

THE CORPORATION OF THE TOWN OF WHITBY

BY-LAW NO. 6456-11

BEING A BY-LAW TO REGULATE THE MAINTENANCE, OCCUPANCY, USE OF, AND OTHER MATTERS PERTAINING TO BOULEVARDS UNDER THE JURISDICTION OF THE TOWN OF WHITBY

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WHEREAS paragraph 1 of subsection 11 (3) of the Municipal Act 2001 provides that a municipality may pass by-laws respecting highways under its jurisdiction; and

WHEREAS The Municipal Act permits municipalities to control the placing of litter or snow/ice on highways through municipal by-law; and

WHEREAS the Town of Whitby deems it necessary to regulate the maintenance and use of the boulevard portion of highways under its jurisdiction.

NOWHEREFORE The Council Of The Corporation Of The Town Of Whitby Hereby Enacts As Follows:

Article 1.00: Definitions and Interpretation

1.01 Wherever a word is used in this By-law with its first letter capitalized, the term is being used as it is defined in this Section 1.01. Subject to Section 1.02, where any word appears in ordinary case, its regularly applied meaning in the English language is intended.

- (a) "Abutting Boulevard" means property with the front and/or side yard that shares the Street Line with the Boulevard.
- (b) "Boulevard" means that part of a Highway (whether assumed or unassumed) between a Street Line and the edge of the curb or, where there is no curb, that portion of the Highway which is travelled or designed to be travelled by Vehicles. A Boulevard may or may not contain a sidewalk or a reserve.
- (c) "Debris" means any discarded or unused material, whether or not it is re-useable.
- (d) "Director" means the Director of Public Works or his/her designate.
- (e) "Fixture" means any structure or other fixture affixed to the Boulevard including a utility box, newspaper vending box, bench,

transit shelter, telephone box, telephone booth, transformer box or vault, hydro, streetlight, stoplight poles and street sign.

- (f) "Fixture Owner" means the owner of a Fixture.
- (g) "Hard Surface" means an area covered in whole or in part with asphalt, concrete, interlocking brick or block, crushed or solid stone, gravel, slag, ground asphalt, wood or any non-porous material.
- (h) "Highway" means a common and public highway (whether assumed or unassumed) and includes any bridge, trestle, viaduct or other structure forming part of the highway which is under the jurisdiction of the Town and includes the boulevard and other untravelled portions.
- (i) "Injure" means any action which causes physical, biological or chemical damage.
- (j) "Landscaping" means vegetation in the form of lawns, grasses, shrubs, flowers, ornamental plantings, or any combination thereof.
- (k) "Maintenance" means an action required to maintain a Boulevard or Fixture, or an action to sustain the Landscaping on a Boulevard, including, but not limited to, cutting, watering, removing debris or graffiti there from, or repairing damage to any driveway located on the Boulevard area and "Maintain" has a corresponding meaning.
- (l) "Municipal Property" means any Town owned land or property under the jurisdiction of the Town.
- (m) "Officer" means a Municipal Law Enforcement Officer appointed by the Council of the Town to enforce the By-laws of the Town.
- (n) "Owner" means the registered owner of the property in question as revealed in the Land Registry Office of the Ministry of Consumer and Commercial Relations
- (o) "Person" means an individual, association, firm, partnership, corporation, trust, organization, trustee, or agent, and their heirs, executors, or legal representatives of the Person to whom the context can apply according to law.
- (o) "Property" means any Land, including the buildings and structures thereon, registered to a person on title in the Land Registry Office or Land Titles Division, as the case may be.

- (p) "Regional Road" means a Highway under the jurisdiction of the Regional Municipality of Durham.
- (q) "Repair" means the taking of any action to ensure that the Boulevard area or Fixture conforms to the standards contained in this By-law.
- (r) "Restore" means taking action to remove unlawful materials and objects and by planting Landscaping or installing materials and objects in compliance with this By-law.
- (s) "Standards" means the standards for Boulevard and Fixture maintenance as prescribed by Section 4.0 of this By-law.
- (t) "Street Line" means the boundary between a lot and the street or streets upon which the lot abuts and includes any reserves.
- (u) "Town Tree" means any tree 50% or more of the trunk of which is located on municipal property is deemed to be owned by the Town.
- (v) "Town" means the Corporation of the Town of Whitby.
- (w) "Town Street" means a Highway under the jurisdiction of the Town.

#### 1.02 Interpretation Rules:

- (1) Wherever this By-law refers to a person or thing with reference to gender or the gender is neutral, the intention is to read the By-law with the gender applicable to the circumstances.
- (2) References to items in the plural include the singular, as applicable.
- (3) The words "include", "includes" or "including" are not to be read as limiting the phrases or descriptions that precede it.
- (4) References to "property" or to "Building" or "structure" or "Yard" are to be read as always including one or more parts of the property, Building, structure, or Yard.

#### 1.03 Citing Legislation & Regulations: Specific references to laws in this By-law are printed in italic font and are meant to refer to the current laws applicable within the Province of Ontario as at the time the By-law was passed. For Provincial laws, the reference is to the relevant chapter of the R.S.O. 1990 edition, as amended from time to time, including successor legislation.

- 1.04 Severability: If a court or tribunal of competent jurisdiction declares any portion of this By-law to be illegal or unenforceable, that portion of this By-law will be considered to be severed from the balance of the By-law, which will continue to operate in full force.
- 1.05 Conflicting By-laws and Regulations:
- (1) This By-law shall not be construed to reduce or mitigate any restrictions or regulations lawfully imposed by the Town or by any governmental authority having jurisdiction to make such restrictions or regulations.
- (2) If there is a conflict between a provision of this By-law and a provision of any other Town Bylaw, the provision that establishes the higher standard to protect the health and safety of the public and to maintain clean and tidy conditions on the Highway shall apply.
- 1.06 And/Or: The word "and" is an inclusive conjunction, the use of which indicates that all items or phrases in that subsection, article, or list in which it appears are permitted or required as the case may be. The word "or" is an alternate conjunction, the use of which indicates that alternate or optional items or phrases in the subsection, article or list in which it appears are permitted or required, as the case may be; however, notwithstanding the foregoing, where the context permits, the word "or" may also be an inclusive conjunction having the same meaning as the word "and".
- 1.07 Measurements: Where the By-law provides metric and imperial units of measure, the metric unit of measure shall prevail. For convenience only, approximate imperial measurements may have been provided in parentheses but are of no force or effect. The abbreviation "mm" stands for millimetres, "cm" stands for centimetres, "m" stands for metres, "in" stands for inches and "ft" stands for feet.

#### Article 2.00: Offences, Enforcement and Administration

- 2.01. Enforcement: It is the duty of Municipal Law Enforcement Officers to enforce the provisions of this By-law.
- 2.02 Owner to Comply: Every Owner and Fixture Owner shall comply with an Order issued pursuant to Article 3.03 of this By-law within the time provided for therein.
- 2.03 Offences and Prosecution: Every person who contravenes or fails to comply with any of the provisions of this By-law has committed an offence

and may be prosecuted as provided for by Section 61 of the *Provincial Offences Act*, for each day on which the offence occurs. Persons convicted of offences pursuant to this By-law are subject to the fines and/or other penalties as prescribed by the *Provincial Offences Act*, R.S.O 1990, c. P.33

#### Article 3.00: Order Requiring Compliance

- 3.01. Order: Where an Owner fails to comply with any provision set out in this By-law, an Order may be issued by an Officer to the Owner requiring compliance within the time frame specified in the Order.
- 3.02. Contents of Order: An Officer who finds that a Boulevard or a Fixture does not conform to any of the standards prescribed in this By-law may make an Order to an Owner or a Fixture Owner:
- (a) Stating the municipal address of the Property, a Street Line of which is located immediately adjacent to the subject Boulevard area or, in the case of a Fixture, the municipal address closest to that Fixture;
  - (b) Giving reasonable particulars of the Repairs, Restoration or Maintenance to be made to the Boulevard or Fixture;
  - (c) Indicating the time frame for complying with the terms and conditions of the Order; and
  - (d) Stating that if the Order is not complied with within that time, the Town may carry out the work at the Owner's or Fixture Owner's expense.
- 3.03 Method of Delivery of Order: The Order, and any subsequent written Order amending or withdrawing the Order, may be delivered by any one or more of the following methods:
- (a) personal delivery to the person to whom it is addressed;
  - (b) personal or couriered delivery to either an adult person, of the residential address of the addressee;
  - (c) delivery by registered or certified mail; or
  - (d) delivery by facsimile transmission.
- 3.04 Deemed Delivery:
- (1) Where an Order is personally delivered, it is considered to have been delivered at the date and time at which it was handed to the addressee.

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- (2) Where an Order is delivered to the residential address of the addressee, it is considered to have been delivered on the next business day following the date of delivery.
  - (3) Where an Order is delivered by registered or certified mail, it is deemed to have been served on the fifth day after the day of mailing.
  - (4) Where an Order is delivered by facsimile, it is considered to have been delivered on the next business date following the date showing on the proof of transmission document.
- 3.05 Town May Complete Work: Where an Order has been issued by the Town and compliance has not been achieved within the required time period as set out in the Order, the Town may, through its employees and agents or persons acting on their behalf, carry out the work required by the Order at the expense of the Owner or Fixture Owner and, in the case of an Owner, all expenses so incurred may be added to the tax roll and collected from an Owner in the same manner as municipal taxes.
- 3.06 Cost Recovery: Where Section 3.05 of this By-law is invoked, all costs associated with the work shall be added to the tax roll of the property which is the subject matter of the Order and shall be collected in like manner as municipal taxes.

#### Article 4.00: Boulevard Standards

- 4.01 Every person may landscape or improve that portion of a Boulevard abutting his/her Property, subject to the regulations contained hereafter:
- (1) No hedge, shrub, tree, planting, post, fence, wall, landscape rock or any other material or object shall be permitted:
    - (a) Where a sidewalk is located on the Boulevard, within 0.3m (1 ft) of the property line side of the sidewalk or between the sidewalk and travelled portion of the Highway.
    - (b) Where no sidewalk is located on the Boulevard, within 2 m (6.6 ft) of the curb or travelled portion of the Highway
  - (2) No hedge, shrub, tree planting, post, fence, wall or other thing, exceeding 0.9m (3 ft) in height above the Grade of the Boulevard shall be permitted on any Boulevard.
  - (3) Nothing shall be maintained on any Boulevard which is protruding, sharp, dangerous in any way, or which may otherwise injure a Person.

- (4) The municipality shall be held harmless for any damages to landscaping works associated with municipal or utility repairs or any other maintenance works within the boulevard as deemed required by the Director.

Article 5.00: Boulevard and Fixture Maintenance Standards

- 5.01 Every Owner shall maintain the Abutting Boulevard in accordance with the requirements of this By-law.
- 5.02 Every Owner shall:
- (a) Clean and clear the Abutting Boulevard of all debris, waste, refuse and litter, and conform to the provisions of Section 16 of the Solid Waste Management By-law dealing with the Times for Setting Out Waste Materials;
  - (b) Clean and clear the Abutting Boulevard of any abandoned items, machinery, equipment or other thing;
  - (c) Maintain grass and weeds on any Abutting Boulevard at a Height which is not greater than fifteen (15)cm {six (6) in} in Height;
  - (d) Maintain the Landscaping on any Abutting Boulevard so that Landscaping materials do not encroach over that portion of an adjacent Highway that is travelled or designed to be travelled by Vehicles, adjacent driveway or sidewalk; and
- 5.03 Every Fixture Owner shall maintain all Fixtures owned by it in a condition which is free from all defacing marks, tagging and graffiti.
- 5.04 Notwithstanding Articles 4.01 and 5.01, this By-law shall not be interpreted as preventing or prohibiting:
- (a) The placement or erection of Signs in compliance with the Town and Regional Sign Bylaws;
  - (b) The creation and use of Hard Surfaced areas on Boulevard areas used for bus stops, bus stop shelters, or bus stop bench seating;
  - (c) The creation and use of Hard Surface areas in unique locations which have been approved by the Director of Public Works of the Town, or such other Town staff person designated by the Director of Public Works;

- (d) The temporary placement of refuse for collection in compliance with the standards of the Town of Whitby Waste Management By-law; or
- (e) The placement of structures placed or utilized by the Town, the Regional Municipality of Durham, a Transportation Commission, GO Transit, utilities, Canada Post, or newspaper boxes if approved by the Director, or such other Town staff person designated by the Director;
- (f) The installation of plantings (excluding fruits, vegetables or noxious weeds) or mulch around the base of Town Trees not exceeding 0.5 m in height and a maximum 0.5 m from the base of the tree.

#### Article 6.00: Prohibitions

- 6.01 No person shall damage any landscaping, structure, tree, shrub, hedge, sidewalk or other improvement on any Boulevard.
- 6.02 No person shall damage any Landscaping, structure, Fixture, sidewalk, Hard Surface, on a Boulevard.
- 6.03 No person shall injure or destroy a tree, bush or hedge or any part of a tree, bush or hedge located on municipal property.
- 6.04 No person shall interfere with a tree or part of a tree located on municipal property, including but not limited to attaching, affixing or placing upon in any manner any object or thing to a tree or part of a tree, and climbing the tree.
- 6.05 No person shall place or leave or utilize any structure, including any basketball net, hockey net, skateboard ramp or other play structure, in such a manner as to interfere with or obstruct safe passage on a Highway or Municipal Property.
- 6.06 No person shall place or deposit, or cause to be placed or deposited, any vegetation cuttings, rubbish, discarded materials or any liquid or solid waste on any Highway or Municipal Property or in any drainage facility.
- 6.07 No person shall mark, deface, wax or damage any curb, sidewalk, or part of a Highway or Municipal Property.
- 6.08 No person shall place or deposit, or cause to be placed or deposited, any Debris upon any Highway.
- 6.09 No person shall place or deposit, or cause to be placed or deposited, any snow or ice upon any Highway; this includes the movement of snow or ice from private driveways, laneways, roads, parking lots and sidewalks, from

those lands to the Highway. The placement of snow or ice removed from the hard surface of the Boulevard and sidewalk onto the Abutting Boulevard, excluding the travelled portion of the Highway, shall be permitted.

- 6.10 No person shall place or deposit, or cause to be placed or deposited, leaves on any Highway except in an approved yard waste bag pursuant to the Waste Management By-law, as amended.

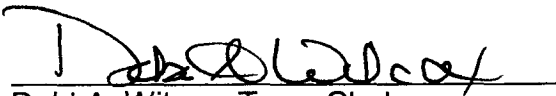
Article 7.00: Short Title

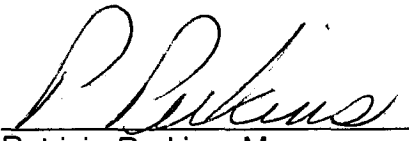
7.01 SHORT TITLE: This By-law may be cited as the "Boulevard By-law".

Article 8.00: Effective Date

8.01 EFFECTIVE DATE This By-law shall come into force on the date of passage by Council.

BY-LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 7<sup>th</sup> DAY OF MARCH, 2011

  
Debi A. Wilcox, Town Clerk

  
Patricia Perkins, Mayor