

THE CORPORATION OF THE TOWNSHIP OF BROCK

BY-LAW NUMBER XXXXX

BEING A BY-LAW RESPECTING THE MAINTENANCE OF BOULEVARDS

WHEREAS Section 8(1) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, (“Municipal Act, 2001”) provides that the powers of a municipality under any Act shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate, and to enhance their ability to respond to municipal issues;

WHEREAS Section 9 of the *Municipal Act, 2001*, provides that a municipality has the capacity, rights, powers, and privileges of a natural Person for the purpose of exercising its authority under the Act;

WHEREAS Section 11(2)6 of the *Municipal Act, 2001*, provides that a municipality may pass by-laws in the interest of the health, safety, and well-being of its residents;

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

WHEREAS Section 128 of the *Municipal Act, 2001*, provides that a municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisances;

WHEREAS Section 446 of the *Municipal Act, 2001*, provides that a municipality may proceed to do things at a Person’s expense which that Person is otherwise required to do under a by-law, but has failed to do and the costs incurred by a municipality may be recovered by adding the costs to the tax roll and collecting them in the same manner as taxes;

AND WHEREAS the Council for The Corporation of the Township of Brock deems it necessary to regulate the maintenance and use of the boulevard portion of highways under its jurisdiction.

NOW THEREFORE, the Council of The Corporation of the Township of Brock enacts as follows:

SECTION I - SHORT TITLE

This by-law may be cited as the Boulevard Maintenance By-law.

SECTION 2 – DEFINITIONS

2. In this by-law,

- a) **“Adjacent Boulevard”** means that portion of a Highway between the travelled portion of the roadway and the Township of Brock’s property line which abuts an owner’s Front Property Line or Exterior Side Property Line or Exterior Property Line and is not used or intended for use for vehicular travel by the general public, and includes the landscaped areas and any driveway apron, but does not include any paved or poured hard-surface sidewalk or a curb or gutter that is not part of a driveway apron.
- b) **“Apron”** includes that section of a driveway contained within the boulevard between the Front Property Line and the Roadway.
- c) **“Boulevard”** means the portion of a highway on either side of the roadway but does not include a sidewalk or traffic island.
- d) **“Exterior Side Property Line”** or **“Exterior Property Line”** shall mean the lot line abutting a street other than the front lot line of a corner lot or the rear lot line of a through lot.
- e) **“Front Property Line”** means:
 - i. in the case of an interior lot, the line dividing the lot from the street;
 - ii. in the case of a corner lot, the shorter lot line abutting a street;
 - iii. in the case of a corner lot whose exterior lot lines are the same length, the lot line opposite the main entrance of the main building;
 - iv. in the case of a through lot, the nearer street line to the main building;
 - v. in the case of a lot located on a private lane or right of way, the lot line abutting the private lane or right of way, and where two lot lines abut a private lane or right of way, the lot line opposite the main entrance of the main building.
- f) **“Herbaceous plant”** means a plant without woody above-ground parts, with a stem that dies back to the ground each year but excludes turf grass.
- g) **“Highway”** means a common and public highway and includes one or both of the following:
 - i. any street, road, avenue, parkway, lane, driveway, boulevard, sidewalk, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles or persons, or,
 - ii. the area between the lateral property lines of any highway or road

allowance including any curbs, gutters, boulevards, culverts, ditches and retaining wall;

- h) “**Maintenance**” means the action required to sustain a boulevard including but not limited to cutting, watering, removing debris or repairing damage to any driveway located within the boulevard area;
- i) “**Municipal Law Enforcement Officer**” means By-Law Officer, and/or a person or persons duly appointed by the Council of the Township of Brock to enforce the provisions of this by-law;
- j) “**Owner**” means the person or persons shown on as the registered Property owners on the Land Registry Office or the Municipal tax roll as having title to the land or responsibility for it, as well as any tenant or person or persons lawfully in possession of or exercising control over the property;
- k) “**Person**” means an individual, firm, corporation, association or partnership and their heirs, executors or assigns;
- l) “**Property**” means a parcel of land having specific boundaries, which is capable of legal transfer;
- m) “**Property Standards Committee**” means the Property Standards Committee as defined by Section 6.09 of the Township of Brock Property Standards By-Law 1562-98-PP
- n) “**Property Line**” means any boundary of a property and the vertical projection thereof;
- o) “**Region**” means the Region of Durham
- p) “**Roadway**” means the portion of a highway that is improved, designed, or ordinarily used for vehicular traffic, and includes a curb and shoulder;
- q) “**Sidewalk**” shall mean that portion of the highway that is intended for the use of pedestrians and which surface is finished with concrete or asphalt;
- r) “**Township of Brock**” means the Corporation of the Township of Brock;
- s) “**Township**” means the Corporation of the Township of Brock;
- t) “**Turf Grass**” means a perennial strand of plant that can form turf and withstand mowing, traffic and/or wear.

- u) **“Utilities”** includes infrastructures such as cables, pipelines or structures that are owned and maintained by the Township, Region, a municipality or other utility companies.
- v) **“Vegetation”** means Turf Grass, Weeds, shrubbery and other plants;
- w) **“Vehicle”** includes a motor vehicle, trailer, boat, motorized snow vehicle, mechanical equipment and any vehicle drawn, propelled, or driven by any kind of power, including muscular power.
- x) **“Weed(s)”** means a noxious weed designated by or under the *Weed Control Act*, R.S.O. 1990, c.W.5, including weeds designated as a local or noxious weed under a by-law of the Township passed under that Act.

SECTION 3 – PLANTING IN BOULEVARDS

Herbaceous Plants

- 3.1 A property owner shall not plant or permit to be planted herbaceous plants that:
 - a) exceed a height of 45 centimeters;
 - b) impair drainage; or
 - c) contain vegetables or grains;on an adjacent boulevard abutting his or her property.
- 3.2. No person shall plant or permit to be planted a herbaceous plant on a boulevard or section of a boulevard that is regularly maintained by the Township or Region.

Trees

- 3.3. On a boulevard adjacent to his or her property, an owner shall not plant or place, or permit the planting or placement of a tree or shrub unless permission is obtained from the Township of Brock or the Region of Durham.

SECTION 4 – BOULEVARD MAINTENANCE OBLIGATIONS

- 4.1 Subject to any permission granted by the Township, the Region, or a utility, on a boulevard adjacent to his or her property, no owner shall permit anything on the boulevard that:

- a) is protruding, sharp, dangerous in any way, or which may otherwise injure a person.
- b) may cause damage to any person or thing.
- c) restricts sight lines of pedestrians, cyclists or drivers of vehicles to intersections, driveways, sidewalks, walkways, travel lanes, or traffic control devices.
- d) inhibits or obstructs snow removal operations.
- e) obscures or obstructs access to fire hydrants, post office boxes, or other installations belonging to the Township, Region, or any utility provider.
- f) is located within 0.6 metres of the sidewalk, unless it is turf grass, herbaceous plants, wood chips, mulch, or inorganic material.
- g) is located within 1.8 metres of the curb, unless it is turf grass, herbaceous plants, wood chips, mulch, or inorganic material;
 - i. Any inorganic material, wood chips, or mulch permitted under this subsection must be installed flush to the curb.
- h) is located within 1.8 metres of the roadway, where there is no curb, unless it is turf grass, herbaceous plants, wood chips, mulch, or inorganic material;
 - i. Any inorganic material, wood chips, or mulch permitted under this subsection must be installed flush with the existing grade of the boulevard and provide for a 2% to 4% grade for drainage.
- i) is more than 20 centimeters in height, unless it is a herbaceous plant and governed by subsection 3.1(a) of this by-law.
- j) may overflow onto the street, sidewalk, highway or adjacent property.

Exception – Snow

4.2 Subsection 4.1 does not apply to snow on boulevards. Snow on Aprons shall be the responsibility of the Owner.

Grass

4.3. On a boulevard adjacent to his or her property, an owner shall not permit turf grass to exceed a height of 20 centimeters.

Alteration of Boulevard

- 4.4. On a boulevard adjacent to his or her property, no owner shall alter an area of the boulevard that is regularly maintained by the Township or Region.

Exception – Waste Collection

- 4.5. The provisions of section 4.1 do not apply to anything on a boulevard that is permitted under the Region of Durham Waste Management By-Law (No.046-2011) as amended.

SECTION 5 – DAMAGE TO BOULEVARD

Damage by Person

- 5.1. No person shall damage, construct or re-construct a sidewalk, curb, apron driveway or boulevard without the written permission of the Township of Brock, the Region of Durham and or a utility.
- 5.2. For the purposes of Section 5.1, “person” shall not include the Township of Brock, the Region of Durham, a utility, or a contractor hired by the Township of Brock, Region of Durham or utility.

Damage by Township, Region, Utility

- 5.3. If a boulevard, or property located on or under a boulevard is damaged by the Township, the Region, a utility, or a contractor hired by the Township, Region or utility, the Township, Region, utility or contractor that caused the damage shall only be responsible for restoring turf grass on a boulevard and shall not be obligated to restore any alterations to the boulevard made by the owner.
- 5.4. Where an owner has obtained written permission from the Township, Region and or utility under section 3.1, that owner shall comply with any conditions set forth in the written permission of the Township, Region and or utility.

SECTION 6 – ENFORCEMENT

- 6.1 For the purpose of ensuring compliance with this by-law, a Municipal Law Enforcement Officer, or Police Officer, may at all reasonable times, enter upon and inspect the Adjacent boulevard, any land or Property to determine whether the following are being complied with:
- a) this by-law;
 - b) a direction or order made under this by-law; or

- c) a prohibition order made under Section 431 of the *Municipal Act, 2001*.
- 6.2 A Municipal Law Enforcement Officer or Police Officer, may for the purposes of the inspection, under Section 6.1 of this by-law, require information in writing or otherwise as required by the officer from any person concerning a matter related to the inspection; or alone or in conjunction with a person possessing special or expert knowledge, undertake an inspection to determine compliance with this by-law.
- 6.3 A Municipal Law Enforcement Officer or Police Officer, may make an Order, sent, or served by prepaid regular mail to the last known address, posted on-site or personally delivered to a person requiring the person who contravened the by-law, within the time specified in the Order to:
- a) discontinue the contravening activity; and/or
 - b) do work to correct the contravention.
- 6.4 If an Order under Section 6.3 is served by regular mail, the service shall be deemed to have been made on the fifth (5th) day after the day of mailing.
- 6.5 An Order may be served on a person personally by handing it to the person, but where the Order cannot be given or served by reason of the person's absence from the person's property or by reason of evasion of service, the order may be given or served:
- a) by handing it to a person that is an adult person on the person's property; by posting it in a conspicuous place upon part of the owner's property and by sending a copy by ordinary mail; or
 - b) by sending it by prepaid registered mail to the owner at the address where he/she resides.
- 6.6 If an Order under Section 6.3 is served by registered mail, the service shall be deemed to have been made on the fifth (5th) day after the day of mailing.

An Order under Section 6.3 shall set out:

- a) reasonable particulars of the contravention adequate to identify the contravention and the location of property abutting Adjacent boulevard where the contravention occurred;
- b) the work to be completed; and

- c) the date(s) by which the work must be complete.
- 6.7 Where the Owner fails to comply with an Order issued under section 6.3 of this by-law, within the time specified for compliance, a Municipal Law Enforcement Officer, or Police Officer, with such assistance by others, as may be required, may bring the Adjacent boulevard into compliance with any section of this by-law by:
- a) bringing the property under compliance of the by-law by conducting the work necessary to bring the property under compliance as identified in Sections 3, 4 and 5 of this by-law.
- 6.8 A Municipal Law Enforcement Officer or a Police Officer is authorized to give immediate effect to any order issued under Section 6.3 of this by-law that has not been complied with by the owner.
- 6.9 Where a Municipal Law Enforcement Officer, or Police Officer or Township of Brock employee so authorized by the By-Law Enforcement Department and or the Director of Public Works and/or his/her designate, determines that on the Adjacent boulevard there is anything that is protruding, sharp, dangerous or anything that would obstruct or impair the vision of a vehicle operator, the Municipal Law Enforcement Officer, or Police Officer or Township of Brock employee so authorized may take immediate steps, without issuing an order, to bring the Adjacent boulevard into compliance with this by-law by immediately removing the danger or obstruction.

SECTION 7 – RECOVERY OF COSTS

- 7.1 Where the Township of Brock, its employees or authorized agents or contractors have performed the work required to bring the Adjacent boulevard or Property into compliance with this by-law, all expenses incurred by the Township in doing the work as well as any related fees, shall be deemed to be a debt to the Township and may be collected by action or the costs may be added to the tax roll for the property and collected in the same manner as municipal taxes.

SECTION 8 - APPEAL TO PROPERTY STANDARDS COMMITTEE

- 8.1 An owner may appeal the decision or an order of a Municipal Law Enforcement Officer under this by-law to the Property Standards Appeals Committee in writing within fourteen (14) days of the issuance of the Order made under section 6.3 of this by-law.
- 8.2. A hearing shall be held as soon as practicable after receipt of the notice of the intent to appeal.

- 8.3. The Committee may affirm, rescind, or modify the decision or order of the Municipal Law Enforcement Officer at the hearing.
- 8.4. The Committee may adjourn the hearing to a later date if in the opinion of the Committee it will have more complete or useful evidence to assess at that time.
- 8.5. Where a person has requested a hearing and does not appear at the appointed time, the Committee may dismiss the hearing as abandoned, or may, where it has cause to believe it would be beneficial to adjourn the hearing, may do so to allow the owner an opportunity to be present. If the appeal is dismissed as abandoned by the Committee, the decision of the Municipal Law Enforcement Officer shall stand.
- 8.6. Rulings of the Committee shall be provided to the appellant.
- 8.7. The rulings of the Committee for this by-law cannot be appealed to Ontario Court
- 8.8. The fees for an appeal shall be payable at the time of filing a notice of appeal and shall be in accordance with the "Fees By-Law " as amended from time to time.

SECTION 9 – PENALTY

- 9.1 Every person who contravenes any of the provisions of this by-law and, if the person is a corporation, every director or officer of the corporation who knowingly concurs in the contravention, is guilty of an offence and on conviction is liable:
 - a) On a first conviction, to a fine of not more than \$25,000; and
 - b) On a subsequent conviction, to a fine of not more than \$10,000 for each day, or part thereof, upon which the contravention has continued after the day on which the person was first convicted.
- 9.2 If the person referenced in Section 9,1 is a Corporation, the maximum penalty that may be imposed is:
 - a) On a first conviction, a fine of not more than \$50,000; and
 - b) On a subsequent conviction, a fine of not more than \$25,000 for each day or part day, or part thereof, upon which the contravention has continued after the day on which the corporation was first convicted, and not as provided in subsection (a).

PART 10 – OBSTRUCTION

10.1 No Person shall or attempt to hinder or obstruct a Municipal Law Enforcement Officer or Police Officer from performing his or her duties as described under this by-law.

10.2 No Person shall obstruct any employee or agent authorized to complete the work for the Township of Brock required to bring the Adjacent boulevard into compliance with this by- law.

SECTION 11 – SEVERABILITY

11.1 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.

SECTION 12 – ENACTMENT

12.1 This by-law comes into force and effect on the date of its passing and enactment.