

CITY OF ST. THOMAS
BY-LAW NO. 109-2022

A by-law to provide for regulating the construction, maintenance, and protection of boulevards within the geographical limits of the City of St. Thomas.

WHEREAS subsection 11(2)(6) of the Municipal Act, 2001, S.O. 2001, c. 25 as amended ("the Act") provides that a municipality may pass by-laws respecting the health, safety and well-being of persons;

AND WHEREAS subsection 11(2)(8) of the Act provides that a municipality may pass by-laws respecting the protection of persons and property;

AND WHEREAS subsection 30 of the Act 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;

AND WHEREAS subsection 27(1) of the Act grants a municipality the power to pass by-laws in respect of highways over which it has jurisdiction;

AND WHEREAS subsection 28(2) of the Act grants a municipality jurisdiction over all road allowances located in the municipality that were made by the Crown surveyors [subsection 28(2)(a)] and all road allowances, highways, streets and lanes shown on a registered plan of subdivision [subsection 28(2)(b)].

AND WHEREAS Section 391 (1) of the Municipal Act, 2001, S.O. 2001 c. 25 states that section 11 authorizes a municipality to impose fees or charges on persons, for services or activities provided or done by the municipality;

AND WHEREAS subsections 425(1) and 429(1) of the *Municipal Act, 2001* authorize a municipality to pass by-laws providing that a person who contravenes a municipal by-law is guilty of an offence and to establish a system of fines for offences under a by-law;

AND WHEREAS subsection 444(1) of the *Municipal Act, 2001* authorizes a municipality to make an order requiring the person who contravened a by-law, caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to discontinue the contravening activity;

AND WHEREAS section 446 of the Municipal Act 2001, S.O. 2001, c. 25 as amended provides that if a municipality has the authority under this or any other Act or under a by-law under this or any other Act to direct or require a person to do a matter or thing, the Municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense and the Municipality may recover 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 and collecting them in the same manner as property taxes.

AND WHEREAS the *Police Services Act, R.S.O. 1990, Section 15* authorizes the municipality to appoint persons to enforce the by-laws of a municipality and that Municipal Law Enforcement Officers are Peace Officers for the purpose of enforcing municipal by-laws;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF ST. THOMAS ENACTS AS FOLLOWS:

SECTION 1 SCOPE OF BY-LAW

1.1 SHORT TITLE

This By-law and any amendments thereto shall be known as the "Boulevard Maintenance By-Law."

1.2 INTENT AND SCOPE

The purpose of this By-law is to: establish and maintain boulevards in a clean and clear condition, within the geographical limits of the City of St. Thomas.

1.3 CONTENT OF BY-LAW

All references in the By-law to sections, regulations, exceptions, tables, figures, schedules and maps, refer to those in this By-law unless otherwise indicated.

1.4 RELATION TO OTHER GOVERNMENT REQUIREMENTS (COMPLIANCE WITH OTHER REGULATIONS)

This By-Law shall not be construed so as to reduce or mitigate restrictions or regulation that is lawfully imposed by the City of St. Thomas, or by any governmental authority having jurisdiction to make such restrictions or regulations. Compliance with this By-law does not relieve a property owner from complying with:

- a) the requirements of any federal, provincial, regional, or conservation authority legislation or regulations;
- b) any By-Law of the Municipality.

SECTION 2- DEFINITIONS AND INTERPRETATION

2.1 DEFINITIONS-

The terms set out below shall have the following meanings in this By-law:

"APRON" includes a section of a driveway contained within the boulevard;

"BACK LOT PROPERTY" refers to that portion of a property where the rear yard is adjacent to a city road allowance;

"BOULEVARD" means the portion of a highway on either side of a roadway, but does not include a sidewalk or traffic island;

"CITY" means the Corporation of the City of St. Thomas;

"HERBACEOUS PLANT" means a plant without woody above-ground parts, with a stem that dies back to the ground each year, but excludes turf grass;

"HIGHWAY" shall have the same meaning as the Highway Traffic Act, RSO 1990, c. H.8, as amended, and shall include a common and public highway, street, parkway, driveway, square, place, bridge, viaduct, or trestle, 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.

"MAINTENANCE" means the action required to sustain a boulevard including but not limited to cutting, watering, removing debris or repairing damage to any driveway located within the boulevard area;

"MUNICIPAL BY-LAW ENFORCEMENT OFFICER" means a person appointed by the Council of The Corporation of the City of St. Thomas or their designate for the purpose of enforcing Municipal By-Laws and, for the purpose of this By-Law.

"ORDER TO COMPLY" means the written order as set out in Section 6 of this By-Law.

"OWNER" means a registered owner of land, or any person in control of land, including a lessee or an occupant thereof.

"PERSON" means an individual, firm, proprietorship, partnership, association, syndicate, trust, corporation, department, bureau, and agency; and includes an owner.

"ROADWAY" means the portion of a highway that is improved, designed, or ordinarily used for vehicular traffic, and includes a curb and shoulder;

"SIDEWALK" shall mean that portion of the highway that is intended for the use of pedestrians and which surface is finished with concrete or asphalt;

“TRAFFIC CONTROL DEVICE” means a sign, lane, meter, marking, space, barrier or device painted or erected to guide, regulate, warn, direct, restrict, control or prohibit traffic;

“TURF GRASS” means a perennial strand of plant that can form turf and withstand mowing, traffic and/or wear;

“UTILITIES” includes infrastructures such as cables, pipelines or structures that are owned and maintained by the City, Region, a municipality or other utility companies.

SECTION 3- PLANTING IN BOULEVARDS

3.1 Herbaceous Plants

A property owner shall not plant or permit to be planted herbaceous plants that:

- (a) exceed a height of 45 centimeters;
- (b) impair drainage; or
- (c) contain vegetables or grains; on a boulevard abutting his or her property.
- (d) encroach or hinder passage on a sidewalk

3.2 No person shall plant or permit to be planted a herbaceous plant on a boulevard or section of a boulevard that is regularly maintained by the City.

3.3 Trees

On a boulevard abutting his or her property, an owner shall not plant or place, or permit the planting or placement of a tree or shrub.

SECTION 4- BOULEVARD MAINTENANCE OBLIGATIONS

4.1 GENERAL MAINTENANCE

Subject to any permission granted by the City or a utility, on a boulevard abutting his or her property, no owner shall permit anything on the boulevard that:

- (i) is protruding, sharp, dangerous in any way, or which may otherwise injure a person or animal;
- (ii) may cause damage to any person or thing;
- (iii) restricts sight lines of pedestrians, cyclists or drivers of vehicles to intersections, driveways, sidewalks, walkways, travel lanes, or traffic control devices;
- (iv) Inhibits or obstructs snow removal operations;
- (v) obscures or obstructs access to fire hydrants, post office boxes, or other installations belonging to the City or any utility provider;
- (vi) is located within 0.6 metres of the sidewalk, unless it is turf grass, herbaceous plants, wood chips, mulch, or inorganic material;
- (vii) is located within 1.8 metres of the curb, unless it is turf grass, herbaceous plants, wood chips, mulch, or inorganic material;
 - a. Any inorganic material, wood chips, or mulch permitted under this subsection must be installed flush to the curb.
- (viii) is located within 1.8 metres of the roadway, where there is no curb, unless it is turf grass or herbaceous plants;
- (ix) is more than 15 centimeters in height, unless it is a herbaceous plant and governed by subsection 3.1(a) of this by-law; or
- (x) may overflow onto the street, sidewalk, highway or adjacent property.

4.2- GRASS

On a boulevard abutting an owner's real property, an owner shall not permit turf grass or weeds to exceed a height of 15 centimeters.

SECTION 5- BOULEVARD INCIDENTALS

5.1 No person shall damage, construct or re-construct a sidewalk, curb, apron driveway or boulevard without the written permission of the Director of Environmental Services or their designate.

5.2 For the purposes of Section 5.1, "person" shall not include the City, a utility, or a contractor hired by the City.

5.3 Where an owner has obtained written permission from the Manager of Roads and Transportation under section 5.1, that owner shall comply with any conditions set forth in the written permission of the Director of Environmental Services or their designate.

SECTION 6- ADMINISTRATION AND ENFORCEMENT

6.1 This by-law shall be enforced by the Municipal By-Law Enforcement Officers.

6.2 A Municipal By-Law Enforcement Officer may by written order, sent by regular mail to the last known address (last revised assessment roll), sent to the last known electronic mail address, posted on site or personally delivered to owner or owners of property, within the time specified in the order to:

- a) Discontinue the contravening activity, and/or
- b) Do work to correct the contravention

6.3 The order will state:

- i. the section that is in contravention of the by-law
- ii. the location/adjoining address of the contravention
- iii. reasonable particulars of the contravention
- iv. the work to be completed
- v. the date by which the work must be completed

6.4 Where an owner fails to comply with an Order, the officer may without any further notice cause the work to correct the contravention to be done at each owner's expense. Without limitation, the officer may retain such persons to assist in completing the work as the Municipal By-law Enforcement Officer determines appropriate. All costs incurred by the City of St. Thomas in relation to such work may be recovered by being added to the tax roll and collected in the same manner as property taxes. An administrative fee will also be added as set out in Schedule "A" hereto.

SECTION 7- PENALTY

Each person who contravenes any provision of this by-law is guilty of an offence. A person convicted of an offence contrary to a provision of this by-law in a proceeding commenced under Part III of the Provincial Offences Act, R.S.O. 1990, c. P.33, is liable to a fine of no less than two hundred and fifty dollars(\$250.00), and no more than Ten Thousand Dollars (\$10,000) for each day or part of a day on which the offence occurs or continues provided that the total of all daily fines for the continuing offence shall not exceed One Hundred Thousand Dollars(\$100,000).

A person convicted of an offence contrary to a provision of this by-law in a proceeding commenced under Part 1 of the Provincial Offences Act, R.S.O. 1990, c. P.33, is guilty of an offence and on conviction is liable to a fine as provided in the Provincial Offences Act, R.S.O. 1990, c. P. 33, as amended.

SECTION 8- SEVERABILITY

Where a court of competent jurisdiction declares any section or part of a section of this by-law invalid, the remainder of this by-law shall continue in force unless the Court makes an order to the contrary.

SECTION 9- EFFECTIVE DATE

THAT this By-Law shall take effect on August 8, 2022.

READ a First and Second time this 8th day of August 2022

READ a Third time and Finally passed this 8th day of August, 2022.

Original signed by "Maria Konefal"
City Clerk

Original signed by "Joe Preston"
Mayor

SCHEDULE "A"
By-Law 109 -2022

Administration Fee for Issuance of Orders

Boulevard Maintenance Order—————\$200.00

Fees for services related to execution of Orders

Fees for staff service:

Time- Municipal Law Enforcement Officer————\$50.00/hour

Mileage, photocopying, phone, etc.————as per City guidelines

External Disbursements:————actual cost

(professional services, contractor services, etc.)

Administration Fee————15% of total disbursements