

**THE COMMITTEE OF THE WHOLE**

**AGENDA**

**6:30 P.M.**

**Tuesday, March 10, 2020**

**6:30 P.M.**

**Council Chambers, City Hall**

**Pages**

**1. CALL TO ORDER**

**2. AGENDA APPROVAL**

Recommendation

That the agenda for this March 10, 2020 meeting of the Committee of the Whole be approved.

**3. MINUTES**

**3.1 Minutes of the Committee of the Whole Meeting held January 28, 2020**

**3**

Recommendation

That the minutes of the Committee of the Whole meeting held January 28, 2020 be approved.

**4. REPORTS**

**4.1 Budget Transfer Policy**

**9**

Recommendation

That the Committee recommend that Council approve the Budget Transfer Policy 05-1680-B as presented.

**4.2 Fees and Charges Amendment**

**13**

Recommendation

That the Committee direct staff to prepare an amendment to the Town of Ladysmith Fees and Charges Bylaw 2008, No. 1644” to include:

1. False Alarms per calendar year:
  - a. First False Alarm – warning letter
  - b. Second False Alarm - \$100.00
  - c. Third and subsequent False Alarms - \$250.00

2. Online banking payments – transfers between accounts, per calendar year:
  - a. First transfer – warning letter
  - b. Second transfer – warning letter
  - c. Third and subsequent transfers – a fee of 10% of the requested transferred amount with a minimum of \$5.00 to a maximum of \$25.00

## **5. COUNCIL SUBMISSIONS**

### **5.1 Request to Arrange a Formal Joint Meeting with the Board of Trustees of School District 68**

Councillors Jacobson and Stevens have requested that the Committee discuss the possibility of arranging a formal joint meeting with the board of trustees of School District 68 as well as potential agenda items.

### **5.2 Protection and Preservation of Trees within the Town of Ladysmith**

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Councillor Paterson has requested that the Committee discuss a previous draft bylaw initiated by the Green Street Committee regarding the protection and preservation of trees within the Town of Ladysmith.

## **6. NEW BUSINESS**

## **7. ADJOURNMENT**



**MINUTES OF A MEETING OF THE  
COMMITTEE OF THE WHOLE**

**Tuesday, January 28, 2020  
6:30 P.M.  
Council Chambers, City Hall**

**Council Members Present:**

Councillor Jeff Virtanen, Chair  
Mayor Aaron Stone  
Councillor Duck Paterson  
Councillor Amanda Jacobson

Councillor Rob Johnson  
Councillor Tricia McKay  
Councillor Marsh Stevens

**Staff Present:**

Guillermo Ferrero  
Erin Anderson  
Jake Belobaba  
Geoff Goodall  
Joanna Winter

Joanna Winter  
Ryan Bouma  
Julie Tierney  
Mike Gregory  
Sue Bouma

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**2. AGENDA APPROVAL**

**CW 2020-001**

That the agenda for this January 28, 2020 meeting of the Committee of the Whole be approved.

*Motion Carried*

**3. MINUTES**

**3.1 Minutes of the Municipal Services Committee Meeting held  
December 9, 2019**

**CW 2020-002**

That the minutes of the Municipal Services Committee meeting held December 9, 2019 be approved.

*Motion Carried*

#### 4. DELEGATION

##### 4.1 Jane Kilthei, Marilyn Swallow and Guy Johnson, One Cowichan Community Education Society: Climate Emergency

Jane Kilthei, Marilyn Swallow and Guy Johnson of One Cowichan Community Education Society made a presentation to Council requesting that the Town increase climate action by developing green infrastructure, planning denser neighbourhoods, increasing public transit and providing community education. They asked Council to make climate action a priority over expanding the Town in the next ten years, and to recognize the critical importance of the forest when considering development proposals going forward.

Council thanked Ms. Kilthei, Ms. Swallow and Mr. Johnson for their presentation.

##### **CW 2020-003**

That Council amend the agenda to move Item 6.1., "Climate Declaration" to follow the delegation on Climate Emergency by the One Cowichan Community Education Society.

*Motion Carried*

#### 5. Climate Declaration

##### **CW 2020-004**

That the Committee recommend that Council adopt the following resolution:

Whereas: Climate change creates risks to our economic, social and physical environments.

Whereas: The overwhelming scientific consensus is that human activities are causing climate change.

Whereas: A response to climate change will consist of mitigation and adaptation.

Whereas: Mitigation of climate change will necessarily include a transition to a low carbon society.

Whereas: The transition to a low carbon society could effect the economic and

social environments negatively for a period of time, and those negative effects on the lives of citizens must be minimized.

Whereas: Adaptation to climate change will involve the 'hardening' of public assets

Whereas: The Town of Ladysmith exists to provide: good government; services, laws and other matters for the benefit of the community; stewardship of public assets AND to foster the economic, social, and environmental well being of the community.

Therefore Be It Resolved That:

\* The Town of Ladysmith acknowledges the emergent risks posed by climate change to our economic, social and physical environments.

And further, the Town of Ladysmith will continue to adopt plans, bylaws, policies and spending that: facilitate the smoothest possible socio-economic transition to a low carbon community; mitigate the carbon footprint of the Town and its citizens; and adapt/build public assets to withstand and/or overcome the effects of climate change.

## AMENDMENT

### **CW 2020-005**

That the third paragraph of resolution CW 2020-004 be amended to read as follows:

Whereas: The overwhelming scientific consensus is that human activities are contributing to climate change.

*Amendment Carried*

*Main Motion as Amended Carried.*

## 6. REPORTS

### 6.1 Churchill Property Development – Progress Report

#### **CW 2020-006**

That the Committee:

1. Receive the progress report by the Director of Infrastructure Services dated January 14, 2019, on options for potential development of the Town-owned property at 1260 Churchill Place; and

2. Recommend that Council authorize an additional \$15,000 to fund a geotechnical survey of the property with the funds to come from the real property reserve.

*Motion Carried*

## 6.2 2020 Grants in Aid Requests – Preliminary Review

### **CW 2020-007**

That the Committee recommend that Council allocate \$3000 from the unspent funds from the 2019 Grant in Aid budget to offer a Grant Writing Workshop to local organizations.

*Motion Carried*

### **CS 2020-008**

That the Committee recommend a Grant-in-Aid an allocation of \$7500 to the Ladysmith & District Historical Society.

*Motion Carried*

OPPOSED: Councillor Jacobson

### **CW 2020-009**

That the Committee recommend a Grant-in-Aid allocation of \$3500 to the Ladysmith Golf Club Society.

*Motion Carried*

OPPOSED: Councillor Jacobson

### **CW 2020-010**

That the Committee recommend a Grant-in-Aid allocation of \$2500 in to the Waiving of Fees.

*Motion Carried*

### **CW 2020-011**

That the Committee recommend that Council allocate the 2020 Grants in Aid as follows:

<b>Organization</b>	<b>Preliminary Approval 2020</b>
Ladysmith Fire Rescue - Santa Parade	1200
Ladysmith Show and Shine	1500
Ladysmith Festival Of Lights	10000
Ladysmith Downtown Business Association	1500

Art Council of Ladysmith and District	1000
Stz'uminus First Nation	2500
Ladysmith and District Marine Rescue Society	2500
Ladysmith Ambassador Program	1500
Old English Car Club Central Island Branch	600
Ladysmith Maritime Society	1500
Ladysmith Celebrations Society	8000
Ladysmith Family and Friends Society	2500
Cowichan Family Caregivers Support Society	750
Cowichan Trail Stewardship Society - Ladysmith Chapter	1000
Ladysmith Community Gardens Society	1000
Ladysmith Little Theatre	2000
St Philips Church - Open Table	500
Citizens on Patrol	
LSS - Frank Jameson Bursary	1500
Late Applications/ Council Discretion	6579
<b>Total</b>	<b>61,129</b>

*Motion Carried*

### **CW 2020-012**

That the Committee direct staff to provide a report for the Committee with options for reviewing and allocating Grants-in-Aid to help provide the best returns for the community in terms of economic activity and/or community growth and development.

*Motion Carried*

OPPOSED: Councillor Paterson

### **6.3 Park and Facility Naming Policy**

#### **CW 2020-013**

That the Committee refer the draft Park and Facility Naming Policy and application process, with accompanied park and facility naming inventory, to Council for consideration.

*Motion Carried*

**6.4 Building Inspector's Report to December 31, 2019**

**CW 2020-014**

That the Committee receive the Building Inspector's Report for the month of December, 2019.

*Motion Carried*

**6.5 Ladysmith Fire/Rescue Reports for November and December 2019**

**CW 2020-015**

That the Committee receive the Ladysmith Fire/Rescue Reports for the months November and December, 2019.

*Motion Carried*

**7. COUNCIL SUBMISSIONS**

**7.1 Budget Transfer Policy**

**CW 2020-016**

That the Committee direct staff to bring back to the Committee amendments to the existing budget transfer policy which would allow staff to reallocate up to 0.3% of the current year municipal tax levy between projects, providing funds are available, and advise the Committee of such transfers in a future financial report.

*Motion Carried*

**8. ADJOURNMENT**

**CW 2020-017**

That this meeting of the Committee of the Whole adjourn at 8:30 p.m.

*Motion Carried*

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Chair (Councillor J.Virtanen)

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Corporate Officer (J. Winter)



**INFORMATION REPORT TO THE COMMITTEE**

**Report Prepared By:** Erin Anderson, Director of Financial Services  
**Report Reviewed By:** Guillermo Ferrero, CAO  
**Meeting Date:** March 10, 2020  
**File No:**  
**RE:** BUDGET TRANSFER POLICY

**RECOMMENDATION:**

That the Committee recommend that Council approve the Budget Transfer Policy 05-1680-B as presented.

**EXECUTIVE SUMMARY:**

The current policy, nearly 20 years old, adds delays to projects in order to wait for Council’s approval to authorize a budget amendment. The revised policy incorporates the Committee’s recommendation of a maximum transfer amount (0.3%) between projects.

**PREVIOUS COUNCIL DIRECTION:**

<p>January 14, 2020</p>	<p>CW 2020-016</p>	<p>That the Committee direct staff to bring back to the Committee amendments to the existing budget transfer policy which would allow staff to reallocate up to 0.3% of the current year municipal tax levy between projects, providing funds are available, and advise the Committee of such transfers in a future financial report.</p>
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**DISCUSSION:**

The Committee may recall that at a previous meeting staff were directed to amend the current Budget Transfer Policy to include a maximum transfer amount. Staff have amended the policy for the Committee’s consideration.

*I approve the report and recommendation(s).*

**Guillermo Ferrero, Chief Administrative Officer**

**ATTACHMENT(S):**

05 1680 B DRAFT Budget Transfer Policy 2019



**TOWN OF LADYSMITH**  
**POLICIES AND PROCEDURES MANUAL**

<b>TOPIC:</b>	<b>BUDGET TRANSFER POLICY</b>		
<b>APPROVED BY:</b>	<b>Council</b>	<b>DATE:</b>	XXXXX
<b>RESOLUTION #:</b>			
	2000-594		

Purpose:

1. The purpose of the policy is to establish the responsibilities, controls and authorizations for current year Financial Plan budget transfers in order to efficiently manage unforeseen expenses.

Definitions:

2. The following definitions in this policy apply:
  - a) “Department Head” means one of the following staff positions: Chief Administrative Officer, Director of Infrastructure Services, Director of Financial Services, Director of Parks, Recreation & Culture, Director of Development Services.
  - b) “Project Lead” means one staff member authorized to oversee the capital project in question and make financial decisions regarding the project.
  - c) “New Capital Project” means a capital project that is not included in the current year of the Financial Plan.
  - d) “Cancelled Capital Project” means a capital project that was approved in the current year of the Financial Plan and is no longer proceeding.
  - e) “Existing Capital Project” means a capital project that is included in the current

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year of the Financial Plan and is either complete or requires additional funding.

- f) “Maximum Budget Transfer” means 0.3% of the current year municipal property tax levy.

Policy:

3. Council expects staff to maximize the effective use of taxpayer funds.
4. Council supports Staff’s decisions to efficiently manage cost savings and cost overruns in capital projects.
5. All employees are expected to function within the budget for each capital project established in the Financial Plan.
6. The Director of Financial Services (or delegate) is the only person authorized to amend a capital project up to the maximum budget transfer amount.
7. This policy does not apply to *Community Charter* s.173(3) regarding emergency spending.

Responsibilities:

1. Only Council can:
  - a. Decide on budget transfers exceeding the maximum budget transfer amount.
  - b. Decide on budget transfers to a new project.
2. The Director of Financial Services is responsible for:
  - a. Confirming budget estimates are within the maximum budget transfer amount;
  - b. Confirming adequate funding sources;
  - c. Directing appropriate finance staff to make the Financial Plan and financial software changes.
3. Department Heads are responsible for:
  - a. Confirming eligibility of a budget transfer amount; and
  - b. Preparing a report to Council if budget transfer estimate exceeds maximum budget transfer amount or is required for a new project.
4. Project leads are responsible for:
  - a. Calculating budget transfer estimates; and

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b. Obtaining Department Head approval.

Procedures:

1. All budget change requests must be submitted, in writing, to the Director of Financial Services and include the existing or cancelled project codes and dollar amounts.
2. Budget transfers between capital projects are subject to appropriate prior approval.
3. Approval authority depends on the dollar amount of the transfer.
4. Budget transfers are between existing projects and within the appropriate Fund (general, water or sewer).
5. Budget transfers do not increase the total capital budget.
6. The Director of Financial Services will summarize all budget transfers and report to Council.

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**STAFF REPORT TO THE COMMITTEE OF THE WHOLE**

**Report Prepared By:** Erin Anderson, Director of Financial Services  
**Meeting Date:** March 10, 2020  
**File No:**  
**RE:** **FEES AND CHARGES AMENDMENT**

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**RECOMMENDATION:**

That the Committee direct staff to prepare an amendment to the Town of Ladysmith Fees and Charges Bylaw 2008, No. 1644" to include:

- 1) False Alarms per calendar year:
  - a. First False Alarm – warning letter
  - b. Second False Alarm - \$100.00
  - c. Third and subsequent False Alarms - \$250.00
- 2) Online banking payments – transfers between accounts, per calendar year:
  - a. First transfer – warning letter
  - b. Second transfer – warning letter
  - c. Third and subsequent transfers – a fee of 10% of the requested transferred amount with a minimum of \$5.00 to a maximum of \$25.00

**EXECUTIVE SUMMARY:**

The fees charged on various products and services provided by the Town require updating in order to ensure that the cost are partially recovered from the individuals requesting the product or service.

**PREVIOUS DIRECTION**

n/a

**INTRODUCTION/BACKGROUND:**

Periodically, the Fees and Charges bylaws are reviewed to ensure the Town is recouping adequate funds for the provision of service or product. There are a few items within the Fees and Charges bylaw that require attention. These items include:

**False Alarms**

The current bylaws provides for one false alarm at no-charge (a warning), the second false alarm at \$50.00 and the third and subsequent alarms at \$100.00.

Ladysmith Fire/Rescue team responded to:

Year	# of calls	# of invoices	Wages to attend False Alarms
2019	10	1	\$ 4,754
2018	20	6	\$ 6,832
2017	42	7	\$ 9,882

It is proposed that Ladysmith continue with the one warning per calendar year, though increase the second alarm to \$100.00 and third and subsequent to \$250.00

City	Time period	1st	2nd	3rd	4th	5th	6th
Parksville	12 months	Warning only	Warning only	\$ 250			
	24 months					\$ 500	
Duncan	12 months	Warning only	\$ 150	\$ 500			
Nanaimo	12 months	Warning only	Warning only	\$ 300.00			
Courteney	Calendar year	Warning only	Warning only	Warning only	\$100	\$200	
	Greater than 1 calendar year						\$250

Online banking payments – transfers between accounts

The Town offers online banking as an option for property owners making payment. Property owners are required to select different biller types: Utilities for the water, sewer and garbage bills or Property Tax for their property tax payments. Some property owners select the wrong biller type and make payment on their taxes when they intended the payment to be placed on their utility bill (or vice versa). The payment file is imported directly from the secured banking site into the Town’s billing system. Upon review, Staff often catch these type of payments and send a letter to the property owner advising them of their error and request authorization to move the payment. No penalty amount is charged on the outstanding balance as the funds were in a credit situation on the other biller type.

On occasion, property owners do not change their banking information after warnings. The property owner frequently requests transfers to be made from one biller type payment to the other. These request require documentation and staff time to fulfill the transfer.

It is proposed that a fee of 10% of the requested transfer amount with minimum of \$5.00 to a maximum of \$25.00 is levied on accounts that request more than 2 transfers in a calendar year. This fee is consistent with the fee charged on refunds.

**ALTERNATIVES:**

Council can choose to keep the status quo or suggest any other amount.

**FINANCIAL IMPLICATIONS:**

The Town must be able to substantiate reasoning behind charging a fee.

For the fire department, the average fee to attend a false alarm was roughly \$475. A fee of \$100 for the second call and \$250 for subsequent calls would go towards the cost of providing the service.

The fee for transferring payments between accounts is \$5.00 to \$25.00. As property owners determine where their on-line payments go, they can avoid this fee if they make the proper selection.

**LEGAL IMPLICATIONS:**

n/a

**CITIZEN/PUBLIC RELATIONS IMPLICATIONS:**

If approved, property owners would be advised of the new fee schedule in future warning letters.

**INTERDEPARTMENTAL INVOLVEMENT/IMPLICATIONS:**

n/a

**ALIGNMENT WITH SUSTAINABILITY VISIONING REPORT:**

- Complete Community Land Use
- Green Buildings
- Innovative Infrastructure
- Healthy Community
- Not Applicable
- Low Impact Transportation
- Multi-Use Landscapes
- Local Food Systems
- Local, Diverse Economy

**ALIGNMENT WITH STRATEGIC PRIORITIES:**

- Infrastructure
- Community
- Waterfront
- Economy
- Not Applicable

*I approve the report and recommendation(s).*

**Guillermo Ferrero, Chief Administrative Officer**

**ATTACHMENT(S):**

**Draft 7**  
**07-02-15**

**TOWN OF LADYSMITH**  
**BYLAW No. 0000**

Tree Protection Bylaw

**A BYLAW TO PROVIDE FOR THE PROTECTION AND PRESERVATION**  
**OF TREES WITHIN THE TOWN OF LADYSMITH**

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**WHEREAS**, pursuant to the provisions of the Community Charter, RSBC 2003. Council may, by bylaw, exercise certain powers to preserve and protect trees within the Township, to regulate their cutting and removal and to require their replacement; and

**WHEREAS** the Council considers it in the public interest to provide for the protection and preservation of trees, the regulation of their cutting and removal and their replacement;

**NOW THEREFORE** the Council of the Town of Ladysmith in open meeting assembled enacts as follows:



## 1. CITATION

This bylaw may be cited for all purposes as “Town of Ladysmith Tree Protection Bylaw, 2007, No. 0000”

## 2. DEFINITIONS

In this Bylaw,

“**Arborist**” means a person currently certified by the International Society of Arboriculture as a professional Arborist or Arboriculturist;

“**Boulevard**” means all of that part of a road or highway not improved and designated for vehicular or pedestrian travel;

“**Breast Height**” means a point on the trunk of a tree, 1.3 metres above the natural grade of the land adjacent to the tree, measured from the base of the tree;

“**Bylaw Enforcement Officer**” means the person currently employed by the Town of Ladysmith to ensure all bylaws are being abided;

“**Council**” shall mean the Town Council of the Town of Ladysmith;

“**Cut Down**” means to cut down, kill or remove a tree by any means and without limiting the generality of the 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 centimetres (3.9 inches);

“**Diameter at Breast Height (DBH.)**” means the diameter of the trunk of the tree measured at breast height or 1.3 meters;

“**Director of Parks, Recreation & Culture, (Director)**” means the person appointed by the Town Council as the Director of Parks, Recreation and Culture and the deputy of such person or the person temporarily appointed to act on behalf of the Director and here after referred to by Director

“**Drip Line**” means a line on the surface of the ground around the trunk of a tree which is the vertical extension down from the outermost branches of a tree to the ground;

“**Engineer**” means the person appointed by the Town Council as the Director of Public Works, and the deputy of such person or the person temporarily appointed to act on behalf of the Director of Engineering Services;

“**Development Permit Area or Environmentally Sensitive Area**” means a specific area or parcel of land within the Town boundaries, which has been designated and declared as having habitat, growth or other natural features which are considered by the Town Council to be sensitive and necessary to protect from encroachment by development, vehicles, human access or contamination;

“**Hazardous**” includes 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 “C” attached hereto;

**“Landmark Tree”** means a tree of the genus / species and size outlined in Schedule B attached hereto;

**“Owner”** means the registered owner in fee simple of a parcel of land and the trees growing on it;

**“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, encourage flowering or to regulate growth;

**“Qualified Expert”** means either an Arborist certified by the International Society of Arboriculture, a forester registered with the Association of Forest Professionals, or a landscape architect registered with the B.C. Society of Landscape Architects; provided they have specialized training and experience;

**“Replacement Tree”** means a tree replacing a tree cut, removed or damaged in accordance with Section 13 and replaced with a tree listed in Schedule “D” of this bylaw;

**“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 Removal Permit”** means written permission from the Director authorizing the removal of one or more trees from a specified parcel of land;

**“Town”** means, as the context requires, the Town of Ladysmith or the area within the boundaries of the Town of Ladysmith;

**“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 trees which provide shelter or wildlife habitat for an egg or a nest protected under Schedule A of this bylaw or which is listed under Section 34 of the Wildlife Act;

### 3. SIGNIFICANT TREES

Council considers:

3.1. The trees set out in “Schedule A” important to the community as wildlife habitat;

3.2. The trees set out in “Schedule B” important to the community for landmark value;

3.3. The trees set out in “Schedule C” important to the community for their heritage value;

#### **4. LOCATION AND MEASURING**

- 4.1. For the purposes of this bylaw:
- 4.2. the location of a tree on a lot must be measured at the point at which the trunk of the tree meets the ground;
- 4.3. a tree must be considered to be located on the same side of a building envelope line that the major part of the trunk of that tree is located;
- 4.4. the diameter of a tree is determined by dividing the circumference of its trunk, measured at 1.3 m above the ground, by 3.142;
- 4.5. the diameter of a tree having multiple trunks 1.3 m above the ground is the sum of:
- 4.6. 100% of the diameter of the largest trunk; and
- 4.7. 60% of the diameter of each additional trunk;

#### **5. APPLICATION**

- 5.1. Except in respect of a Significant Trees listed on Schedule A, B, or C, this bylaw does not apply to trees having a D.B.H. of less than 150mm;
- 5.2. Except in respect of a Significant Trees listed on Schedule A, B, or C, this bylaw does not apply to a parcel of land that is less than 0.6 hectares in size unless it is located within an Environmentally Sensitive Area or a Development Permit Area;

#### **6. CUTTING AND REMOVAL OR PRUNING OF TREES**

- 6.1. Except as provided in Section 6.2 a tree may only be cut or removed in accordance with all the provisions of this bylaw and pursuant to a valid and subsisting permit to do so. As noted in Section 15, no permit shall be required prior to the removal of any tree or part of any tree when there is imminent danger of the tree or any part of the tree falling and injuring persons or damaging property;
- 6.2. No permit, except in respect of a Significant Tree, is required to prune the roots or branches of a tree where pruning is required by sound arboricultural practice;

#### **7. PROHIBITIONS**

- 7.1. No person shall cut, remove or damage any Significant Tree, or a tree within a Development Permit Area in the Town of Ladysmith Official Community Plan, or suffer or permit any such tree to be cut, removed or damaged, except where permitted by and in accordance with the terms of this bylaw;
- 7.2. No person shall cut, remove or damage a tree growing on any land designated as a Development Permit Area in the Town of Ladysmith without first obtaining a Development Permit, except any tree certified by a Qualified Expert approved by the Town, in a written statement to be diseased or damaged beyond reasonable expectation of recovery, dead, or that for a specified reason, presents a hazard or danger to a person or a property;

- 7.3. No person shall cut, remove or damage a tree shown “to be retained” on a tree management plan or a plan attached to a Development Permit except where permitted by and in accordance with the terms of this bylaw;
- 7.4. No person shall fail to comply with the terms and conditions of a permit issued pursuant to this bylaw;

## **8. EXEMPTIONS**

- 8.1. This bylaw does not apply to trees cut or removed:
- 8.2. pursuant to the Hydro Power and Authority Act, R.S.B.C. 1979, c.188. if 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;
- 8.3. on land if forestry practices on the land are governed by a tree farm licence, permit or other authority or tenure under the Forest Act;
- 8.4. on land if section 21 of the Private Managed Forest Land Act applies to the land;
- 8.5. This bylaw does not apply to trees cut or removed on Town property in accordance with approved Town operations.
- 8.6. Any person acting under the written direction of the DPRC conducting work for and on behalf of the Town is exempt from the provisions of this bylaw.

## **9. OTHER WORKS**

- 9.1. Any excavation, construction or engineering works of any nature, howsoever authorized or permitted, carried out on, under or above land within five (5) metres of the Drip Line of any Protected Tree, shall be undertaken only to the extent and in a manner that does not damage the trunk, branches or root structure of any tree;

## **10. PERMITS**

- 10.1. Notwithstanding any provision of this bylaw, a permit for the cutting or removal of any tree prohibited by this bylaw from being cut or removed may be issued by the Director upon application by the Owner in accordance with this Section 10;
- 10.2. An application for a permit to cut or remove a tree shall be submitted on the forms as provided for this purpose by the Town and shall be accompanied by the applicable fee and by all documents listed as required on the application form, including a tree management plan;
  - 10.2.1. Fees for a Tree Removal Permit shall be determined by the Town. Amount to be payable upon issuance of the Permit;
- 10.3. 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 13;

- 10.4. Where an application for a permit is made to facilitate the subdivision of a parcel of land, the tree management plan shall provide for:
- 10.4.1. the protection or replacement of all significant trees on the parcel of land; and
  - 10.4.2. the protection of a minimum of 20-percent 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 0.6 hectare in size;
- 10.5. 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-percent of the trees on the parcel of land exclusive of any area set aside for park dedication pursuant to the provisions of the Local Government Act and Community Charter;
- 10.6. The applicant shall mark all trees proposed to be removed or retained from a parcel of land in a manner satisfactory to the Director;
- 10.7. 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);
- 10.8. 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;
- 10.9. 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-percent of the parcel size at a location to be determined in consultation with the Director;
- 10.10. A permit to cut or remove a tree, other than a Significant Tree may be issued by the Director:
- 10.10.1. where the tree is certified as being an unreasonable hazard to the safety of persons or property in the opinion of a Qualified Expert;
  - 10.10.2. where the tree is certified by a Qualified Expert to be diseased or damaged beyond reasonable expectation of recovery, or is certified to be dead or in decline;
  - 10.10.3. where the Director, the Engineer or the duly authorized representative of an engineer employed by any public utility or a Qualified Expert certifies that in his or her opinion a tree is impairing, interfering with or, presents a risk or hazard to the operation of sewers, drains, water lines, electrical, telephone and cable lines, poles or other similar equipment and appurtenances and structures

as approved by the Town or highways and street works as approved by the Town or the Province of British Columbia or approved driveways, parking spaces or septic fields;

10.10.4. where a tree other than a Significant Tree situated within 2-metres of the building foundation wall permitted pursuant to zoning bylaws and/or a building permit approved by the Town, where the building configuration cannot reasonably be modified to accommodate the tree;

10.10.5. where a tree other than a Significant Tree is situated in a required yard or on a Boulevard and must be cut or removed for a driveway access route or the construction, placing or laying or any building, utility, structure or septic field and which is permitted pursuant to zoning bylaws and/or a building permit approved by the Town, where the layout or configuration cannot reasonably be modified to accommodate the tree;

10.10.6. for the pruning or topping of a Significant Tree where the pruning or topping is certified as being necessary by a Qualified Expert, and where it is certified the work will not affect the health or life expectancy of the tree, in which case the Director may require a condition of such permit that all pruning activity be carried out under the on-site supervision of a Qualified Expert;

10.10.7. Except as in Section 10.10.5, Significant Trees cannot be cut, removed, damaged or significantly altered in any way unless they are first removed by Order of Council from Schedule A, B or C;

10.11. The Director may, as a condition of any permit:

10.11.1. Require that the cutting or removal of trees or specific trees be carried out under the supervision of a Qualified Expert;

10.11.2. Revoke a Tree Removal Permit if the terms or conditions have been breached;

10.11.3. Determine the number, species and sizes of Replacement Trees required;

10.11.4. Determine the location of Replacement Trees when they are planted on private lands or on Boulevards; and

10.11.5. Refuse to grant a Tree Removal Permit in areas designated as Environmental Sensitive Areas or Development Permit Area;

10.12. No permit shall be issued until the Owner has complied with all the applicable requirements of Section 10 of this bylaw;

10.13. A tree prohibited from being cut or removed shall only be cut or removed where the Owner holds a valid approved and subsisting permit to do so;

## **11. OFFENCE**

11.1. Every person who violates any of the provisions of this bylaw or who suffers or permits any act or thing to be done or omits to do anything required to be done in

contravention or in violation of any of the provisions of this bylaw, is guilty of an offence against this bylaw and is liable to the penalties hereby imposed.;

- 11.2. For the purposes of this bylaw, each tree cut or removed or damaged in violation of this bylaw and each day that a violation is permitted to exist or continues shall constitute a separate offence.

## **12. PENALTY**

- 12.1. Every person who commits an offence against this bylaw is liable to a fine and penalty allowed by the Community Charter for each tree unlawfully cut down, removed or damaged.

- 12.2. The minimum penalty for each tree that is cut down, damaged or removed in contravention of this bylaw is a fine of:

12.2.1. \$500.00 for the first offence;

12.2.2. \$1,000.00 for a second or subsequent offence;

- 12.3. The voluntary penalty for a first contravention of a provision of this bylaw is:

12.3.1. \$300 if paid within 14 days from the date of the offence notice;

12.3.2. \$400 if paid after 14 days but within 45 days from the date of the offence notice;

12.3.3. \$500 if paid after 45 days from the date of the offence notice;

- 12.4. The voluntary penalty for a second or subsequent contravention of a provision of this bylaw is:

12.4.1. \$800 if paid within 14 days from the date of the offence notice;

12.4.2. \$900 if paid after 14 days but within 45 days from the date of the offence notice;

12.4.3. \$1,000 if paid after 45 days from the date of the offence notice;

- 12.5. In addition to any penalty that may be imposed under this bylaw where any person cuts, removes or damages, or suffers or permits any tree to be cut, removed or damaged in contravention of this bylaw, or in excess of any permission, or in violation of any terms and conditions of a permit issued under this bylaw, such tree shall be replaced by a new tree on the same parcel of land in accordance with the provisions of Schedule "D", and Section 13 applies;

- 12.6. Any person who is authorized by the Council and who has reason to believe that another person has committed an offence under this bylaw may deliver an offence notice to that other person;

- 12.7. An offence notice may be delivered by giving it in person to, or by sending it by prepaid registered mail to the person believed to have committed an offence;

- 12.8. An offence notice shall indicate the offence and the amount of voluntary penalty that may be paid to the Town for the offence;
- 12.9. A prosecution may not be commenced for an offence described in an offence notice if a voluntary penalty is paid in accordance with this bylaw before information is sworn and a summons is issued;

### **13. REPLACEMENT TREES**

- 13.1. Where compliance is required with this Section, the Owner shall replace the trees to be cut or removed with a new tree planted on the same parcel in accordance with the requirements specified, as to number, size and species, set out in and determined in Schedule "D";
- 13.2. Where Replacement Trees are required to be planted on a Boulevard the species shall be selected by the Director, and the trees shall be located to approval of the Director and shall conform to the size and type as set out in Schedule "D";
- 13.3. An Owner who has planted a replacement tree as required by this bylaw shall provide to the Director a written statement to the effect detailing the location, height, D.B.H., species and date of placement of the replacement tree;
- 13.4. An Owner shall maintain every replacement tree in accordance with good and sound horticulture practice. If a replacement tree dies, or gives other indication of imminent failure, within one (1) growing season of being planted it must be replaced pursuant to Section 12.5.
- 13.5. Where a Replacement Tree is required to be planted pursuant to Section 12 it shall be planted within 90 days of the cutting or removal requiring replanting, and where the Replacement Tree is required to be planted pursuant to Section 12 it shall be planted within 90 days of the issuance of the occupancy permit for the last house or other principal building being constructed as part of the project, or within not more than three (3) years of the date of the permit when the date of construction completion is unknown;
- 13.6. Except as specified in Section 13.7 the Town may require two (2) Replacement Trees for every one tree (1) removed pursuant to this bylaw;
- 13.7. Where an Owner who is required by the terms of this bylaw, or a permit issued pursuant to the bylaw, to plant Replacement Trees, provides to the Director the report of a Qualified Expert stating that one or more of the Replacement Trees cannot be planted in accordance with sound arboricultural practice such that the survival of adjacent existing trees is unlikely, or where it is not possible due to other considerations, such as required setbacks, lot size or topography, the Owner will not be required to plant the required 2:1 replacement ratio;
- 13.8. 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.



- 13.9. 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.
- 13.10. 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.
- 13.11. 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.

#### **14. SECURITY FOR REPLACEMENT**

- 14.1. Wherever in this bylaw, or in the terms of the permit granted hereunder, a Replacement Tree is to be planted and maintained, the Owner thereof, shall, prior to issuance of a permit or upon request of the Director, as the case may be, provide to the Town a security deposit in cash or letter of credit in the amount, for the period and on the terms specified. No interest shall be paid on cash security deposits;
- 14.2. Any letter of credit required to be provided under this bylaw shall be a clean, unconditional and irrevocable letter of credit drawn from a Canadian financial institution acceptable to the Town and in a form acceptable to the Town. The irrevocable letter of credit shall be automatically extended until such time as it is cancelled by mutual consent of the owner and director. The Town may draw down the letter of credit without notice or restriction and hold the monies in lieu thereof.
- 14.3. The amount of any deposit to secure provision and maintenance of Replacement Trees required by the bylaw, to be planted and maintained, shall be as follows:
- 14.3.1. Except where Replacement Trees are required as part of a penalty, as stated in Section 12, no security will be required when less than five Replacement Trees are required to be planted;
- 14.3.2. Where five or more Replacement Trees are required to be planted, security of \$200.00 per Replacement Tree shall be required;
- 14.4. The amount of security deposit held by the Town shall be reduced in stages as provided in Sections 14.5 and 14.6 of this Bylaw. It shall be a condition precedent to each reduction of the security deposit that the Owner request an inspection and assessment per section 16 and that the Director be satisfied that the Owner has complied with the tree replacement and maintenance requirements of this bylaw, including the replacement of any Replacement Tree that has failed to establish, is dead or is dying;
- 14.5. Subject to Section 14.4 of this Bylaw, a deposit shall be reduced as follows:
- 14.5.1. by 50-percent of the original amount after the planting of all Replacement

Trees required to be provided, and the Town's approval of these trees;

14.5.2. by the balance of the deposit after one year from the date of the first reduction provided for in Section 14.5.1 provided that the planted Replacement Trees receive Town approval;

14.6. Subject to Section 14.5 of this Bylaw, where a developer submits a letter of credit to cover the total cost of required project site landscaping, and when that letter of credit includes the amount of security required to cover Replacement Trees, the security shall be reduced as follows:

14.6.1. by 90% of the original amount after the landscaping is complete, including all planting of Replacement Trees, and has been approved by the Town;

14.6.2. by the balance of the deposit after one year from the date of the first reduction, provided for in Section 14.6.1 provided that the landscaping and the Replacement Tree planting receives Town approval;

14.6.3. Whenever the Town holds cash as security no interest shall be paid to the Owner;

14.7. If at any time an Owner fails to comply with the provisions of this bylaw relating to requirements for Replacement Trees and their maintenance, the Town may by its employees or others under its direction, enter upon the lands that are the subject of such requirements to plant Replacement Trees and/or maintain the same, and for such purpose may draw upon the deposit and expend the deposit to cover all costs and expenses of so doing;

14.8. Authority to Enter upon Property, the Bylaw Enforcement Officer is hereby authorized to enter at all reasonable times upon any property within the Town for the purpose of ascertaining whether the regulations herein or directions hereunder are being observed.

## **15. EMERGENCIES**

15.1. Necessity shall be a defence to the cutting or removal of trees contrary to this bylaw where such necessity arises from imminent danger of the tree or any part of it falling and damaging persons or property;

## **16. INSPECTION AND ASSESSMENT**

16.1. The Director may inspect or cause an inspection to be made of any tree in the Town;

## **17. APPEAL PROCESS**

17.1. In respect of any delegation of authority under this bylaw to the Director, an Owner or occupier of real property subject to any decision of the Director is entitled to have the Council reconsider the decision without charge. Any person wishing to have Council reconsider a decision of the Director shall apply in writing to the Town Clerk, substantially in the form supplied by the Town, within thirty (30) days of the Director's decision;

17.2. On receipt of an application for reconsideration pursuant to Section 17.1, Council shall require a written report from the Director and upon receipt of same shall hear the applicant before rendering a decision;

**18. GENERAL PROVISIONS**

18.1. All Schedules referred to herein are attached to and form a part of this bylaw.

18.2. The provisions of this bylaw are severable and the invalidity of any part of this bylaw shall not affect the validity of the remainder of this bylaw.

READ A FIRST TIME this            day of            2006  
READ A SECOND TIME this        day of            2006  
READ A THIRD TIME this         day of            2006  
RECONSIDERED AND FINALLY ADOPTED this    day of            2006

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

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**SCHEDULE "A"**

**Town of Ladysmith Tree Protection Bylaw 2006, No. 0000.  
Identified Wildlife Trees**

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

**Refer to Section 34 of the BC Wildlife Act**

forming part of Bylaw 2007, No.0000.

Schedule "A" attached to and

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Clerk

## SCHEDULE “B”

### Town of Ladysmith Tree Protection Bylaw 2006, No. 0000.

#### Landmark Trees – Native Trees of Ladysmith

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

Tree	Status	Size of Tree Diameter for Retention:
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	7 cm +
Pacific Crabapple ( <i>Malus fusca</i> )	Uncommon	10 cm +
Black Hawthorne ( <i>Crataegus douglasi</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	7 cm +
Arbutus ( <i>Arbutus menziesii</i> )	Common	25 cm +

Schedule “B” attached to and forming part of Bylaw 2006, No.0000.

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Clerk

## **SCHEDULE "C"**

### **Town of Ladysmith Tree Protection Bylaw 2006, No. 0000. Identified Heritage Trees**

The following trees described by location, species and size are heritage trees:

#### **INSERT SIGNIFICANT TREE LIST**

*THE CURRENT LIST REQUIRES  
CHECKING AND UPDATING – SOME  
TREES APPARENTLY NO LONGER EXIST;  
OTHERS MIGHT BE ADDED.  
NEEDS TOWN STAFF AND COMMITTEE  
INPUT (PUBLIC INPUT ??)*

Schedule "C" attached to and  
forming part of Bylaw 2006, No.0000.

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Clerk

**SCHEDULE "D"**  
**REPLACEMENT TREES**

**Town of Ladysmith Tree Protection Bylaw 2006, No. 0000.**

B.1 Where Replacement Trees are required to be planted pursuant to Section 13 of this bylaw, such Replacement Trees shall be provided as follows:

every Replacement Tree shall be of the same species as the tree cut, removed or damaged, provided that where the Owner provides a certified statement of an Arborist that it is either impractical or impossible to obtain or plant a Replacement Tree of that species, then the Owner shall provide and plant an alternate species listed in Table 1 of this Schedule as a permitted alternate to the species of tree cut, removed or damaged, subject to the approval of the DPRC;

no Replacement Tree shall be in excess of 10% less in height and D.B.H. than the tree cut, removed or damaged, provided that where an Owner provides a certified statement of an Arborist that it is either impractical or impossible to obtain or plant a Replacement Tree of the required size then the Owner shall provide as many Replacement Trees of the minimum size (3 meters height 7 centimetres D.B.H.) as are necessary so that:

the D.B.H. of all Replacement Trees when added together equal at least two (2) times the D.B.H. of the tree or trees cut, removed or damaged;

the height of all Replacement Trees when added together equals at least two (2) times the height of the tree or trees cut, removed or damaged.

B.2 Where Replacement Trees are required to be provided pursuant to Section 10 of this bylaw such

Replacement Trees shall be provided and planted as follows:

every Replacement Tree shall, at the option of the DPRC, be of the same species as the tree cut, removed or damaged, or an alternate species listed in Table 1 of this Schedule as a permitted alternate to the species of the tree cut, removed or damaged;

every Replacement Tree shall be of a size not less than the 3 meters height and 7 centimetres D.B.H

**TABLE 1**  
**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."

Schedule "D" attached to and  
Forming part of Bylaw 2006, No. 0000.

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Clerk



**SCHEDULE "E"**  
**Staff to determine need of this schedule**

**APPLICABLE REGULATIONS**

**Town of Ladysmith Tree Protection Bylaw 2006, No. 0000.**

E.1 Wherever in this bylaw trees may be cut or removed, the following regulations apply:

all works are to be carried out in strict accordance with the Regulations and requirements of the Workers Compensation Board of British Columbia;

all works pertaining to removal and falling of trees shall only be performed under the guidance and direction of a certified arborist or forester;

if, in the opinion of the DPRC, the works will encroach on public lands, the owner/applicant will be required to:

show proof of liability insurance in the amount of not less than \$3,000,000 with the Town of Ladysmith included as an additional named insured;

notify the Department of Parks, Recreation and Culture not less than forty-eight (48) hours in advance of the intention to commence the work;

provide a plan showing the intended method of safeguarding the users of the public lands, and the general public, during the duration of the work, that is acceptable to the DPRC;

**??provide a bond or certified cheque in the amount of \$5,000, acceptable to the Treasurer of the Town of Ladysmith, to cover damages which may be incurred by the public lands, such bond or certified cheque which will be returned to the applicant upon satisfactory completion of the work, any required cleanup and/or reinstatement of damage to public lands to the satisfaction of the DPRC;??**

remove any and all debris associated with the work, on the same day as the work is carried out, to the satisfaction of the DPRC.

Schedule "E" attached to and forming part of Bylaw 2006, No. 0000.

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Clerk

The rest of the schedules were removed – by request of committee. It was decided that guidelines for industrial areas or subdivisions would be a useful schedule to create. Not Started.

TOWN OF LADYSMITH  
BYLAW NO. 695

A Bylaw to regulate the cutting of trees in park, greenbelt and public areas within the Town of Ladysmith.

WHEREAS Section 868 (f) of the Municipal Act provides that the Council may, by Bylaw, regulate or prohibit the cutting of trees on lands within any area within the municipality, and require the holding of a permit for such purposes; and

WHEREAS it is deemed desirable and in the public interest to regulate the cutting of trees in parks, greenbelt or public areas within the Town of Ladysmith;

NOW, THEREFORE, the Municipal Council of the Town of Ladysmith, in open meeting assembled, enacts as follows:

1. In this Bylaw the following words and terms shall, unless the context otherwise requires, include the following meanings:

"Person" shall when necessary, mean and include natural persons of either sex both plural and singular, associations, corporations, bodies politic, co-partnerships, whether acting by themselves or by a servant, agent or employee, and their heirs, executors, administrators, successors or assigns or other legal representatives of such person to whom this context can apply according to law.

"Town" means the municipality known as the Town of Ladysmith.

"Council" means the Municipal Council of the Town of Ladysmith.

"Public Area" means any area of land within the Town of Ladysmith that comes under the jurisdiction and control of the Council, but does not include privately owned lands.

"Works Foreman" means the person appointed by the Council from time to time to perform the duties of the Works Foreman in the Town.

2. No person, other than an authorized regular employee of the Town, shall cut trees of any kind within any area of the Town set aside for use as a park, greenbelt or public area, without first obtaining a permit to do so.

3. Any person wishing to cut trees on such lands may make application to the Council for a permit to do so, in the form set forth as Appendix "A" to this Bylaw.

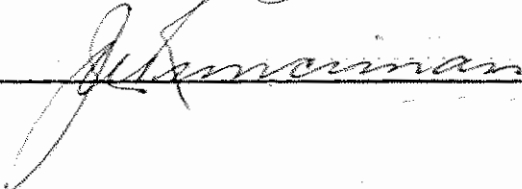
4. The cutting of trees in an area set aside for use as a park, greenbelt or other public area may be approved by Council where deemed necessary and desirable, by authorizing the issue of a permit to do so. Such permit shall be in the form set forth in Appendix "B" to this Bylaw.

5. An application made under the provisions of Section 3 of this Bylaw shall clearly set forth the area in which it is proposed to cut trees, specify the species and location of the trees to be cut, state whether the tree is to be completely felled or, if the tree is to be topped only, the total length of the top to be removed.
6. When an application to cut trees is approved by Council the Works Foreman shall issue a permit authorizing the work to be done by the applicant in the manner approved by Council.
7. When a permit is issued under the provisions of Section 6 of this Bylaw, no cutting of trees shall be done by the permit holder until the trees to be cut are "flagged" by the Works Foreman, with the degree of cutting approved by Council clearly noted on such flag.
8. If the cutting of trees in accordance with the terms of a permit issued under the provisions of Section 6 of this Bylaw is done under the personal supervision of the Works Foreman, the "flagging" of trees to be cut, as required by Section 7 of this Bylaw, may be waived.
9. All residue resulting from the cutting of trees under an approved permit shall be disposed of in a workmanlike manner and the site left in a tidy condition.
10. Every person who violates any of the provisions of this Bylaw, or who neglects to do or refrains from doing anything required to be done by any of the provisions of this Bylaw, shall in addition to any other penalties otherwise provided for herein be deemed to be guilty of an infraction thereof and shall be liable to the penalty hereinafter provided.
11. Any person guilty of an infraction of this Bylaw shall be liable upon conviction to a fine not exceeding \$500.00 and costs or to imprisonment for a period not exceeding 30 days, or to both fine and imprisonment, which penalty and costs shall be recoverable and enforceable upon summary conviction in the manner provided by the "Summary Convictions Act".
12. This Bylaw may be cited as the "Tree Cutting Regulation Bylaw, 1979, No. 695".

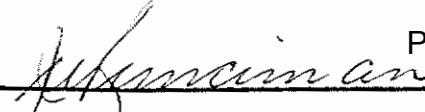
Read a First time on the 13th day of August , 1979.  
 Read a Second time on the 13th day of August , 1979.  
 Read a Third time on the 13th day of August , 1979.

REconsidered , Finally Passed and Adopted on the 27th day of August , 1979.

  
 \_\_\_\_\_  
 Mayor

  
 \_\_\_\_\_  
 Clerk

I hereby certify the above to be a true and correct copy of Bylaw # 695 of the Town of Ladysmith.

  
 \_\_\_\_\_  
 Clerk

## Town of Ladysmith

### **STAFF REPORT**



LADYSMITH

To: Ruth Malli, City Manager  
From: Felicity Adams, Manager of Development Services  
Date: Oct 14, 2008  
File:

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Re: DRAFT TREE PROTECTION BYLAW – STATUS REPORT

#### RECOMMENDATION:

That the Government Services Committee recommends to Council that:

- the approach to the draft tree protection bylaw be reviewed as part of the implementation of the results of the Community Sustainability Visioning Process;
- resource requirements be referred to the 2009 budget process,
- staff be directed to require a tree protection plan (referencing significant trees identified in the draft tree protection bylaw) for new rezoning applications that have not yet been considered by Council; and
- the list of trees identified in the draft bylaw as important to the community for their heritage value be referred to the HRAC for review and comment.

#### BACKGROUND / HISTORY:

*Community Charter*, section 8 (3) (c) [*spheres of authority – trees*], provides Council the authority, by bylaw, to regulate, prohibit, and impose requirements in relation to trees. This authority may not be used to do anything that a council is specifically authorized to do under Part 26 [*Planning and Land Use Management*] or Part 27 [*Heritage Conservation*] of the *Local Government Act*, e.g. s. 919.1 development permit authority for the protection of the natural environment or the protection of development from hazardous conditions. The legislation can be found in Appendix 1.

The legislation requires the municipality to provide a statement respecting Council's reasons for adopting a tree bylaw. The draft tree protection bylaw includes this statement: WHEREAS the Council considers it in the public interest to provide for the protection and preservation of trees, the regulation of their cutting and removal and their replacement.

The Town currently has a tree cutting regulation bylaw (Bylaw 695, adopted in 1979) and tree pruning and removal policy (adopted in 1998). Bylaw 695 regulates the cutting of trees in parks, greenbelt and public area and is administered by the Works Foreman. The tree pruning policy (98-065) provides criteria for tree pruning and removal on public land and is administered by the Director of Parks, Recreation and Culture.

In 2001, Council provided direction to staff to conduct a tree protection bylaw review (2001-147). In 2004, the tree pruning policy was referred to the Parks, Recreation and Culture Commission for review with the intent of creating flexibility within the policy in order to accommodate the protection of views such as at Ryan Place (2004-347).

The review process was conducted by the Director of Parks, Recreation and Culture and focused on the development of a tree management plan including looking at the subdivision approval process and the developer's obligation towards existing trees.

A task group was formed in 2004 including members of the Parks, Recreation and Culture Commission, the Advisory Planning Commission and their staff liaisons. The tree management plan that was received by the Public Works and Government Services Committee included three phases.

- Phase I: Establish inventory of all municipal trees; outline Ladysmith's current tree management data; create a Tree Protection Bylaw that includes both municipal and private lands. Refer to neighbouring municipality bylaws for guidance.
- Phase II: Draft bylaw; hold public meeting; finalize draft; formally adopt bylaw; utilize local resources.
- Phase III: Include community awareness, municipal tree programs, and risk management.

Phase 1 commenced in May 2005 when consultants were contracted to draft the bylaw. The task force oversaw the project. A first draft of the bylaw was completed in December 2005 and it was not endorsed by the task force.

Since that time, several drafts of the tree protection bylaw were prepared by the citizen members of the task force using the City of Nanaimo tree protection bylaw as a basis.

The draft bylaw has not been reviewed by legal counsel.

#### ANALYSIS:

The draft tree bylaw is reviewed below and comments are provided regarding approach, administration and required resources.

#### ***What trees are covered?***

The draft tree protection bylaw does not apply to trees having a diameter at breast height (DBH) or 1.3 metres or less than 150 mm, or to a parcel of land that is less than 0.6 hectares in size, unless it is located within a development permit area or unless the tree is a significant tree as defined in the draft bylaw. Danger trees are exempt, as is pruning by sound arboricultural practice. Specific circumstances are listed in the draft bylaw where a permit may be issued for tree removal, such as driveway access, interference with utilities, or proximity to a building foundation.

Significant trees (i.e. trees to which the bylaw applies) includes these categories of trees recognized as having community value: wildlife habit trees, landmark value

trees, heritage value trees, as specified in the draft bylaw. The trees identified in the draft bylaw are listed in Appendix 2.

Comment: The draft bylaw needs to be carefully reviewed for consistency with the *Community Charter* and to make sure it is clear as to which trees are and are not affected by the draft bylaw.

For all other trees, the draft tree protection bylaw provides a prohibition on cutting a tree except by permit.

Comment: The draft bylaw needs to be reviewed to determine administrative requirements, such as bylaw interpretation, permit review and issuance and bylaw enforcement. Currently the draft bylaw includes administration by the Director of Parks, Recreation and Culture.

The administration of other municipalities' tree bylaws also refers to the Director of Parks, Recreation and Culture, as well as the Director of Planning, Manager of Parks, or on-staff Arborist.

### **What is required?**

The draft tree bylaw requires the applicant to prepare a tree management plan, to mark trees to be removed or retained, and to advise the Director prior to commencing tree removal. In addition to the trees to be retained as noted below, an additional 5% of trees are to be protected to be determined in consultation with the Director.

In the draft bylaw, a 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.

Comment: The form of the tree protection plan, application requirements, application forms and fees have not been developed. The draft bylaw puts the onus on the land owner to prepare the tree management plan.

Tree protection is required as follows:

- “Building development”, other than an individual single family dwelling, where one or more significant trees are to be removed, the applicant will provide replacement trees. Replacement trees are specific in a schedule to the draft bylaw, and may be required in a 2:1 ratio in the same species as removed from the land.
- “Subdivision of a parcel of land” the applicant will provide for the protection and replacement of significant trees on the land and protection of at least 20% of the trees (excluding areas set aside for park dedication) where the parcel to be subdivided is greater than 0.6 ha,
- “Logging of commercial timber” which requires retention of 20% of the trees.

### ***What would a permit include?***

The permit issued to allow the removal of trees may specify conditions, such as: the work to be done must be supervised by an arborist; the number, species and sizes of replacement trees to be planted; and the location of replacement trees (private lands or boulevards).

If the works would encroach on public lands the draft bylaw anticipates proof of liability insurance with the Town as an additional named insured.

Comment: Such conditions require a certain type of knowledge and training to evaluate and specify.

### ***What type of security?***

Replacement trees are required to be replaced if there is an indication of imminent failure within one growing season, or the tree dies within one year of replanting. Replacement trees are to be planted within 90 days. The draft bylaw also stipulates that the Town may require two trees to replace every one tree removed. Security in the form of 120% of the cost of replacing and maintaining replacement trees is required for a one year period. The draft bylaw also provides an exemption from security for less than five replacement trees and \$200 per tree for five or more trees, and a scheme for a phased reduction in the deposit as trees are replanted.

Comment: Consistency will be required in the amount of security. Monitoring of work completed, tree health and financial management of security would be required of Town staff. The scheme appears to be onerous.

### ***What type of penalty?***

The draft bylaw includes a penalty of \$500 (per tree cut down, damaged or removed in contravention of the bylaw) for the first offence and \$1000 per offence thereafter, and a requirement that the cut tree be replaced by a new tree on the same parcel. A reduced penalty applies to payment within 14 days.

Comment: The *Community Charter*, permits the establishment of a maximum fine of up to \$10,000 with provision for continuing offences.

### ***Other issues:***

The time, expertise and staff resource requirements for the implementation of the draft tree protection bylaw have not been reviewed by the City Manager or the Senior Management team. The implementation of such a bylaw will have budget implications. No legal review has been undertaken of the draft bylaw.

New rezoning applications not yet considered by Council that could be included by the requirement of the preparation of a tree protection plan include:

- 1323 4<sup>th</sup> Avenue (G. Bezeau)
- Cook Street (JR Homes – E. Wallace)
- 1142 TransCanada Highway (M. Huntjens)



## Appendix 1 – Legislative Authority

### Community Charter

**s. 8** (3) A council may, by bylaw, regulate, prohibit and impose requirements in relation to the following:

(c) trees;

(7) The powers under subsections (3) to (6) to regulate, prohibit and impose requirements, as applicable, in relation to a matter

(a) are separate powers that may be exercised independently of one another,

(b) include the power to regulate, prohibit and impose requirements, as applicable, respecting persons, property, things and activities in relation to the matter, and

(c) may not be used to do anything that a council is specifically authorized to do under Part 26 [*Planning and Land Use Management*] or Part 27 [*Heritage Conservation*] of the *Local Government Act*.

(8) As examples, the powers to regulate, prohibit and impose requirements under this section include the following powers:

(a) to provide that persons may engage in a regulated activity only in accordance with the rules established by bylaw;

(b) to prohibit persons from doing things with their property;

(c) to require persons to do things with their property, to do things at their expense and to provide security for fulfilling a requirement.

(9) A municipality must make available to the public, on request, a statement respecting the council's reasons for adopting a bylaw under subsection (3), (4), (5) or (6).

(10) Powers provided to municipalities under this section

(a) are subject to any specific conditions and restrictions established under this or another Act, and

(b) must be exercised in accordance with this Act unless otherwise provided.

## Restrictions in relation to authority

- 50** (1) A bylaw under section 8 (3) (c) [*spheres of authority – trees*] that is in relation to the protection of trees does not apply to the following:
- (a) land and the trees on it if forestry practices on the land are governed by a tree farm licence, permit or other authority or tenure under the *Forest Act*;
  - (b) land and trees on it if section 21 of the *Private Managed Forest Land Act* applies to the land;
  - (c) tree cutting or removal that is undertaken by a utility, on land owned or held by the utility, and done for the purpose of safety, maintenance or operation of the utility's infrastructure.
- (2) Subject to subsection (3), if a bylaw under section 8 (3) (c) would have the effect on a parcel of land of
- (a) preventing all uses permitted under the applicable zoning bylaw, or
  - (b) preventing the development to the density permitted under the applicable zoning bylaw,
- the bylaw does not apply to the parcel to the extent necessary to allow a permitted use or the permitted density.
- (3) A bylaw referred to in subsection (2) applies without limit to a parcel if the council, by resolution, commits the municipality to
- (a) pay compensation to the owner of the parcel for any reduction in the market value caused by the prohibition, or
  - (b) provide, by development permit, development variance permit or otherwise, alternative means for the parcel to be used for a permitted use or developed to the permitted density.
- (4) For the purposes of subsection (3),
- (a) the compensation must be as determined and paid as soon as reasonably possible in an amount set by agreement between the owner and the municipality or, if no agreement is reached, by the Supreme Court, and

(b) the council may issue a development permit or development variance permit on its own initiative without an application from the owner.

**Compensation not payable**

**51** Except as provided in section 50 (3), no compensation is payable to any person for a reduction in the value of any interest in land that results from

(a) a bylaw under section 8 (3) (c) [*spheres of authority – trees*], or

(b) the issue or refusal of a permit required under such a bylaw.

**Right to reconsideration by council**

**52** If a council delegates powers, duties or functions in relation to its authority under section 8 (3) (c) [*spheres of authority – trees*], the owner or occupier of real property that is subject to a decision of a delegate is entitled to have the council reconsider the matter.

## Appendix 2 – Trees to be regulated

### 1. Trees important to the community as wildlife habitat:

- Section 34 of the BC Wildlife Act

**34** A person commits an offence if the person, except as provided by regulation, possesses, takes, injures, molests or destroys

(a) a bird or its egg,

(b) the nest of an eagle, peregrine falcon, gyrfalcon, osprey, heron or burrowing owl, or

(c) the nest of a bird not referred to in paragraph (b) when the nest is occupied by a bird or its egg.

### 2. Trees important to the community for landmark value (native trees):

Tree	Status	Size of Tree Diameter for Retention:
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	7 cm +
Pacific Crabapple ( <i>Malus fusca</i> )	Uncommon	10 cm +
Black Hawthorne ( <i>Crataegus douglasi</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	7 cm +
Arbutus ( <i>Arbutus menziesii</i> )	Common	25 cm +

3. Trees important to the community for their heritage value:

<u>SPECIES/COMMON NAME</u>	<u>CLASSIFICATION</u>	<u>LOCATION</u>
<i>Acer macrophyllum</i> and <i>Acer</i> (?) / <b>Big Leaf Maple and (?) Maple</b>	Heritage Group	Dalby's Corner – 202-204 Dogwood Street
<i>Acer macrophyllum</i> / <b>Big Leaf Maples</b>	Heritage Group	133 White Street
<b>Various</b>	Heritage Group	Arboretum
<i>Magnolia soulangeana</i> ; <i>Hamamelis mollis</i> ; <i>Prunus cerasifera</i> ; <i>Forsythia</i> species; and more / <b>Saucer Magnolia; Chinese Witch Hazel; Purple Leaved Plum; Forsythia; and more</b>	Historical	101 First Avenue
<i>Prunus serrulata</i> / <b>Japanese Flowering Cherries</b>	Landmark Heritage / Outstanding	Ladysmith Post Office
<i>Pseudotsuga menziesii</i> / <b>Douglas Fir</b>	Landmark Heritage	Aggie Field
<i>Ginkgo biloba</i> / <b>Ginkgo</b>	Outstanding / Rare	Below highway
<i>Araucaria araucana</i> / <b>Monkey Puzzle Tree</b>	Outstanding / Rare	202 Dogwood Street
<i>Fagus sylvatica</i> "Atropunicea" / <b>Purple Beech</b>	Outstanding	202 Dogwood Street
<i>Arbutus menziesii</i> / <b>Arbutus</b>	Heritage Area	Arbutus Ridge in Transfer Beach Park
<i>Rhododendron</i> species / <b>Rhododendron</b>	Outstanding / Landmark Heritage	228 Kitchener Street
<i>Magnolia soulangeana</i> / <b>Saucer Magnolia</b>	Outstanding	217 Baden-Powell Street
<i>Prunus serrulata</i> / <b>Japanese Flowering Cherry</b>	Outstanding	217 Baden-Powell Street
<i>Acer palmatum</i> / <b>Japanese Maple</b>	Outstanding	217 Baden-Powell Street
<i>Castanea mollissima</i> / <b>Chinese Chestnut</b>	Rare	High Street & Third Avenue
<i>Aesculus hippocastanum</i> / <b>Horse Chestnut</b>	Outstanding	First Avenue & Baden-Powell Street – low side
<i>Platanus acerifolia</i> / <b>London Plane Trees</b>	Rare	Ladysmith Credit Union parking lot on First Avenue
<i>Cornus nuttalli</i> / <b>Western Flowering Dogwood</b>	Outstanding	First Avenue & White Street
<i>Quercus garryana</i> / <b>Garry Oak</b>	Outstanding	Junction - Dogwood & Belaire Streets
<i>Cornus nuttalli</i> / <b>Western Flowering Dogwood</b>	Outstanding	132 High Street

Rhododendron species / <b>Rhododendrons</b>	Outstanding	208 Dogwood Street
Cornus florida / <b>Eastern Flowering Dogwood</b>	Outstanding	210 Dogwood Street
Fagus sylvatica / <b>Beech</b>	Outstanding	217 Dogwood Street
Salix babylonica / <b>Weeping Willow</b>	Landmark Heritage	Transfer Beach Park
Prunus cerasifera "Atropurpurea" / <b>Purple Leaved Plum</b>	Outstanding	Ladysmith Child Care - Roberts Street & Second
Camellia japonica / <b>Camellia</b>	Outstanding	212 White Street
Juglans species/ <b>Black Walnut (?)</b>	Heritage	Fourth Avenue Farm
Liriodendron tulipefera / <b>Tulip Tree</b>	Outstanding	La Rosa Gardens area
Cornus species / (?) <b>Dogwood</b>	Outstanding	First Ave. by the Ladysmith Credit Union
Populus nigra "Italica" / <b>Lombardy Poplar</b>	Outstanding	(?)
Robinia pseudoacacia (?) / <b>Black Locust (?)</b>	Rare	By the Hospital
Prunus serrulata / <b>Japanese Flowering Cherry</b>	Outstanding	(?)