



Memorandum

Corporate By-law Number: 8-2025-Corporate Services-Licensing & Enforcement

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

FROM: Doug Vincent, Manager – Licensing & Enforcement
Corporate Services

DATE PREPARED: January 9, 2025

SUBJECT: Attachment A - Proposed Boulevard Garden and Maintenance By-Law .docx

MEETING DATE: City Council – February 24, 2025

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

Authorization: Report 349-2024 (Committee of the Whole) – September 23, 2024; Resolution - Committee of the Whole – December 16, 2024; and Committee of the Whole – Resolution – January 13, 2025.

By-law Explanation: The purpose of this By-law is to authorize the City of Thunder Bay to permit boulevard gardens.

Schedules and Attachments:

- Schedule A – Prohibited Local Plants for Boulevard Gardens.
- Schedule B – Prohibited Auditor Generals List – Unregulated Invasive Plant Species

Amended/Repealed By-law Number(s):



THE CORPORATION OF THE CITY OF THUNDER BAY
BY-LAW NUMBER 008-2025

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. General

- 1.1 Short Title: That this By-law may be cited as the “Boulevard Garden and Maintenance By-law.”
- 1.2 Scope: That this By-law shall apply to all Boulevards within the geographic boundaries of the City of Thunder Bay.
- 1.3 Definitions:
 - a. “Acknowledgement Declaration Agreement” means the document, in the format prescribed by the City, that any Owner or Owner-Agent with the owners express written permission, is required to complete and acknowledge, which identifies the property address within the City of Thunder Bay where they desire to install and maintain a Boulevard Garden in agreement with the requirements of the By-law.
 - b. “Adjacent Boulevard” means the Boulevard immediately adjacent to the front, side, rear or exterior side yards of an Owner’s property that is between the property line and is an opened Right-of-Way.
 - c. “Alternating Planting Prescription” means any plantings that exceed the Standard Growth Height, are commonly expected at maturity to exceed the Standard Growth Height or are a Shrub-Permitted where Maximum Growth Height-Shrubs is 1000 mm, are required to follow a prescription for alternating spacing that maintains clear visibility of pedestrians and vehicles on the opposite side of the Boulevard Garden plantings.
 - d. “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.
 - e. “Boulevard Garden” means vegetation contained within a Boulevard including a Garden Box consisting of annual or Herbaceous plantings and Shrubs-Permitted by the By-law, which are native or adaptive to Ontario and their cultivars but does not include any other woody stemmed plants including trees.
 - f. “Boulevard Restricted Area” means a 1500 mm reserve, measured from the road edge toward the adjacent property line in any location where curbs are not present.

- g. “City” means The Corporation of the City of Thunder Bay.
- h. “Driveway Access Set-Back Distance” means a distance of 2000 mm measured from the edge of any driveway to the closest portion of a Garden Box that contains plantings and/or Seasonal Plant Support Devices that exceed the Standard Growth Height.
- i. “Garden Box” means a straight-walled container that is built and designed to hold and contain soil materials for herbaceous plants, that is of uniform construction and made entirely of untreated wood that has been planed to smooth the surface.
- j. “Hardscape” means any City-owned or approved surface material, object, feature or thing that is not Soft Landscaping.
- k. “Herbaceous” means a plant which does not form a woody stem and dies down to the root each year.
- l. “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.
- m. “Highway Access Set-Back Distance” means a distance of 2000 mm measured from the edge of any driveway, closest curb or road shoulder to the closest portion of a Garden Box that contains plantings and/or Seasonal Plant Support Devices that exceed the Standard Growth Height.
- n. “Highway Obstruction By-law” means City of Thunder Bay By-law 119-1983 and any amendments thereto or any future replacement By-law.
- o. “Maximum Growth Height” means the maximum height of 1600 mm above original grade for any plant that is found within the Boulevard Garden, whether intentionally cultivated or otherwise occurring, except where heights are otherwise restricted.
- p. “Maximum Growth Height – Shrubs” means the maximum height of 1000 mm above original grade for any Shrub-Permitted that is found within the Boulevard Garden, whether intentionally cultivated or otherwise occurring.
- q. “Municipal Standards for Property By-law” means City of Thunder Bay By-law 95-2022 and any amendments thereto or any future replacement By-law.

- r. "Nuisance Litter" means any debris 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. This includes Waste Material, natural or intentional accumulations of fruit, vegetables and other discarded materials, or compost not kept in accordance with this By-law. It also includes other materials that migrate from the other lands onto surrounding lands, by any reason, including wind or other environmental factors.
- s. "Officer" means a Municipal Law Enforcement Officer for the City or a Police Officer.
- t. "Order" means an order to complete required work or to stop work from continuing, that is issued under this By-law.
- u. "Owner" means any person, firm, or corporation that is the registered owner of the property under consideration.
- v. "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 the property's Boulevard Garden adjacent to the specific lands owned by the person(s) that provided such permission.
- w. "Planting Blocks" means an area containing plants of similar height that exceeds the Standard Growth Height, that are planted together in a group or clump that measures no more than 600 mm in width and up to 600 mm in depth, and are planted in a single Planting Block or multiple Planting Blocks that form a linear pattern, parallel to adjacent Highway and sidewalk and are separated from the next Planting Block by a 600 mm wide Standard Growth Height area, thereby achieving a visual separation between each Planting Block.
- x. "Public land" means any land under the ownership, management or jurisdiction of the City or a provincial or federal government authority.
- y. "Recognized Winter Safety Hazard Marker" means a commonly available "driveway or hazard" marker that is usually plastic, fiberglass, or light metal (aluminum), often a high-visibility colour (or white), with a multi-sided reflector top. They commonly range in height from 915 mm to 1830 mm and usually in a diameter of between 5 mm and 10 mm, but may be slightly larger. A home-made version that meets the requirements and is not otherwise prohibited by the By-law is acceptable, providing it does not create a safety hazard.

- z. "Required Set-Back" means an area of boulevard within which, only herbaceous plantings up to 600 mm maximum height may be hand-dug and planted and further restrictions include prohibiting impervious materials, rocks and Garden Boxes in this area.
- aa. "Right-Of-Way" means any property of the City of Thunder Bay that contains an open street but does not include an unopened road or one that was open but is now closed, or any laneway. Abbreviated as "ROW".
- bb. "Standard Growth Height" means the maximum height of 1000 mm above original grade for any plant that is found within the Boulevard Garden, whether intentionally cultivated or otherwise occurring, except where heights are otherwise further restricted.
- cc. "Seasonal Plant Support Device" means physical items normally used to support growing vegetables such as, but not limited to, trellises, arbors, cages, baskets, ladders or stakes which are commercially available or homemade in design.
- dd. "Set-Back Area" means the distance of 600mm from curbsides, shoulder edges, sidewalks, and driveways, where specific restrictions apply.
- ee. "Shrub-Permitted" means a woody plant that is not a tree which has several main stems arising at or near the ground and is without thorns or similar hazards, that does not encroach in any set-back areas, is kept trimmed to comply with the Standard Growth Height limit and otherwise maintained to conform to requirements of this By-law.
- ff. "Sight Triangle" means a triangular area that is clear of any visual obstruction from Boulevard Garden plantings and is formed between points measured along the closest curb-lines (or closest edge of road shoulder where applicable) a prescribed distance of 9000 mm in each direction from the intersection of those streets.
- gg. "Soft Landscape" means the surface of the Boulevard Garden that is covered in natural material that is pervious to absorption of water but does not include artificial surface materials.
- hh. "Synthetic Fertilizer" means chemical(s) created through an industrial process to control, enhance or alter woody and herbaceous vegetative growth and includes commercially available product that are not derived from natural sources.

- ii. "Synthetic Pesticide" means chemical(s) created through an industrial process to control or kill pests and includes commercially available herbicides, fungicides, rodenticides that are not derived from natural sources.
- jj. "Turfgrass" means ground cover of various perennial grasses grown for lawns, of a type that forms a dense, uniform turf, if mown.
- kk. "Waste material" includes refuse, garbage, debris, litter, domestic waste, industrial waste of any kind 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, and branches except where integrated into a planned naturalized garden area that does not otherwise create a nuisance litter or other hazard condition;
 - vi. fallen trees or tree limbs exceeding a 50 mm diameter cross-section;
 - vii. animal and human feces;
 - viii. unused tire or accumulations of unused tires;
 - ix. unused or derelict lawnmowers, lawn tractors or similar mechanical devices and mechanical or electrical parts; and
 - x. any discarded item.

2. Maintenance of Adjacent Boulevards by Property Owners

- 2.1 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 in areas not containing a Boulevard Garden when there is a safe grade or slope, as to not exceed 200 mm in height.

- 2.2 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.
 - 2.3 Notwithstanding the requirements for Waste Material to be removed at all times, the following is permitted in all Boulevard Gardens, except in Required Set-Back areas and Garden Boxes: yard waste, brush and branches where integrated into a planned naturalized garden area that does not otherwise create a Nuisance Litter or other hazard condition.
 - 2.4 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 200 mm in height.
3. Boulevard Garden Acknowledgement Declaration/Transfer/Removal
 - 3.1 The City may establish an Acknowledgement Declaration system for Owners and Owner-Agents that desire to establish Boulevard Gardens, that includes terms and conditions required to plant and maintain a Boulevard Garden. Any such 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.
 - 3.2 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 by the City or in a 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.
 - 3.3 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 if altered, damaged or removed for any reason.
 - 3.4 Nothing in this By-law shall be construed as creating a property interest in Public land, and any Owner, Owner-Agent or other person who plants or maintains a Boulevard Garden does so at their sole risk and expense.
 - 3.5 All Owners and those legally acting on their behalf, who have established or authorized a Boulevard Garden be created and then sell or transfer the

property at a future date, 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, or remove the Boulevard Garden and reinstate the boulevard to the required standard before the transfer.

- 3.6 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, existed or was being maintained by or on behalf of the prior Owner of the purchased property, on an Adjacent Boulevard to that property.
 - 3.7 All new owners of property, with an Adjacent Boulevard Garden, must complete and submit a new Acknowledgement Declaration Agreement or remove the Boulevard Garden within 180 days of obtaining ownership of adjacent property to the Boulevard Garden.
 - 3.8 Where a new Owner of property fails to either remove or maintain the Boulevard Garden or enter into a new Acknowledgement Declaration Agreement, 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.
 - 3.9 All Boulevard Gardens which existed prior to this By-law 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, including the requirement to complete and submit the Acknowledgement Declaration Agreement, or remove the Boulevard Garden.
4. Acknowledgement Declaration Agreement Required
 - 4.1 Every Owner or Owner-Agent that wishes to establish or maintain a Boulevard Garden in an Adjacent Boulevard of their property, shall first complete and submit a Boulevard Garden Acknowledgement Declaration Agreement, and thereby agree to the terms of use concerning Boulevard Gardens, maintenance and removal, within the City.
 - 4.2 Every Owner may in writing, allow another person(s) to submit the Boulevard Garden Acknowledgement Declaration Agreement and be known as an Owner-Agent, which permits them to establish and maintain Boulevard Gardens and Garden Boxes adjacent to the Owner’s property and such written authorization must be produced when requested by an Officer for confirmation of such authorization.

- 4.3 Boulevard Gardens cannot be established adjacent to vacant lands, where occupancy/use appear to have been abandoned, or where the property no longer meets the Standards set out in the Municipal Standards for Property By-law.
 - 4.4 Every Owner and Owner-Agent shall comply with the applicable terms and conditions required to establish, maintain, or remove any Boulevard Garden, including Garden Boxes.
 - 4.5 Every Owner and Owner-Agent, when requested by the City, shall satisfy any requests to conform to the By-law and make required alterations or remove the Boulevard Garden in a manner and time frame prescribed.
 - 4.6 Every Owner and Owner-Agent, when requested by an Officer, shall complete and submit an Acknowledgement Declaration Agreement, in the manner and timeframe required.
 - 4.7 Every Owner and Owner-Agent shall not permit the Boulevard Garden to create a potential health, safety, or fire hazard to anyone.
 - 4.8 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.
 - 4.9 Prior to establishing a Boulevard Garden or carrying out any excavation or installing any stakes of any kind that is required to establish or maintain a Boulevard Garden, an Owner shall first ensure that they have complied with the *Ontario Underground Infrastructure Notification System Act*, S.O. 2012, c. 4, and regulations made thereto, referred to as an Ontario One Call, (before you dig).
 - 4.10 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.
 - 4.11 No Boulevard Garden shall be planted or maintained contrary to this By-law or any other by-law of the City, legislation of the Province of Ontario, or statute of Canada.
 - 4.12 Notwithstanding 4.11 above, the provisions of City of Thunder Bay Highway Obstruction By-law do not apply to a Boulevard Garden that properly conforms to this By-law, unless requested to be corrected or removed by a City Municipal Law Enforcement Officer, in writing.
5. Additional Requirements to Establish and Maintain a Boulevard Garden and Garden Boxes

- 5.1 Every Owner or Owner-Agent, who has completed and submitted an Acknowledgement Declaration 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. Except where otherwise expressly permitted, only Soft Landscaping and hand-digging is permitted.
 - b. Only Herbaceous plants are permitted in Boulevard Garden Boxes.
 - c. Except where otherwise expressly permitted, woody-stemmed plants, including shrubs, are prohibited for planting or being maintained in Boulevard Gardens, including Garden Boxes.
 - d. Boulevard Gardens shall not be established in any Boulevard Restricted Area.
 - e. Garden Boxes are not permitted, except where the construction, materials, installation, maintenance and planting requirements of the By-law are adhered to.
 - f. Slopes and basins of draining swales or ditches cannot be filled or altered but existing slopes up to the edge of swale or ditch may be used to accommodate a Boulevard Garden, except Garden Boxes would require a 600 mm setback from the closest edge of swales, basins or ditches, unless the By-law otherwise requires a greater setback when Maximum Growth Height plantings and/or Seasonal Plant Support Devices are installed in a Garden Box and require additional set-back distances near driveways and Highways as set out in the By-law.
 - g. No Boulevard Garden shall ever exceed 1600 mm in Maximum Growth Height above the original grade of the Boulevard, and where a more restrictive height or Alternating Planting Prescriptions are otherwise set-out and required in this By-law then that more restrictive limit or prescription shall apply.
 - h. No Boulevard Garden, except within a Garden Box, shall raise the existing bed height greater than 25 mm, subject to a Required Set-Back area near Roads, Curbs, sidewalks or driveways, as set out in the By-law.
 - i. No Boulevard Garden shall alter the original bed-height in the Required Set-Back area within 300 mm to the closest edge of the following: road, road shoulder, curb, sidewalk or driveway

- j. No Boulevard Garden shall be installed or located as to impede, obstruct, cover or conceal a water shut-off valve, except where herbaceous plant growth or permitted shrub may seasonally hide such valve(s) from direct view.
 - k. No Boulevard Garden shall be installed or located if it is likely to damage or interfere with existing uses or maintenance of infrastructure.
 - l. No Boulevard Garden shall alter the original or designed elevation or grade of a Boulevard.
 - m. No Boulevard Garden shall alter or remove any existing City-authorized hardscapes or structures, or City or utility equipment contained within a Boulevard, without express written authorization from the City.
 - n. No Boulevard Garden shall contain any prohibited plant listed in Schedule "A" or Schedule "B", or 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.
 - o. 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 5% of the Boulevard Garden surface area and the remaining 95% shall be Soft Landscape.
 - p. Except where otherwise expressly permitted by this By-law, Seasonal Plant Support Devices cannot be installed or utilized in a Boulevard Garden.
- 5.2 Every Owner and Owner-Agent shall not plant or maintain plants that exceed 600 mm in height in any of the Required Set-Back areas listed below within the distances set out as follows:
- a. 1500 mm set-back radius surrounding hydrants, utility poles, electrical or utility boxes.
 - b. 1000 mm set-back radius from the trunk of any City tree.
 - c. Within a street corner Sight Triangle.
 - d. 600 mm set-back from closest edge of road curb (where curbs exist).
 - e. 600 mm set-back from closest edge of road shoulder (where no curb exists).

- f. 600 mm set-back from closest edge of sidewalk.
- g. 600 mm from closet edge driveway.

5.3 Every Owner and Owner-Agent shall not install or maintain a Garden Box on a Boulevard except where it conforms to the following requirements:

- a. Constructed entirely from untreated and finished (planed) wood materials, in a uniform method with straight sides that are vertically plumb.
- b. Shall not exceed 600 mm maximum height from original grade.
- c. Combined height of Garden Box and plant growth shall not exceed 1600 mm maximum total height from original grade or any lesser height when required otherwise by the By-law.
- d. Where plant growth in a Garden Box exceeds the Standard Growth Height or is expected to exceed the Standard Growth Height by the type of planting undertaken, then the Alternating Planting Prescription shall be followed and excessive growth trimmed to maintain at least a fifty percent (50%) horizontal spacing and sight-lines between alternating Planting Blocks of Standard Growth Height planting areas and Maximum Growth Height planting areas.
- e. Seasonal Plant Support Devices shall be fully contained within the frame of the Garden Box and shall not be installed in Alternating Planting Prescriptive areas, requiring that only the Standard Growth Height limit for plants be maintained. Seasonal Plant Support Devices shall not impede required visibility or reduce the requirement of fifty percent (50%) horizontal spacing, which will ensure that sight-lines are maintained between the street and the property adjacent to the Boulevard Garden.
- f. Seasonal Plant Support Devices installed in a Garden Box shall not, in combination with the Garden Box height, exceed the Maximum Growth Height limit and shall be wholly contained within the Garden Box dimensional areas, to the Maximum Growth Height limit.
- g. Seasonal Plant Support Devices shall be maintained in good repair and shall not create a potential health or safety hazard to anyone.
- h. Seasonal Planter Support Devices shall only be used to support living plants and shall be removed at the end of the growing season or by no later than November 15 annually.
- i. Seasonal Plant Support Devices are only permitted in a Garden Box, except where a cage or basket commonly used to support vegetables

like tomatoes, may be used in other Boulevard Garden areas that are not located in any type of Set-Back, Required Set-Back or other restricted areas and do not create a potential health or safety hazard at that location.

- j. No person shall install or use Seasonal Plant Support Devices in a Boulevard Garden that are not specifically permitted by this By-law.
- k. Each exterior corner of a Garden Box shall have a Recognized Winter Safety Hazard Marker, that has a reflective top, that is securely affixed to each corner and is measured between 915 mm and 1830 mm height from original grade and shall be maintained year-round when the Garden Box is on a Boulevard.
- l. Recognized Winter Safety Hazard Markers shall not exceed 254 mm in diameter or cross-section and shall not be of rock, concrete or made from common steel products such as T-Bars, Re-bars (reinforcing rods) or similar items that could damage maintenance equipment.
- m. Garden Boxes shall not be placed in any Required Set-Back, Set-Back or other areas where greater restrictions require increased set-back distances set-out elsewhere in the By-law.
- n. Garden Boxes that contain plants and/or Seasonal Plant Support Devices that exceed the Standard Growth Height, must follow additional Driveway Access Set-Back Distances and/or Highway Access Set-Back Distances.
- o. Garden Boxes, unless a greater set-back distance is prescribed in the By-law, shall only be installed where they can maintain a minimum set-back distance of 600 mm from the closest curb edge (or road shoulder edge) and closest edge of sidewalk and closet edge of driveway and does not otherwise create a potential health or safety hazard in that location.
- p. Garden Boxes, unless a greater set-back distance is prescribed in the By-law, shall maintain a minimum set-back distance of 600 mm from the closest edge of a swale, drainage basin or ditch.
- q. Garden Boxes may, in addition to one address identification plate described in the By-law, be decoratively painted or have stain or preservative applied to external surfaces.
- r. Garden Boxes may display one address identification plate not to exceed 100 mm X 250 mm, but shall not display any other signs, advertising, graphics, images, posters or any other markings that may

communicate messages/statements/slogans or political advertising or any graffiti and, any such things must be immediately removed, upon discovery.

- s. Garden Boxes shall be maintained in good repair, free from loose boards or projections or attachments that could create a safety hazard to both pedestrians, animals or vehicular traffic.
- t. Garden Boxes shall only be placed and maintained for use as a Garden Box to grow herbaceous plants only and shall not be used for other purposes.

5.4 Every Owner or Owner-Agent that desires to plant a shrub within a Boulevard Garden must comply with the following restrictions and conform to the Alternating Planting Prescription for permitted Shrubs, as follows:

- a) Shrubs must have annual growth trimmed and maintained to prevent the Maximum Growth Height – Shrubs, of 1000 mm, being exceeded.
- b) Shrubs must have annual growth trimmed and maintained to prevent encroachment into any set-back area-types, or over sidewalks, driveways and highways.
- c) No person shall permit a shrub to encroach into any set-back areas or create a potential health, safety or fire hazard.
- d) No person shall permit or maintain a shrub that exceeds 1000 mm in vertical height.
- e) Shrubs cannot be planted or maintained in any Set-Back areas, including Boulevard Restricted Areas or Required Set-Back Areas.
- f) Shrubs must be trimmed and maintained to create a minimum separation distance of 1000mm to the closest edge of another shrub, Garden Box, Seasonal Plant Support Device or Planting Blocks that has plants exceeding the Standard Growth Height.
- g) Where more than one shrub or row of shrubs are planted, in addition to the minimum separation distance, an unobstructed sightline that is perpendicular from the highway between additional shrubs to any sidewalk, driveway or private structures, must be maintained.
- h) Shrubs cannot be planted or maintained in a Garden Box.
- i) Shrubs with thorns or other similar characteristics that could impale or otherwise cause possible injury a person coming in contact with the shrub, shall not be planted or maintained within a Boulevard Garden.

- 5.5 Every Owner or Owner-Agent that desires to grow plants in a Boulevard Garden that exceed the Standard Growth Height of 1000 mm, must comply with the following restrictions and conform to the Alternating Planting Prescription for Maximum Growth Height plantings, as follows:
- a) Plants that exceed the Standard Growth Height in a Boulevard Garden shall be planted in Planting Blocks that do not exceed 600 mm width or 600 mm depth and be separated from the next Planting Block by a 600 mm distance. Only Standard Growth Height plants can occupy the separation space between Planting Blocks, thereby creating a visual break between the Maximum Growth Height Planting Blocks.
 - b) Planting Blocks of Maximum Growth Height plants shall be trimmed, maintained or supported to prevent encroachment into the visual space between each Planting Block.
 - c) No person shall allow plants in a Planting Block that exceeds 1000 mm in height to encroach into the space between Planting Blocks, such that visibility is not maintained.
 - d) Planting Blocks must be established in a linear pattern, parallel with the adjacent sidewalk or Highway.
 - e) Where more than one Planting Block exists or more than one linear row of Planting Blocks is to be planted, in addition to the minimum separation distance between Planting Blocks, an unobstructed sightline that is perpendicular from the Highway between additional rows of Planting Blocks, to any sidewalk, driveway or private structures must be maintained.
 - f) Boulevard Gardens cannot be planted or maintained in such a way that would result in obscuring more than fifty percent (50%) of the visibility of any sidewalk, driveway or private residential structures, immediately adjacent to the Boulevard Garden.
- 5.6 Every Owner or Owner-Agent that desires to grow more than one Shrub or rows of Shrubs in a Boulevard Garden, in addition to other requirements of this By-law, must comply with the following restrictions and conform to the Alternating Planting Prescription for Shrub plantings, as follows:
- g) Shrubs-Permitted, to be planted in a Boulevard Garden shall be planted and maintained separate from the next Shrub, Garden Box or other Alternating Planting Prescription areas, by a 1000 mm distance. Only Standard Growth Height plants, that are not Shrubs, can occupy the separation space between other Shrubs, thereby creating a visual

sight-line between the street and any sidewalk, driveway or private structures.

- h) Shrubs shall be trimmed, maintained or supported to prevent encroachment into the visual space between each shrub.
- i) Plantings of more than one Shrub must be established in a linear pattern, parallel with the adjacent sidewalk or Highway.
- j) Where more than one Shrub exists or more than one linear row of Shrubs is to be planted, in addition to the minimum separation distance between Shrubs, an unobstructed sightline that is perpendicular from the Highway between additional rows of Shrubs, to any sidewalk, driveway or private structures must be maintained.

6. Growing of Edibles or Other Consumables

- 6.1 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.
- 6.2 No Boulevard Garden shall contain any plants or fungi (mushrooms) which have potential hallucinogenic properties.
- 6.3 Any pesticide set out in Provincial Legislation, as being prohibited for use in Ontario, is prohibited for use in Boulevard Gardens.
- 6.4 No person shall use or apply to any plant or soil or cause the use or application to any plant or soil, any Synthetic Pesticide, Herbicide or Synthetic Fertilizer on any Boulevard Garden including Garden Boxes.

7. Penalties and Enforcement

- 7.1 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.
- 7.2 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.

8. Work Order

8.1 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.

8.2 An Order under subsection 8.1 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.

8.3 An Order under subsection 8.1 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.

8.4 Any person who fails to comply with an Order issued under subsection 8.1 of this By-law, is guilty of an offence.

9. Stop Work Order

9.1 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.

9.2 An Order under subsection 9.1 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.

9.3 Any person who fails to comply with a stop work Order issued under subsection 9.1 of this By-law is guilty of an offence.

10. Service of Order

- 10.1 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
 - 10.2 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
 - 10.3 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
 - 10.4 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.
 - 10.5 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.
11. Where Order to Follow Compliance Action
 - 11.1 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.
 - 11.2 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.
12. Obstruction Prohibited
 - 12.1 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.
 - 12.2 No person, including an Owner, shall obstruct an Officer by providing any false or misleading information.
 - 12.3 It is an Offence for any person to obstruct an Officer in the discharge of their duties.

12.4 It is an Offence for any person to submit a Boulevard Garden Declaration Acknowledgement Agreement that contains false or misleading information.

13. Remedial Action

13.1 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.

13.2 The costs outlined in subsection 13.1 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.

13.3 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.

14. Exemptions

14.1 Nothing in this By-law shall affect:

- a. Any right or duty of the City with respect to any Highway right of way.
- 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.

15. General Provisions

15.1 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.

16. This By-law shall come into force and take effect on the date it is passed.

Enacted and passed this 13^h day of January, A.D. 2025 as witnessed by the Seal of the Corporation and the hands of its proper Officers.

Ken Boshcoff

Mayor

Krista Power

City Clerk

DRAFT

Boulevard Garden and Maintenance By-law

Schedule “A” Prohibited Local Plants for Boulevard Gardens

- Canada thistle (*Cirsium arvense*)
- Common buckthorn (*Rhamnus cathartica*)
- Glossy buckthorn (*Frangula alnus*)
- Dog-strangling vine, also known as black swallowwort and pale swallowwort (*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*)
- Stinging Nettle (*Urtica dioica*)
- Any member of the Family Cannabaceae (Includes *Cannabis Sativa*)

Boulevard Garden and Maintenance By-law

Schedule “B” Prohibited Auditor Generals List – Unregulated Invasive Plant Species

- Amur maple (*Acer tataricasspginnala*)
- Autumn Olive (*Elaeagnusumbellata*)
- Common buckthorn (*Rhamnus cathartica*)
- Creeping jenny (*Lysimachianummularia*)
- Dame’s rocket (*Hesperismatronalis*)
- Daylily (*Hemerocallis fulva*)
- English ivy (*Hedera helix*)
- Garlic mustard (*Alliariapetiolate*)
- Glossy buckthorn (*Frangula alnus*)
- Goutweed (*Aegopodium podagraria*)
- Italian honeysuckle (*Lonicera caprifolium*)
- Japanese barberry (*Berberis japonica*)
- Japanese honeysuckle (*Lonicera japonica*)
- Pachysandra, Japanese spurge (*Pachysandra terminalis*)
- Lily of the valley (*Convallaria majalis*)
- Manitoba maple, box elder (*Acer negundo*)
- Miscanthus, silvergrass (*Miscanthus sacchariflorus* and *M. sinensis*)
- Multiflora rose (*Rosa multiflora*)
- Norway maple (*Acer platenoides*)
- Oriental bittersweet (*Celastrus orbiculatus*)
- Ornamental honeysuckles including: Tatarian (*Lonicera tatarica*), Amur (*L. maackii*), Morrow (*L. morrowii*), and Bells (*L. xbella*) honeysuckles.
- Periwinkle (*Vinca minor*)
- Russian olive (*Elaeagnus angustifolia*)
- Sea buckthorn (*Hippophaerhamnoides*)
- Spearmint (*Mentha spicata*)
- Tree-of-heaven (*Ailanthus altissima*)
- White mulberry (*Morus alba*)
- Winged burning bush (*Euonymus alatus*)
- Euonymus, Wintercreeper (*Euonymus fortunei*)
- Yellow archangel (*Lamium galeobdolon*syn*Lamiastrum galeobdolon*)