

THE CORPORATION OF HALDIMAND COUNTY

By-law No.1806/17

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 Haldimand County 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 Haldimand County enacts as follows:

PART I - SHORT TITLE

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

PART II – DEFINITIONS

1. In this by-law,
 - a) **“Adjacent Boulevard”** means that portion of a Highway between the travelled portion of the roadway and the County 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) **“County”** means the Corporation of Haldimand County;
 - c) **“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.
 - d) **“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;
 - e) **“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;
- f) **“Municipal Law Enforcement Officer”** means a *person* or *persons* duly appointed by the *Council* of the Corporation to enforce the provisions of this by-law;
- g) **“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;
- h) **“Person”** means an individual, firm, corporation, association or partnership and their heirs, executors or assigns;
- i) **“Property”** means a parcel of land having specific boundaries, which is capable of legal transfer;
- j) **“Property Line”** means any boundary of a *Property* and the vertical projection thereof;
- k) **“Turf Grass”** means ground cover comprised of one or more species of growing grass with or without trees, shrubbery or maintained planting beds for other vegetation;
- l) **“Vegetation”** means *Turf Grass*, *Weeds*, shrubbery and other plants;
- m) **“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;
- n) **“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 *County* passed under that Act.

PART III – BOULEVARD MAINTENANCE

2. Every *Owner* of a property shall maintain the *Adjacent boulevard* by cutting the *Vegetation* on the boulevard so that the *Vegetation* does not exceed a height greater than 20.32 centimeters (8 inches).
3. Every *Owner* of a property shall maintain the *Adjacent boulevard* clear of all debris, refuse, waste, or litter.
4. Every *Owner* of a property shall maintain the *Adjacent boulevard* clear of any abandoned items, machinery, equipment or other thing.
5. No *Person* shall install, place, permit or cause the installation or placement of a fence, post, wall or rock on the *Adjacent boulevard*.
6. No *Person* shall install, place, plant, permit or cause the installation, placement, planting or locating on an *Adjacent boulevard*, anything that is protruding, sharp, dangerous or anything that would obstruct or impair the vision of a vehicle operator.

PART IV – ENFORCEMENT

7. 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 or not 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.
8. A *Municipal Law Enforcement Officer* or *Police Officer* may for the purposes of the inspection under Section 7:
 - a) require information in writing or otherwise as required by the officer from any *person* concerning a matter related to the inspection; or

- b) alone or in conjunction with a *person* possessing special or expert knowledge, undertake an inspection to determine compliance with this by-law.
9. 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.
10. If an Order under Section 9 is served by regular mail, the service shall be deemed to have been made on the fifth (5th) day after the day of mailing.
11. 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 an apparently adult person on the *person's* property;
 - b) by posting it in a conspicuous place upon some part of the owner's property and by sending a copy by ordinary mail; or
 - c) by sending it by prepaid registered mail to the owner at the address where he/she resides.
12. If an Order under Section 9 is served by registered mail, the service shall be deemed to have been made on the fifth (5th) day after the day of mailing.
13. An Order under Section 9 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.

14. Where the *Owner* fails to comply with an Order issued under 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) cutting the Vegetation;
 - b) clearing all debris, refuse, waste, or litter;
 - c) clearing any abandoned items, machinery, equipment or other thing;
 - d) removing any fence, post, wall or rock; and/or
 - e) removing anything that is protruding, sharp, dangerous or anything that is obstructing or impairing the vision of a vehicle operator.
15. A *Municipal Law Enforcement Officer* or a Police Officer is authorized to give immediate effect to any order issued under Section 9 that has not been complied with by the owner, under the provisions of the Haldimand County Procurement Policy.
16. Where any of the materials or things are moved in accordance with Section 14, the materials or things may be immediately disposed of by the *Municipal Law Enforcement Officer*, or Police Officer, and any recovered salvage value or other actual recovery of money made upon such disposal shall be credited first against costs.
17. Where a *Municipal Law Enforcement Officer*, or Police Officer or *County* employee so authorized by the Manager, Building Controls and By-law Enforcement or Manager, Roads Operations, 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 *County* 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.

PART V– RECOVERY OF COSTS

18. Where the *County*, 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 County in doing the work as well as any related fees, shall be deemed to be a debt to the County 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.

PART VI – PENALTY

19. 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.
20. If the person referenced in Section 19 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 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 VII – OBSTRUCTION

21. No *Person* shall or attempt to hinder, hinder or obstruct a *Municipal Law Enforcement Officer* or Police Officer from carrying out his or her duties as described under this by-law.
22. No *Person* shall obstruct any employee or agent authorized to carry out work for the County required to bring the *Adjacent boulevard* into compliance with this by-law.

PART VIII – SEVERABILITY

23. 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.

PART IX – ENACTMENT

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

READ a first and second time this 15th day of May, 2017.

READ a third time and finally passed this 15th day of May, 2017.

MAYOR

DEPUTY CLERK