

As amended by By-law 93-2013 and 64-2016
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, Chap. 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 timeframe 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.

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 (5th) 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.

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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 appeals 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 1.3.4.2.iv) before 4:30 p.m. on the tenth (10th) day after the Order is given to the Person at which time the Order is final and is not subject to review including 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 Offences 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 governmental 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 of the public and to maintain clean 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 the 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 alternate 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 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.
“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, telephone booth, transformer box or

vault, telephone, hydro, streetlight, stoplight 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 or 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 this By-law and “Posted” has a corresponding meaning. Posting includes either: <ul style="list-style-type: none"> (i) affixing an Order to a building or structure on the Property abutting the subject Boulevard; or (ii) the erection of a post on the subject Boulevard or Property abutting the subject Boulevard and affixing an Order to that post; or (iii) in the case of a Fixture, affixing an Order to that Fixture located on the Boulevard.
“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, recreational 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 the sidewalk or within 1.2m (4 ft) of the curb or travelled portion of the 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 or artificial turf, in whole or in part, to the surface. (64-2016)

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.

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. (64-2016)

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. (64-2016)

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. (64-2016)

- 6.4 A decision of 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 that is not appealed pursuant to section 1.3.4.1 is final and is not subject to review including review by any Court. (64-2016)

By-law approved this second day of October, 2006.

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