

SUMMARY:

The City of Kelowna Maintenance of Boulevards by the Owners of Lands Abutting Thereon Bylaw is designed to regulate the maintenance of boulevards by or on behalf of the owners of land abutting on them.

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# CITY OF KELOWNA

## BYLAW NO. 10425

### A Bylaw to Regulate the Maintenance of Boulevards by the Owners of Lands Abutting Thereon

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WHEREAS Part Three, Division 5 of the *Community Charter*, 2003, c.26 provides that Council for the City of Kelowna may, by bylaw be granted the authority to regulate the maintenance of boulevards by or on behalf of the owners of land abutting on them;

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

1. In this bylaw the following definitions apply:

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

“**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.

“**City**” means the City of Kelowna.

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

“**Noxious weed**” shall have the same meaning as defined in the City of Kelowna Noxious Weed and Grass Control Bylaw No. 8133.

“**Park Services Manager**” means the person appointed to the position of Park Services Manager or his or her designate.

“**Highway**” means a street, road, lane, right-of-way, bridge or viaduct but does not include a private right-of-way on private property.

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

“**Transportation Services Manager**” means the person appointed to the position of Transportation Services Manager or his or her designate.

“**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.

2. In regard 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 20 cm;

- b) Keep such **boulevard**, including any sidewalk, free of brush, **noxious weeds**, litter, leaves or debris and in a tidy condition;
  - c) Maintain the height and width of any shrubs or **non-standard landscaping** (excluding City planted trees which are maintained by the city as per the Municipal Properties Tree Bylaw No. 8042), 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) Landscaping must not interfere with intersection sightlines, as per Traffic Bylaw 8120.
  - f) 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 **Transportation Services Manager**.
3. The obligations to maintain the **boulevard** as specified in Section 3 do not apply where in the opinion of the **Park Services Manager**, 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.
4. **Non-standard landscaping** is permitted on a **boulevard**, under the following conditions:
- a) The property owner is responsible for locating the property line as well as all underground utilities prior to digging;
  - b) The property owner is solely liable for any claims regarding injury or hazards that may be created due to **non-standard landscaping**.
  - c) Shrubs and plant materials must be drought tolerant and maintained to a height less than 0.5 m above the **boulevard** level.
  - d) **Noxious weeds** or invasive plants are not permitted;
  - e) 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;
  - f) Decomposable mulches are permitted;

- g) As of September 2010, 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; or
    - ii) Where a sidewalk is present, gravel that is no larger than 2.5cm in diameter may be placed between the sidewalk and an adjacent property line, provided that the gravel is at least 2.5cm below the level of the sidewalk to prevent spillage on to the sidewalk; or
    - iii) Where a sidewalk is not present and a curb is located in the **boulevard**, gravel that is no larger than 2.5cm in diameter may be placed between the curb and an adjacent property line, provided that the gravel is at least 2.5cm below the level of the curb to prevent spillage on to the road.
  - 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**; and
  - j) All landscaping placed in the **boulevard** could be removed by the **City** at any time and without notice, and will not be replaced, except with soil and grass.
  - k) The **City** is not responsible for damages to **boulevard** landscaping due to road maintenance activities.
5. 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, in the same manner as it may recover municipal taxes.
6. Every person who violates a provision of this bylaw commits an offence and is liable on summary conviction to a penalty not exceeding Ten Thousand Dollars (\$10,000.00) and the costs of prosecution.
7. Each day that a person contravenes any of the provisions of this bylaw constitutes a separate and distinct offence.
8. This bylaw may be cited for all purposes as "Bylaw No. 10425, being "Maintenance of Boulevards by the Owners of Lands Abutting Thereon".

9. 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 Kelowna, as amended, revised, consolidated or replaced from time to time.
10. If any section, paragraph or phrase of this bylaw is for any reason held to be invalid by a decision of a Court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this bylaw.
11. City of Kelowna Maintenance of Boulevards by the Owners of Lands Fronting Thereon Bylaw No. 5708-84, and all amendments thereto, are hereby repealed.
12. 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 18<sup>th</sup> day of October, 2010.

Adopted by the Municipal Council of the City of Kelowna this 25<sup>th</sup> day of October, 2010.

Charlie Hodge

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Acting Mayor

Stephen Fleming

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City Clerk