

The Corporation of the Town of Tecumseh

By-Law Number 2024-078

Being a by-law to regulate the maintenance, occupancy, use of, and other matters pertaining to boulevards under the jurisdiction of the Town of Tecumseh.

Whereas Subsection 11(3) and Section 27(1) of the *Municipal Act*, S.O. 2001, c.25 (the “**Act**”), provides that a municipality may pass by-laws respecting highways under its jurisdiction;

And Whereas Section 127 of the Act provides that a local municipality may require the owner and occupants of land to clean and clear the land or to clear refuse or debris from the land;

And Whereas Section 11(1) of the Act allows municipalities to pass by-laws respecting the environmental well-being of the municipality, and the health and safety of persons;

And Whereas Section 429(1) of the Act provides that a municipality may establish a system of fines for a by-law passed under the Act;

And Whereas Section 434.1 of the Act provides that a municipality may require a person to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with any by-law of the municipality passed under the Act;

And Whereas Section 391(1) of the Act provides that a municipality may pass by-laws imposing fees or charges on any person for services or activities provided by the municipality or done on behalf of it;

And Whereas The Corporation of the Town of Tecumseh deems it necessary to regulate the maintenance and the use of the boulevard portion of highways under its jurisdiction;

And Whereas the Council of The Corporation of the Town of Tecumseh considers it desirable to pass such a by-law;

Now Therefore the Council of The Corporation of The Town of Tecumseh hereinafter referred to as the “**Town**” enacts as follows:

Section 1 Definitions and Interpretations

1.1 Definitions

In this By-Law wherever a word is used with its first letter capitalized, the term is being used as it is defined in this Section 1.1. Subject to Section 1.2, where any word appears in ordinary case, its regularly applied meaning in the English language is intended:

- a) **“Abutting Boulevard”** means the portion of the Boulevard lying along a “Property’s” Street Line. Provided that where more than one “Property” would otherwise share an “Abutting Boulevard” the “Abutting Boulevard” shall be allocated to each Property by drawing a line from the midway point of the angle created by the point at which such lot lines meet each other.
- b) **“Boulevard”** means that part of a “Town” Street (whether assumed or unassumed) between a Street Line and the edge of the curb or, where there is no curb, between a Street Line and that portion of the “Highway” which is travelled or designed to be travelled by “Vehicles”. A “Boulevard” may or may not contain a sidewalk, multi-use pathway, trail, tree, ditch, Fixtures or a reserved space (unimproved alley or easement).
- c) **“County Road”** means a “Highway” under the jurisdiction of the County of Essex.
- d) **“Debris”** means any discarded or unused material, whether or not it is re-useable.
- e) **“Director”** means the Director of Public Works & Engineering Services or his/her designate.
- f) **“Fixture”** means any structure or other fixture affixed to the Boulevard including a utility box, community mailbox, newspaper vending box, bench, transit area, telephone box, telephone booth, transformer box or vault, hydro streetlight, stoplight poles and street sign, water valves and service valves, hydrants, sample stations, boundary meters, storm and sanitary manholes, etc.
- g) **“Fixture Owner”** means the owner entitled to exercise the control over the “Fixture”, whether it be the “Town”, local utility or other public authority having jurisdiction.
- h) **“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.
- i) **“Highway”** means a common, roadway and public highway, and includes the following:
 - (i) Any street, road, avenue, parkway, lane, driveway, “Boulevard”, trail, sidewalk, multi-use path, bike lane, square, place, bridge, viaduct, or trestle designed or intended for, or used by the general public for the passage of “Vehicles” or “Persons”, and/or;
 - (ii) The area between lateral “Property” lines of any “Highway” or road allowance including any curbs, gutters, “Boulevards”, culverts, ditches and retaining walls.

- j) **“Injure”** means any action which causes physical, biological or chemical damage to an individual or to “Property”.
- k) **“Landscaping”** means vegetation in the form of lawns, grasses, shrubs, flowers, ornamental plantings, or any combination thereof.
- l) **“Landscaping Rock”** means large rocks used for decoration as well as smaller landscaping rock used in place of mulch.
- m) **“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.
- n) **“Municipal Property”** means any real “Property” or interest in real “Property” owned by the “Town”.
- o) **“Officer”** means a Municipal By-Law Enforcement Officer appointed by the Council of the “Town” to enforce the by-laws of the “Town”.
- p) **“Owner”** means the registered owner of the “Property” in question as revealed in OnLand the Ontario Governments virtual Land Registry Office and shall also include such other “Persons”, tenants or others, who are exercising care and control over the “Property”.
- q) **“Person”** has the normal and usual meaning of person and includes a corporation and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law.
- r) **“Property”** means any land, including the buildings and structures thereon, within the “Town” and abutting a “Boulevard”.
- s) **“Repair”** means taking action to ensure that the “Boulevard” area or “Fixture” conforms to the “Standards” contained in this By-law.
- t) **“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.
- u) **“Standards”** means the standards for “Boulevard and “Fixture” “Maintenance” as prescribed by Section 4.0 of this By-law.
- v) **“Street Line”** means the boundary between a lot and the abutting “Highway”.
- w) **“Town”** means The Corporation of the Town of Tecumseh.
- x) **“Town Street”** means a “Highway” under the jurisdiction of the “Town”.

- y) **“Town Tree”** means any tree of which, any portion of its trunk is on the “Boulevard”.
- z) **“Vehicle”** shall have the same meaning as found in the *Highway Traffic Act*, R.S.O. 1990, c.H.8 as amended.
- aa) **“Weeds”** shall include “local weeds”, “noxious weeds” and “weed seeds”. “Local weeds” shall have the same meaning as found in the *Weed Control Act*, R.S.O. 1990, c.W.5 as amended or replaced from time to time. **“Noxious weeds”** shall have the same meaning as found in the *Weed Control Act*, R.S.O. 1990, c. W.5 as amended or replaced from time to time. **“Weed seeds”** shall have the same meaning as found in the *Weed Control Act*, R.S.O. 1990, c. W.5 as amended or replaced from time to time.

1.2 Interpretation Rules

- a) 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.
- b) References to items in the plural include the singular, as applicable.
- c) The words “include”, “includes” or “including” are not to be read as limiting the phrases or descriptions that precede it.
- d) Reference 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.

1.3 Citing Legislation and 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.

1.4 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.

1.5 Conflicting By-laws and Regulations

- a) 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.

- b) If there is a conflict between a provision of this By-law and a provision of any other “Town” By-law, 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.

1.6 **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”.

1.7 **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.

Section 2 Offences, Enforcement, and Administration

2.1 **Enforcement**

It is the duty of the Director to enforce the provisions of this By-law.

2.2 **Owner to Comply**

Every Owner and Fixture Owner shall comply with an Order issued pursuant to Section 3 of this By-law within the time provided for therein.

2.3 **Offences and Prosecution**

- a) 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 in the *Provincial Offences Act*, R.S.O 1990, c.P.33 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.
- b) Every Person who contravenes or fails to comply with any of the provisions of this By-law shall upon issuance of a penalty notice be subject to an administrative monetary penalty in the amount(s) set out in By-law 2024-048 as amended being the Town’s Administrative Penalty By-law.

- c) Pursuant to Section 431 of the *Municipal Act*, 2001, if a Person has been convicted of an offence under this By-Law, a court of competent jurisdiction may, in addition to any penalty imposed on the Person convicted, issue an order:
 - (i) prohibiting the continuation of repetition of the offence by the Person convicted; and
 - (ii) requiring the Person convicted to correct the contravention in the manner and within the period that the court considers appropriate.
- d) If a Person is required to pay an administrative penalty in respect of a contravention of this By-Law, the Person shall not be charged with an offence in respect of the same contravention.
- e) In accordance with Section 398(2) of the *Municipal Act*, 2001, the Town may add unpaid fees, charges, and fines under this By-Law to the tax roll and collect them in the same manner as municipal taxes.

Section 3 Order Requiring Compliance

3.1 Order

Where an Owner fails to comply with any provision set out in this By-law, an Order may be issued by the Director to the Owner requiring compliance within the time frame specified in the Order.

3.2 Contents of Order

The Director 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 such 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 of the Property closest to that Fixture;
- b) Giving reasonable particulars of the Repair, 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 expense.

3.3 Method of Delivery or 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, or;
- c) Delivery by prepaid mail to the Person's last known address or as otherwise contemplated in subsection 343(6) of the Act.

3.4 Deemed Delivery

- a) 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.
- b) 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.
- c) Where an Order is delivered by prepaid mail, it is deemed to have been delivered on the fifth (5th) day after the day of mailing.

3.5 Town May Complete Work

- a) 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 the 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.
- b) If a Boulevard or a Fixture that does not conform to any of the Standards prescribed in this By-law is a safety concern, as deemed so by the Director, the Town may act immediately to carry out the work at the Owner's expense. In this circumstance, the Town will follow up thereafter with a letter to the Owner and an invoice describing the actions taken.
- c) If an Owner commits a prohibition noted in 6.5 hereof, that causes dumping into catch basins or manholes, the Town shall act to issue an Order and will flush/clean catch basins and/or sewers at the expense of the Owner.

3.6 Cost Recovery

- a) Where Section 3.5 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.
- b) Every Person who contravenes any provision of this By-Law, and every director or officer of a corporation who concurs in such contravention by

the corporation, is guilty of an offence and is liable to a fine, and such other penalties, as provided for in the *Provincial Offences Act*, R.S.O. 1990, c.P.33, and the *Municipal Act*, 2001, as both may be amended from time to time.

- c) The Town's Administrative Penalty By-law 2024-048, as amended, applies to this By-law. Every Person who contravenes a provision of this By-Law (as designated by Schedule of the Administrative Penalties By-law 2024-048), shall upon issuance of a Penalty Notice be liable to pay an administrative penalty in the amount therein set out.

Section 4 Boulevard Standards

- 4.1 Every Owner may landscape or improve that portion of the Abutting Boulevard to his/her Property subject to the Standards contained hereafter:
- a) Where a sidewalk, multi-use pathway, or trail is located within the Boulevard, no hedge, shrub, tree, planting, post, fence, wall, Landscaping Rock or any other material or object shall be permitted within 0.45 m (18 inches) of side of the sidewalk, multi-use pathway, or trail.
 - b) Where a sidewalk, multi-use pathway, or trail is located within the Boulevard, no hedge, shrub, planting, post, fence, wall, Landscaping Rock or any other material or object shall be permitted between the sidewalk, multi-use pathway, or trail and travelled portion of the Highway unless in the instance of Town Trees or Town infrastructure.
 - c) Where no sidewalk, multi-use pathway, or trail is located within the Boulevard, no hedge, shrub, planting, post, fence, wall, Landscaping Rock or any other material or object shall be permitted within 2 m (6.6 ft) of the curb or travelled portion of the Highway. This clause does not apply to Town infrastructure and Town Trees, as approved by the Director.
 - d) No hedge, shrub, tree, planting, post, fence, wall or other things as deemed to be a hazard by the Director, exceeding 0.9 m (3 ft) in height above the grade of the Boulevard shall be permitted on any Boulevard. The Town reserves the sole right to strategically plant street trees within the Boulevard that exceed this height.
 - e) No hedge, shrub, tree, planting, post, fence, wall or other thing including Landscaping Rock or any other material or object, shall be permitted within 2 m (6.6 feet) of fire hydrants or mainline water valves.
 - f) No elevation changes shall be permitted within Boulevard's that would negatively impact the Towns infrastructure, such as manholes, water valves, boulevard catch basins, fire hydrants, etc.
 - g) Nothing shall be installed, placed, planted and/or maintained on any Boulevard which is protruding above the grade of the Boulevard, and/or

which is sharp, or which, in the opinion of the Officer, poses a danger to the health or safety of any Person using the Highway.

- h) No Owner shall or permit the installation, placement or locating of any electrical wiring, or other electrical systems or any plumbing pipes or other plumbing systems on any Boulevard.
- i) No Owner shall or permit any excavations, trenches or ditches which present or could present an unsafe condition on any Boulevard.
- j) If a Boulevard is damaged by the Town, or a contractor hired by the Town associated with municipal or utility repairs or Maintenance works within the Boulevard as deemed required by the Director the Town shall be responsible to restore the turf grass on a boulevard and shall not be obligated to restore any alterations to the Boulevard made by the Owner.
- k) Materials other than plain asphalt or plain concrete are permitted in the portion of driveways within the Municipal Property. Interlocking brick and/or paving stones are not permitted with the Municipal Property. Notwithstanding, if the driveway must be repaired, replaced, or relocated during infrastructure repair within the Municipal Property, the Town will Repair the driveway with plain asphalt or plain concrete. Stamped, coloured or otherwise special asphalt will be repaired with plain asphalt. Stamped, coloured or otherwise special concrete will be repaired with plain concrete, unless the Owner agrees to pay the additional cost. The type and thickness of the asphalt and concrete shall be indicated on the public works permit.
- l) At all times, where a sidewalk, multi-use pathway, or trail is located within the Boulevard, it shall be continuous across the Property and not replaced with any other material. Additionally, the longitudinal grade must match the grade of the adjacent curb to ensure no drainage problems are created at driveways.
- m) Town-owned infrastructure existing within driveways, such as mainline valves, curb boxes, manholes, etc. shall be maintained in compliance with Town standards and specifications to ensure continued access and operation of the infrastructure.

Section 5 Boulevard and Fixture Maintenance Standards

- 5.1 Every Owner shall maintain the Abutting Boulevard in accordance with the requirements of this By-Law.
- 5.2 Every Owner shall:
 - a) Clean and clear the Abutting Boulevard of all Debris, waste, refuse and litter;

- 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 twenty (20) cm (8 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 by Vehicles or pedestrians, adjacent driveway, sidewalk, multi-use pathway, or trail.

5.3 Every Fixture Owner shall maintain all Fixtures owned by it in a condition which is free from all defacing marks, tagging and graffiti.

5.4 Notwithstanding Section 4.1 and 5.1, this By-Law shall not be interpreted as preventing or prohibiting:

- a) The placement or erection of signs in compliance with the Town's Sign By-laws;
- b) The creation and use of Hard Surfaced areas on Boulevard areas used for bus stops or bus stop bench seating;
- c) The creation and use of Hard Surface areas in unique locations which have been approved in writing by the Director;
- d) The temporary placement of refuse for collection in compliance with the standards of the Town's Waste Collection By-law;
- e) 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.

Section 6 Prohibitions

6.1 No Person shall damage any Landscaping, structure, tree, shrub, hedge, sidewalk, multi-use pathway, trail, Fixture, Hard Surface, or other improvement permitted or located by the Town on any Boulevard.

6.2 No Person shall Injure or destroy a tree, bush or hedge or any part of a tree, bush or hedge located on Municipal Property.

6.3 No Person shall interfere with a Town Tree, including but not limited to attaching, affixing or placing upon in any manner any object or thing to a Town Tree or part of a Town Tree, and climbing the Town Tree.

6.4 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.

- 6.5 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.
- 6.6 No Person shall mark, deface, wax or damage any curb, sidewalk multi-use pathway, trail, or part of a Highway.
- 6.7 No Person shall place or deposit, or cause to be placed or deposited, any Debris upon any Highway.
- 6.8 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, sidewalks, multi-use pathways, and trails, from those lands to the Highway. The placement of snow or ice removed from the Hard Surface of the Boulevard and sidewalk, multi-use pathway, or trail onto the Abutting Boulevard, excluding the travelled portion of the Highway, shall be permitted.
- 6.9 No Person shall place or deposit or cause to be place or deposited, leaves on any Highway except in an approved yard waste bag pursuant to the Waste Collection By-Law.

Section 7 Short Title

7.1 This By-law may be cited as the “Boulevard Maintenance By-Law”.

Section 8 Repeal

8.1 By-law No. 2016-05 is hereby repealed and any other By-law provisions that are inconsistent with this By-law shall be of no effect to the extent of the inconsistency.

Read a first, second, third time and finally passed this 25th day of September 2024.

Gary McNamara, Mayor

Robert Auger, Clerk