

TOWN OF TISDALE

BYLAW NO. 12-26

BOULEVARD MAINTENANCE AND PROTECTION BYLAW

A BYLAW TO REGULATE THE MAINTENANCE, LANDSCAPING, USE AND PROTECTION OF MUNICIPAL BOULEVARDS

WHEREAS pursuant to subsection 8(1) of The Municipalities Act, a municipality has the general power to pass bylaws for municipal purposes respecting, among other matters, the safety, health and welfare of people and the protection of people and property [clause 8(1)(b)], people, activities and things in, on or near a public place [clause 8(1)(c)], nuisances [clause 8(1)(d)], and streets and roads [clause 8(1)(g)];

AND WHEREAS subsection 8(2) of The Municipalities Act authorizes a municipality to make bylaws respecting enforcement, including creating offences, imposing fines, providing for inspections and remedying contraventions;

NOW THEREFORE the Council of the Town of Tisdale, in the Province of Saskatchewan, pursuant to sections 5, 6 and 8 and Part XII, Division 4 of The Municipalities Act, enacts as follows:

1. SHORT TITLE

1.1 This Bylaw may be cited as the "Boulevard Maintenance and Protection Bylaw."

2. PURPOSE

2.1 The purposes of this Bylaw are to:

- a. establish responsibilities for the routine care and maintenance of municipal boulevards;
- b. protect Town-owned trees, municipal infrastructure, utilities, drainage systems and public access;
- c. regulate landscaping, structures, obstructions and alterations within boulevards;
- d. maintain safe sightlines and accessibility;
- e. preserve the Town's ability to access and use municipal rights-of-way for municipal purposes; and
- f. provide authority for administration and enforcement of boulevard requirements.

3. DEFINITIONS

3.1 "Adjacent Property" means a parcel of land that immediately abuts a boulevard.

3.2 "Adjacent Property Owner or Occupant" means the registered owner, tenant or occupant of an adjacent property who is responsible for the routine maintenance of that property.

3.3 "Boulevard" means the portion of a municipal street or right-of-way located between the roadway and the adjacent private property line, whether or not improved, and may include grass, trees, landscaping, sidewalks, curbs, drainage features, utilities, signs and other municipal infrastructure.

3.4 "CAO" means the Chief Administrative Officer of the Town of Tisdale or a person designated by the Chief Administrative Officer.

3.5 "Municipal Infrastructure" includes streets, curbs, sidewalks, drainage works, signs, traffic-control devices, hydrants, water and sewer works, utility infrastructure and other works or assets located within a municipal right-of-way.

3.6 "Town" means the Town of Tisdale.

3.7 "Town Tree" means a tree located on Town-owned property or within a municipal right-of-way that is owned, planted or maintained by the Town.

4. GENERAL BOULEVARD MAINTENANCE

4.1 Except where a boulevard is maintained by the Town under section 13, the owner or occupant of property adjacent to a boulevard shall be responsible for the routine care and maintenance of the boulevard immediately adjacent to that property.

4.2 Routine care and maintenance includes:

- a. cutting and maintaining boulevard grass at a reasonable and maintained height;
- b. controlling weeds in accordance with applicable legislation;
- c. removing litter, leaves, grass clippings and other debris;
- d. keeping sidewalks, gutters and drainage areas free from vegetation or materials originating from the adjacent property; and
- e. maintaining landscaping or other improvements installed or assumed by the property owner or occupant.

4.3 Grass clippings, leaves, branches, soil, snow, landscaping material or other debris shall not be intentionally deposited onto a street, sidewalk, gutter, drainage channel or other public infrastructure.

4.4 Nothing in this section requires an adjacent property owner or occupant to maintain Town-owned infrastructure or to prune, remove or undertake structural maintenance of a Town Tree.

5. TOWN RESPONSIBILITIES

5.1 The Town remains responsible for municipal infrastructure and Town-owned assets located within a boulevard, subject to applicable law and available municipal resources.

5.2 Town responsibilities may include Town Trees, streets and curbs, municipal sidewalks, drainage infrastructure, signs and traffic-control devices, municipal water and sewer infrastructure, work associated with municipal services, and repairs resulting from municipal infrastructure projects.

5.3 The Town is not responsible for routine grass cutting on boulevards adjacent to residential or commercial properties except where the CAO determines that municipal maintenance is appropriate because of location, configuration, safety, accessibility, operational requirements, historical practice or another municipal purpose.

6. BOULEVARD TREES

6.1 Trees planted, owned or maintained by the Town within a boulevard or other municipal right-of-way are Town Trees and remain the property of the Town.

6.2 Adjacent property owners or occupants are encouraged to provide reasonable routine care of Town Trees, including watering during dry periods and keeping grass and weeds reasonably clear of the trunk.

6.3 An adjacent property owner or occupant may undertake minor pruning or trimming of a Town Tree where reasonably necessary to:

- a. remove a small broken or damaged branch that can be safely reached and removed;
- b. maintain reasonable access to a driveway or sidewalk;
- c. prevent branches from interfering with the reasonable use of an adjacent property or street parking; or
- d. address another minor maintenance concern.

6.4 Where a Town Tree has a broken, damaged or hazardous limb that is large, beyond the reasonable reach of the resident, or cannot be safely removed from ground level, the resident should contact the Town Office. Residents shall not attempt to remove large or inaccessible limbs where doing so may create a safety risk or cause significant damage to the tree.

6.5 Any pruning permitted under subsection 6.3 shall be undertaken safely and in a manner that does not significantly alter, injure, weaken or compromise the health or structural integrity of the Town Tree.

6.6 No person shall, without prior written authorization from the Town:

- a. remove, cut down or transplant a Town Tree;
- b. substantially prune, top or significantly alter a Town Tree;
- c. remove major limbs except where necessary to address an immediate safety hazard;

- d. attach signs, wires, lights, structures or other objects in a manner that may injure or damage a Town Tree;
- e. excavate or undertake work that may significantly damage the root system of a Town Tree; or
- f. apply any substance that may injure, damage or kill a Town Tree.

6.7 Notwithstanding subsection 6.3, elm trees shall only be pruned in accordance with applicable provincial legislation and the Town's Dutch Elm Disease Management Policy. No person shall prune an elm tree during the annual provincial elm pruning ban, currently April 1 to August 31, except where otherwise permitted by provincial legislation.

6.8 Where an elm tree has a broken, damaged, dead or hazardous branch, the matter should be reported to the Town and any pruning or removal shall be undertaken in accordance with provincial requirements and the Town's Dutch Elm Disease Management Policy.

6.9 Elm wood, branches or other material from an elm tree shall be handled, stored, transported and disposed of only in accordance with applicable provincial legislation and the Town's Dutch Elm Disease Management Policy.

6.10 Tree branches and other permitted yard waste shall be disposed of only at a location authorized by the Town and in accordance with the requirements established for that disposal location.

6.11 Trees and shrubs located on private property, including branches extending over a sidewalk, street, alley, boulevard or other public place, remain the responsibility of the property owner or occupant. The owner or occupant shall maintain and trim such vegetation so that it does not:

- a. create a traffic or pedestrian visibility obstruction;
- b. interfere with intersection sightlines;
- c. obstruct or interfere with the safe use of a sidewalk;
- d. interfere with a street, alley, driveway, traffic sign or municipal infrastructure; or
- e. otherwise create a hazard to the public.

6.12 Where branches from private property extend onto neighbouring property, property owners are encouraged to communicate with the affected neighbour before undertaking pruning or trimming, where reasonably practicable.

7. LANDSCAPING AND ALTERATION OF BOULEVARDS

7.1 No person shall undertake a significant alteration of a standard grass boulevard without first obtaining any authorization required by the Town.

7.2 Without prior written authorization from the Town, no person shall:

- a. plant or transplant a tree on a boulevard;
- b. construct or install a permanent structure or fence;
- c. place large rocks, retaining walls or other fixed obstructions;
- d. alter the grade or drainage of a boulevard;
- e. extend a driveway, parking area or other hard surface onto or across a boulevard, except as otherwise authorized by the Town;
- f. excavate or undertake ground disturbance within a boulevard; or
- g. undertake work that may interfere with municipal infrastructure, utilities, drainage, public access or municipal operations.

7.3 Any landscaping or improvement within a boulevard shall be maintained so that it does not interfere with pedestrian or vehicle visibility, drainage, snow removal, sidewalks, utilities, signs, hydrants, driveways, Town Trees or other municipal operations.

7.4 Permission granted under this section may be subject to conditions considered necessary by the Town and may be revoked where the conditions are not met or where the boulevard is required for a municipal purpose.

8. UNDERGROUND UTILITIES

8.1 Before undertaking any excavation or ground disturbance within a boulevard, a person shall ensure that underground utilities are properly located and that all permits, approvals and permissions required by law or by the Town have been obtained.

8.2 Private landscaping or improvements within a boulevard shall not restrict or prevent access by the Town or an authorized utility provider for inspection, maintenance, repair, replacement or installation of infrastructure.

9. MUNICIPAL ACCESS AND DAMAGE TO PRIVATE IMPROVEMENTS

9.1 The Town and authorized utility providers may enter upon and undertake work within a boulevard as reasonably necessary for a lawful municipal or utility purpose, including road work, snow removal, water or sewer work, drainage work, utility work, sidewalk or curb work, tree maintenance, sign work and emergency work.

9.2 The Town will make reasonable efforts to avoid unnecessary damage to privately installed landscaping or improvements; however, subject to applicable law, the Town is not responsible for repairing or replacing private landscaping, irrigation systems, decorative features, gardens or other private improvements located within the municipal right-of-way where damage results from necessary municipal or utility work.

9.3 A person who installs or maintains private landscaping or improvements within a boulevard does so subject to the Town's continuing right to use and access the municipal right-of-way.

10. SAFETY AND SIGHTLINES

10.1 A boulevard shall be maintained so that grass, plants, shrubs, landscaping materials or other objects do not:

- a. obstruct the view of motorists, cyclists or pedestrians;
- b. interfere with intersection sightlines;
- c. obstruct traffic signs or traffic-control devices;
- d. restrict access to or safe use of sidewalks;
- e. interfere with driveways;
- f. block or impair drainage;
- g. obstruct access to fire hydrants, valves, utility infrastructure or municipal equipment; or
- h. create a hazard to the public.

10.2 The Town may require vegetation, landscaping or other materials to be trimmed, modified, relocated or removed where reasonably necessary to protect public safety, municipal infrastructure or municipal operations.

11. SNOW REMOVAL AND MUNICIPAL OPERATIONS

11.1 Private landscaping and improvements within a boulevard shall be installed and maintained with normal municipal operations in mind.

11.2 Snow, ice, gravel, sand or other materials may be deposited or displaced onto boulevards as a result of normal winter road or sidewalk maintenance.

11.3 Subject to applicable law, the Town is not responsible for damage to private landscaping or improvements within a boulevard resulting from normal snow removal, street maintenance or other lawful municipal operations.

12. ORDERS AND ENFORCEMENT

12.1 Enforcement of this Bylaw shall be carried out in accordance with subsection 8(2) and Part XII, Division 4 (sections 362 to 373) of The Municipalities Act, as applicable.

12.2 Where the requirements of section 364 of The Municipalities Act are met, a designated officer may issue a written order to remedy a contravention in accordance with that section.

12.3 An order issued pursuant to section 364 of The Municipalities Act shall be served in accordance with that section, shall give notice that an appeal is available and advise the

person of the body to which the appeal is directed, and may contain the directions authorized by subsection 364(4).

12.4 A person may appeal an order made pursuant to section 364 within fifteen (15) days after the date of the order in accordance with section 365 of The Municipalities Act. Where the statutory requirements in section 366 are satisfied, the Town may take the action or measure necessary to remedy the contravention or prevent its recurrence.

12.5 Pursuant to subsection 366(3) of The Municipalities Act, expenses and costs of an action or measure taken by the Town pursuant to section 366 are an amount owing to the Town by the person who contravened the enactment or bylaw. Such amounts may be collected by civil action for debt pursuant to section 368, subject to applicable law.

12.6 An amount may be added to a tax roll only where authorized by section 369 of The Municipalities Act or another applicable enactment. For greater certainty, clause 369(1)(c) authorizes unpaid expenses and costs of remedying a contravention to be added to the tax roll of a parcel only where the contravention occurred on all or part of that parcel. Nothing in this Bylaw shall be interpreted as authorizing boulevard-maintenance costs incurred on Town-owned land to be added to the tax roll of an adjacent parcel unless such addition is otherwise authorized by law.

12.7 Nothing in this Bylaw limits the Town's ability to proceed under another applicable Town bylaw, including a nuisance abatement bylaw, where the circumstances fall within that bylaw.

13. EXCEPTIONS AND TOWN-MAINTAINED BOULEVARDS

13.1 The CAO may exempt a boulevard or portion of a boulevard from the routine maintenance requirements imposed on an adjacent property owner or occupant where:

- a. the boulevard forms part of a Town-maintained park, facility, entrance, median or public space;
- b. the location or configuration makes resident maintenance unsafe or impractical;
- c. the Town has historically assumed maintenance of the area;
- d. municipal infrastructure or construction temporarily prevents maintenance; or
- e. the CAO determines that Town maintenance is appropriate in the public interest.

13.2 An exemption may be temporary or continuing and may be made subject to conditions.

14. ADMINISTRATION AND WRITTEN AUTHORIZATION

14.1 The CAO is authorized to administer and interpret this Bylaw and may designate employees, officers or agents to carry out inspections, issue notices or orders, grant permissions, and undertake other administrative or enforcement functions permitted by law.

14.2 Where this Bylaw requires Town permission or authorization, the permission or authorization shall be in writing and may contain terms and conditions.

14.3 A person requesting permission may be required to provide plans, drawings, utility locates, proof of insurance or other information reasonably required to assess the request.

15. OFFENCES AND PENALTIES

15.1 A person who contravenes this Bylaw, fails to comply with a lawful order made under this Bylaw, or obstructs a person acting lawfully in the administration or enforcement of this Bylaw is guilty of an offence.

15.2 Pursuant to clauses 8(2)(b) and 8(2)(c) of The Municipalities Act, a bylaw may impose, for each offence, a fine not exceeding \$10,000 in the case of an individual and a fine not exceeding \$25,000 in the case of a corporation, subject to the provisions of The Municipalities Act. Any prosecution or penalty under this Bylaw shall be administered in accordance with applicable law.

15.3 Pursuant to clause 8(2)(d) of The Municipalities Act, a continuing offence may be subject to a maximum daily fine established by bylaw. Each day that a contravention continues may constitute a separate offence where authorized by law.

15.4 Payment of a fine does not relieve a person from the obligation to remedy a contravention.

16. RELATIONSHIP TO OTHER LAWS

16.1 Nothing in this Bylaw relieves a person from complying with any other Town bylaw or any applicable provincial or federal enactment.

16.2 Where a requirement of this Bylaw conflicts with a provincial or federal enactment, the enactment prevails to the extent of the conflict.

16.3 The Town's Boulevard Maintenance Policy may provide administrative guidance respecting boulevard maintenance but does not replace or expand the enforcement authority established by this Bylaw or applicable legislation.

17. LEGISLATIVE REFERENCES

17.1 This Bylaw is enacted principally pursuant to sections 5, 6 and 8 of The Municipalities Act. Enforcement provisions are to be read with Part XII, Division 4 of The Municipalities Act, including sections 362 (inspection), 363 (warrant re access), 364 (order to remedy), 365 (appeal), 366 (municipality remedying contraventions), 367 (emergencies), 368 (civil action), 369 (adding amounts to tax roll), 370 (injunction), 372 (costs of municipality in actions), and 373 (bylaw enforcement officers), as applicable.

18. SEVERABILITY

18.1 If any provision of this Bylaw is declared invalid or unenforceable by a court of competent jurisdiction, that provision shall be severed and the remaining provisions shall continue in force.

19. REPEAL

19.1 Bylaw No. 2/91, being a bylaw to protect certain municipal property, is hereby repealed.

19.2 The repeal of Bylaw No. 2/91 does not affect any right, obligation, proceeding, offence, penalty or enforcement action arising before the effective date of this Bylaw.

20. COMING INTO FORCE

20.1 This Bylaw comes into force on the date of final passage.

Mayor

Chief Administrative Officer