

CITY OF NANAIMO

BYLAW NO. 4695

A BYLAW FOR THE MANAGEMENT AND PROTECTION OF TREES  
WITHIN THE CITY OF NANAIMO

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WHEREAS Council is authorized, pursuant to Section 929.01 of the Municipal Act, to prohibit the cutting and removal of trees; to prohibit the damaging of trees; to regulate activities that may damage trees; to require the replacement, in accordance with the bylaw, of trees that have been cut, removed, or damaged and to establish exemptions from the application of the bylaw;

AND WHEREAS Council is authorized, pursuant to Section 929.02 of the Municipal Act, to require permits to cut or remove trees; to establish fees for such permits; and to establish terms and conditions for the granting, refusal and the use of such permits;

AND WHEREAS Council is authorized, pursuant to Section 929.03 of the Municipal Act, to identify trees that Council considers significant because of their importance to the community, including importance for heritage or landmark value or as wildlife habitat;

THEREFORE BE IT RESOLVED the Municipal Council of the City of Nanaimo, in open meeting assembled, ENACTS AS FOLLOWS:

1. Title

This bylaw may be cited as the City of Nanaimo "TREE PROTECTION BYLAW 1993 NO. 4695".

2. Interpretation

In this bylaw, unless the context otherwise requires:

"Branch"	means the lateral secondary woody growth originating from the stem of a tree.
"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 <u>Police Act</u> , to enforce regulatory bylaws of the municipality.
"Certified Arborist" (C.A.)	means a person certified by the International Society of Arboriculture or the National Arborist Association as an arborist.
"City"	means the City of Nanaimo.
"Cut Down"	means to cut down, kill or remove a tree by any means and without limiting the generality of the foregoing includes the topping of a tree or the removal of any branch or stem of a tree where the branch or stem removed or cut has a diameter of more than 10 centimeters (3.9 inches).
"Diameter of Branch"	means the measurement obtained by dividing the circumference of a branch measured at its junction with the stem by 3.142.
"Diameter of Tree Stem"	means the measurement obtained by dividing the circumference of a tree stem measured at 1.4 meters (4.5 ft.) above the point of germination by 3.142.
"Director"	means the person or persons appointed from time to time by Council as Director of Parks, Recreation and Culture and any duly authorized delegate of the Director.
"Drip Line"	means a line on the ground around the stem of a tree directly beneath the ends of the outermost twigs and branches of a tree.

"Hazardous Tree"	means any tree which due to its location, condition, health or any other circumstances has been determined by a Certified Arborist or the Director, presents a hazard to the safety of persons or to the public or to private property.
"Heritage Tree"	means a tree listed and identified in Schedule 'A' attached hereto.
"Landmark Tree"	means a tree of the genus/species and size outlined in Schedule 'C' attached hereto.
"Length"	means the distance from the point of germination to the crown measured along the axis of its stem.
"Owner"	means in respect of real property the registered owner of an estate in fee simple and includes:  (a) the registered holder of the last registered agreement for sale; and  (b) the holder or occupier of land held in the manner mentioned in Sections 409 and 410 of the <u>Municipal Act</u> ; and  (c) an agent authorized in writing by the owner to act on his behalf.
"Permit"	means written permission from the Director authorizing the removal of one or more trees from a specified parcel of land.
"Protection"	means taking any and all actions necessary to ensure that trees on a parcel of land are not in any way damaged.
"Prune"	means the removal of living or dead parts of a tree, including branches, in order to reduce size, to maintain shape, health, flowering or to regulate growth.

"Registered Professional Foresters" (R.P.F.)	means a person who is registered under the <u>Foresters Act</u> .
"Significant Tree"	means a tree which has been identified in this bylaw as being important to the community and includes heritage trees, landmark trees and wildlife trees.
"Stem"	means the main ascending axis of a woody plant.
"Tree"	means any standing, living, woody plant which is 5 meters (16.3 feet) or more in length and 10 centimeters (3.9 inches) or more in diameter.
"Tree Management Plan"	means a plan of a parcel of land prepared by or for an owner indicating the location, size and type of trees which the owner proposes to cut or remove from the parcel of land or protect on the parcel of land.
"Wildlife Tree"	means a tree which provides shelter or wildlife habitat for an egg or a nest protected under Section 35 of the <u>Wildlife Act</u> or which is listed in Schedule 'B' attached hereto.

[Note: For the convenience of persons unfamiliar with S.I. (System International) units of measurement, soft conversions to imperial units have been included in the text of this bylaw. Imperial equivalents follow the metric measurements and are enclosed in brackets. All area measurements expressed in square feet are denoted by the abbreviation ft.<sup>2</sup>. In the case of any discrepancies between metric and imperial measurements, the metric measurement shall be taken as correct.]

### 3. Significant Trees

Council considers:

- (1) The trees set out in Schedule 'A' important to the community for heritage value.
- (2) The trees set out in Schedule 'B' important to the community as wildlife habitat.
- (3) The trees set out in Schedule 'C' important to the community for landmark value.

### 4. Prohibitions

- (1) No person shall, unless exempted by this bylaw, cut down any tree or suffer or permit a tree to be cut down without first obtaining a permit for that purpose from the Director.
- (2) No person shall, unless exempted by this bylaw, carry out any of the following tree damaging activities in respect to any tree without first obtaining a permit and carrying out the activity strictly in accordance with the permit:
  - (a) cutting or damaging the roots inside the drip line;
  - (b) placing fill, building materials, asphalt or depositing concrete washout or other liquid or chemical substances harmful to a tree on land inside the drip line of a tree;
  - (c) operating trucks, backhoes, excavators or other heavy equipment over the roots inside the drip line;
  - (d) denting, gouging or damaging the trunk of a tree;
  - (e) removing bark from a tree;
  - (f) constructing or placing a building or structure on land inside the drip line of the tree;
  - (g) removing soil from land inside the drip line of a tree, except that a person may remove a small quantity of soil if the act of doing so is not likely to damage the health of the tree;
  - (h) blasting inside the drip line of a tree or blasting outside the drip line so as to damage roots or disturb soil inside the drip line; and
  - (i) undermining the roots inside the drip line.
- (3) No person unless exempted by this bylaw shall prune or top a significant tree without first obtaining a tree removal permit.

5. Application for Permit

- (1) The owner of a parcel of land shall obtain a permit from the City prior to engaging in any tree cutting regulated by this bylaw.
- (2) An application for a permit shall be completed upon the forms as provided for this purpose by the City and must be signed by the applicant.
- (3) An application for a permit and the supporting drawings and documents shall become the property of the City.
- (4) An application for a permit shall be accompanied by a tree management plan.

6. Permits

- (1) Where the application for a permit is made to facilitate a proposed building development, other than an individual single-family dwelling, and where one or more significant trees are proposed to be removed, the applicant shall make provision in the tree management plan to provide replacement trees as set out in Section 9.
- (2) Where an application for a permit is made to facilitate the subdivision of a parcel of land, the tree management plan shall provide for:
  - (a) the protection or replacement of all significant trees on the parcel of land; and
  - (b) the protection of a minimum of 20% of the trees on the parcel of land exclusive of any area set aside for park dedication pursuant to the provisions of the Municipal Act, when the parcel of land to be subdivided is greater than 0.5 hectare (1.0 acre) in size.
- (3) When the application for a permit is made to facilitate the logging of commercial timber on a parcel of land, the tree management plan shall provide information on the logging methods and measures for the protection of trees which are to be left on the parcel of land. A tree management plan developed to facilitate the issuance of a permit for the logging of a parcel of land shall make provision for the retention of a minimum of 20% of the trees on the parcel of land exclusive of any area set aside for park dedication pursuant to the provisions of the Municipal Act.
- (4) The applicant shall mark all trees proposed to be removed or retained from a parcel of land in a manner satisfactory to the Director.
- (5) When it is proposed that one or more significant trees are to be cut during the course of the development of a parcel of land, the Director may consider approving removal of such trees subject to a satisfactory replacement program in the tree management plan. (Schedule 'D' provides suggested replacement trees).
- (6) The owner shall notify the Director prior to commencing any work authorized by a tree removal permit and following completion of the works authorized. It is the responsibility of the owner to notify the Director if any part of the work is not carried out in accordance with the tree removal permit.
- (7) Where an owner applies for a permit prior to the development and/or subdivision of a parcel of land, the tree management plan shall in addition to any other requirement of this bylaw, provide for the full protection of trees in an area equal

to 5% of the parcel size at a location to be determined in consultation with the Director.

7. Fees

- (1) Every application for a tree removal permit shall be accompanied by a non-refundable application fee of \$25.00.
- (2) Prior to issuance of a permit, the applicant shall pay the municipality a fee of \$2.00 for each tree to be cut.
- (3) Notwithstanding Subsections (1) and (2) of this Section, the fee for a permit shall not exceed:
  - (a) Two Hundred Dollars (\$200.00) per hectare of land upon which trees are to be cut; or
  - (b) Five Hundred Dollars (\$500.00) in total.
- (4) There shall be no fee charged for a permit authorizing the removal of a hazardous tree or the pruning of a significant tree.

8. Exemptions

- (1) Notwithstanding Section 4, a person may cut or remove trees, other than significant trees without first obtaining a tree removal permit if:
  - (a) the tree or trees are hazardous and present an immediate danger to the safety of persons, or are likely to damage public or private property;
  - (b) the tree or trees are located on lands classified as managed forest land under the British Columbia Assessment Act, or land in a tree license area under the Forest Act;
  - (c) the tree or trees are located on parcels of land having an area less than 0.2 hectare (0.5 acre); or
  - (d) the tree or trees are located in a City park, on a highway or other City property or right-of-way and removal by the City is required to facilitate the construction or repair of City works.
- (2) Notwithstanding Section 4 an owner may cut or remove up to a total of four (4) trees, other than significant trees, from any parcel of land in each calendar year.

9. Replacement of Trees

- (1) Where a person cuts down or allows a tree to be cut down contrary to the provision of a permit or any provision of this bylaw, the person shall upon notice from the Director replant the parcel of land with trees of the same species, size and number as those removed.
- (2) Where an applicant proposes to remove one or more significant trees, the person shall replant the parcel of land with trees of the same species or species as set out in Schedule 'D' of the same size and number necessary.
- (3) Where replacement trees of a similar size are not available or where in the opinion of a Registered Professional Forester or a Certified Arborist such trees would not survive, smaller trees may be substituted and the size shall be based on the opinion of a Registered Professional Forester or Certified Arborist that the trees are the largest trees of that species that would achieve a 90% survival rate over a one (1) year period.
- (4) Where the owner of a parcel of land is required to replant trees as set out in this Section, he shall be responsible for maintenance of any replacement tree on the parcel of land to be developed or logged for a one (1) year period. The owner shall post with the municipality security in the amount of 120% of the cost of replacing and maintaining the trees for a period of one (1) year to guarantee the performance of the requirements of this section.
- (5) Where a tree is planted to replace a tree that has been cut down, removed or damaged and the replacement tree dies within one year of replanting, the owner shall replace the dead tree.
- (6) Where more than ten trees are planted to replace trees that have been cut down, removed or damaged and fewer than 90% of the replacement trees survive for one year following replanting, the owner shall replace the dead trees.

10. Authority to Enter upon Property

A Bylaw Enforcement Officer is hereby authorized to enter at all reasonable times upon any property within the City for the purpose of ascertaining whether the regulations herein or directions hereunder are being observed.

11. Enforcement

- (1) Where a person fails to comply with a requirement under Section 8 of this bylaw, the City may by bylaw require other persons, at reasonable times and in a reasonable manner, to enter onto the property and effect remedial work required at the expense of the property owner.
- (2) Where the person, at whose expense remedial work is carried out under Section 9(1) of this bylaw, does not pay the costs of the remedial work on or before December 31 in the year that the remedial work was done, the costs shall be added to and form part of the taxes payable on the property as taxes in arrears.

12. Penalty

Every person who violates any of the provisions of this bylaw or who suffers or permits any act or thing to be done in violation of any provision of this bylaw is guilty of an offense and is liable upon summary conviction to a fine of not less than Five Hundred Dollars (\$500.00) FOR EACH tree unlawfully cut down or damaged, for a first offence, and for any subsequent offences to a fine of not less than One Thousand Dollars (\$1,000.00) FOR EACH tree unlawfully cut down or damaged.

13. Severability

If any Section, Subsection, sentence or phrase of this bylaw is for any reason held to be invalid by the decision of any Court of competent jurisdiction, it shall not affect the validity of the remaining parts of this bylaw or the validity of this bylaw as a whole.

14. Schedules

- (a) Schedule 'A' - Identified Heritage Trees
- (b) Schedule 'B' - Identified Wildlife Trees
- (c) Schedule 'C' - Landmark Trees - Native Trees of Nanaimo
- (d) Schedule 'D' - Landmark Tree Replacement

15. Repeal

City of Nanaimo "TREE PROTECTION BYLAW 1992 NO. 4570" is hereby repealed.

PASSED FIRST, SECOND AND THIRD READINGS 1993-JUL-26.  
ADOPTED 1993-AUG-23.

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ACTING M A Y O R

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DEPUTY CITY CLERK

**SCHEDULE 'A'**  
**IDENTIFIED HERITAGE TREES**

**Trees which Council consider important to the community for heritage value.**

<b>SPECIES</b>	<b>NO.</b>	<b>ADDRESS (or abbreviated Legal Description)</b>
Pseudotsuga menziesii (Douglas Fir)	4	Lot 1, Plan 34409 (Waldbank Road)
Sequoiadendron giganteum (Giant Sequoia)	1	480 Caledonia Ave.
Quercus garryana (Gary Oak)	1	Lot 10, Plan 1905os
	1	1941 East Wellington Rd. (Lot 1, Plan 6334
Quercus robur (English Oak)	4	Strata P.L. 519, Lots 1-24 (Howard Ave.
	26	Row from Jinglepot to 3rd St. - R/A + Addison Rd. blvd. or Lot 3, Plan 35726
	20	Lot 1, Plan 28980
	3	Rem. Sec. 13, Rge. 8
Chamaecyparis lawsoniana (Lawson Cypress)	2	461 Albert St., Lot 14, Blk. 16, Plan 584
Thuja plicata (Native Red Cedar)	1	Lot 1, Plan 34409 (Waldbank Road)

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Acer macrophyllum (Big Leaf Maple)	9	911 Comox Rd.
	1	7186 Sebastian Rd. (Lantzville)

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Populus nigra (Lombardy Poplar)	1	386 Wakesiah Ave.
	1	384 Wakesiah Ave.
	2	376 Wakesiah Ave.
	1	623 Foster St.

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Catalpa bignoniodes (Indian Bean Tree)	1	129 Milton St.
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Araucaria araucana (Monkey Puzzle Tree or Chilean Pine)	1	225 Vancouver Ave.
	2	536 Kennedy St.
	1	330 Machleary St.
	1	120 Old Victoria Rd.

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Robinia pseudoacacia (Black Locust or False Acacia)	row	Rem. Lot 3, Plan 35726
	row	Lot 1, Plan 35726
	row	865 and 875 3rd St.
	row	885 3rd St.
	row	324 3rd St.

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Fagus sylvatica atropunicea (Copper Beech)	1	126 Mt. Benson
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Trachycarpus fortunei (Windmill Palm)	1	897 Howard Ave.
Castanea sativa (Spanish Chestnut)	1	745 Townsite Rd.
Albizzia julibrissin (Mimosa or Silk Tree)	1	522 Old Victoria Rd.
Liriodendron tulipifera (Tulip Tree)	1	307 Kennedy St.
Juglans nigra (Black Walnut)	1	215 Newcastle
Prunus species (Cherry and Plum)	2	2168 Sarnia Rd.
Aesculus carnea (Chestnut)	1	Lot 1, Plan 14199 Corner of 575 Albert & 510 Prideaux
Sequoiadendron giganteum & other plant genera ie rhododendrons (Giant Sequoia or Redwood)	1	3255 Stephenson Point Rd., Lot 1, Plan 26212
Robins Gardens - selection of tree genera (List of tree species)		Lots 1 - 8, Blk. 2, Plan 584 1150 Milton St.
Apple, Pear, Cherry	Group	2445 Godfrey Rd. 2545 Godfrey Rd.

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**SCHEDULE 'B'**

**IDENTIFIED WILDLIFE TREES**

**Trees which Council considers important to the community as wildlife habitat.**

**SCHEDULE 'C'**  
**LANDMARK TREES**  
**NATIVE TREES OF NANAIMO**

**Trees which Council considers important to the community for landmark value.**

<b><u>TREE</u></b>	<b><u>STATUS</u></b>	<b><u>SIZE OF TREE DIAMETER FOR RETENTION</u></b>
Western White Pine ( <i>Pinus monticola</i> )	Very Uncommon	20 cm +
Shore Pine ( <i>Pinus contorta</i> vari. <i>contorta</i> )	Fairly Common	20 cm +
Sitka Spruce ( <i>Picea sitchensis</i> )	Very Uncommon	80 cm +
Western Hemlock ( <i>Tsuga heterophylla</i> )	Common	50 cm +
Douglas-Fir ( <i>Pseudotsuga menziesii</i> )	Abundant	80 cm +
Grand Fir ( <i>Abies grandis</i> )	Fairly Common	80 cm +
Western Red-Cedar ( <i>Thuja plicata</i> )	Common	80 cm +
Rocky Mountain Juniper ( <i>Juniperus scopulorum</i> )	Uncommon	10 cm +
Western Yew ( <i>Taxus brevifolia</i> )	Uncommon	15 cm +
Trembling Aspen ( <i>Populus tremuloides</i> )	Very Uncommon	20 cm +

Black Cottonwood ( <i>Populus balsamifera</i> )	Fairly Uncommon	80 cm +
Pacific Willow ( <i>Salix lasiandra</i> )	Fairly Uncommon	15 cm +
Hooker's Willow ( <i>Salix hookeriana</i> )	Very Uncommon	15 cm +
Sitka Willow ( <i>Salix sitchensis</i> )	Fairly Uncommon	15 cm +
Red Alder ( <i>Alnus rubra</i> )	Common	30 cm +
Garry Oak ( <i>Quercus garryana</i> )	Fairly Uncommon	10 cm +
Pacific Crabapple ( <i>Malus fusca</i> )	Uncommon	10 cm +
Black Hawthorne ( <i>Crataegus douglasii</i> )	Uncommon	10 cm +
Bitter Cherry ( <i>Prunus emarginata</i> )	Fairly Uncommon	15 cm +
Bigleaf Maple ( <i>Acer macrophyllum</i> )	Common	80 cm +
Douglas Maple ( <i>Acer glabrum</i> )	Very Uncommon	40 cm +
Cascara ( <i>Rhamnus purshiana</i> )	Fairly Common	15 cm +
Western Dogwood ( <i>Cornus nuttallii</i> )	Common	10 cm +
Arbutus ( <i>Arbutus menziesii</i> )	Common	50 cm +

## SCHEDULE 'D'

### LANDMARK TREE REPLACEMENT

#### **RECOMMENDED REPLACEMENT TREE GENUS AND SPECIES:**

*Pinus monticola* with *Pinus ponderosa* "Ponderosa Pine" or *Pinus sylvestris* "Scots Pine."

*Pinus contorta* vari. *contorta* with *Pinus nigra* "Austrian Pine" or *Pinus strobus* "Strobus Pine."

*Picea sitchensis* with *Picea abies* "Norway Spruce" or *Picea omorika* "Serbian Spruce."

*Tsuga heterophylla* with *Pseudotsuga menziesii* "Douglas Fir" or *Abies concolour* "White Fir" or *Abies pinsapo* "Spanish Fir."

*Pseudotsuga menziesii* with *Tsuga heterophylla* "Western Hemlock" or *Abies concolour* "White Fir" or *Picea abies* "Norway Spruce."

*Abies grandis* with *Abies amabilis* "Amabilis Fir" or *Pseudotsuga menziesii* "Douglas Fir" or *Abies concolour* "White Fir."

*Thuja plicata* with *Tsuga heterophylla* "Western Hemlock" or *Sequoiadendron giganteum* "Redwood" or *Chamaecyparis nootkatensis* "Yellow Cypress."

*Taxus brevifolia* with *Taxus baccata* "English Yew" or *Taxus cuspidata* "Japanese Yew" or *Thuja plicata* "Western Red-Cedar."

*Populus tremuloides* with *Betula papyrifera* "White Birch" or *Betula pendula* "Silver Birch."

*Populus balsamifera* with *Betula papyrifera* "White Birch" or *Betula pendula* "Silver Birch."

*Salix lasiandra* with *Salix babylonica* "Weeping Willow" or *Salix alba* "Golden Willow."

*Salix hookeriana* with *Salix discolor* "Pussy Willow" or *Salix alba* "Golden Willow."

*Salix sitchensis* with *Salix nigra* "Black Willow" or *Salix alba* "Golden Willow."

*Alnus rubra* with *Alnus sinuata* "Sitka Alder" or *Fagus sylvatica* "Beech."

*Quercus garryana* with *Quercus alba* "White Oak" or *Quercus rubra* "Red Oak" or *Quercus palustris* "Pin Oak."

*Malus fusca* with *Prunus virginiana* "Western Choke Cherry" or *Amelanchier alnifolia* "Saskatoon Berry."

*Crataegus douglasii* with *Crataegus columbiana* "Columbia Hawthorn" or *Crataegus oxyacantha* "Hawthorn."

*Prunus emarginata* with *Prunus virginiana* "Choke Cherry" or *Prunus vari.* "Japanese Cherry."

*Acer macrophyllum* with *Acer platanoides* "Norway Maple" or *Acer pseudoplatanus* "Sycamore Maple."

*Acer glabrum* with *Acer circinatum* "Vine Maple" or *Acer ginnala* "Amur Maple."

*Rhamnus purshiana* with *Cornus nuttallii* "Western Dogwood" or *Carpinus betulus* 'Fastigiata' "Pyramidal Hornbeam."

*Cornus nuttallii* with *Cornus nuttallii* "White Wonder Dogwood" or *Cornus* species of similar form.

*Arbutus menziesii* with *Quercus ilex* "Holm Oak" or a coniferous genus.