

CITY OF PORT ALBERNI

BYLAW NO. 3869

**A BYLAW TO REGULATE THE MAINTENANCE OF BOULEVARDS AND THE PLANTING AND CARE OF SHADE OR ORNAMENTAL TREES, SHRUBS AND BUSHES ON AND ADJACENT TO A HIGHWAY**

**WHEREAS**, Section 578(2) of the *Municipal Act* RSBC 1979 provides amongst other things, that Council may construct, repair, maintain, improve and care for sidewalks and boulevards on highways and plant, care for and remove grass, shrubs, trees and other plants on them.

**AND WHEREAS** Section 579(1) of the *Municipal Act* provides amongst other things, that the Council may by bylaw regulate:

- a) the construction and maintenance of boulevards by or on behalf of the owners of land fronting on them;
- b) planting and care of shade or ornamental trees, shrubs and bushes on a highway;
- c) planting of trees, shrubs, bushes or hedges adjacent to a highway.

**AND WHEREAS** Section 579(2) of the *Municipal Act* provides amongst other things, that the Council may by bylaw prohibit and provide penalties for willful damage to boulevards, trees, shrubs, plants, bushes and hedges adjacent to a highway, and to fences and highway lighting.

**AND WHEREAS** Section 935 of the *Municipal Act* provides that:

- 1) The Council may by bylaw provide for removing, cutting down or trimming of any trees, shrubs, hedges or bushes growing or standing on land adjacent to a highway which the Council believes are dangerous, or where the Council believes the safety or convenience of the public requires, or where the trees, shrubs, hedges or bushes become injurious to the road bed, sidewalk or works at the expense of the owners or occupiers of land on which they grow or stand.
- 2) Before exercising the powers in the bylaw, the Council shall give the owner or occupier of the land notice requiring him within 5 days from the date of the notice to remove, cut down or trim the trees, shrubs, hedges or bushes designated in the notice. If the owner or occupier defaults or does not make an application to the County Court, the municipality, by its employees and others, may enter and effect the removal, cutting down or trimming at the expense of the person defaulting.
- 3) If notice of appeal to the County Court is given to the Council, the court shall hear and determine the matter, and its decision shall be final and without appeal.
- 4) The expenses incurred by a municipality under this section shall, if unpaid on December 31<sup>st</sup> in any year, be added to and form part of the taxes payable on the land designated in the notice.

**AND WHEREAS** Section 311 of the *Municipal Act* provides that whenever a Council has authority to direct that a matter or thing done by a person, the Council may also direct that on default by that person the matter or thing shall be done at the expense of the person in default,

and may recover the expense, with interest at the rate of 6% per year, with costs in the same manner as municipal taxes.

**NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CITY OF PORT ALBERNI IN OPEN MEETING ASSEMBLED ENACTS AS FOLLOW:**

**PART I - TITLE AND INTERPRETATION**

1. Title

This bylaw may be cited as the Boulevard and Tree Care Maintenance Bylaw.

2. Interpretation

- a) Administrator means the person appointed as Administrator by the Port Alberni Parks and Recreation Commission pursuant to the City's Parks and Recreation Commission Bylaw or any person lawfully acting in that capacity.
- b) Boulevard means that area of highway between the curb line, the sidewalk or the shoulder of a street and the adjacent property line which has been set aside for the planting of grass, trees or other plants.
- c) City means the City of Port Alberni or the area within the boundaries thereof as the context may require.
- d) Commission means the Port Alberni Parks and Recreation Commission appointed pursuant to the City's Parks and Recreation Commission Bylaw.
- e) Engineer means the person appointed by Council as City Engineer or any person lawfully acting in that capacity.
- f) Highway includes any street, road, lane or other way open to public use but does not include a private right-of-way on private property.
- g) Person includes any company, corporation, partnership, firm, association, society or party but excludes the City of Port Alberni, the Port Alberni Parks and Recreation Commission, and any employee of the City or the commission in the normal course of his/her duties.
- h) Tree includes shade or ornamental trees, shrubs and bushes or other plants.
- i) Vehicle means a device in, upon or by which a person or thing may be transported on drawn upon land.

## PART II - CONSTRUCTION OF BOULEVARDS

### 3. Council May Construct Boulevards

The Council is hereby authorized to construct or cause to be constructed boulevards and may amongst other things deemed necessary for the boulevard development, plant grass, trees or other plants within or upon boulevards.

## PART III - GRASS ON BOULEVARDS

### 4. Abutting Owners to Maintain Grass

- a) The owners of land abutting upon, fronting or adjacent to a boulevard shall maintain, water and cut any grass planted upon such boulevard as and when required in order to keep said boulevard in a neat and tidy condition.
- b) Every owner of land abutting upon, fronting or adjacent to a boulevard shall upon receipt of written notice to that effect and within the time limited by such notice water, cut or otherwise deal with the grass planted on a boulevard abutting, fronting or adjacent to their premises as may be specified in said notice.
- c) Should the owner of land, abutting upon, fronting or adjacent to a boulevard default in conforming with a notice under this section, the Council by its employees and others may enter upon such boulevard and effect such watering, cutting or other dealing with the boulevard as is necessary to conform to the notice and any expenses incurred as a result shall be recovered, with interest at a rate of 6% a year, with costs, in the same manner as municipal taxes.

## PART IV - TREES ON BOULEVARD OR HIGHWAYS

### 5. Care of Trees Responsibility of Commission

Pruning, trimming or other care or maintenance of trees within or upon highways or boulevards, including the replacement of damaged or diseased trees shall be the responsibility of the Commission.

### 6. Unlawful to Damage Trees

Save as provided in Section 8 hereof, it shall be unlawful for any person to willfully damage any boulevard or any tree upon or within any highway or boulevard.

### 7. Council May Remove Trees at any Time

The Council by its employees or others may at any time without notice remove any tree located within or upon any highway or boulevard in the City.

8. Permission Required to Plant, Remove or Otherwise Deal with Trees

It shall be unlawful for any person to plant, remove or otherwise deal with any tree upon or within any highway or boulevard in the City without first obtaining and subsequently complying with permission in writing from the Administrator.

9. Application for Permission

All applications for such permission shall be in writing and shall describe the work to be done including the time and date such work will be performed, together with the variety, grade, size and precise location of each tree affected.

10. Considerations in Granting Permission

If the Administrator finds after consultation with the Engineer that the proposed planting, removal or other dealing does not or could not be reasonably expected to conflict with existing or proposed public works that:

- a) in the case of planting:
  - i) the tree proposed to be planted has a reasonable likelihood of prospering;
  - ii) the variety and/or grade of tree is considered to be acceptable and will conform in appearance and location to adjacent trees located or proposed to be located within or upon the highway or boulevard;
  - iii) there is suitable soil or that the applicant will provide suitable soil to support the tree;
- b) in the case of removal of a tree that the applicant has paid to the City the estimated cost of planting plus the value of the tree as determined by the Administrator or if the tree can be transplanted the applicant has paid the cost of such transplanting;
- c) in the case of trimming or otherwise dealing with a tree, that the proposed trimming or other dealing:
  - i) will not injuriously affect the tree;
  - ii) will keep such tree conforming in appearance to adjacent trees located within or upon the highway or boulevard;
  - iii) the applicant has made acceptable arrangements for removal from the highway or boulevard of any limbs or other parts of the tree severed as a result of the trimming or other dealing with the tree.

He may grant permission to any applicant to plant, remove or otherwise deal with a tree or trees located within or upon a highway or boulevard. Such permission shall be valid only for the time and dates named in the application unless otherwise stated.

11. Appeal on Refusal to Grant Permission

If the Administrator refuses to grant permission to an applicant as aforesaid, he shall so notify the applicant who may appeal to the Commission in writing within 10 days of the date of the refusal. The Commission shall hear and determine the appeal and the decision of the Commission shall be final.

**PART V - TREES ON PRIVATE LAND**

12. Branches Projecting Over Highways and Sidewalks

The branches of trees standing on privately owned land may project over a highway but shall be trimmed by the owner thereof or his agent to an elevation of not less than:

- a) 3.0 metres above the street level where said branches project over that portion of highway travelled upon or used by vehicles; and
- b) 2.5 metres above the sidewalk level where said branches project over that portion of a highway developed or used as sidewalk.

13. Dangerous or Injurious Trees

The Council may by resolution declare any trees, shrubs, hedges or bushes standing on land adjacent to a highway to be dangerous or detrimental to the safety or convenience of the public or to be injurious to the road bed, sidewalk or works and may order the owner, or occupier of the land upon which they grow, at his own expense, and within 5 days of the date of notice, to remove, cut down or trim the said trees, shrubs, hedges or bushes.

- a) If such owner or occupier defaults in conforming with the provisions of the notice as aforesaid and does not provide the City with notice of an appeal to the County Court, the City by its employees and others may, at the expiration of the five days aforesaid, enter and effect such removal, cutting down or trimming at the expense of the person defaulting, and if said expenses remain unpaid on the 31<sup>st</sup> day of December in the year incurred, shall be added to and form part of the taxes payable upon the land designated in the notice.

14. Penalty

- 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 or in violation of any of the provisions of this bylaw, who neglects to do or refrains from doing anything required to be done by any provisions of this bylaw or who does any act which violates any of the provisions of this bylaw, is guilty of an offence against this bylaw and liable to the penalties hereby imposed. Each day that a violation continues to exist shall constitute a separate offence.
- b) Every person who commits an offence against this bylaw is liable to a fine and penalty of not more than \$2,000.00 and not less than \$100.00 for each offence, or to imprisonment for not more that 6 months or to both, and in default of

payment forthwith or within such time as the presiding Provincial Court Judge or Justice of the Peace shall direct, the fine imposed shall be recoverable under the provisions of the *Offence Act*, RSC 1979, Chapter 304 and all amendments thereto.

**READ A FIRST TIME THIS 13<sup>TH</sup> DAY OF JUNE, 1988.**

**READ A SECOND TIME THIS 13<sup>TH</sup> DAY OF JUNE, 1988.**

**READ A THIRD TIME THIS 13<sup>TH</sup> DAY OF JUNE, 1988.**

**FINALLY ADOPTED THIS 27<sup>TH</sup> DAY OF JUNE, 1988.**

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Mayor

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Clerk