

# THE CORPORATION OF THE TOWNSHIP OF WEST LINCOLN

## BY-LAW NO. 2016-64

### A BY-LAW TO PROVIDE MAINTENANCE AND PROTECTION OF BOULEVARDS WITHIN THE TOWNSHIP OF WEST LINCOLN (BOULEVARD BY-LAW)

**WHEREAS** pursuant to provisions of subsection 11 (2) (6) of the *Municipal Act, 2001*, S. O. c. 25 as amended provides that a municipality may pass by- laws respecting the health, safety and wellbeing of persons;

**AND WHEREAS** subsection 11 (2) (8) of the *Municipal Act* provides that a municipality may pass by-laws respecting the protection of persons and property;

**AND WHEREAS** subsection 27 (1) of the *Municipal Act* grants a municipality the power to pass by-laws in respect of highways over which it has jurisdiction;

**AND WHEREAS** subsection 28 (2) of the *Municipal Act* grants a municipality jurisdiction over all road allowances located in the municipality that were made by the Crown surveyors [subsection 28 (2) (a)] and all road allowances, highways, streets and lanes shown on a registered plan of subdivision [subsection 28 (2) (b)];

**AND 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 so under this by-law, but has failed to do so 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 Township of West Lincoln wishes to ensure that boulevards within the Township are protected, maintained and do not create a hazard;

**NOW THEREFORE** the Municipal Council of the Corporation of the Township of West Lincoln enacts as follows:

#### 1. INTERPRETATION

##### Definition(s)

"**Apron**" shall mean that section of driveway contained within the boulevard;

"**Back Lot Property**" shall mean that portion of a property where the rear yard is adjacent to a municipal road allowance;

"**Boulevard**" shall mean the portion of a highway on either side of a roadway, but does not include a sidewalk or traffic island;

"**Boulevard Garden**" shall mean a cultivated assortment of plants contained within a boulevard, but does not include Herbaceous Ground cover;

"**Dangerous Items**" shall mean anything deemed to be dangerous or a public safety hazard at the discretion of the Director of Public Works and Engineering for the Township of West Lincoln or designate;

"**Director**" shall mean the Director of Building and By-law for the Township of West Lincoln;

**"Herbaceous Ground Cover"** shall mean but is not limited to, Turf Grass and plant materials which are capable of being maintained at a height of 8 inches (20 cm) or less;

**"Highway"** shall mean a common and public Highway, common and public walkway, street, road, avenue, parkway, square, place, bridge, viaduct, trestle, or any other way open to public use, and includes the area between the lateral property lines thereof;

**"Lot"** shall mean a parcel of land, the boundaries of which are defined in the last registered instrument by which legal title to the said parcel of land was lawfully and effectively conveyed or which is a whole lot as shown on a registered plan of subdivision pursuant to the provisions of the *Planning Act*;

**"Lot Line"** shall mean any boundary of a lot;

**"Maintenance"** includes action to maintain a Boulevard including cutting, watering and removal of debris;

**"Municipal Law Enforcement Officer"** shall mean an employee of the Township who has been appointed by by-law to enforce the provisions of Township by-laws;

**"Owner"** shall mean the person or persons shown on the Land Registry Office record the records of the land at the registry office, or Municipal tax roll, as having title to the land or responsibility for it, as well as the tenant and person or persons lawfully in possession of, or exercising control over, the property;

**"Noxious Weed"** means a plant that is deemed to be a Noxious Weed under subsection 10 (2) of the *Weed Control Act* R.S.O. 1990 c.w.5, or designated as a Noxious Weed under clause 24(a) of the *Weed Control Act* R.S.O. 1990 c.w.5; ("mauvaise herbe nuisible")

**"Roadway"** shall mean the portion of a Highway that is improved, designed, or ordinarily used for vehicular traffic, and includes a curb and shoulder;

**"Turf Grass"** shall mean a perennial strand of plant that can form turf and withstand mowing, traffic and/or wear;

## 2. GENERAL PROVISIONS

2.1 This By-law shall apply to all Boulevards within the Township of West Lincoln.

## 3 GENERAL MAINTENANCE

3.1 Every Owner of a lot which abuts a Highway shall keep the Boulevard neat and free of any and/or all rubbish or debris.

3.2 (a) Every Owner of a lot which abuts a Highway shall ensure that a Boulevard containing Herbaceous Ground Cover is cut and maintained to a height of no more than 20 cm (8 inches).

(b) No person shall plant or permitted to be planted a Herbaceous Ground Cover on a Boulevard or section of a Boulevard that is regularly maintained by the Township.

3.3 (a) Every Owner of a lot which abuts a Highway shall ensure that an abutting Boulevard containing a Boulevard Garden is maintained to a height of no more than 76 cm (30 inches).

- (b) Every Owner of a lot which abuts a Highway shall ensure that an abutting Boulevard containing a Boulevard Garden does not obstruct or overlay any sidewalk or curb abutting the Boulevard Garden.
  - (c) Every Owner of a lot which abuts a Highway shall ensure that an abutting Boulevard containing a Boulevard Garden is free from Noxious Weeds and woody plants.
- 3.4 Every Owner of a lot which abuts a Highway shall ensure that any plantings on a Boulevard are at least 3 metres away from a municipal fire hydrant.
- 3.5 Notwithstanding the provisions of Section 3.2, the height of Herbaceous Ground Cover need not be maintained in:
- 1) areas that are designated as Environmental Protection or Agriculture under the applicable Zoning By-law;
  - 2) where a Boulevard abuts public lands.
- 3.6 Every Owner shall:
- 1) maintain any hedges or fences on their property to ensure that the hedges or fences do not encroach onto the Boulevard;
  - 2) shall obtain permission from the Township for the removal and/or planting of trees within the Boulevard;
  - 3) not alter an area of the Boulevard that is regularly maintained by the Township.
- 3.7 Subject to any permission granted by the Township, on a Boulevard abutting his or her property, no Owner shall install rocks, trees, shrubs, or any other type of vegetation or decorative covering that interferes with, impedes, or affects the following:
- 1) Road Maintenance including snow removal;
  - 2) Utility services;
  - 3) Pedestrian use of sidewalks;
  - 4) Traffic sight lines in compliance with the Township of West Lincoln Zoning By-law;
  - 5) Clearance of at least 3 metres from any fire hydrant or fire hydrant valve in compliance with the by-law to provide for the regulation of water supply in the Township of West Lincoln ("Water Conservation By-law");
  - 6) Public health or safety.

#### **4 MUNICIPAL WORKS ON BOULEVARDS**

- 4.1 (a) The Township or any other authorized utility reserves the right to excavate any Boulevard for the repair of any infrastructure.
- (b) The Township will provide written notice to an Owner in advance of any Township work on a Boulevard.
- (c) Any restoration of a Boulevard after municipal works is at the discretion of the Township and, where plants are removed from a Boulevard, the Township shall not be responsible for the costs associated with replanting, with the exception of the restoration of Turf Grass.

## **5 DAMAGE TO BOULEVARDS**

- 5.1 No person shall damage, construct or reconstruct a sidewalk, curb, Apron driveway or Boulevard without the written permission of the Director.
- 5.2 For the purposes of Section 5.1, "Person" shall not include the Township, the Regional Municipality of Niagara, a utility or a contractor hired by the Township, Region or utility.

## **6 ENFORCEMENT**

- 6.1 Municipal Law Enforcement Officers are hereby authorized and empowered to enforce the provisions of this By-law.
- 6.2 Municipal Law Enforcement Officers and persons under their direction may, at any reasonable time, enter onto lands within the Township to determine if the provisions of this By-law are being complied with or may enter onto any lands within the Township to carry out remedial actions required to bring the property into conformity with this By-law.
- 6.3 No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this By-law.

## **7 EXEMPTIONS**

- 7.1 This By-law shall not apply where the obstruction is permitted under a valid and binding encroachment agreement or permit between a person and the Township of West Lincoln.
- 7.2 This By-law shall not apply to any sign that is in compliance with the Township of West Lincoln Sign By-law.

## **8 ORDERS**

- 8.1 Where:

- 1) A person damages a Boulevard by any means; or
- 2) A Boulevard is not maintained in accordance with the requirements of this By-law

the Township may serve an Order directing that steps be taken to repair the damage or comply with the By-law.

- 8.2 Every person shall repair, remove or clean up all contraventions identified in an Order within the time period set out in the Order.

## **9 SERVICE**

- 9.1 Service of any document, including an order, under this By-law may be given in writing in any of the following ways and is effective:
- 1) When a copy is delivered to the person to whom it is addressed;
  - 2) On the 5<sup>th</sup> day after a copy is sent by registered mail to the person's last known address;
  - 3) Where service is unable to be done under subsections 6.1 (a) or (b), notice maybe

given by placing a placard containing the terms of the document or order in a conspicuous place on the property to which the document or order relate and shall be deemed to be sufficient service on the Owner or Occupant.

## **10 FAILURE TO COMPLY**

10.1 Where an Owner, having been served with an Order, fails to comply with the Order within the time specified, the Township may enter onto the property at a reasonable time and carry out any or all of the work described in the Order, and recover the costs of doing so by adding the cost to the tax roll of the real property adjoining the Boulevard and collecting the cost in the same manner and with the same priority as municipal taxes.

## **11 PENALTY**

11.1 Every person who contravenes any provision of this By-law is, upon conviction, guilty of an offence and is liable to a fine recoverable under the *Provincial Offences Act*, R.S.O. 1990, c.P.33, as amended.

## **12 SEVERABILITY**

12.1 If any section, clause or provision of this By-law, is for any reason declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this By-law as a whole or any part thereof other than the section, clause or provision so declared to be invalid and it is hereby declared to be the intention of Council for the Township that all remaining sections, clauses or provisions of this By-law shall remain in full force and effect until repealed, notwithstanding that one or more provisions thereof may have been declared invalid.

## **13 EFFECTIVE DATE**

13.1 This By-law shall come into full force and effect upon the date of its passing.

**READ A FIRST, SECOND AND THIRD  
TIME AND FINALLY PASSED THIS 18<sup>th</sup>  
DAY OF JULY, 2016.**

---

**MAYOR DOUGLAS JOYNER**

---

**CAROLYN LANGLEY, CLERK**