

THE CORPORATION OF THE DISTRICT OF OAK BAY

BYLAW NO. 3829 (*incl. BL 3884*)

A Bylaw to restrict the encroachment of private vegetation  
onto public property

The Municipal Council of The Corporation of the District of Oak Bay, in open meeting assembled, enacts as follows:

In this Bylaw, except where the context otherwise requires:

"CORPORATION" means The Corporation of the District of Oak Bay;

"DIRECTOR OF ENGINEERING SERVICES" means the Director of Engineering Services for the Corporation;

"HIGHWAY" means a street, lane or right of way designed or intended for or used by the general public for the passage of vehicular traffic, pedestrian traffic, or both, and includes a boulevard or sidewalk;

"MANAGER, PARKS SERVICES" means the Manager, Parks Services for the Corporation;

"MUNICIPAL CLERK" means the Municipal Clerk for the Corporation;

"MUNICIPAL COUNCIL" means the Municipal Council of the Corporation;

"OCCUPIER" in respect of real property means a person who is qualified to maintain an action for trespass;

"OWNER" in respect of real property means the registered owner of an estate in fee simple and includes the tenant for life under a registered life estate;

"REAL PROPERTY" means land, with or without improvements so affixed to the land as to make them in fact and in law a part of it;

"ROADWAY" means that portion of a highway which is commonly travelled over by vehicular traffic, more particularly the portion so used which has been surfaced with asphalt, gravel or other hard material;

"SIDEWALK" means that portion of a highway, between the curb lines or lateral lines of a roadway and the adjacent property lines, which has been improved for the use of pedestrians;

"TRAFFIC CONTROL DEVICE" means a sign, signal, line, marking, light, barrier or other device placed or erected on or over a highway by authority of the Minister of Transportation and Highways, the Municipal Council or a person authorized by either of them to

exercise that authority.

2. Every owner and occupier of real property adjoining a highway shall cause all trees, shrubs, hedges or bushes on the property to be trimmed or cut back to the extent required to ensure that any growths extending over, under or upon such highway do not create or aggravate:

(1) a hazard to the safety of persons; that is:

(a) obscurement of a traffic control device other than one setting time limits for parking;

(b) impairment of a line of sight for vehicle or pedestrian traffic at an intersection; or

(c) projection of a rigid, brittle, hard or sharp branch, limb, twig or leader over a highway or part thereof, to an extent and height where it is liable to be struck by a pedestrian, cyclist or motor vehicle using the highway in a lawful manner;

(2) damage to the roadway, a sidewalk, an underground or above ground utility or other public property; or

(3) an obstruction or other serious inconvenience to the public; that is:

(a) reduction of the available width of a sidewalk, other public walkway, or roadway below that which would be available for public passage in the absence of the encroachment or projection over the highway or part thereof; or

(b) obscurement of a traffic control device setting time limits for parking.

3. Where an owner or occupier fails to comply with the requirement to trim or cut back a tree, shrub, hedge or bush in accordance with Section 2, the Director of Engineering Services or the Manager, Parks Services may serve the owner or occupier with notice that the Corporation will be entitled to take the required action at the expense of that person if the noncompliance remains outstanding within five (5) days of service; and the authority of the Municipal Council under Section 929.05 of the *Municipal Act* is hereby severally delegated to the Director of Engineering Services and the Manager, Parks Services.

4. A notice under Section 3 shall:

(1) describe, using apt words, measurements, sketches or photographs, or a combination thereof, the location, extent and nature of the required action;

(2) describe the nature of the hazard, damage, obstruction or inconvenience;

- (3) indicate how the person served with the notice may contact the Director of Engineering Services or the Manager, Parks Services, as the case may be, if he or she desires further information with respect to the location, extent or nature of the required action;
  - (4) state that the person served with the notice may apply to the Municipal Council for reconsideration of the requirement to take the action described in the notice;
  - (5) indicate how the person served with the notice may obtain information regarding an application for reconsideration; and
  - (6) state that if within the required time the person served with the notice applies for reconsideration by the Municipal Council, he or she need not take the action described in the notice until the application has been dealt with and the requirement confirmed by that body.
5. Where more than one person is shown on the records of the Victoria Land Title Office as the owner of the real property in question, service of a notice upon any one of such persons shall be deemed to be good and sufficient notice to the owner of such property for the purposes of this Bylaw.
6. An application for reconsideration by the Municipal Council shall:
- (1) be in writing;
  - (2) include a return address; and
  - (3) be submitted to the Municipal Clerk before the expiration of the time set out in the notice for the completion of the required work.
7. Following receipt of an application for reconsideration under Section 6, the Municipal Clerk shall notify the applicant of the time, date and place the application will be placed before the Municipal Council.
8. Notification from the Municipal Clerk in accordance with Section 7 shall:
- (1) state that reconsideration by the Municipal Council at the time, date and place specified will include a reasonable opportunity to be heard or make written submission on the matter either in person, or through an agent, or both; and
  - (2) be mailed or otherwise delivered to the applicant at least five (5) days before the date set for reconsideration by the Municipal Council.

- 9.If the Municipal Council, upon reconsideration, has confirmed a requirement to take action under this Bylaw, notice of such confirmation shall be sent by double registered mail or otherwise delivered to the applicant at the return address indicated on his or her application. Notice shall be deemed to have been served upon delivery to the property at that address or, if mailed, within three (3) days of mailing.
- 10.If the person given notice under this Bylaw does not take the required action within five (5) days of service under Section 3 or Section 9, whichever is applicable, then the Corporation, by its employees or others, may at the expense of that person effect the action required by the notice and may, to the extent reasonably required for this purpose, enter the real property which is subject to the notice.
- 11.The Corporation shall keep an accurate account of the costs incurred pursuant to Section 10, and when the required action is completed shall mail a statement of such charges to the person given notice under this Bylaw, with a demand for payment of same.
- 12.If the person referred to in Sections 10 and 11 does not pay the costs of the action by the Corporation under Section 10 on or before December 31 in the year in which the costs were incurred, the costs shall be added to and form part of the taxes payable on the real property as taxes in arrears.
- 13.Section 53 of Bylaw No. 3658, "Streets and Traffic Bylaw, 1990", as amended, is hereby repealed.
- 14.This Bylaw may be cited as the **"HAZARDOUS TREE AND SHRUB BYLAW, 1994"**.

READ a first, second and third time by the Municipal Council on November 14, 1994

ADOPTED AND FINALLY PASSED by an affirmative vote of at least two-thirds of all members of the Municipal Council on November 28, 1994

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Mayor

Municipal Clerk

Sealed with the Seal of The Corporation of the District of Oak Bay.