

SUMMARY:

The Maintenance of Boulevards Bylaw No. 12744 establishes street tree and boulevard maintenance standards.

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# CITY OF KELOWNA

## Maintenance of Boulevards Bylaw No. 12744

WHEREAS the *Community Charter*, Section 36(1), allows a municipality by bylaw to regulate and prohibit in relation to all uses of or involving a highway or part of a highway;

NOW THEREFORE the Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

### 1. Definitions

#### 1.1. In this bylaw:

“Abutting” means immediately contiguous to, or physically touching, and when used with respect to a **highway**.

“Boulevard” means a portion of a **highway** between the curb lines or the edge of a **roadway** and the adjoining property or **roadway**. Includes municipal property such as a curb, sidewalk, planted area, or drainage infrastructure.

“City” means the City of Kelowna.

“City-Approved Landscaping Plan” means a **landscaping plan** that may be part of a Subdivision Application, Development Permit, Building Permit, or other off-site **landscaping plan** approved by the **City** following Subdivision, Development and Servicing Bylaw No. 7900 design standards.

“Damage” means an action that may cause a **tree** to decline in health or die, including ringing or removing bark, poisoning, burning, topping (unless branches are weak/diseased), cutting roots, excavating in a manner that impacts roots, or **excessive pruning**.

“Excessive Pruning” means removing or trimming greater than 25% of live branches of a **tree** within a period of 12 months.

“Highway” means “Highway” as defined in Subdivision, Development and Servicing Bylaw No. 7900.

“Infrastructure Operations Department Manager” means the Infrastructure Operations Department Manager of the **City**.

“Landscaping Plan” means a document that details the visual appearance of an outdoor area which may include the location of items such as a **tree, vegetation, or mulch**.

“Mulch” means a ground cover treatment applied over soil.

“Noxious Weed” means ‘noxious weeds’ as defined in the Noxious Weed and Grass Control Bylaw No. 8133 or the Regional District of Central Okanagan Noxious Weed Control Bylaw No. 1544, 2024. Includes an invasive plant species identified as noxious, invasive, or alien in federal, provincial, or local regulations.

“Roadway” means the portion of the **highway** that is improved, designed, or ordinarily used for vehicular traffic, but does not include the shoulder.

“Shouldering” means the compacted gravel adjacent to the edge of an asphalt **roadway** designed to support and drain the **roadway** structure.

“Tree” means a self-supporting woody plant that is a species of coniferous or deciduous genus.

“Vegetation” means a plant such as a groundcover, perennial, annual, shrub, or other plant excluding a **tree**.

### 2. General Regulations

- 2.1 A person must not modify or construct works in a **boulevard** except in accordance with this bylaw or another **City** bylaw.

2.2 The following is prohibited in a **boulevard**:

2.2.1. A permanent structure, including a retaining wall or fence.

2.2.2. The construction of a parking space or new driveway unless approved by the **City**, in accordance with Subdivision, Development and Servicing Bylaw No. 7900.

2.2.3. Expansion of an existing driveway unless approved by the **City**, in accordance with Subdivision, Development and Servicing Bylaw No. 7900.

2.3. Replacing or maintaining an existing driveway in a state of good repair is permitted in a **boulevard**.

2.4. Plant-based or organic **mulch** such as bark **mulch** or composted **mulch** is permitted in a **boulevard** to protect a **tree** or **vegetation** under the following conditions:

(a) Where a sidewalk or curb is present, the **mulch** must not spill into a sidewalk or **roadway**.

(b) Where a sidewalk or curb is not present, **mulch** must be located at least 0.6 m away from drainage infrastructure, **shouldering** or the edge of **roadway** asphalt if the **shouldering** area is unclear.

2.5. Rocks, which include boulders, rock **mulch**, or gravel, are not permitted in the **boulevard**, except under the following conditions:

2.5.1. For the purpose of drainage, gravel (25 mm minus) may be placed in accordance with Section 4.

2.5.2. Decorative rock may be placed in accordance with a **City-approved landscaping plan** or in accordance with Subdivision, Development and Servicing Bylaw No. 7900. Decorative rock is prohibited in the **shouldering** area or over drainage infrastructure.

2.5.3. Self-binding gravel or crusher fines (9.5 mm minus) may be placed over the soil as **mulch** within 2 metres of a **tree** trunk.

2.5.4. When rock **mulch**, decorative rock, paving slabs, or flagstone is permitted in a **boulevard** it must meet one of the following conditions:

(a) Where a sidewalk or curb is present, the rock material must not spill into a sidewalk or **roadway**.

(b) Where a sidewalk or curb is not present, the rock material must be at least 0.6 m away from drainage infrastructure, **shouldering** or the edge of **roadway** asphalt if the **shouldering** area is unclear.

2.6. Rocks permitted in accordance with Section 2.5 may be required to be removed at the cost of the abutting property owner if it creates a hazard to public safety or **City** equipment.

3. Property Owner Responsibilities

3.1. An **abutting** property owner must:

3.1.1. Maintain a **tree** located in a **boulevard** in a manner that

(a) achieves standard watering and plant care (as defined by the Canadian Landscape Standard), or as required by a **City-approved landscaping plan**.

(b) is in accordance with the Municipal Tree Bylaw No. 8042.

(c) protects a **tree** from **damage**.

3.1.2. Maintain **vegetation** or irrigation located in a **boulevard** in a manner that

(a) prevents growth over a sidewalk, curb, or **roadway**.

(b) allows safe access for a pedestrian.

(c) achieves watering and standard plant care as defined by the Canadian Landscape Standard, or as required by a **City-approved landscaping plan**.

(d) does not interfere with a utility, ditch, swale, gravel soaker strip, soak away zone, or similar drainage infrastructure.

(e) aligns with another **City** bylaw that regulate sightlines and unobstructed areas, including parking, intersection, fire hydrant, telecommunication utility pedestal, electrical transformer, or infrastructure regulated by Subdivision, Development and Servicing Bylaw No. 7900.

(f) aligns with third-party utility standards.

(g) does not permit **vegetation** adjacent to an approved on-street parking space to be greater than 0.2 metres in height within 0.6 metres of a curb.

3.1.3. Sections 3.1.1.a and 3.1.2.c do not apply where a water purveyor has restricted or prohibited this type of water usage.

3.1.4. Replace a **tree, vegetation**, or a private irrigation component located in a **boulevard** according to a **City-approved landscaping plan** or in accordance with Subdivision, Development and Servicing Bylaw No. 7900.

(a) A different species may be used as a replacement if it meets the requirements of Subdivision, Development and Servicing Bylaw No. 7900.

3.1.5. Keep a **boulevard** free of a **noxious weed**, litter, or debris.

3.1.6. Receive approval from the **City** in accordance with Section 4 prior to modifying drainage infrastructure located in a **boulevard**.

3.1.7. Locate a property line or underground utility prior to works adjacent to or in the **boulevard**.

3.1.8. Remove or mitigate a public hazard in a **boulevard** identified as per Section 4.

3.2. An **abutting** property owner may plant **vegetation** and install private irrigation within an existing vegetated **boulevard**.

3.3. An **abutting** property owner is solely liable for a claim regarding injury or hazard that may be due to lack of maintenance of a **boulevard** or works installed that do not follow **City** standards identified within Subdivision, Development and Servicing Bylaw No. 7900.

#### 4. **City Authority**

4.1. The **Infrastructure Operations Department Manager** may

4.1.1. deem a **boulevard** condition to be a hazard to public safety or **City** equipment.

4.1.2. approve or deny a request to modify drainage infrastructure.

4.2. A **tree, vegetation**, or rock located in a **boulevard** may be removed by the **City**.

4.2.1. The **City** will attempt to notify the abutting owner prior to the removal, unless the removal is an emergency to rectify a public safety concern.

4.2.2. The **City** will replace **boulevard vegetation**, rock, or a **tree** following the design requirements of Subdivision, Development and Servicing Bylaw No. 7900.

4.3. The **City** is not responsible for **damage** to a **tree** or **vegetation** located in a **boulevard**.

4.4. The **Infrastructure Operations Department Manager** may exempt the owner of an **abutting** property from the requirement to maintain a **boulevard** as set out in Section 3 if:

4.4.1. a slope greater than 10% prohibits safe access to or maintenance of the **boulevard**, or

4.4.2. the size of the **boulevard** is such that the burden of maintenance on the **abutting** property owner would be substantially disproportionate to that of other property owners.

4.5. Section 4.4 does not apply if an **abutting** property owner has altered the site to the detriment of maintenance or access.

#### 5. **Penalty**

5.1. Every person who violates a provision of this bylaw commits an offence and is liable on summary conviction to a penalty not exceeding Fifty Thousand Dollars (\$50,000.00) and the costs of prosecution.

- 5.2. Each day a violation of the provision of this bylaw exists or is permitted to exist will constitute a separate offence.
- 5.3. When a person fails to perform an action required by this bylaw, the **City** is authorized to carry out such action through its representative, employee, or agent at the expense of the responsible property owner.
  - 5.3.1. The **City** will invoice the responsible property owner the costs incurred.
  - 5.3.2. The responsible property owner will pay the invoice amount within thirty (30) days of the invoice date.
  - 5.3.3. Pursuant to provisions of the *Community Charter*, a fee required to be paid by this bylaw which remains unpaid after December 31 of the calendar year will be added to and form part of the property taxes in arrears on the **abutting** subject property.
6. Severability
  - 6.1. A portion of this bylaw is held invalid by a Court of competent jurisdiction, then the invalid portion must be severed and the remainder of this bylaw is deemed to have been adopted without the severed section, subsection, paragraph, subparagraph, clause or phrase.
7. This bylaw may be cited as "Maintenance of Boulevards Bylaw No. 12744".
8. Bylaw No. 10425, being "Maintenance of Boulevards by the Owners of Lands Thereon" and all amendments thereto are hereby repealed.
9. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first, second and third time by the Municipal Council this 20<sup>th</sup> day of January, 2025.

Adopted by the Municipal Council of the City of Kelowna this 27<sup>th</sup> day of January, 2025.

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Mayor

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City Clerk