

To: Community Services Committee

From: Ron Diskey, Commissioner,  
Community Services Department

Report Number: CS-16-63

Date of Report: June 17, 2016

Date of Meeting: June 23, 2016

Subject: Proposed Amendments to Boulevard By-law 136-2006

File: A-2130

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## **1.0 Purpose**

To respond to direction of Community Services Committee to review Boulevard By-law 136-2006 to consider the use of artificial turf and the planting of vegetable gardens within the Boulevard.

## **2.0 Recommendation**

That the Community Services Committee recommend to City Council:

That based on Report CS-16-63 dated June 17, 2016, Proposed Amendments to Boulevard By-law 136-2006, Council approve the following recommendations:

1. That the City amend Boulevard By-law 136-2006 to allow the Director of Municipal Law Enforcement, the Commissioner of Community Services (or his or her delegate) to grant an exemption to minor variances to Articles 3.1.1 and 4.1.2 of Boulevard By-law 136-2006;
2. That the the Director of Municipal Law Enforcement, the Commissioner of Community Services (or his or her delegate) be authorized to impose such conditions as determined are appropriate;
3. That artificial turf continue to be prohibited within the City's Boulevard and that Boulevard By-law 136-2006 be updated to clearly reflect this prohibition;
4. That the City amend Boulevard By-law to update the method of notice to be consistent with contemporary By-laws; and,
5. That staff review the opportunity for a minimum fee based on City's processing cost to be charged to residents seeking an exemption to the Boulevard By-law.

6. That a copy of this report be sent to the residents who requested the By-law review.

### **3.0 Executive Summary**

Not applicable.

### **4.0 Input From Other Sources**

- Municipal Law Enforcement and Licensing
- Legal Services
- Engineering Services
- Finance Services
- Municipalities including the cities of Victoria, Guelph, Barrie, St. Catharines, and Vancouver.

### **5.0 Analysis**

#### **5.1 Boulevard By-law 136-2006**

Boulevard By-law 136-2006 regulates the maintenance, occupancy, and use of boulevards and establishes set back distances from the curb and sidewalk, height restrictions and acceptable landscaping within the boulevard area. A number of residents have come forward requesting changes to Boulevard By-law 136-2006 to allow vegetable gardens on the boulevard. A separate request to allow artificial turf has also been received.

Boulevard By-law 136-2006 defines Boulevard as “Means that part of a Highway (whether assumed or unassumed by the City) 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.” This area is owned by the City and the majority of which consist of standard grass. Under Boulevard By-law 136-2006, property owners are responsible for maintaining the boulevard in front of and beside their property if on a corner lot.

Boulevard By-law 136-2006 regulates the maintenance, occupancy, and use of boulevards and establishes set back distances from the curb and sidewalk, height restrictions and acceptable landscaping within the boulevard area. Boulevards are regulated to ensure public safety and access to above and below ground infrastructure, such as sidewalks, utilities, street trees, fire hydrants, signs and lights. Access to the various types of infrastructure and utilities for maintenance activities, repairs or improvements of services is required from time to time by the City or utilities service providers and their contractors.

Boulevards are public spaces providing pedestrians with safe access to the sidewalk, driveway or parked cars. Restrictions on the use of boulevards also ensures that traffic and pedestrian sightlines are not impacted. They also play a role in snow storage, managing storm water run-off by slowing down and filtering water before it enters into our drainage network.

Notwithstanding the various functions of City Boulevards, residents take a great deal of pride and commitment to maintaining the space. There is a growing interest in the use of alternatives to the standard turf landscaping. Assessing the suitable use of space on boulevards must take into account the actual purpose and various functions of the space to limit liability and to continue to ensure that the space is well-maintained and accessible.

**5.2 Artificial Turf**

Artificial turf is being promoted as a maintenance-free, durable option to replace natural grass. Commonly used on sports fields, its also being promoted for landscaping on residential and commercial properties because it is durable and requires less maintenance in the form of weeding, mowing and fertilizing.

In reviewing the request to allow artificial turf on City boulevards, it was essential to look at the potential for widespread use beyond what may seem to be an isolated use of the product. Wide-spread replacement of natural vegetation with artificial turf could have cumulative impacts on ecological processes.

The City promotes the value of green infrastructure within the community. Natural surfaces, including the grass on our boulevards, play an important role in the urban environment. Permitting the use of artificial turf on City boulevards goes against the goals of Environmental Responsibility outlined in Oshawa’s Strategic Plan to improve climate resiliency and to connect our natural features.

Although artificial turf is promoted as a “green” alternative to natural grass because it doesn’t require watering, there are a number of other negative aspects to artificial turf. The following table lists concerns about the residential use of artificial turf and the benefits associated with maintaining natural vegetation on boulevards.

<b>Artificial Turf</b>	<b>Natural Vegetation</b>
<ul style="list-style-type: none"> <li>• Made of several heat-retaining materials that could result in an increase in air temperatures and can potentially contribute to the urban heat island effect if widely adopted.</li> </ul>	<ul style="list-style-type: none"> <li>• Has cooling properties through evapotranspiration and absorption that reduces ambient temperatures.</li> </ul>
<ul style="list-style-type: none"> <li>• Fragments natural habitats and decreases biodiversity which could have an impact on nearby trees, vegetation and other ecological processes.</li> </ul>	<ul style="list-style-type: none"> <li>• Promotes biodiversity and natural habitats for birds, butterflies and pollinators.</li> </ul>
<ul style="list-style-type: none"> <li>• Impact infiltration and storm water run-off reducing the capacity of the ground to absorb rainfall and snow melt</li> </ul>	<ul style="list-style-type: none"> <li>• Slows storm water run-off and encourages infiltration, reducing soil erosion and improving water quality.</li> </ul>
<ul style="list-style-type: none"> <li>• Life span is limited and requires disposal.</li> </ul>	<ul style="list-style-type: none"> <li>• Natural plantings suitable for the location have a greater life span</li> </ul>

<b>Artificial Turf</b>	<b>Natural Vegetation</b>
<ul style="list-style-type: none"> <li>• Perpetuates unnatural perfection.</li> </ul>	<ul style="list-style-type: none"> <li>• Creates interesting and diverse streetscapes and aids in traffic calming and healthier living.</li> </ul>

Artificial turf restricts easy access to infrastructure and below ground utilities which is required from time to time. It is not the general practice of either the City, utilities or their contractors to give notice before commencing work on the boulevard. Extra effort would be required to remove artificial turf for maintenance activities and the City, utilities and their contractors would not be responsible for any costs associated with damage to landscaping. After the completion of work the standard sod will be restored to the boulevard area burdening the home owner with extra cost to replace the artificial turf removed.

Based on the review it is recommended that artificial turf not be permitted on boulevards and that Boulevard By-law 136-2006 be updated to clearly reflect this, as shown in Attachment 1.

**5.3 Boulevard Gardens**

Staff reviewed a number of options and undertook a jurisdictional scan of other municipal practices.

Due to the wide range of competing uses and critical functions of Boulevards staff reviewed the benefits and concerns of two potential options:

**Option 1: Maintain the Requirements in Boulevard By-law**

- Continue to not permit gardening related activities as is currently set out in the Boulevard By-law.
- Maintaining the By-law restrictions limits any liability and hazards associated with the use of the Boulevard.

**Option 2: Boulevard Garden Exemption**

- Amend Boulevard By-law to require owner, wishing to garden within the boulevard, to seek an exemption, in writing, from the Director of Municipal Law Enforcement and Licensing Services to the Boulevard-By-law requirements.
- Prior to providing exemptions to the By-law the request will be reviewed with appropriate City departments including Community Services.
- To be exempt, gardening activities must follow terms and conditions to limit the City's liability exposure and continue to ensure safety and accessibility of the utilities and infrastructure.
- It is highly recommended that plantings be native perennial species that are drought and salt tolerant, examples of such plants are included in the Terms and Conditions for Boulevard Gardens.
- Residents may choose to plant vegetables but at their own risk and must further maintain the garden to a standard that limits soil run off, does not attract unwanted animals and other pests into the garden, and does not cause harm to people or pets.

- Similar process for an exemption will be followed as is currently practiced under the Fence and Sight Triangle By-law 23-2014.
- This approach is consistent with approaches found in other jurisdictions such as Barrie, Guelph, St. Catharines, Victoria and Vancouver.
- This is the recommended approach as it allows residents to contribute to the beautification of our streetscapes and provides opportunity for various environmental benefits, while also taking steps to limit the City's liability.

### **5.3.1 Option 1: Maintain the Requirements in Boulevard By-law**

This option continues to uphold the requirements of Boulevard By-law 136-2006 restricting residents from damaging the approved landscaping (such as grass). This option limits the City's liability and manages the risks associated with the improper use of boulevard space.

To limit the liability and risks the following are the landscaping restrictions under Boulevard By-law 136-2006:

- No hedge, shrub, tree, planting, post, fence, wall, or any other thing within 0.6m (2ft) of either edge of the side walk or within 1.2m (4 ft) of the curb or 1.8m (6ft) of the curb where there is no sidewalk;
- No hedge, shrub, tree planting, post, fence, wall or other thing exceeding 0.9m (3ft) height above the grade of the Boulevard;
- Nothing that is protruding, sharp, or dangerous in any way; and
- No hard surfaces such as asphalt, concrete, interlocking brick or block, crushed or solid stone, gravel, slag, ground asphalt, wood or any non-porous material.
- No person shall damage the City's landscaping (considered in this case to be sod)

Grass is the standard landscaping material for most boulevard spaces in the City because it is inexpensive to plant, low growing ground cover, easy to walk on, easily and quick to restore after construction and is generally considered normal landscaping practice.

By allowing residents to undertake gardening related activities within the boulevard could have risks associated with potential tripping or safety hazards and impact the City's liability. The By-law addresses the various uses and functions of boulevards and takes public safety and liability into consideration.

### **5.3.2 Option 2: Boulevard Garden Exemption**

Given the benefits of natural vegetation outlined in Section 5.2, the City recognizes that there are a number of benefits associated with gardening on boulevards. Although property owners are encouraged to maintain the standard turf grass on the boulevard allowing homeowners to garden on boulevards instead of tending to and maintaining a traditional lawn:

- beautifies our streetscape
- builds community pride and fosters community engagement
- increases ecological diversity and creates habitat for pollinators and birds
- calms traffic and reduces noise pollution

- improves soil quality and slows storm water drainage by catching and storing rain water
- improves air quality by capturing particulates

Many residents across the City have recognized these benefits and despite the current by-law restrictions have planted and are caring for gardens on the boulevard.

To ensure success, it is important that homeowners take into account the purpose and functions of the space and maintain it in a manner that does not provide a hazard to the public. A document outlining the Terms and Conditions, provided in Attachment 2, for a Boulevard Gardening Program has been developed and is based on successful programs operating in Barrie, Guelph, Vancouver and Victoria.

The Terms and Conditions document outlines the essentials that must be considered, including safety, accessibility, maintenance, suitable vegetation, aesthetic elements and the legal responsibilities associated with maintaining the area of the boulevard. The planting of native perennial pollinator-friendly plants that are drought and salt tolerant have an additional environmental benefit. Using perennials instead of annuals means that the soil is only worked once and is more secure avoiding soil erosion into the street which could lead to nuisance dust and the clogging of storm sewers.

Vegetable gardens on boulevards are not recommended because of the harsh growing conditions, poor soil quality and pollution. Vegetable gardens generally require more maintenance and watering which can be problematic if they are not maintained properly. If the homeowner chooses to plant vegetables the City cannot guarantee the suitability of the boulevard for growing food which could be impacted by runoff or contaminants from historical land use. Gardeners need to be diligent in harvesting to avoid spoilage and attracting unwanted animals and pests into the garden. To avoid soil erosion it is important to maintain a mulch cover outside of the growing season.

The following are the requirements and restrictions that will be established as part of the exemption criteria and gardeners must ensure that plantings do not create any unsafe or hazardous conditions, obscure sight lines or overhang the road or sidewalk:

- Homeowners must read and acknowledge that they understand the terms and conditions by signing and submitting the Indemnity Agreement attached to the Boulevard Garden Program – Terms and Conditions.
- If there is no sidewalk, access must be provided so that pedestrians have a safe place to travel. Leave a minimum of 60 cm (2ft) of level grass or walkable ground cover for pedestrians.
- A minimum 60 cm (2 ft) wide, level, walkable border or path of maintained grass or ground cover around the perimeter of the boulevard, along the curb, adjacent to the driveway or property line, and on either side of the sidewalk, must be maintained so the garden doesn't interfere with foot traffic along the side walk or people crossing from the street to the sidewalk, people getting in and out of cars, or car doors.
- Plantings must be setback 1.5 m (5 ft) from utilities, fire hydrants, signs, light poles and newly planted street trees to provide clear and easy access. Fire hydrants must be kept visible and kept as maintained grass from the edge of the curb and the edge of the sidewalk.

- To avoid impinging on sight lines from the road, driveway and sidewalks plantings must not exceed a maximum height of 90 cm (3 ft) above grade.
- Vegetation must be native perennial plants that are draught and salt tolerant and consideration should be given to pollinator-friendly species that have an additional environmental benefit. The Terms and Conditions for Boulevard Gardens has a list of plants considered acceptable.
- No hard surfaces or sharp, protruding objects (such as plant stakes and tomato hoops) that could cause a danger or injury. This is consistent with the current By-law restrictions.

Property owners are encouraged to maintain the standard turf grass on the boulevard in front of their property, however, if homeowners choose to replace the standard turf grass to establish a boulevard garden they are assuming a certain level of responsibility and costs.

Before engaging in boulevard gardening, homeowners must submit in writing a request to be exempted from Boulevard By-law for the purpose of a Boulevard Garden, read and agree to comply with the Boulevard Gardening Program Terms and Conditions and any other Conditions that the Director of Municipal Law Enforcement and Licensing Services or Commissioner of Community Services (or his or her delegate) may see as appropriate to maintain the general intent and purpose of the Boulevard By-law. By choosing to garden on the boulevard homeowners are assuming all responsibility and costs.

The City or utilities service providers and their contractors may need to undertake maintenance work, repair or upgrade utilities or infrastructure above or below the boulevard at any time. The City or utilities service providers and their contractors will not be responsible for any costs associated with works undertaken on the boulevard including replacement of plants.

#### **5.4 Boulevard By-law Exemptions**

From time to time, Community Services receives requests for minor variances, such as for boulevard gardens and fences, to the Boulevard By-law. For such minor variances it would be administratively more efficient for the Commissioner of Community Services (or his or her delegate) to assess such requests on a case by case basis, impose any conditions that may be appropriate to maintain the general intent and purpose of the by-law and, when satisfied, grant an exemption to Boulevard By-law 136-2006. Requests for minor variances must be submitted in writing to the Director of Municipal Law Enforcement. The Director of Municipal Law Enforcement will work with the Commissioner of Community Services or (or his or her delegate) to review, assess and develop any necessary conditions to allow for the exemption. It is recommended that the Boulevard By-law be amended to reflect the ability for exemptions to such variances as shown in Section 6 of Attachment 2.

Staff will be reviewing the option of charging applicants a minimum fee based on the City's costs associated with the work to process requests which may include site inspections. Both Mississauga and Oakville have developed a minimum fee for their permit process.

## **5.5 Housekeeping Amendment**

Minor housekeeping amendment is recommended to Boulevard By-law 136-2006 to bring the notice provision of the current dated By-law into compliance with contemporary by-laws, as is shown in Attachment 1.

## **6.0 Financial Implications**

There are no financial implications to the City for this project.

## **7.0 Relationship to the Oshawa Strategic Plan**

This report supports the Oshawa Strategic Plan Goal of Environmental Responsibility under the theme of Proactive Environmental Management: Ensure City policies and practices, including stormwater management , respect and enhance the natural environment; and Educate the public about the value and importance of all aspects of environmental responsibility.



Glenn Simmonds, Director,  
Operations Services



Ron Diskey, Commissioner,  
Community Services Department

**Attachment 1: Proposed By-law Amendments to Sections 1.3.3, 3.1.1 iv) and 6.0**

As amended by By-law 93-2013

By-law 136-2006

of the Corporation of the City of Oshawa



Being a by-law to govern and regulate the maintenance, occupancy, use of, and other matters pertaining to, those portions of public highways under the jurisdiction of the City of Oshawa known as boulevards.

**Be it enacted and it is hereby enacted** as a by-law of the Corporation of the City of Oshawa by the Council as follows:

**1.0 Administration, Interpretation, Enforcement**

**1.1 Short Title**

1.1.1 This By-law may be cited as the "Boulevard By-law."

**1.2 Scope**

1.2.1 This By-law applies to all Boulevards under the jurisdiction of the City of Oshawa pursuant to the provisions of the Municipal Act, 2001 S.O. 2001, Chapter 25 unless otherwise indicated herein.

**1.3 Enforcement**

1.3.1 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.

1.3.2 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) Giving notice that if the Order is not complied with within that time, the City may carry out the work at the Owner's or Fixture Owner's expense.

**(Proposed Housekeeping Revision)**

**Delete: 1.3.3 An Order shall be Posted and a copy shall either be personally delivered or sent by Registered Mail to the last known address of the Owner of Fixture Owner, as the case may be. Where an Order is Posted it shall be deemed served on the Owner of Fixture Owner immediately.**

**Update with: 1.3.3 Any notice or document respecting this By-law may be given in writing in any of the following ways and is effective:**

- (a) When a copy is delivered to the Person to whom it is addressed;**
- (b) On the fifth (5<sup>th</sup>) day after a copy is sent by registered mail to the Person's last known Address;**
- (c) Upon the conclusion of the transmission of a copy by facsimile transmission to the Person's last known facsimile transmission number;**
- (d) Upon the sending of a copy by e-mail transmission to the Person's last known e-mail Address; or**
- (e) By posting a copy at or on the Property.**

1.3.4 Every Owner and Fixture Owner shall comply with an Order issued pursuant to Article 1.3.2 of this By-law within the time provided for therein.

1.3.4.1 A Person who is given an Order pursuant to article 1.3.2 of this By-law may appeal to the Hearings Officer against it pursuant to article 1.3.4.2.

1.3.4.2 The following applies to a Hearings Officer against an Order issued pursuant to article 1.3.2 of this By-law:

- i) An appeal to the Hearings officer does not operate as a stay of the Order.
- ii) An Order that is not appealed pursuant to this article is final and is not subject to review including review by any Court.
- iii) A Person's right to appeal expires if it has not been exercised in the manner prescribed in clause 1.2.4.2 iv) before 4:30 p.m. on the tenth (10<sup>th</sup>) day after the Order is given to the Person at which time the Order is final and is not subject to review by any Court.
- iv) A right to appeal is exercised by:

- (a) giving to the Director written notice of appeal that includes particulars of all grounds upon which the appeal is made; and by
  - (b) paying the fee from time to time prescribed by the City's General Fees and Charges By-law.
- v) The Person shall be given no fewer than seven (7) days' notice of the date, time and place of the hearing of the appeal
  - vi) Where the Person fails to appear at the time and place scheduled for a hearing of the appeal, the Person's appeal shall be deemed to be dismissed and the Person shall pay to the City an administrative fee as from time to time prescribed by the General Fees and Charges By-law.
  - vii) Subject to clause 1.3.4.2. vi), the Hearings Officer shall not decide the appeal unless the Hearings Officer has given each of the Person, the Director and the Officer an opportunity to be heard at the time and place scheduled for the hearing of the appeal.
  - viii) The Hearings Officer may make any decision that the Director or an Officer could have made pursuant to this By-law.
  - ix) The decision of the Hearings Officer is final and not subject to review including review by any Court.

1.3.5 Where an Order has been issued by the City and compliance has not been achieved within the required time period as set out in the Order, the City 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.

#### 1.4 **Penalty**

1.4.1 Every Person who contravenes any of the provisions of this By-law is guilty of an offence and, upon conviction, is liable to the penalties as prescribed by the Provincial Offenses Act, R.S.O. 1990, c. P.33

1.4.2 Administrative Penalty Process By-law 63-2013 applies to each administrative penalty issued pursuant to this By-law.

1.4.3 Each person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law 63-2013, be liable to pay to the City an administrative penalty in the amount of \$125 for each day on which the contravention occurs or continues.

1.5 **Severability**

1.5.1 If any provision or part of a provision of this By-law is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative in particular circumstances, the balance of the By-law, or its application in other circumstances, shall not be affected and shall continue to be in full force and effect.

1.6 **Compliance with other By-laws and Regulations**

1.6.1 This By-law shall not be construed to reduce or mitigate any restrictions or regulations lawfully imposed by the City or by any government authority having jurisdiction to make such restrictions or regulations.

1.6.2 If there is a conflict between a provision of this By-law and a provision of any other City By-law, the provision that establishes the higher standard to protect the health and safety and tidy conditions on the Highway shall apply.

1.7 **Gender and Number**

1.7.1 In this By-law, unless the contrary intention is indicated, words used in singular shall include the plural and words used in the male gender shall include female gender and vice versa.

1.8 **Measurements**

1.8.1 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.

1.9 **And/Or**

1.9.1 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 alternative 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”.

1.10 **Repeal of Existing By-Laws**

1.10.1 By-law 165-70 is hereby repealed.

1.11 **Effective Date**

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

2.0 **Definitions**

2.1.1 For the purpose of interpreting the provisions set forth in this By-law, the following definitions shall apply:

- “Boulevard” Means that part of a Highway (whether assumed or unassumed by the City) between a Street Line and the edge of the curb or, where is no curb, that portion of the Highway which is travelled or designated to be travelled by Vehicles. A Boulevard may or may not contain a sidewalk.
- “City” Means the Corporation of the City of Oshawa.
- “City Street” Means a Highway under the jurisdiction of the City.
- “Director” Means the City’s Director, Municipal Law Enforcement and Licensing Services.
- “Fixture” Means any structure or other fixture affixed to the Boulevard including a utility box, newspaper vending box, bench, transit shelter, telephone box, transformer box or vault, telephone, hydro, streetlight poles and street sign.
- “Fixture Owner” Means the owner of a Fixture.
- “Grade Height” Means the surface of the ground measured at any point, or when associated with an object, plant or other thing, the surface of the ground at the base or bottom of that object, plant or thing.
- “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.
- “Hearings Officer” Means “Hearings Officer” as defined in paragraph 1(e) of Hearings Officer By-law 26-2008, as amended.
- “Highway” Means a common and public Highway, street, avenue, or parkway any part of which is intended for use by the general public for the passage of vehicles and includes the area between the lateral Property lines including any Boulevard.

“Landscaping”	Means vegetation in the form of lawns, grasses, shrubs, flowers, ornamental plantings, or any combination thereof.
“Maintenance”	Means an action required to or maintain a Boulevard of 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.
“Officer”	Means “Officer” as defined in Paragraph 1(h) of Inspection By-law 64-2008.
“Owner”	Means lawful owner but also includes a lessee, tenant, mortgagee in possession or occupant who appears to have care and control of the property.
“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.
“Post”	Means the act of erecting an Order under the By-law and “Posted” has a corresponding meaning. Posting includes either: <ul style="list-style-type: none"> <li>(i) Affixing an Order to a building or structure on the Property abutting the subject Boulevard; or</li> <li>(ii) The erection of a post on the subject Boulevard or Property abutting the subject Boulevard and affixing an Order to that post; or</li> <li>(iii) In the case of a Fixture, affixing an Order to that Fixture located on the Boulevard.</li> </ul>
“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.
“Regional Road”	Means a Highway under the jurisdiction of the Regional Municipality of Durham.
“Repair”	Means the taking of any action to ensure that the Boulevard area or Fixture conforms to the standards contained in this By-law.

“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.
“Standards”	Means the standards for Boulevard and Fixture maintenance as prescribed by Section 4.0 of this By-law.
“Street Line”	Means the boundary between a lot and the street or streets upon which the lot abuts provided that, where a lot abuts a 0.3 metre reserve, the Street Line shall be deemed to be the boundary between the 0.3 metre reserve and the street or streets upon which the 0.3 metre reserve abuts.
“Vehicle”	Means an automobile, truck, or other motor vehicle, including farm implement or equipment, motor home, motorized construction equipment, motorcycle, snowmobile, boat, recreation vehicle, aeroplane, trailer and any other device which is capable of being driven, propelled or drawn by any kind of power, excluding devices powered solely by means of human or animal effort, such as bicycles, wheelchairs, wagons, carts or skateboards.

### 3.0 **Boulevard Standards**

3.1.1 Every person may landscape or improve that portion of a Boulevard abutting his/her Property, subject to the regulations contained hereafter:

- i) No hedge, shrub, tree, planting, post, fence, wall or any other thing shall be permitted.
  - (a) Where a sidewalk is located on the Boulevard, within 0.6m (2 ft.) of either edge of either edge of the sidewalk or within 1.2m (4 ft.) of the curb or travelled portion of Highway, or
  - (b) Where no sidewalk is located on the Boulevard, within 1.8m (6 ft.) of the curb or travelled portion of the Highway;
- ii) 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;

- iii) Nothing shall be maintained on any Boulevard which is protruding, sharp, dangerous in any way, or which may otherwise injure a Person; and
- iv) No Person shall alter a Boulevard by adding or maintaining any Hard Surface material **(Proposed text to be added) or artificial turf**, in whole or in part, to the surface.

#### 4.0 **Boulevard and Fixture Maintenance Standards**

4.1.1 Every Owner shall maintain the Boulevard that abuts that Owner's Property (hereinafter called the Abutting Boulevard) in accordance with the requirements of this By-law.

4.1.2 Every Owner shall:

- i) Clean and Clear the Abutting Boulevard of all debris, waste, refuse and litter;
- ii) Clean and Clear the Abutting Boulevard of any abandoned items, machinery, equipment or other thing;
- iii) Maintain grass and weeds on any Abutting Boulevard at a Height which is not greater than twenty (20) cm {eight (8) in} in Height provided that this section shall not prevent the growth of grasses and plant material in excess of the aforementioned height in areas the maintenance of which is deemed to be a hazard by the Commissioner of Community Services of the City, or such other City staff person designated by the City Manager.
- iv) 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;
- v) Subject to Sentence (iii) of this Article 4.1.2, maintain all Landscaping on the Boulevard to a height not exceeding 0.9m (3 ft.) above the Grade of the Boulevard; and
- vi) Maintain or Restore Landscaping and Hard Surface areas on the Boulevard to the Standards required by this By-law.

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

4.1.4 Notwithstanding Articles 3.1.1 and 4.1.2, this By-law shall not be interpreted as preventing or prohibiting:

- i) The placement or erection of Signs in compliance with the City and Regional Sign By-laws:
- ii) The creation and use of a driveway apron, the width and location of which has been approved by the City;
- iii) The creation and use of Hard Surfaced areas on Boulevards. Other than a driveway apron, the width and location of which has been approved by the City.
- iv) The creation and use of Hard Surfaced areas on Boulevard areas used for bus stops, bus stop shelters, or bus stop bench seating;
- v) The creation and use of Hard Surface areas in unique locations which have been approved by the Commissioner of Community Services of the City, or such other City staff person designated by the City Manager.
- vi) The temporary placement of Refuse for collection in compliance with the standards of the City of Oshawa Refuse Collection By-law;
- vii) The placement of structures placed or utilized by the City, the Regional Municipality of Durham, a Transportation Commission, GO Transit, utilities, Canada Post, or newspaper boxes if approved by the Commissioner of Community Services of the City, or such other City staff person designated by the City Manager; or
- viii) Trees planted on the Boulevard in compliance with the City's Tree By-law.

5.0 **Boulevard Damage**

5.1 **Damage – Offence**

- 5.1.1 No person shall damage any landscaping, structure, tree, sidewalk or other improvement on any Boulevard. For the purpose of this Article, "Damage" shall include placing any permanent mark or otherwise defacing, tagging or placing graffiti on any structure or other fixture affixed to the Boulevard including a utility box, telephone box, telephone booth, transformer box or vault, telephone, hydro, streetlight, stoplight poles or street sign.

**(Proposed provisions to be added)**

**6.0 Exemptions**

- 6.1 Notwithstanding Articles 3.1.1 and 4.1.2, the Director or the Commissioner of Community Services (or his or her delegate) may grant an exemption to an Owner where the Director or the Commissioner of Community Services (or his or her delegate) is satisfied that the granting of the exemption would maintain the general intent and purpose of this By-law.**
- 6.2 The Director or the Commissioner of Community Services (or his or her delegate) may impose such conditions as the Director or the Commissioner of Community Services (or his or her delegate) determines are appropriate in relation to an exemption granted by him or her pursuant to section 6.2.**
- 6.3 An Owner may appeal to the Hearings Officer pursuant to section 1.3.4.1 against a decision made by the Director or the Commissioner of Community Services (or his or her delegate) respecting an exemption pursuant to section 6.1 including any condition imposed pursuant to section 6.2.**
- 6.4 A decision of the Director or Commissioner of Community Services (or his or her delegate) respecting an exemption pursuant to section 6.1 including any condition imposed pursuant to section 6.2 that is not appealed pursuant to section 1.3.4.1 is final and is not subject to review including review by any Court.**

This By-law is effective on the date of its passing.

By-law passed this            day of            , 2016.

\_\_\_\_\_

Mayor

\_\_\_\_\_

City Clerk

# **Boulevard Gardening: Terms and Conditions**

## **City of Oshawa**

Boulevard By-law Number 136-2006 defines “Boulevard” as “that part of a Highway (whether assumed or unassumed by the City) 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.” This area is owned by the City and is a functional and critical component of the City’s infrastructure.

City Boulevards are strictly regulated to ensure public safety and access to above and below ground infrastructure, such as sidewalks, utilities, street trees, fire hydrants, signs and lights. Boulevards are public spaces providing pedestrians with safe access to the sidewalk, driveway or parked cars. Boulevard By-law 136-2006 regulates the maintenance, occupancy, and use of boulevards and establishes set back distances from the curb and sidewalk, height restrictions and acceptable landscaping within the boulevard area.

Restrictions on the use of boulevards ensure that traffic and pedestrian sightlines are not impacted. They also play a role in snow storage and the management of storm water run-off by slowing down and filtering water before it enters into our drainage network. Because of these critical functions access to the boulevard may be required from time to time to maintain, repair or improve services.

Under the City's Boulevard By-law, By-law 136-2006, property owners are responsible for maintaining the boulevard in front of and beside their property if on a corner lot. Residents that live adjacent to Regional roads should refer to the Region of Durham for information and responsibilities related to maintaining of Regional Boulevards.

Residents wishing to garden on City Boulevards must seek approval from the Director of Municipal Law Enforcement who can grant an exemption to Boulevard By-law 136-2006. The Director may impose such conditions as the Director determines are appropriate to maintain the general intent and purpose of the Boulevard By-law.

### **1. Potential Benefits of Boulevard Gardens**

Although property owners are encouraged to maintain the standard turf grass on the boulevard in front of or beside their property if on a corner the City acknowledges that there are a number of potential benefits to gardening on boulevards, such as:

- beautifies our streetscape
- builds community pride and fosters community engagement
- increases ecological diversity and creates habitat for pollinators and birds
- calms traffic and reduces noise pollution
- improves soil quality and slows storm water drainage by catching and storing rain water
- improves air quality by capturing particulates

Allowing residents to garden on City boulevards instead of tending to and maintaining a traditional lawn provides greater opportunity to beautify our City. To ensure success, it is important that homeowners take into account the purpose and functions of the space and maintain it in a manner that does not create a hazard to the public.

This document lays out the standards for boulevard gardening on City boulevards. Residents that live adjacent to Regional roads should refer to the Region of Durham for information and responsibilities related to maintaining of Regional Boulevards.

## **2. Before Beginning**

- Read this document and understand the function of the boulevard and your responsibilities before starting. Before proceeding you must obtain an exemption to the Boulevard By-law. A letter requesting an exemption to Boulevard By-law 136-2006 along with the signed Indemnity Agreement attached to this document must be submitted to the Director of Municipal Law Enforcement and stating that you understand the responsibility, liabilities and terms and conditions outlined in this document..
- Be a good neighbour. Talk to your neighbours especially those immediately on either side and across from you. Gaining their support ahead of time will help to avoid complaints after you have planted. Getting them involved in the garden may help to inspire greater support.
- Observe how your boulevard is being used. There are factors that should be considered in advance, for example is there street parking, children playing, etc. Remember the boulevard is a public space.
- Consider soil quality and potential contamination from winter snow storage and salt spray, automobile exhaust and surface water run-off.
- It is the responsibility of the property owner to obtain a legal survey to locate the property line if necessary. The garden must be on the boulevard directly abutting lands owned by the property owner, or if renting the resident must seek permission from the property owner.

### **3. Site Design and Preparation**

- Before digging, it is the property owner's responsibility to locate all servicing, such as gas, phone, Hydro, cable, etc. before beginning work on the boulevard. Call before you dig Ontario One Call: 1-800-400-2255.
- Sketch a plan to show your planting plan and use of the grassy portion of the boulevard before starting and make a list of the plants you want to use. Ensure the garden looks good year round.
- Use the criteria within this document to choose the most suitable plants ensuring that they aren't invasive and won't over grow the height restrictions when mature.
- Your planting plan should include distances, height requirements and set-backs specified in the document.
- Use hand tools only (no rototillers). Avoid erosion and you must not damage to City owned boulevard trees and roots, infrastructure or utilities.
- Do not alter grading. Maintaining the positive minimum 2% grade of the boulevard is important to allow storm water to run away from the sidewalk area to avoid pooling, icing or flooding the sidewalk or other adjacent areas.
- Mounding soil within the boulevard is not allowed as it can also cause pooling of water or erosion of soil.
- Remember permanent hard surfaces and structures are not permitted including fences, artificial turf, trellis, and other barriers.
- Do not remove, block or restrict the proper vision and condition of any City owned infrastructure or street signs in order to create space.

### **4. Plants and Vegetation**

- Do your research. Remember not all plants can survive the harsh growing conditions of the boulevard. Plants are subject to a variety of conditions such as foot traffic, salt and car pollution not found in your backyard.
- Use native perennial plants that are drought and salt tolerant. Consider pollinator-friendly species that have an additional environmental benefit.
- Using perennials instead of annuals means that the soil is only worked once and is more secure avoiding soil erosion into the street which could lead to nuisance dust and the clogging of storm sewers.
- Vegetable gardens on boulevards are not recommended because of the harsh growing conditions, poor soil quality and pollution. Vegetable gardens generally require more maintenance and watering which can be problematic if they are not maintained properly. If you choose to plant vegetables you must be diligent in

harvesting to avoid spoilage and attracting unwanted critters, such as animals, mice, rats, and other pests into the garden.

- There are a number of vegetables and plants that can be toxic to pets such as garlic, onions, mushrooms, and potatoes that should be avoided.
- Plants and produce may be picked by passers-by and you have little control over people, pets and other animals or wildlife.
- Between seasons be sure to mulch and level the surface
- Do not plant trees, hedges or shrubs.
- Do not plant noxious and nuisance plants including plants that contain thorns and burrs and plants that have been identified as invasive species by Ontario Invasive Plants Council such as goutweed, periwinkle, japanese spurge, lily of the valley, creeping bell flower, soapwort or ribbon grass See a full list of recommended plants in Attachment 1.
- Do not plant aggressive exotics as they pose problems for our natural ecosystems when their seeds are distributed by the wind or through water runoff.
- Ivy or vines shall not be permitted as they can climb City infrastructure.
- Remember that by disturbing the soil you are giving weeds the opportunity to flourish, use a landscape fabric, wet newspaper or cardboard under mulch to smother the weeds.
- All vegetation must meet the setback and height requirements specified in Section 6.

## **5. Protect Street Trees**

Street trees are planted and maintained by the City and are important features of our green infrastructure. City Trees By-law 78-2008 states that no person shall injure or destroy a tree or any part of a tree located on municipal property.

- Protect the street trees. Do not tie, nail or lean fixtures to a boulevard tree. Adding just a few inches of soil could harm the tree by smothering tree roots.
- Do not dig, cut or damage the roots, trunk, bark or branches of the tree.

For more information on the value of trees visit, [www.oshawa.ca/greenstreets](http://www.oshawa.ca/greenstreets).

## **6. Gardening Restrictions**

The safety of sidewalk and road users is important. Garden plantings must not obscure site lines or overhang the road or sidewalk.

- **Setbacks:**
  - If there is no sidewalk access must be provided so that pedestrians have a safe place to travel. Leave a minimum of 60 cm (2ft) of level grass or walkable ground cover for pedestrians.
  - A minimum 60 cm (2 ft) wide, level, walkable border or path of maintained grass or ground cover around the perimeter of the boulevard, along the curb, adjacent to the driveway or property line, and on either side of the sidewalk, must be maintained so the garden doesn't interfere with foot traffic along the side walk or people crossing from the street to the sidewalk, people getting in and out of cars, or car doors.
  - Plantings must be setback 1.5 m (5 ft) from utilities, fire hydrants, signs, light poles and newly planted street trees to provide clear and easy access. Fire hydrants must be kept visible and kept as maintained grass from the edge of the curb and the edge of the sidewalk.
- **Height:**
  - To avoid impinging on site lines from the road, driveway and sidewalks plantings must not exceed a maximum height of 90 cm (3 ft) above grade
- Raised beds are not permitted within the boulevard area as they may impact drainage or smother tree roots.

## 7. Maintenance

Homeowners wishing to install alternative vegetation to sod are responsible to keep their boulevards well-maintained and in compliance with criteria set out in this document.

- Dig out weeds, mulch to avoid soil erosion,
- Gardening tools and equipment must not be left on the boulevard or sidewalk, as they restrict access and pose potential safety hazards.
- Do not let plants grow onto the sidewalk or street.
- Pesticides are not permitted. The Province of Ontario has banned the use of pesticides on lawns, gardens (vegetable and ornamental), and driveways because they may pose an unnecessary risk to human health, particularly children's health.

The boulevard must be restored to City standards if and when it is decided that the garden is no longer wanted.

## 8. Responsibility and Liability

Property owners are encouraged to maintain the standard turf grass on the boulevard in front of or beside their property. By choosing to garden on the boulevard you are assuming full responsibility and costs for the garden and boulevard.

- It is not the practice of either the City, utilities and/or their contractors to give notice before commencing work on the boulevard. The City, utility companies and/or contractors will continue to restore boulevards with standard grass after work is completed. The City, or utilities service providers and/or their contractors shall not be responsible for any costs associated with damage or destruction to a boulevard garden, including replacement of plants. In the event that emergency works are required that will disturb an existing boulevard garden, no notification will be provided to the homeowner.
- If the boulevard garden is deemed non-compliant by the City, the City will provide two (2) weeks' notice to require the boulevard be returned to turf grass at the property owner's expense, failing which the City may remove all non-compliant material and restore the boulevard to turf grass standard and the property owner will be charged back the cost. If the non-compliance is deemed to be a hazard to public safety in the opinion of the City, in its sole discretion, no notice may be given to the property owner and the City may take immediate steps to remedy the hazard and the property owner will be charged back the cost of remediating the hazard.
- The City cannot guarantee the suitability of your boulevard for growing food - runoff, contaminants from historical land use.

By choosing to garden on the boulevard you are assuming all legal liability that may arise due to your use of the boulevard.

- By assuming control of the boulevard adjacent to your property for boulevard gardening, you and your helpers assume full and sole liability for any bodily injury, property damage, or other harm that is suffered by you, your helpers, or any third party, arising from or in any way related to or connected with, your garden-related activities, and any related liabilities, damages, complaints or claims (collectively, "Claims") that may arise.
- By engaging in boulevard gardening, you agree, in return for permission to garden on City boulevards, to comply with City of Oshawa Boulevard Gardening: Terms and Conditions and waive any and all claims against the City, its officers, employees, elected officials, contractors and agents (collectively, "Releases") in relation to any Claims and you further agree to indemnify and save harmless the

Releases from any and all Claims including legal costs and expenses that may be based on or related to your actions, omission or inaction related to boulevard gardening.

- Granting of permission to garden on a City boulevard is not intended to confer any legal or equitable interest or property right in the City boulevard. The City reserves the right to re-occupy the boulevard at any time and for any reason without notice to you or payment of any compensation for removal of the plants or other property from the boulevard or for the time and effort spent by you or anyone else in gardening or improving the boulevard in any way.

## **9. Complaints**

If you feel that a boulevard garden poses a safety risk or does not comply with the Boulevard By-law and the criteria for managing and maintaining a boulevard garden please contact Service Oshawa at 905-436-3311 or by email at [service@oshawa.ca](mailto:service@oshawa.ca).

## **Boulevard Garden Indemnity Agreement**

By assuming control of the boulevard adjacent to your property for gardening purposes, you and your helpers assume full and sole responsibility for any bodily injury, property damage, or other harm that is suffered by you, your helpers, or any third party, arising in any way from, or connected in any way to, your garden-related activities, and any related liabilities, damages, complaints or claims (collectively, "Claims") including, without limiting the generality of the foregoing, injury to anyone who may trip and fall in your garden, illness to anyone who may eat plants from your garden, and lost or damaged plants, or ornaments caused by anyone including the City.

The publication of the Terms and Conditions and the granting of an exemption to allow for gardening on City boulevards is not intended to establish any agency or other relationship between the City and any person engaged in gardening on a boulevard. The City does not assume any responsibility or supervising authority for gardening on boulevards and will not inspect or manage boulevard gardens in any way.

By engaging in boulevard gardening, you agree, in return for permission to garden on City boulevards in accordance with the Conditions established by the Director, to comply with any and all Conditions and to waive any and all claims against the City, its officers, employees, elected officials, contractors and agents (collectively, "Releases") in relation to any Claims and you further agree to indemnify and save harmless the Releases from any and all Claims including legal costs and expenses that may be based on or related to your actions, omission or inaction.

Publication of these Terms and Conditions and the granting of an exemption to garden on City boulevards is not intended to confer any legal or equitable interest or property right in the City boulevards. The City reserves the right to re-occupy the boulevards at any time and for any reason without notice to you or payment of any compensation for removal of the plants or other property from the boulevard or for the time and effort spent by you or anyone else in gardening or improving the boulevard in any way.

I have read and understand the above policy and agree to the terms and conditions:

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Homeowner's Signature \_\_\_\_\_ Date \_\_\_\_\_

Homeowner's Name (please print):	Telephone:
Address:	Email:

Personal information on this form is collected pursuant to Section 11 of the Municipal Act, 2001 and will be used to indemnify the City and document garden locations in case of complaints. Questions about this collection should be directed to the City's Freedom of Information Coordinator at 50 Centre Street South, Oshawa, Ontario, L1H 3Z7, by phone at 905-436-3311 or by email at [clerks@oshawa.ca](mailto:clerks@oshawa.ca).

# Acceptable Plants for Boulevards

The following plants are considered acceptable plants on boulevards:

## Perennials for Shade

Bergenia - *Bergenia cordifolia*  
Bethlehem Sage – *Pulmonaria saccharata*  
Blue Lungwort - *Pulmonaria angustifolia*  
Common Bugle - *Ajuga reptans*

## Salt Tolerant Perennials

Artemisea (Silvermound) – *Artemisia schmidtiana*  
Blue Fescue Grass – *Festuca glauca*

## Low Spreading Evergreens

Blue Rug Juniper - *Juniperus horizontalis* 'Wiltonii'  
Dwarf Canadian Hemlock - *Tsuga Canadensis* 'Cole's Prostrata'  
Golden Japanese Yew - *Taxus cuspidata* 'Aurescens'

## Drought Tolerant Perennials

Butterflyweed - *Asclepias tuberosa*  
Carpet Bugle - *Ajuga reptans* 'Palisander'  
Snow-in-Summer – *Cerastium tomentosum*  
Common sage - *Salvia officinalis*  
Creeping Chamomile - *Chamaemelum nobile*  
Feverfew 'Golden Ball' – *Tanacetum parthenium*  
Lambs ear - *Stachys byzantine*

## Ferns

Christmas Fern – *Polystichum acrostichoides*  
Hayscented Fern - *Dennstaedtia punctilobula*  
Lady Fern - *Athyrium filix femina*  
Maidenhair Fern - *Adiantum pedatum*

Deadnettle - *Lamium maculatum*  
Goat's Beard - *Aruncus dioicus*  
Japanese Spurge - *Pachysandra terminalis*  
Wintergreen - *Gaultheria procumbens*

Blue Lyme Grass – *Elymus arenarius*  
Dianthus – *Pulmonaria x allwoodii*  
Plantain Lily (Hosta) – *Hosta* spp.  
Sea Lavender – *Limonium latifolium*  
Sea Thrift - *Armeria maritima*

Japanese Garden Juniper – *Juniperus procumbens* 'Nana'  
Rug Juniper - *Juniperus horizontalis* 'Prince of Wales'  
Siberian Carpet Cypress - *Microbiota decussate*  
Star Juniper – *Juniperus squamata*

Lavander - *Lavandula* spp.  
Ornamental Grasses – species vary  
Pearly Everlasting - *Anaphalis*  
Pussy toes - *Antennaria dioica*  
Sedum - *Sedum* spp.  
Silver Brocade - *Artemisia stelleriana*  
Spurge - *Euphorbia* spp.  
Threadleaf Coreopsis - *Coreopsis verticillata*  
Thyme - *Thymus* spp.  
Yarrow 'Moonshine' – *Achillea*