

# VILLAGE OF PEMBERTON

## BYLAW No. 713, 2012

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Being a bylaw to regulate to regulate the maintenance of boulevards and ditches.

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**WHEREAS** Part Three, Division 5 of the *Community Charter* provides that Council for the Village of Pemberton 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 Council of the Village of Pemberton, in open meeting assembled, **ENACTS AS FOLLOWS**:

### 1. CITATION

This Bylaw may be cited as “Village of Pemberton Boulevard Maintenance Bylaw No. 713, 2012.”

### 2. DEFINITIONS

In this bylaw:

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

**“application”** means the application for a Boulevard Improvement Permit made in the form(s) established and prescribed by the Village

**“Boulevard”** means the area of a highway or roadway between the edge of the paved or main travelled portion of the roadway and the adjacent property line and includes sidewalks, ditches and curbs.

**“Ditch”** means a drainage ditch located within the right-of-way of a highway or roadway in the possession and control of the Village.

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

**“Village”** means the Village of Pemberton.

**“Noxious Weeds”** means any weed designated by a provincial regulation to be a noxious weed, and includes seeds of a noxious weed.

**“Owner”** when referring to personal property, means the registered owner of such real property, the holder of any registered or unregistered legal owner of such property if it is not registered, the purchase of it under any registered or unregistered conditional sale agreement, and also any agent or other authorized representative of such person.

**“Permit”** means the Boulevard Improvement Permit as established and prescribed and issued by the Village.

**“Roadway”** means that portion of a highway which is improved for use by vehicular traffic, and includes paving, underground utilities, curbs and gutters.

**“Traffic Control Device”** means a sign, line, meter, marking, space, barrier, or device; painted, placed or erected; to guide, regulate, warn, direct, restrict, control or prohibit traffic.

**“Village Official”** means a duly authorized representative of the Village.

### **3. GENERAL PROVISIONS**

#### **3.1 Property Owner Prohibitions**

3.1.1 An Owner of Property must not:

- a) permit any garbage, debris or discarded materials to accumulate on boulevards or in ditches; or
- b) place any rocks, fencing, landscape ties, rails, bricks, concrete structures or figurines, on the boulevard or in a ditch, immediately adjacent to the owner’s property. This provision does not pertain to items authorized by the Village.
- c) deposit snow originating from private property on municipal highways, roadways, sidewalks, lanes or parking areas;
- d) place fill, landscaping debris or material in drainage swales/ditches;
- e) install culvert extensions in drainage ditches without Village authorization;

#### **3. 2 Property Owner Obligations**

3.2.1 Every Owner of Property adjacent to a Boulevard or Ditch must maintain that Boulevard or Ditch in a clean and safe condition at all times;

3.2.2 In regard to the boulevard immediately abutting an owner’s property, such property owner must:

- a) keep grass on the boulevard trimmed to a height of not more than 20 centimetres;
- b) keep such boulevard free of brush and noxious weeds;
- c) prune and trim hedges, trees and shrubs in the boulevard so that a minimum vertical clearance of three (3.0) metres above the sidewalk and five (5.0) metres above the roadway, is maintained and there is no encroachment on:
  - a sidewalk; or
  - a road, where there is no sidewalk;
- d) ensure that sight lines to intersections, driveways, sidewalk, walkways, travel lanes, and visibility to all traffic control devices is not restricted by modifications to the boulevard which the property owner may undertake;
- e) maintain a one (1) meter clearance for shrubbery, hedges and trees from any fire hydrant or fire hydrant valve.
- f) manage trees and vegetation in such a way that it does not become a hazard to houses, infrastructure, or persons.

3.2.3 The obligation to maintain the boulevard as specified in subsection 3.2.1 and subsection 3.2.2 does not apply where in the opinion of the Village Official the property owner is unable to directly access the boulevard due to steep grades, walls, fences or other obstructions.

### **3.3 Boulevard Improvement**

3.3.1 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 Boulevard Improvement Permit.

3.3.2 An Owner may apply for a Boulevard Improvement Permit by submitting an application in the form as prescribed by the Village.

3.3.3 Village Officials may approve, reject, or approve with such conditions as it considers appropriate an application for a Boulevard Improvement Permit.

3.3.4 A Boulevard Improvement Permit may permit an Owner to improve a Boulevard by the planting of grass, shrubbery and ground cover, addition of flower beds, the placement of decorative rock, or the construction of paved or concrete driveways, sidewalks or curbs, provided that Landscaping treatment do not fill in or interfere with utilities, ditches, swales, drainage structures or Village maintenance and operations and complies with the conditions established in the Boulevard Improvement Permit;

- 3.3.5 An Owner that is granted a Boulevard Improvement Permit must carry out such improvements strictly in accordance with the conditions of that Boulevard Improvement Permit.
- 3.3.6 Village Officials may revoke without compensation a Boulevard Improvement Permit if the holder of the Boulevard Improvement Permit has failed to comply with the regulations of this Bylaw or with a condition of the Boulevard Improvement Permit.
- 3.3.7 Every Owner of property adjacent to an Improved Boulevard must, in addition to any other maintenance obligations set out in this Bylaw, maintain such Improved Boulevard by sufficiently watering and keeping trim any additions as approved in the permit.
- 3.3.8 All landscaping placed in an Improved Boulevard could be removed by the Village at any time and without notice, and will not be replaced, except with soil and grass.

### **3.4 Snow and Ice Removal**

- 3.4.1 Every owner, occupier or tenant of real property shall remove or cause the removal of snow and ice from sidewalks and footpaths abutting the property by 7:00 a.m. each day in order to maintain safe pedestrian passage. The Village will provide snow clearing services on arterial sidewalks or footpaths as per the Snow and Ice Removal Policy as amended from time to time.
- 3.4.2 Notwithstanding section 3.4.1 of this Bylaw, where the accumulation of snow and ice on a footpath, sidewalk, or roof creates a hazardous condition, the owner or occupier of the real property on which the footpath, sidewalk, or roof is located, or is adjoined by, shall immediately remove the accumulation of snow and ice.
- 3.4.3 Snow collected on private property shall be stored within the private property envelope. No owner, occupier or tenant of real property shall deposit snow originating from private property on Village highways, roadway, sidewalks, lanes or parking areas.
- 3.4.4. Owners, occupiers or tenants of commercial and residential properties may store snow from sidewalks and parking lots in certain areas within the Village boundaries as designated by the Village.

### **3.5 Village and Utility Company Action**

- 3.5.1 The Village may, without notice or compensation to any person, remove or prune any tree or shrub upon a Boulevard that is deemed by the Village to be a nuisance to public property or to a utility installation, or that interferes with the safe and orderly movement of vehicular or pedestrian traffic.

- 3.5.2 The Village, and any utility company serving the Village, may, without notice or compensation to any person, enter upon, disturb, and take over any Boulevard for the purpose of maintaining or constructing a utility service, including any works in connection with that utility service.
- 3.5.3 The Village is not responsible for damages to boulevard landscaping due to road or ditch maintenance activities.

### **3.6 Restoration of the Boulevard After Construction**

- 3.6.1 Upon completion of any work by the Village or Utility acting on behalf of the Village which required the removal of any flower beds, plant shrubbery and landscaping, the property owner may replace such vegetation with the permission of the Village through a Boulevard Improvement Permit.

## **4. COMPLIANCE**

- 4.1 If, in the opinion of the Village Official, the owner of real property or other responsible person fails to comply with a requirement of this Bylaw, the Village Official may issue an order requiring that the owner or other responsible person bring the real property into compliance with the provisions of this Bylaw within such time as the Village Official considers appropriate in the circumstances.
- 4.2 Service of an order referred to in Section 4.1 will be sufficient if a copy of the order is:
- (a) served personally or mailed by prepaid registered mail to the owner of the real property as shown on the current year's real property assessment roll; and;
  - (b) either posted on the real property or delivered or mailed by regular mail to the occupier of the real property.
- 4.3 Notice issued under section 4.2 herein must state:
- (a) the civic address of the subject real property;
  - (b) the legal description of the subject real property;
  - (c) the particulars of the condition of the real property or other non-compliance with this Bylaw to be remedied;
  - (d) that the non-compliance with this Bylaw must be remedied within fourteen (14) days of the date of delivery of the notice, or, in the case of snow, ice or rubbish on a highway, sidewalk, footpath, lanes, parking areas or roadway within twenty-four (24) hours from the time the snow, ice or rubbish is deposited thereon.

(e) that if the owner or occupant fails to comply with the notice, the Village may, without further notice, proceed to carry out the work required, and the cost of such work will be added to the taxes of the real property, and the owner or occupant or both may be subjected to prosecution for an offence under this Bylaw.

4.4 Notice issued under section 4.2 herein may give specific instructions to remedy the accumulation of materials (rubbish or otherwise) of the real property or other non-compliance with this Bylaw including, but not limited to, any one or more of the following directions:

(a) remove unsightly accumulations of materials or rubbish from the boulevard or ditches;

(b) remove snow, ice or rubbish from sidewalks footpaths, lanes, parking areas, highway and roadways;

(c) clear the boulevard or ditch of brush, trees, noxious weeds or other growths;

(d) cut grass or weeds present on the boulevard or ditch;

(e) prune trees or shrubs on the boulevard or ditch;

(f) otherwise remediate, maintain or repair the boulevard or ditch as specified in the notice, so as to bring it into compliance with this Bylaw.

4.5 If the owner of real property or other responsible person fails to comply with the Village Officials compliance order within the time period specified in such notice, the Village, by its workers or others, may at all reasonable times and in a reasonable manner, enter the real property and bring about such compliance at the cost of the defaulting owner or other responsible person. Such costs shall consist of all costs and expenses incurred by the Village to achieve compliance with this Bylaw including, without limitation, administrative costs, costs to attend property by Village employees or its contractors and the costs of removal, clean up and disposal.

4.6 If an owner of real property or other responsible person defaults in paying the cost referred to in Section 4.5 to the Village within thirty (30) days after receipt of a demand for payment from the Village, the Village may either recover from the owner or other responsible person, in any court of competent jurisdiction, the cost as a debt due to the Village, or direct that the amount of the cost be added to the real property tax roll as a charge imposed in respect of work or service provided to the real property of the owner, and be collected in the same manner as property taxes.

- 4.7 Service of a demand for payment referred to in Section 4.6 will be sufficient if a copy of the demand is served personally or mailed by regular mail to the owner of the real property as shown on the current year's real property assessment roll.

**5. ENFORCEMENT**

The provisions of this Bylaw may be enforced by a designated Village Official.

**6. PENALTY**

6.1 Every Person who contravenes or violates any provision of this Bylaw, or who suffers or permits any act or thing to be done in contravention or in violation of any provision of this Bylaw, or who neglects to do or refrains from doing anything required to be done by any provision of this Bylaw, commits an offence and, upon conviction, shall be liable to a fine or penalty not exceeding \$10,000;

6.2 Each day that a violation of any provision of this Bylaw continues to exist is a separate offence against this Bylaw.

**7. SEVERABILITY**

7.1 If any part, section, sub-section, clause, or sub-clause of this bylaw is, for any reason, held to be invalid by the decision of a Court of competent jurisdiction, such decision does not affect the validity of the remaining portions of this bylaw.

**8. COMMENCEMENT**

The provisions of this Bylaw shall take effect on the day of adoption.

**READ A FIRST TIME** this 2<sup>nd</sup> day of October, 2012.

**READ A SECOND TIME** this 2<sup>nd</sup> day of October, 2012.

**READ A THIRD TIME** this 2<sup>nd</sup> day of October, 2012.

**ADOPTED** this 16<sup>th</sup> day of October, 2012.

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Mayor

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Corporate Officer

