



BYLAW

Bylaw Number: XXXX/20

PUBLIC TREE PROTECTION AND REPLACEMENT

1. PURPOSE:

- 1.1 WHEREAS, the Municipal Government Act, RSA 2000, Chapter M-26 provides that a Council may pass bylaws for the protection of people and property and with respect to people, activities, and things in, on or near a public place or a place that is open to the public;
- 1.2 WHEREAS it is desirable to protect, preserve, replace, retain trees in public spaces owned or controlled by the Town of Nanton;
- 1.3 AND WHEREAS Nanton's public trees provide many environmental, health, and economic benefits to the community including:
- Improvement of air quality by removal of gaseous pollutants and dust particulates;
 - Absorption of carbon dioxide;
 - Climate moderation and energy conservation;
 - Storm water retention;
 - Wildlife habitat;
 - Aesthetics; and
 - General improvement of quality of life;
- 1.4 AND WHEREAS public trees share limited space with services such as utilities and transportation infrastructure, the repair and replacement of which causes loss of valuable trees;
- 1.5 AND WHEREAS, Council has determined that activities in, on or near a public place can result in damage to trees located in public places;
- 1.6 NOW THEREFORE, the Council of the Municipality of the Town of Nanton in the Province of Alberta duly assembled enacts as follows:

2. INTERPRETATION:

2.1 This Bylaw will be cited as the “Tree Protection Bylaw”.

2.2 Definitions

- 2.2.1 “Arborist” means a person with a diploma or degree involving arboriculture from an accredited college or university, a Registered Professional Forester, or an accredited Certified Arborist under the International Society of Arboriculture;
- 2.1.2 “Application” means Schedule ‘A’ attached to this bylaw, as modified from time to time by the CAO for clarity;
- 2.1.3 “Boulevard” means:
- a. The strip of land between the curb and sidewalk and between the sidewalk and the property line; or
 - b. Where there is no sidewalk, the strip of land between the curb and the property line; or
 - c. Where there is no curb, the strip of land between the near edge of the road and the property line;
- 2.1.4 “CAO” means the person appointed by Council as Chief Administrative Officer pursuant to the Municipal Government Act, R.S.A. 200, Chapter M-26;
- 2.1.5 “Council” means the Council of the Town of Nanton, duly assembled;
- 2.1.6 “Development” shall have the same meaning as in the Town of Nanton Land Use Bylaw #1246/13, as may be amended, repealed and replaced from time to time;
- 2.1.7 “Officer” means any exempt **Officer** of the Town of Nanton or his/her designate;
- 2.1.8 “Emergency” means a situation in which there is imminent danger to public safety or property;
- 2.1.9 “Emergency Personnel” means fire rescue personnel, emergency medical providers, law enforcement personnel, local, provincial, and federal authorities and workers engaged in emergency repair to a Public Utility;
- 2.1.10 “Enforcement Officer” means a Bylaw Enforcement Officer, Community Peace Officer, Police Officer, or another individual appointed by the CAO to enforce the terms of this Bylaw;
- 2.1.11 “Incident Commander” means the Emergency Personnel responding to an Emergency who is in charge of the incident response;
- 2.1.12 “Permit” means a permit issued pursuant to this Bylaw;
- 2.1.13 “Person” means any individual, corporation, or society;
- 2.1.14 “Pruning”, also “limbing” and/or “topping” are the horticultural and silvicultural practice involving the selective removal of certain parts of a plant, such as branches, buds, or roots.

- 2.1.15 “Public Place” means any property which is owned, occupied, controlled, or maintained by the Town of Nanton and includes, but is not limited to, parks, green spaces, walkways, medians, boulevards, and road right-of-ways;
- 2.1.16 “Public Tree” means any tree which has any part of its trunk located in a Public Place, as determined by the Officer in his or her sole discretion;
- 2.1.17 “Public Tree Disclosure Statement” means the portion of a Permit Application, as per Section 2.12, filled out by a Developer or his/her agent which discloses if there are any Public Trees located within six (6) meters of a proposed Development;
- 2.1.18 “Public Utility” is an organization that maintains the infrastructure for a public service such as water, sewer, power, gas or telecommunications;
- 2.1.19 “Root barrier” is a physical guide that redirects tree roots down and away from hardscapes, mitigating damage while preserving the health of mature trees.
- 2.1.20 “Town” is the municipal corporation of the Town of Nanton;
- 2.1.21 “Tree” means any perennial plant, including large shrubs, having permanently woody main stems or trunks and includes any plant designated a tree by the Officer in his or her sole discretion;
- 2.1.18 “Tree Protection Barrier” means a fence or other protective cordon surrounding a Tree to restrict access;
- 2.1.19 “Tree Protection Plan” means a plan included within an application, as required as per the provisions of this Bylaw for Developers who are applying for the removal of public tree(s) for the facilitation of new improvements or construction subject to the Town’s Land Use or Building regulatory processes;
- 2.1.21 “Tree Protection Zone” means the area between the Tree Protection Barrier and the Public Tree wherein Development activities are restricted;
- 2.1.22 “Violation Tag” means a Town of Nanton issued notice that alleges an offense and provides a Person with the opportunity to pay an amount to the Town in lieu of prosecution for the offence;
- 2.1.23 “Violation Ticket” means a summons violation ticket issued pursuant to the Provincial Offenses Procedures Act, R.S.A. 2000, Chapter P-34 as may be amended, repealed and replaced from time to time.

3. ENACTMENT:

3.1 Regulations and Permits

- 3.1.1 No Person shall:
- a. Plant or cause to be planted any Tree, shrubbery, or other plant material on or within any Public Space without having first obtained a Permit;
 - b. Remove, move, cut, prune, or cause the same to any Public Tree without having first obtained a Permit;
 - c. Remove or cause to be removed the bark of any Public Tree;

- d. Penetrate or cause to be penetrated the bark, trunk, or any branch of any Public Tree;
 - e. Damage, disturb, kill or cause the same any part of a Public Tree including its branches, trunk, bark and root system;
 - f. Commence a development within six (6) meters of a Public Tree or commence a development which may otherwise impact a Public Tree;
 - g. Remove or caused to be removed any part of a Tree Protection Barrier or enter into or cause another person to enter into the area enclosed by a Tree Protection Barrier;
 - h. Attach a sign or poster to any Public Tree unless required to do so by the Manager of Operations or other Officer;
 - i. Attach electrical cord to a Public Tree;
 - j. Spray or apply by any means any substance with intention of poisoning a Public Tree;
 - k. Fail to adhere to any Permit conditions.
- 3.1.2 On a prosecution or other proceeding pursuant to this section, any person who may benefit from a sign or poster attached to a Public Tree will be deemed to have attached the sign or poster to the Public Tree unless that person brings forward evidence to the contrary.
- 3.1.3 Notwithstanding Section 3.1.1, where the Town deems it necessary to prune, remove or otherwise conduct work on a Public Tree, the Town or its contractors may perform such work as deemed necessary to comply without obtaining a Permit in recognition that:
- a. Tree Protection Policy 16/07/18, as amended or replaced, generally guides Town employees or contractors;
 - b. Standard Operating Procedures, established by Town Administration, may provide further direction to employees and contractors.
- 3.1.4 Notwithstanding **section 4**:
- a. In accordance with Regulations governing Public Utilities, a Public Utility may perform such pruning, limbing and topping as necessary to comply with safety Regulations and to maintain safe operation of their facilities provided that:
 - (i) at least three business days prior to commencing any work, the Public Utility provides the Manager of Operations written notice of its intentions;
 - (ii) the work is carried out in accordance with accepted arboricultural standards and practices; and
 - (iii) the Public Utility follows any specific directions of the Manager of Operations or other Officer as to how the work shall be carried out.

- b. The Manager of Operations or another Officer may order the Public Utility to stop any work performed by a Public Utility if appropriate arboricultural practices are not being followed.
- 3.1.5 Where removal, pruning, limbing or topping of a Public Tree is determined to be necessary by Emergency Personnel responding to an emergency, such tree or part of it may be cut or removed without first obtaining written authorization to do so. The CAO shall be informed as soon as reasonably possible following the Emergency of the work done to the Public Tree.
- 3.1.6 Applications for a Permit shall be submitted in writing to the Officer or his/her designate, utilizing Schedule 'A' attached to this Bylaw.
- 3.1.7 Applications that are related to proposed new development or construction shall include the information required for the Public Tree Disclosure Statement and, where Development or construction will occur within six (6) meters of a Public Tree, or where Development or construction may impact a Public Tree, a Tree Protection Plan must also be included in the submission.
- 3.1.8 A Tree Protection Plan must:
- a. Be completed in its entirety;
 - b. Signed by an Arborist when required by the Officer;
 - c. Adhere to Schedule 'A' of this Bylaw and any additional applicable bylaws, policies or Standard Operating Procedures of the Town of Nanton;
 - d. Include photographs of the Development site, including all Public Trees that are located within six (6) meters of the property line where the proposed Development will take place;
 - e. Include the location of all Public Trees inside the Development area, and within six (6) meters surrounding the property where the proposed Development will take place;
 - f. Include a description of all Public Trees, including species, diameter, height, condition and any existing flaws, damage, pests and disease;
 - g. Identify the work to the Public Tree being proposed;
 - h. Identify a Tree Protection Zone;
 - i. Identify staging, hoarding, and storage areas for the Development;
 - j. Identify the boundaries of any disturbance to the Public Place so that impacts to municipal infrastructure, if any, can reasonably be determined;
 - k. Identify construction methods and equipment to be utilized on the Public Place;
 - l. Identify protective measures for Public Trees during Development;
 - m. Provide contact information for a designated individual responsible for ensuring that Development adheres to the approved Tree Protection Plan and the provisions of this bylaw; and

n. Identify, if required, an Arborist who shall directly supervise any works directly upon any Public Tree.

3.1.9 Upon receipt of a complete Application, the Officer or his/her designate shall review the Application and determine whether or not the permit shall be issued, as well as any condition(s) which may be applied to the Permit, including any compensation payable, in the sole discretion of the Officer or his/her designate.

3.1.10 The Officer or his/her designate shall consider relevant bylaws, policies, Standard Operating Procedures and Schedule 'A' attached to this Bylaw in all decisions on Permit Applications.

3.2 Compensation

3.2.1 Where any Person damages, kills, or removes a Public Tree, with or without a Permit, the Town may, at its sole discretion, require compensation for the appraised value of the Public Tree.

- a. The Town shall use the most current edition of the "Guide for Plant Appraisal" from the Council of Tree and Landscape Appraisers published by the International Society of Arboriculture to determine the appraised value of the Public Tree.
- b. An amount owing to the Town under this Part is a debt owing to the Town and recoverable by the Town through any lawful means.
- c. Any amount owing under this Part is in addition to any penalty or fine imposed under Section 3.4.

3.2.2 All compensation received under this Section shall be committed to the Nanton Public Realm Improvement Reserve Fund for the purpose of the planting of new Public Trees within the Town of Nanton.

3.2.3 Notwithstanding the responsibilities of Utility Customers as described in Municipal Utilities Bylaw #1273/17, as amended or replaced, the CAO may agree, in his/ her discretion, to the removal of up to five (5) Public Trees per annum, at Town expense, that have been the subject of an Application by an organization, business or resident that has demonstrated that the Public Tree(s) present an unreasonable encumbrance or undue financial hardship to the existing aspects of their adjacent private property.

3.2.4 Notwithstanding section 3.2.3, a Permit may still be issued for an Application for the same purpose on the condition that the Permittee shall incur the expense of removal and may have to compensate or source replacement trees for the Town.

3.3 Offences and Penalties

3.3.1 Any Person who contravenes any provision of this Bylaw by:

- a. Doing any act or thing which the Person is prohibited from doing; or
- b. Failing to do any act or thing which the Person is required to do;

is guilty of an offence.

- 3.3.2 Any Person who is convicted of an offense pursuant to the Bylaw is liable on summary conviction to a fine not exceeding \$10,000.00.
- 3.3.3 Where the CAO, an Officer or a Peace Officer has reason to believe that a person has contravened any provision of this Bylaw, and that it is in the best interest of the Town to compel the person to appear in front of a Provincial Court, he may direct a Peace Officer to commence proceedings to issue a Part 2 Summons pursuant to the Provincial Offense Procedure Act of Alberta.
- 3.3.4 Where the CAO, an Officer or a Peace Officer has reason to believe that a person has contravened any provisions of this Bylaw, notice shall be served in accordance with the Municipal Government Act allowing payment of the specified penalty, as specified per Schedule "B" attached to this Bylaw, in lieu of prosecution for the offense.
- 3.3.5 Where a contravention of this Bylaw is of a continuing nature, further violation tickets may be issued by a Peace Officer, provided that no more than one ticket shall be issued for each day that the contravention continues.
- 3.3.6 This section shall not prevent any Peace Officer from issuing a violation ticket requiring a court appearance of the defendant, pursuant to the provision of the Provincial Offences Procedures Act.
- 3.3.7 The levying and payment of any fine in this Bylaw shall not relieve a Person from the necessity of paying any fees, charges or costs for which that Person is liable under the provisions of this Bylaw or any other bylaw of the Town of Nanton.
- 3.3.8 Where there is a specified penalty listed for an offence in Schedule "B" of this Bylaw, the amount is the specified penalty for the offence.
- 3.3.9 Notwithstanding the specified or minimum penalties set out in Schedule "B" of this Bylaw:
- a. if a Person is convicted twice of the same provision of this Bylaw within a twenty-four-month period, the minimum penalty for the second conviction shall be the amount of the specified penalty for a first offence; and
 - b. if a Person is convicted three or more times of the same provision of this Bylaw within a twenty-four-month period, the minimum penalty for the third and subsequent convictions shall be double the amount of the specified penalty for such first offence.

4. GENERAL PROVISIONS

- 4.1 Nothing contained within this Bylaw relieves a Person from complying with any other applicable municipal, provincial or federal legislation, regulation or bylaw or any requirements of any applicable permit, order, consent, agreement, or other direction.
- 4.2 Where this Bylaw refers to another Act, Regulation or agency, it includes reference to any Act, Regulation or agency that may be substituted therefore.
- 4.3 In the event that any provision of this Bylaw is to any extent invalid or incapable of being enforced, such provision shall be excluded to the extent of such invalidity or unenforceability; all other terms and provisions shall remain in full force and effect.

4.4 Every provision of this Bylaw is independent of all other provisions, if any provision of this Bylaw is declared invalid for any reason by a Court of competent jurisdiction, all other provisions of this Bylaw shall remain valid and enforceable.

5. EFFECTIVE DATE AND READINGS

5.1 Upon final passing, this Bylaw hereby repeals Town of Nanton Bylaw #1273/16.

5.2 This bylaw comes into effect upon the date of final reading and signing thereof.

5.3 Read a **first** time this _____ day of _____, 2020.

TOWN OF NANTON

CHIEF ELECTED OFFICIAL

CHIEF ADMINISTRATIVE OFFICER

5.3 Read a **second** time this ____ day of _____, 2020.

TOWN OF NANTON

CHIEF ELECTED OFFICIAL

CHIEF ADMINISTRATIVE OFFICER

5.4 Read a **third** time this ____ day of _____, 2020.

TOWN OF NANTON

CHIEF ELECTED OFFICIAL

CHIEF ADMINISTRATIVE OFFICER

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SCHEDULE "A"

Public Trees will only be considered for removal when one or more of the following criteria have been met:

1. The tree has been determined as a "Hazard Tree" and the risk of failure cannot be mitigated by pruning or other practical means or meets the definition of same by qualified professional, meaning "Wildlife Danger Tree Assessor", "Certified Tree Risk Assessor" or "Qualified Environmental Professional" (QEP).
2. The tree is endangering the health or stability of other trees.
3. The tree is interfering with or inhibiting the normal development of a more desirable Public Tree.
4. The tree poses an extreme public nuisance due to its species, size, location or condition.
5. The tree is encroaching into a street or walkway in such a way that visibility and pedestrian or vehicular clearance is reduced thereby causing a traffic safety problem.
6. The tree's removal has been approved as part of an approved plan.
7. The tree is impeding the development of streets, utilities, public works and facilities.
8. The tree is affecting overhead utility lines where pruning operations are not considered practical.
9. The tree is undermining or risking damage to the foundations of public or private buildings.
10. The tree removal plan for any in parks and/or boulevards will include complete removal including the stump or grinding the stump flush to grade.
11. Tree roots are damaging buried private water or sewer utility lines connected to municipal infrastructure or must be removed for installation of same.

Tree Replacement considerations:

1. As a condition of Permit, the Town may require that any Public Tree cut down be replaced at the permittee's expense. Unless this provision is waived, any tree cut down must be replaced within one growing season at a ratio of two replacement trees for each tree removed. The minimum size of replacement tree is 3.0 meter in height for conifers and DBH of 80mm minimum measured 1.3 meters above ground level for deciduous species.
2. Public Trees must reflect both diversity to encourage good health in Nanton's tree population, and characteristics suitable to the planting location, the planting location at the discretion of the Manager of Operations or another Officer.
3. No fruit, berry or nut bearing trees shall be planted on any Town property or boulevard.
4. Upon issuance of a permit, trees shall be planted and cared for by the Town as per maintenance policies and procedures, with the following mandatory requirements for **boulevards and public trails**:
 - Installation of a root barrier approved by an arborist or Officer;
 - Must be planted a minimum of 3 metres (10 feet) from any buried water or wastewater infrastructure, hydrants or driveways);

- Species selected grow to a mature spread of no greater than 6 metres (20 feet) and a minimum 6 centimetre caliper.
5. Tree donations, including Memorial Trees, must meet the relevant bylaw and policy conditions and be subject to planting location and any other conditions determined by the Town.
 6. The following trees and shrubs may be considered for Public Tree planting or replacement planting:

Drought-Resistant shrubs (all areas)	For public trails and boulevards (6m mature spread)	For larger park/open spaces (not boulevards or trails)
Caragana	Brandon Elm	Honey Locust*
Sumac	Trembling Aspen	Hackberry*
Silver Buffaloberry	Swedish Columnar Aspen	Pine*
Grey Dogwood	American Mountain Ash	Bur Oak*
Potentilla/ cinquefoil	Siberian Larch	Green Ash
Currant	White Spruce	Birch
Ninebark	Dogwood*	Elm
		Dropmore Linden
		Balsam Poplar
		Laurel Leaf Willow
* Tree noted for drought resistance in Town of Nanton Parks and Greenspace Plan, 2019.		

The form attached in this schedule or a variant adapted by Town administration should be used to field requests for permits.

**Application for
PUBLIC TREE CUTTING PERMIT**

Name:

Telephone:

Address:

Postal Code:

Type of Tree(s) Requested for Removal and How Many?

Reason for Removal: *please circle one of the following numbers that best describe your situation*

- 1. Dead or dying, thus a potential hazard
- 2. Interfering with utility wires
- 3. Roots interfering with sewer
- 4. Roots interfering with water or sewer line
- 5. Too close to building face/ roofline
- 6. Other: _____

Do you propose to remove the tree yourself or at your own expense? Y/N

What tree species, and how many, do you propose to deliver to the Town as replacements (on the understanding that it may not be planted in the same location)?

Public Tree Disclosure Statement and Protection Plan

Only complete this section if you are a Developer required to disclose Public Trees within 6m of your proposed development and provide a Tree Protection Plan as required by this bylaw. If you are unsure, contact the Town's Planning & Development Officer.

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Use additional sheets of paper if required.

Signed:

Date:

TAKE NO ACTION UNTIL YOU RECEIVE A RESPONSE FROM THE TOWN OF NANTON.

SCHEDULE "B"

The specified penalties for any contravention of this Bylaw #xxxx/20 are specified for the calendar year, as follows:

- First Offense: \$250.00**
- Second Offense: \$500.00**
- Third Offense: \$1000.00**

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