



Memorandum

Corporate By-law Number XX/2024

TO: Office of the City Clerk **FILE:**

FROM: Danielle Thom,
Climate Action Specialist
–Community Strategies

DATE: 09/23/2024

SUBJECT: BL XX/2024 – Boulevard Garden and Maintenance By- Law

MEETING DATE: City Council – xx/xx/2024 (mm/dd/yyyy)

By-law Description: A By-law to permit boulevard gardens and require maintenance of boulevards.

Authorization: Committee of the Whole - xxxxx, xx, 2024

By-law Explanation: The purpose of this By-law is to authorize the Licensing and Enforcement Division to permit boulevard gardens.

Schedules and Attachments: Schedule A – Prohibited Plants

Amended/Repealed By-law Number(s):



THE CORPORATION OF THE CITY OF THUNDER
BAY BY-LAW NUMBER **BL XXX/2024**

A By-law to permit boulevard gardens and require maintenance of boulevards.

Recitals:

1. Section 10 (2) (5) of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, provides that a municipality may pass by-laws respecting the economic, social and environmental well-being of the municipality, including respecting climate change.
2. Section 10 (2) (6) of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, provides that a municipality may pass by-laws respecting the health, safety and well-being of persons.
3. Section 10(2) (8) of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended provides that a municipality may pass by-laws respecting the protection of persons and property.
4. Section 27(1) of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended grants a municipality the power to pass by-laws in respect of highways over which it has jurisdiction.
5. Section 28(2) of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended grants a municipality jurisdiction over all road allowances located in the municipality that were made by the Crown surveyors and all road allowances, highways, streets and lanes shown on a registered plan of subdivision.
6. Section 30 of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended provides that a highway is owned by the municipality that has jurisdiction over it subject to any rights reserved by a person who dedicated the highway or any interest in the land held by any other person.
7. Section 128 of the *Municipal Act*, 2001, S.O. 2001, c.25 as amended provides that a local municipality may pass by-laws with respect to public nuisances, including matters that, in the opinion of council, are or could become or cause public nuisances.

ACCORDINGLY THE COUNCIL OF THE CORPORATION OF THE CITY OF THUNDER BAY ENACTS AS FOLLOWS:

1. **SHORT TITLE**

That this By-law may be cited as the “Boulevard Garden and Maintenance By-law.”

2. **SCOPE OF THIS BY-LAW**

That this By-law shall apply to all Boulevards within the geographic boundaries of the City of Thunder Bay.

3. DEFINITIONS

- a) In this By-law,
“Adjacent Boulevard” means the Boulevard immediately adjacent to the front, side, rear or exterior side of an Owner’s property that is between the property line and is an opened Right-of- Way (R.O.W.)
- b) “Boulevard” means the portion of a Highway between the adjacent property lines and the edge of the curb or travelled road surface of a Highway, or where there is a ditch, swale or other drainage infrastructure, from the adjacent property lines to the nearest edge of the ditch, swale or other drainage infrastructure, but does not include traffic islands or traffic medians.
- c) “Boulevard Restricted Area” means a one-meter reserve, measured from the road edge toward the adjacent property line in any location where curbs are not present.
- d) “Boulevard Garden” means vegetation contained within a Boulevard, and consisting of annual or Herbaceous perennial plantings which are native or adaptive to Ontario and their cultivars, but does not include trees.
- e) “City” means The Corporation of the City of Thunder Bay;
- f) “Herbaceous” means a plant which does not form a woody stem but dies down to the root each year.
- g) “Highway” includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct, or trestle under the jurisdiction of the City, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.
- h) “Nuisance Litter” means any condition, including Waste Material, that is found or stored upon lands, that is likely to create an immediate hazard or nuisance to other persons or lands by entrapment, odour or by attracting animal/vermin; including natural or intentional accumulations of fruit, vegetables and other discarded materials, including compost, not kept in accordance with this By-law, or other waste materials that migrate from the owners’ lands onto other surrounding lands including public lands, by any reason including wind or other environmental factors.
- i) “Officer” means a Municipal Law Enforcement Officer for the City or a police officer.
- j) “Order” means an order to complete required work or to stop work from continuing, that is issued under this By-law.
- k) “Owner” means any person, firm, or corporation that is the registered owner of the property under consideration.
- l) “Owner-Agent” means any person, firm or corporation, who does not otherwise

have control of the Adjacent Boulevard property under consideration, but is provided permission in writing, to establish and maintain another property's Boulevard Garden adjacent to the specific lands owned by the person(s) that provided such permission.

- m) "Maximum Growth Height" means the maximum height for any plant that is found within the Boulevard Garden, whether intentionally cultivated or otherwise occurring.
- n) "Public land" means any land under the ownership, management or jurisdiction of the City or a provincial or federal government authority.
- o) "R.O.W." means any property of the City of Thunder Bay that is a Right-of-Way that contains an open street but does not include an unopened road Right-of-Way or one that was open but is now closed, or any laneway.
- p) "Soft Landscape" means up to ninety-five (95) percent of the surface of the Boulevard Garden is covered in natural material that is pervious to absorption of water, does not raise more than two decimal five (2.5) cm above grade at a minimum setback from both road and sidewalk of twenty-five (25) cm, but does not include artificial surface materials.
- q) "Turfgrass" means ground cover of various perennial grasses grown for lawns, of a type that forms a dense, uniform turf, if mown.
- r) "Waste material" includes refuse, garbage, debris, litter, domestic waste, industrial waste of any kind whatsoever and, without limiting the generality of the foregoing, includes:
 - (i) weighty or bulky items such as appliances or furniture;
 - (ii) vehicles, vessels, other motor-powered equipment and any parts thereof which, in its present state, appears discarded, inoperative, wrecked, partially or wholly dismantled, or not immediately available for the use it was originally manufactured for;
 - (iii) broken concrete, patio stones, bricks or pallets;
 - (iv) unused building material or material resulting from construction or demolition;
 - (v) yard waste, brush, fallen trees or tree limbs and branches except where integrated into a planned naturalized garden area that does not otherwise create a nuisance litter or other hazard condition;
 - (vi) animal and human feces;
 - (vii) unused tire or accumulations of unused tires;
 - (viii) unused or derelict lawnmowers, lawn tractors or similar mechanical devices

and mechanical or electrical parts; and

(ix) any discarded item.

4. MAINTENANCE OF ADJACENT BOULEVARDS BY PROPERTY OWNERS

- 4.1 Every owner of property that abuts adjacent City Boulevard lands shall maintain those lands in a clean and clear condition, free of waste materials and when not being used as a Boulevard Garden, trim the turf grass and any herbaceous growth as to not exceed twenty (20) centimeters in height.
- 4.2 Every Owner, Owner Agent or other person who establishes or maintains a Boulevard Garden shall keep the Adjacent Boulevard clean and cleared of Waste Material and Nuisance Litter at all times.
- 4.3 Every Owner, Owner Agent or other person who establishes or maintains a Boulevard Garden, that includes Turfgrass, shall keep the Adjacent Boulevard trimmed of Turfgrass to not exceed twenty (20) centimeters in height.

5. BOULEVARD GARDENS REGISTRATION AGREEMENT/ TRANSFER/ REMOVAL

- 5.1 The City may establish a registration system for Owners planting Boulevard Gardens that includes terms and conditions required to plant and maintain a Boulevard Garden. Any such registration system may include as a condition precedent that an Owner agree to assuming all risks, costs, losses, or expenses associated with planting or maintaining a Boulevard Garden, including but not limited to those risks, costs, losses, or expenses arising from those circumstances set out in this By-law.
- 5.2 The City, a public utility, or their agents may remove or alter all or part of a Boulevard Garden in order to exercise any power authorized by law, including but not limited to carrying out municipal maintenance practices, or the construction and maintenance of a public utility, as determined at the City or public utility's sole discretion. In all circumstances the costs or losses associated with replacement of a Boulevard Garden shall be the responsibility of the Owner who establishes, maintains, or assumes responsibility for a Boulevard Garden.
- 5.3 The City its agents, or a public utility shall not be responsible for costs, losses, or damages arising from the establishment or maintenance of a Boulevard Garden and are not responsible for replacement of a Boulevard Garden.
- 5.4 Nothing in this By-law shall be construed as creating a property interest in Public land, and any Owner who plants or maintains a Boulevard Garden does so at their sole risk and expense.

- 55 All Owners, who have established a Boulevard Garden and sell or transfer the property, shall inform the purchaser in writing, before completing the transfer, of the continued obligations to the City, concerning the Boulevard Garden(s) associated with the property under this By-law.
- 56 All new owners of property are deemed to have assumed the obligations for an existing Boulevard Garden pursuant to this By-law, where a Boulevard Garden was established or maintained by the prior Owner of the purchased property, on an Adjacent Boulevard.
- 57 All new owners of property are required to either enter into an Acknowledgement Agreement or remove the Boulevard Garden within one hundred and eighty days (180) of ownership.
- 58 Where a new Owner of property fails to either remove or maintain the Boulevard Garden, the City may remove the Boulevard Garden and rehabilitate the area, without notice or liability to an Owner and may require the reimbursement of all costs, including administrative fees as a debt owed the City and may recover by placing on the property roll to be recovered in a manner like taxes.
- 59 All Boulevard Gardens which existed prior to the coming into force, are not "Grandfathered" or exempt to the application of this By-law and must conform with the provisions of this By-law.

6. REGISTRATION OF ACKNOWLEDGEMENT AGREEMENT REQUIRED

- 6.1 Every Owner that wishes to establish or maintain a Boulevard Garden in an Adjacent Boulevard of their property, shall first complete and register a Boulevard Garden Establishment & Removal Acknowledgement Agreement, and agree to the terms of use, maintenance and removal, with the City.
- 6.2 Every Owner that has Registered a Boulevard Establishment & Removal Acknowledgement Agreement may, in writing, allow another person(s) to be an Owner- Agent, to permit them to establish and maintain Boulevard Gardens that are adjacent to their property.
- 6.3 Boulevard Gardens cannot be established adjacent to vacant lands or where occupancy/use appear to have been abandoned and the property no longer meets the Standards set out in the Minimum Standards For Property Occupancy By-law.
- 6.4 Every Owner and Owner-Agent, shall comply with the terms and conditions required to establish, maintain or remove any Boulevard Garden.
- 6.5 Every Owner and Owner-Agent, when requested by the City, shall make alterations or remove the Boulevard Garden, in a manner and time frame prescribed.

- 6.6 Every Owner and Owner-Agent, when requested by an Officer, shall Register an Acknowledgement Agreement, in the manner and timeframe required.
- 6.7 Every Owner and Owner-Agent, shall not permit the Boulevard Garden to create a health safety, or fire hazard to anyone.
- 6.8 Every Owner and Owner Agent, shall not permit the Boulevard Garden or its' growth, to encroach over adjacent public walkways or roads, including the Boulevard Restricted Area or private property.
- 6.9 Prior to establishing a Boulevard Garden or carrying out any excavation required to maintain a Boulevard Garden, an Owner shall ensure that they have complied with the *Ontario Underground Infrastructure Notification System Act*, S.O. 2012, c. 4, and regulations made thereto.
- 6.10 Notwithstanding the above provisions, these requirements do not relieve the Owner from first obtaining any other regulatory approvals or complying with any other government legislation in fulfilling this section's requirements.
- 6.11 No Boulevard Garden shall be planted or maintained contrary to any other by-law of the City, legislation of the Province of Ontario, or statute of Canada.
- 6.12 Notwithstanding 6.11 above, the provisions of City of Thunder Bay By-law 119-1983 prohibiting obstruction or encumbrance of any Highway under the jurisdiction of the City do not apply to a Boulevard Garden properly conforming to this By-law.

7. ADDITIONAL REQUIREMENTS TO ESTABLISH AND MAINTAIN BOULEVARD GARDEN

- 7.1 Every Owner, who have registered an Acknowledgement Agreement to establish and maintain a Boulevard Garden, in addition to other provisions of this By-law, are required to adhere to the following provisions:
- a) Only soft landscaping and hand-digging is permitted.
 - b) Slopes and basins of draining swales or ditches cannot be filled, altered or used to accommodate a Boulevard Garden.
 - c) No Boulevard Garden shall exceed 600 mm in Maximum Growth Height above the grade of the Boulevard.
 - d) No Boulevard Garden shall raise the existing bed height and enclosures to hold additional soils (garden planter boxes) shall not be permitted.
 - e) No Boulevard Garden shall be installed or located as to impede access to a fire hydrant or utility pole, electrical or utility box by a distance of a

1.5 metre radius.

- f) No Boulevard Garden shall be installed or located if it is likely to damage or interfere with existing uses or maintenance infrastructure.
- g) No Boulevard Garden shall be established closer to one (1) metre from the trunk of any City tree.
- h) No Boulevard Garden shall alter the original or designed elevation of a Boulevard.

- i) No Boulevard Garden shall alter or remove any existing and authorized hardscapes or structures, City or utility equipment contained within a Boulevard.
- j) No Boulevard Garden shall contain any prohibited local plant listed in Schedule "A", any Noxious Weed within the meaning of the *Weed Control Act*, R.S.O. 1990, c. W.5, or any Invasive Species within the meaning of the *Invasive Species Act*, S.O. 2015, c. 22.
- k) No Boulevard Garden shall contain any plants which have hallucinogenic properties or pharmacological applications.
- l) No Boulevard Garden shall contain any hard or impervious substances, unless they are placed at or below grade of the curb and sidewalk and shall not cover more than five (5) percent of the Boulevard Garden surface area.
- m) No Boulevard Garden shall restrict driver and pedestrian sight lines at intersections, driveways, sidewalks, walkways, or visibility to all traffic control devices.

8. GROWING OF EDIBLES OR OTHER CONSUMABLES

- 8.1 The City advises that they cannot provide information on the safety of the use of any Boulevard area soil or any possible content of contaminants or other substances that may be present and could potentially be considered a human risk to health if consumed through the consumption of any plants grown therein. For this reason, it is therefore recommended that Owners and Owner-Agents take any and all prudent examinations, including soils testing, public health literature or professional consultations before deciding to consume anything from a Boulevard Garden; any consumption of such things is a risk assumed by the grower.
- 8.2 No Boulevard Garden shall contain any plants which have hallucinogenic properties or pharmacological applications.
- 8.3 Where an Owner or Owner Agent chooses to grow plants for consumption, a sign no bigger than five (5) inches, square, must be clearly visible to public, that advises consumption "at own risk".

9. PENALTIES AND ENFORCEMENT

- 9.1 The City may remediate any contraventions of this By-law, and in all circumstances the costs or losses associated with replacement of a Boulevard Garden shall not be the responsibility of the City.
- 9.2 Any person who fails to comply with any requirement of this By-law is guilty of an offence, and shall upon conviction be liable to a penalty as set out in section 61 of the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended from time to time, or any successor thereof.

10. WORK ORDER

- 10.1 Where the Officer has reasonable grounds to believe that a contravention of this By-law has occurred, the Officer may make an Order requiring the person who contravened this By-law to do work to correct the contravention.
- 10.2 An Order under subsection 10.1 of this By-law shall set out:
- a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and
 - b) the work or remedial action required to be done and the date by which the work or remedial action must be done.
- 10.3 An Order under subsection 10.1 of this By-law may require work or remedial action to be done even though the facts which constitute the contravention of this By-law were present before this By-law came into force.
- 10.4 Any person who fails to comply with an Order issued under subsection 10.1 of this By-law, is guilty of an offence.

11. STOP WORK ORDER

- 11.1 Where the Officer has reasonable grounds to believe that a contravention of this By-law has occurred, the Officer may make an Order requiring the person who contravened this By-law to do work to discontinue the contravening activity.
- 11.2 An Order under subsection 11.1 of this By-law shall set out:
- a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and
 - b) the date by which there must be compliance with the order.

- 11.3 Any person who fails to comply with a stop work Order issued under subsection 11.1 of this By-law is guilty of an offence.

12. SERVICE OF ORDER

- 121 An Order may be delivered in person to an Owner, at the address of lands from an Adjacent Boulevard which is subject of the Order or left with an inmate therein that is over the apparent age of eighteen years, or
- 122 An Order may be sent via e-mail or text to an e-mail address or phone number that has been supplied for a communication purpose and will be deemed served only when such e-mail or text is acknowledged as being received and is not an autoreply, or
- 123 An Order may be sent via registered mail to the last known address supplied to the City's tax office and shall be deemed to be delivered on the fifth (5th) day after the date mailed, or
- 124 An Order may be posted in a conspicuous place on the property or placed in any open mail receptacle in proximity to the main entrance and shall be deemed to be delivered on the seventh (7th) day after being affixed/deposited.
- 125 It is an offence for any person other than the Owner to remove, tear down, or interfere with any Notice or Order posted on the property.

13. WHERE ORDER TO FOLLOW COMPLIANCE ACTION

- 13.1 Where the condition of a Boulevard Garden is such that it does, or is likely to, constitute a safety hazard to the public and/or a health hazard, including from nuisance litter or waste materials, the Officer may institute remedial actions, without first giving an Order, and may pursue cost recovery in the same manner as if an Order had been issued in advance and not complied with.
- 13.2 Where remedial actions are carried out prior to an Order being issued; the Officer shall at the earliest reasonable opportunity, issue and serve the Order on an Owner who is the subject of the Order.

14. OBSTRUCTION PROHIBITED

- 14.1 No person, including an Owner, shall impede, interfere, or obstruct an Officer in the execution of their duties and the inspection of property required under this By-law, by doing any act or refusing an Officer direction.
- 14.2 No person, including an Owner, shall obstruct an Officer by providing any false or misleading information.
- 14.3 It is an Offence for any person to obstruct an Officer in the discharge of their duties.

15. REMEDIAL ACTION

- 15.1 If a person fails to do a matter or thing as directed or required by this By-law, including to comply with an Order under this By-law, the City may, in default of it being done by the person directed or required to do it, do the matter or thing at the person’s expense. The City may recover the costs of doing a matter or thing from the person directed or required to do it by action or by adding the costs to the tax roll an Owner’s property and collecting them in the same manner as property taxes.
- 15.2 The costs outlined in subsection 15.1 of this By-law shall include any fees and charges imposed by the City in accordance with this By-law in relation to the matters identified therein.
- 15.3 The amount of the costs, including interest, constitutes a lien on the land on the subject Owner upon the registration in the proper land registry office of a notice of lien. The lien is in respect of all costs that are payable at the time the notice is registered plus interest accrued to the date the payment is made. Upon receiving payment of all costs payable plus interest accrued to the date of payment, the City shall register a discharge of the lien in the proper land registry office.

16. EXEMPTIONS

- 16.1 Nothing in this By-law shall affect:
 - a) Any right or duty of the City with respect to any Highway right of way; or
 - b) The application and enforcement of the *Weed Control Act*, R.S.O. 1990, c. W.5, as amended, with respect to noxious weeds.
 - c) The application and enforcement of the *Invasive Species Act*, S.O. 2015, c. 22, as amended, with respect to invasive species.

17. GENERAL PROVISIONS

- 17.1 Should any provision of this By-law be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of the By-law as a whole or any part thereof, other than the part which was declared to be invalid.
- 17.2 This By-law shall come into force and take effect on the date it is passed.

Enacted and passed this xxx day of XXX, A.D. 2024 as witnessed by the Seal of the Corporation and the hands of its proper Officers.

Mayor

City Clerk

Boulevard Garden and Maintenance

By-law Schedule "A" Prohibited

Local Plants

Canada thistle (*Cirsium arvense*)
Common buckthorn; Glossy buckthorn (*Rhamnus cathartica*;
Frangula alnus) Dog-strangling vine (*Cynanchum rossicum*;
Cynanchum louiseae)
Garlic mustard (*Alliaria petiolata*)
Giant hogweed (*Heracleum mantegazzianum*)
Himalayan Balsam (*Impatiens glandiflora*)
Japanese knotweed (*Reynoutria japonica* var.
japonica) Phragmites (*Phragmites australis*
subsp. *australis*) Poison ivy (*Toxicodendron*
radicans)
Purple loosestrife (*Lythrum salicaria*)
Ragweed (*Ambrosia artemisiifolia*)