

CITY OF DUNCAN

BOULEVARD MAINTENANCE BYLAW NO. 3055, 2013

WHEREAS Council is authorized to enact a Bylaw to regulate the construction and maintenance of boulevards by or on behalf of the **owners** of land **abutting** them;

NOW THEREFORE the Council of the City of Duncan enacts as follows:

PART ONE: DEFINITIONS

1.1. In this Bylaw,

“**abutting**” means on the front, back or sides of a property **parcel**.

“**application**” means the application for a Non-standard Landscaping Permit.

“**boulevard**” means that portion of a **highway** between the curb lines or the lateral lines of a **roadway** and the adjoining **property** or **roadway**, and includes curbs, sidewalks, **tree wells** and **ditches**;

“**Bylaw Enforcement Officer**” means the person appointed by resolution of the Council as such from time to time;

“**City**” means the City of Duncan;

“**Director of Public Works**” means the person appointed by Council to the position of **Director of Public Works** or his designate;

“**ditch**” means a drainage **ditch** located within the right-of-way of a **highway** in the possession and control of the **City**;

“**highway**” means the same as defined in the *Transportation Act*,

“**non-standard landscaping**” means any type of boulevard landscaping other than grass, such as shrubs, mulch, herbaceous or perennial vegetation;

“**noxious weeds**” means any weed designated by City of Duncan Noxious Weeds Bylaw;

“**owner**” has the same meaning as defined in the *Community Charter*,

“**parcel**” means any lot, block or other area in which land is held or into which it is subdivided, but does not include a **highway**;

“**property**” means land, with or without improvements so affixed to the land as to make them in fact and law a part of it;

“**roadway**” means that portion of a **highway** which is improved, designed, or ordinarily used for vehicular traffic, and includes paving, underground utilities, curbs and gutters, but does not include the shoulder;

“**tree**” means a perennial woody plant that has secondary branches supported clear of the ground on a single main stem or trunk;

“**tree well**” means a planting strip or cutout in a boulevard where a **tree** is planted.

PART TWO: GENERAL PROVISIONS

2.1. In regards to the **boulevard abutting** an **owner’s property**, such property **owner** must:

- a) keep grass or weeds on the **boulevard** trimmed to a height of not more than 15 cm;
- b) keep such **boulevard**, including any sidewalk, free of brush, **noxious weeds**, leaves, litter, debris, garbage or discarded materials, and in a tidy condition;
- c) maintain the height and width of any shrubs or **non-standard landscaping** below a maximum height of 0.5m from the **boulevard** level, and trimmed to prevent growth over an adjacent sidewalk, curb or **roadway**;
- d) maintain a one metre clearance for shrubs, hedges or vegetation from any fire hydrant or fire hydrant valve;
- e) ensure that landscaping does not interfere with intersection sightlines, in accordance with City of Duncan Zoning Bylaw;
- f) not place any hard surfaces, such as rocks, gravel, landscape ties, rails, asphalt, bricks, concrete structures or figurines on a **boulevard**;
- g) water any shrubs, trees and grass that is not watered by an automatic watering system operated by the **City**;
- h) not prune or alter the appearance of the boulevard trees;
- i) not change the grade or the elevation of the **boulevard** without the written permission of the Director of Public Works or his/her designate;
- j) not make any changes to a boulevard without first making application for a Non-standard Landscaping Permit;
- k) notwithstanding any of the above, the adjacent property owner is required to remove or mitigate any landscaping or conditions on the **boulevard** that are deemed to be a hazard in the opinion of the **Director of Public Works**.

- 2.2. The obligations to maintain the **boulevard** as specified in Section 2.1 do not apply where in the opinion of the **Director of Public Works**, the property **owner** is unable to access the **boulevard** due to steep grades or the size of the **boulevard** is unreasonably large for the property **owner** to maintain. This exception does not apply if the **owner** has altered the site to the detriment of maintenance or access.
- 2.3. The **City** has the authority to assume ownership of any **tree**, hedge or shrubbery in a **boulevard** for the purpose of being the sole maintainer of such **tree**, hedge or shrubbery.
- 2.4. Whenever any person is in fault of doing any matter or thing required to be done under the provisions of this Bylaw, the **City**, through its officers, employees or agents may do what is required to be done, at the expense of the person in fault. Recovery of the expenses of the work done, with interest at the rate applicable thereto, including all costs, can be made in the same manner as it may recover municipal taxes.
- 2.5. Any enactment referred to herein is a reference to an enactment of British Columbia and regulations thereto, as amended, revised, consolidated or replaced from time to time, and any Bylaw referred to herein is a reference to an enactment of the Council of the **City** of Duncan, as amended, revised, consolidated or replaced from time to time.
- 2.6. In relation to this Bylaw, pesticide/herbicide treatment is not permitted except when applied by qualified employees of the City of Duncan.
- 2.7. **Non-standard Landscaping**
 - 2.7.1. **Non-standard landscaping** is permitted on a **boulevard**, under the following conditions:
 - a) the property owner must first obtain a valid Non-standard Landscaping Permit from the City;
 - b) the property **owner** is responsible for locating the **property** line as well as all underground utilities prior to digging;
 - c) the property **owner** is solely liable for any claims regarding injury or hazards that may be created due to **non-standard landscaping**;
 - d) shrubs and plant materials must be drought tolerant and must be maintained to a height less than 0.5 m above the **boulevard** level except with City approval;
 - e) **noxious weeds** or invasive plants are not permitted;
 - f) if the **boulevard** is located next to on-street parking, the **boulevard** landscaping must not interfere with the ability of people to open car doors or to exit vehicles;
 - g) hedges, rocks or gravel are not permitted to be placed on the **boulevard** adjacent to a **roadway**, curb or a sidewalk, except:

- (i) gravel placed by **City** personnel on the **boulevard** for the purposes of drainage;
- h) the landscaping treatment must not fill in or interfere with utilities, **ditches**, swales, gravel soaker strips, or drainage structures;
- i) permanent structures, such as retaining walls, fencing or private signs are prohibited in the **boulevard**;
- j) all landscaping placed in the **boulevard** can be removed by the **City** at any time and without notice, and will not be replaced, except with soil and grass; and
- k) the **City** is not responsible for damages to **boulevard** landscaping due to road maintenance activities.

2.8. Non-standard Landscaping Permit

- 2.8.1. No Person shall improve or otherwise alter, modify, landscape or place structures, objects or improvements of any nature upon, within, over or under any Boulevard unless that person holds a valid and subsisting Non-standard Landscaping Permit;
- 2.8.2. An Owner may apply for a Non-standard Landscaping Permit by submitting an **application** in the form as prescribed by the City;
- 2.8.3. City Officials may approve, reject, or approve with such conditions as it considers appropriate an **application** for a Non-standard Landscaping Permit;
- 2.8.4. An Owner that is granted a Non-standard Landscaping Permit must carry out such improvements strictly in accordance with the conditions of that Non-standard Landscaping Permit.
- 2.8.5. City Officials may revoke without compensation a Non-standard Landscaping Permit if the holder of the Non-standard Landscaping Permit has failed to comply with the regulations of this Bylaw or with a condition of the Non-standard Landscaping Permit.

PART THREE: VIOLATIONS, PENALTIES AND ENFORCEMENT

- 3.1. Every person who violates any of the provisions of this Bylaw, or who causes, suffers, or permits any act or thing to be done in contravention or in violation of any of the provisions of this Bylaw, or who neglects or refrains from doing anything required to be done by any of the provisions of this Bylaw, or who fails to comply with any order, direction or notice given under this Bylaw, is guilty of committing an offence against this Bylaw and is liable on summary conviction to a fine of not less than \$100.00 and to a maximum not exceeding the maximum allowed by the *Community Charter*, as amended, and the cost of prosecution.

- 3.2. Notwithstanding Section 3.1, any person who is guilty of obstructing a Bylaw Enforcement Officer or Peace Officer while performing his/her duties in relation to this Bylaw is liable on summary conviction to a fine of not less than \$2,000.00, or to imprisonment, or to both a fine and imprisonment, not exceeding the maximum allowed by the *Community Charter*, as amended, and the cost of prosecution.
- 3.3. Where an offence under this bylaw is of a continuing nature, each day that the offence continues or is permitted to exist shall constitute a separate offence.
- 3.4. This Bylaw may be enforced by means of a ticket in the form prescribed for the purpose pursuant to the *Community Charter*.
- 3.5. This Bylaw may be enforced by the City of Duncan **Bylaw Enforcement Officers**, or members of the Royal Canadian Mounted Police.

PART FOUR: SEVERABILITY AND CITATION

- 4.1. If any part, section, subsection, sentence, clause, or sub-clause, or phrase of this Bylaw is for any reason held to be invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Bylaw.
- 4.2. This Bylaw may be cited for all purposes as “**Boulevard Maintenance Bylaw No. 3055, 2013**”.

READ THE FIRST TIME THE 18th DAY OF March, 2013.

READ THE SECOND TIME THE 18th DAY OF March, 2013.

READ THE THIRD TIME THE 18th DAY OF March, 2013.

ADOPTED THE 15th DAY OF April, 2013.

Director of Corporate Services

Mayor