existing and potential adjacent upland vegetation that exerts an influence on the stream and the size of which is determined based on the water course location as identified in the Official Community Plan.

“**stream**” means a natural watercourse or source of water supply, whether usually containing water or not, ground water, lake, river, creek, spring, ravine, swamp and gulch, as defined by the *Water Act*;

“**tree**” means a self-supporting woody plant that is a species of coniferous or deciduous genus which normally grows to a height of five (5) metres or greater, notwithstanding its current size.

“**Tree Protection Zone**” means the area of land around a tree that must be protected to prevent damage to roots defined by an arborist, which should include the area below the dripline (see Schedule A for details and drawing).

4.0 PROHIBITIONS

- 4.1 No **person(s)** including **owners** shall **damage** a **protected tree** willfully. If **damage** occurs, the responsible **person** will be required to replace the damaged **tree** according to the provisions of this bylaw.
- 4.2 Except as authorized by Section 5.0 of this bylaw, no **person(s)** including **owners** shall **cut down**, or allow to be **cut down**, or damage a **protected tree** without first obtaining a **permit** issued pursuant to this bylaw.
- 4.3 No **person** shall fail to comply with the Terms and Conditions of a **permit** issued pursuant to this bylaw.

5.0 EXEMPTIONS

5.1 The following are exempt from the provisions of the bylaw:

BL8224 replaced paragraph 5.1(a):

- (a) the pruning of **protected trees** to address **dead, diseased or damaged limbs**, when the prior approval of the **Director of Planning & Development Services**, or their designated agent, is given and the pruning follows standard arboricultural practices to avoid **tree damage**;
- (b) the pruning of limbs, within 2M of the ground or touching structures (and less than 30% of the live canopy), to mitigate wildfire risk;
- (c) the removal of invasive trees;
- (d) the pruning or removal of fruit **trees**;
- (e) commercial **tree** farms or nursery operations;
- (f) B.C. Land surveyors cutting survey lines having a width of less than 2 m; or
- (g) land that is classified as managed forest land under the *Assessment Act*, located within a licence area under the *Forest Act*, so long as the land continues to be used for the production and harvesting of timber.

6.0 DELEGATION OF AUTHORITY

6.1 Pursuant to Section 715 of the *Municipal Act*, the **Director of Planning & Development Services** is hereby authorized to:

- (a) the emergency removal of dangerous or hazardous **trees** or limbs by standard arboricultural practices prior to permit issuance if reported immediately to the **Director of Planning & Development Services**;
- (b) exempt an application for a **permit** from the requirements of Section 7.1 of this bylaw if the information to be submitted has otherwise been provided to the City of Kelowna;
- (c) establish which of the terms and conditions set out in Section 7.0 of this bylaw necessarily apply to the granting and use of a **permit** to achieve the purpose of that section;
- (d) exempt a **person** from the provisions of this bylaw where satisfied that there are no **protected trees** which may be affected by a proposed development or that there will be insufficient space on the site after development to locate **replacement trees**;
- (e) to serve notice under Section 712 of the *Municipal Act* on a **person** who does not comply with Section 10.0 of this bylaw to provide **replacement trees** that, failing compliance with the notice, the City of Kelowna 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;
- (f) direct that an assessment or inspection of specified **trees** or sites be undertaken by the municipality for the purposes of Part 22, Division (2) of the *Municipal Act*;
- (g) refuse issuance of a **permit** if a report prepared by a **qualified person(s)** as described in Section 7.1(h) of this bylaw, finds that the proposed cutting may create adverse impact(s);
- (h) revoke a Tree Cutting **Permit** if the **permit** fails to comply with the Terms and Conditions contained in the **permit**.

BL12025 amended Section 7

7.0 PERMIT APPLICATION PROCEDURE

7.1 Permit applications will be considered for the removal of dead, diseased or damaged trees or limbs. The hazard posed must be clearly identified by a qualified person who, in writing, confirms the dangerous or hazardous tree or limb must be removed based on their professional expertise. Permit applications may also be considered if the tree is causing damage to property, including damage to roofs, retaining walls and sidewalks, that standard arboriculture practices cannot rectify.

Every application for a Tree Cutting **Permit** shall be made by the registered **owner** or their agent authorized in writing. The application must be signed by the **owner** or the agent, be submitted to the Planning & Development Services Department and shall include all of the following information unless a requirement is waived by the **Director of Planning & Development Services**:

- (a) a site plan showing the legal boundaries and dimensions of the property;
- (b) the location of each protected tree(s) on the property, including trees within two metres of the property line on an adjacent property;
- (c) a site plan (preferably an air photo) clearly identifying which protected tree(s)

are requested to be cut down, including the type (coniferous or deciduous) and size (DBH) of the tree(s);

- (d) a site plan clearly identifying trees that are to be retained;
- (e) a replacement plan showing the proposed location, size, type and number of proposed **replacement trees**;
- (f) the purpose of the **tree** cutting;
- (g) the legal description and **owner(s)** of the land;
- (h) a report prepared, to the satisfaction of the City of Kelowna, by a **qualified person(s)** stating whether or not the proposed cutting will create such adverse impact as danger of flooding, erosion, land slip or contamination of watercourses;
- (i) the certification of the qualified person;
- (j) a **permit** fee of \$50.00. This fee may be waived if applications for a **Tree Cutting Permit** and Development Permit relating to the same property are submitted to the Planning & Development Services Department concurrently.

7.2 Upon receipt of an application for a Permit the Director of Planning & Development Services may issue a permit with or without conditions, including but not limited to any of the following:

- (a) the replacement of any **protected tree** that is **cut down** with a **tree** or **trees** of a size and species and at such location or locations as the **Director of Planning & Development Services** or his/her designate may specify;
- (b) the posting of security with the City of Kelowna in accordance with Section 8.0 of this bylaw as security for the planting and maintenance of **replacement trees**;
- (c) that the employees and authorized agents of the City of Kelowna be permitted to enter onto the land at any reasonable time to carry out assessments and inspections to determine whether the terms of this bylaw are being complied with;
- (d) that a **person** who obtains a **permit** pursuant to the provisions of this bylaw shall comply with all applicable City of Kelowna bylaws and any other applicable land use restrictions that may be registered in the Land Title Office against title to the lands from which **trees** are removed;
- (e) that a **permit** issued pursuant to the terms of this bylaw shall be valid for a period not to exceed one (1) year with the potential for one additional year subject to approval of the **Director of Planning & Development Services**.

BL12025 amended Section 8

8.0 **SECURITY DEPOSIT**

8.1 At the discretion of the Director of Planning & Development Services, the applicant is required to submit a security deposit for full and proper compliance with all terms and conditions in the **permit**, including provision of all **replacement trees**, materials and maintenance required for site reinstatement.

8.2 The security shall be in the form of a cash deposit or irrevocable letter of credit drawn upon a chartered bank in a form acceptable to the City of Kelowna.

8.3 The amount of security shall be 125% of the value of all **replacement trees** and site restoration and clean-up measures required by the City of Kelowna, as estimated by a

qualified person.

- 8.4 Upon inspection by the City one (1) year after planting, 90% of the security deposit will be returned if the replacement tree is deemed to be in satisfactory health. If a deficiency is identified, the City will withhold the security deposit until the deficiency is rectified.
- 8.5 There shall be a 10% holdback of the security deposit for an additional period of one year and this holdback may be returned following a second inspection to confirm the tree remains in satisfactory health.
- 8.6 Should the **permit** holder fail to comply with the terms and conditions of the **permit**, the City of Kelowna may enter the property and perform such work as is necessary and may retain all or a portion of the security to cover the cost of such work. Should the security be inadequate to cover the costs of such work, the additional costs shall be added to and form part of the taxes payable on the real property as taxes in arrears pursuant to Section 712 of the *Municipal Act*.

9.0 INSPECTION AND ENFORCEMENT

- 9.1 When an application for a **permit** is made under this bylaw, municipal staff or their appointed representatives may inspect the **trees** and the site on which they grow and may assess the location, size, condition and species of the **trees**.
- 9.2 Municipal staff or their appointed representatives may enter on any property subject to this bylaw for the purposes of assessing and inspecting **trees** under this bylaw to determine compliance with this bylaw.
- 9.3 The City of Kelowna may suspend or revoke any **permit** if the **tree** cutting is not being undertaken in accordance with the terms and conditions of the **permit**.

BL 12025 amended Section 10

10.0 REPLACEMENT TREES

- 10.1 Unless this provision is waived or modified by **Council** or the **Director of Planning & Development Services**, any **tree(s) cut down**, removed or altered in accordance with the provisions of this bylaw shall be replaced within one growing season. The replacement formula is determined by the size of the protected tree removed:
- 1 tree at 0 mm - 151 mm (6”) DBH = 2 replacement trees
 - 1 tree at 152 mm - 304 mm (12”) DBH = 3 replacement trees
 - 1 tree at 305 mm - 456 mm (18”) DBH = 4 replacement trees
 - 1 tree at 457 mm - 609 mm (24”) DBH = 6 replacement trees
 - 1 tree at 610 mm and larger (36”) DBH = 8 replacement trees
- 10.2 At least one of the replacement trees must be of the same type (i.e. either a coniferous or deciduous tree) as the tree type being removed. The minimum size of replacement trees shall be 2.0 m (6.5 feet) in height for conifers and 60 mm (2.4 inches) diameter at breast height (DBH) for deciduous species. The qualified professional may propose alternative size and type replacements if deemed equivalent by the Director of Planning & Development.
- 10.3 In addition to any penalty that may be imposed under this bylaw, where a person cuts down, removes or damages any protected tree, or permits any protected tree to be cut down, removed or damaged, in violation of this bylaw, or in violation of any permit issued under this bylaw, compensation will be paid to the City to cover the cost of replacement trees to be planted at the City’s discretion.
- 10.4 Planting and maintenance requirements shall be specified in a replacement plan provided by a **qualified person**. Maintenance must include watering bags or

equivalent irrigation to support the establishment of the **tree** for at least three years after planting. Planting and maintenance must be carried out in accordance with the replacement plan specifications.

- 10.4 For the purposes of computing the number of **trees** needed to satisfy the requirements of Section 10.1, 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 of Planning & Development Services**, 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 of Planning & Development Services**, is so damaged that it will likely become diseased or die prematurely or other wise pose a dangerous condition that is hazardous to **persons** or property;
 - (c) a **tree** that in the opinion of the **Director of Planning & Development Services**, is dead or dying to the extent that it will likely be dead within one year.

11.0 **RE-CONSIDERATION**

- 11.1 Where an owner (or his authorized agent) of property subject to a decision made by the **Director of Planning & Development Services** pursuant to Section 6.0 of this bylaw is dissatisfied with the decision, the owner or agent may apply to the **Council** for re-consideration of the matter within 30 days of the decision being communicated to them provided:
- (a) such notice may be delivered in **person** or by facsimile at (250) 470-0697, or sent by registered mail to the office of the City Clerk, 1435 Water Street, Kelowna, B.C. V1Y 1J4;
 - (b) where such notice is sent by registered mail, it shall be deemed to be delivered three (3) working days after the date of posting; and
 - (c) such notice must contain the address for delivery of the **person** applying for re-consideration, the particulars of the **tree** or **trees** involved and the reason why the decision of the **Director of Planning & Development Services** should be re- considered.
- 11.2 The Clerk, upon receipt of the notice, shall advise the owner and any authorized agent in writing, of the date and approximate time that **Council** will re-consider the decision of the **Director of Planning & Development Services**. Such notice shall be given at least seven (7) days prior to the date of the **Council** meeting at which the request for re-consideration will be heard.
- 11.3 At the **Council** meeting, the **Council** may hear from the **owner** and any authorized agent and any other **person** interested in the matter under re-consideration who wishes to be heard, and may either confirm the requirement or decision of the **Director of Planning & Development Services** or substitute its own requirement or decision.

12.0 **SEVERABILITY**

- 12.1 If any section, sub-section, clauses, sub-clause, or phrase of this bylaw is for any reason held to be invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this bylaw.

BL12025 amended Section 13

OFFENCES AND PENALTIES

- 13.0 No **person** may prevent or obstruct, or attempt to prevent or obstruct, the entry of officials authorized under Section 9.0 upon any property as authorized by this bylaw.
- 13.1 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.
- 13.2 The penalties imposed under this sub-section supplement and are not a substitute for any other remedy to an infraction of this bylaw.
- 13.3 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**.
- 14.0 **REPEAL**
- 14.1 Tree Cutting Permit Bylaw No. 6932 and Bylaw No. 7038, being Amendment No. 1 to Tree Cutting Permit Bylaw No. 6932 are hereby repealed.

BL8224 added a new Section 15 and renumbered the subsequent sections:

15.0 **ENACTMENTS**

- 15.1 Any enactments referred to herein is a reference to an enactment of British Columbia and regulations thereto, as amended, revised, consolidated or replaced from time to time, and any bylaw referred to herein is a reference to an enactment of the Council of the City of Kelowna, as amended, revised, consolidated or replaced from time to time.

16.0 **SCHEDULES**

- 16.1 The following schedules are attached to and form part of this bylaw:

Schedule A - Tree Protection Zone Installation Standards

17.0 **EFFECTIVE DATE**

- 17.1 This bylaw comes into full force and effect and is binding on all **persons** as and from the date of adoption.

Consolidated Bylaw No. 8041 – Page 9.

Read a first time by the Municipal Council this 8th day of April, 1997.

Read a second time by the Municipal Council this 8th day of April, 1997.

Read a third time by the Municipal Council this 8th day of April, 1997.

Adopted by a 2/3 majority of the Municipal Council of the City of Kelowna this 14th day of April, 1997.

"Walter Gray"

Mayor

"D.L. Shipclark"

City Clerk

BL12025 replaced Schedule A

SCHEDULE A

Tree Protection Zone
Installation Standards

PURPOSE

Tree Protection Zones involve barriers placed around trees for the prevention of damage to tree trunks, branches, and roots by any construction activities/operations.

REQUIREMENTS

1. Barriers are to be installed prior to any demolition, excavation, or construction on site.
2. Barriers must remain upright and in place throughout the entire construction process.
3. No incursions inside or against the Tree Protection Zone are to occur, including, but not limited to: garbage/debris storage, material or equipment storage, porta-potties, soil piling, fill or grade changes, surface treatments or excavations of any kind, equipment fueling or chemical mixing, etc.

SPECIFICATIONS FOR CONSTRUCTION

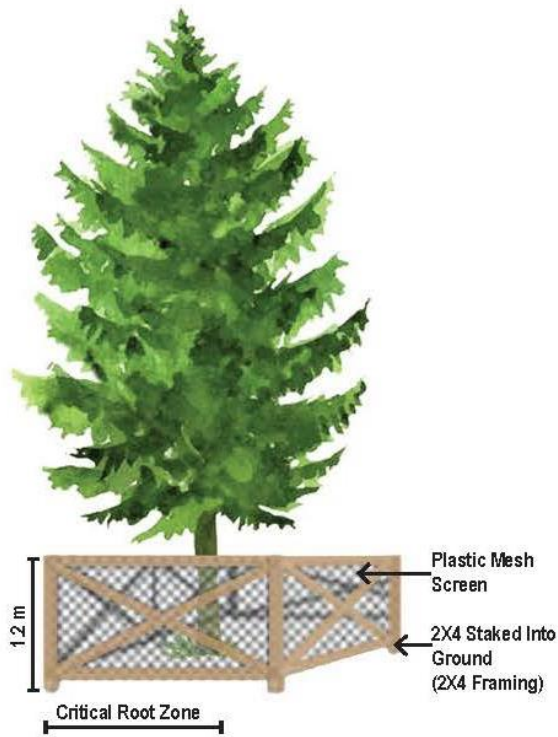
- Barriers should be a maximum of 1.2 m (~4') in height.
- At minimum, 2"x 4" construction lumber to be used for vertical posts, top and bottom rails and cross bracing (in an "X"); round, un-treated vertical posts may be used with a minimum diameter of 9 cm.
- Spacing between vertical posts to be no further apart than 3.7 m (12') on center.
- Structure must be sturdy with vertical posts driven firmly into the ground.
- Barrier must be continuous mesh screening (e.g. orange snow fencing).
- The distance of the barrier from the tree trunk must be determined by a qualified person (arborist) based on the drip line and tree diameter, using table below:

Trunk Diameter (DBH measured in mm or inches)	Critical Root Zone (minimum distance of fence from trunk)
200 mm / 7.9"	1.2 m
250 mm / 9.8"	1.5 m
300 mm / 11.8"	1.8 m
350 mm / 13.8"	2.1 m
400 mm / 15.7"	2.4 m
450 mm / 17.7"	2.7 m
500 mm / 19.7"	3.0 m
550 mm / 21.7"	3.3 m
600 mm / 23.6"	3.6 m
750 mm / 29.5"	4.5 m
900 mm / 35.4"	5.4 m
1000 mm / 39.4"	6.0 m
Minimum Critical Root Zone Calculation: divide DBH (mm) by 166 Example: 800 mm divided by 166 = 4.8 m minimum distance from trunk	

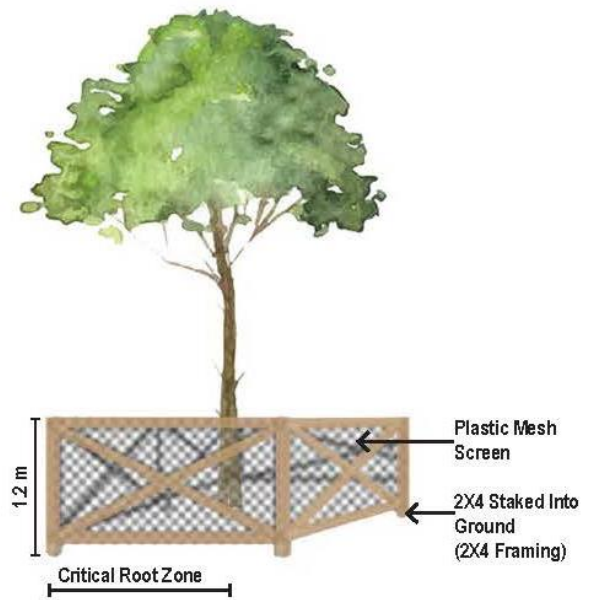
- Visible signage must be posted advising that encroachment inside the protected area is forbidden. Signage to be posted on at least two sides (weather-proof, 11"x17" minimum size). Sign must read:

NO ENTRY
Tree Protection Zone
If barrier has fallen over report immediately for repair
Phone: (xxx) xxx-xxxx

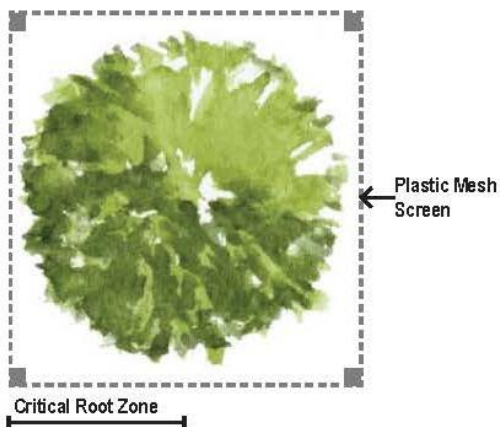
Figure 1 – Standard Tree Protection Zone Barrier Examples



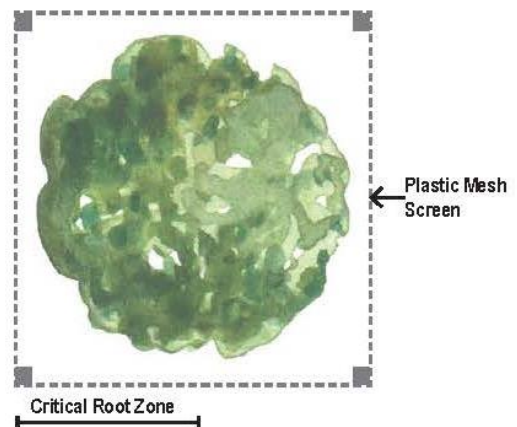
Elevation View



Elevation View



Plan View



Plan View