



District of West Vancouver

## **Boulevard Bylaw No. 4886, 2016**

Effective Date: April 20, 2016

### **Consolidated for Convenience Only**

This is a consolidation of the bylaws below. The amendment bylaws have been combined with the original bylaw for convenience only. This consolidation is not a legal document. Certified copies of the original bylaws should be consulted for all interpretations and applications of the bylaw on this subject.

#### **Amendment Bylaw**

Bylaw No. 5131, 2021

Bylaw No. 5090, 2020

#### **Effective Date**

July 27, 2021

November 2, 2020

The bylaw numbers in the margin of this consolidation refer to the bylaw that amended the principal bylaw (Boulevard Bylaw No. 4886, 2016). The number of any amending bylaw that has been repealed is not referred to in this consolidation.

# Boulevard Bylaw No. 4886, 2016

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District of West Vancouver

## **Boulevard Bylaw No. 4886, 2016**

A bylaw to regulate the use and occupation of highway boulevards

Previous amendments: *Amendment Bylaw 5090 and 5131.*

WHEREAS the *Community Charter* prohibits a person from excavating in, causing a nuisance on, obstructing, fouling or damaging any part of a highway, except as permitted by a municipal bylaw;

WHEREAS the Council of The Corporation of the District of West Vancouver deems it expedient to provide for the use and occupation of highway boulevards;

NOW THEREFORE, the Council of The Corporation of the District of West Vancouver enacts as follows:

### **Part 1 Citation**

- 1.1 This bylaw may be cited as Boulevard Bylaw No. 4886, 2016.

### **Part 2 Severability**

- 2.1 If 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.

### **Part 3 Repeal and Consequential Amendment**

- 3.1 Boulevards Bylaw No. 3191, 1984 is repealed.
- 3.2 The Encroachment Bylaw is amended by substituting for Section 2(2) the following:

This Bylaw does not apply to encroachments authorized by or under Boulevard Bylaw No. 4886, 2016.

## Part 4 Definitions

### 4.1 In this bylaw:

“Altamont Area” means the area identified as such in the Official Community Plan.

“Boulevard” means any portion of a dedicated highway that is not improved for general vehicular or pedestrian traffic, whether such portion is naturally vegetated, artificially landscaped or unimproved, and includes the space below and above the surface.

“Compacted Surface” means a surface composed of crushed rock other than limestone or other rock containing substances harmful to aquatic life, asphalt, paving stones, turf stone, or similar materials, but not river rock or other loose materials, that is capable of bearing the weight of a motor vehicle.

“DBH” means diameter measured 1.4 m above the highest immediately adjacent natural ground level.

“Director” means the Director of Planning and Development Services of the District and any person designated by the Director to administer this bylaw.

“District” means the District of West Vancouver.

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“District Arborist” means the person appointed by the District to that position.

“Driveway Crossings Bylaw” means Driveway Crossings Bylaw No. 3748, 1992.

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“Encroachment” means the occupation of a part of the surface, sub-surface of or airspace above a highway by a building, structure or physical object.

“Encroachment Permit” means a permit issued under Part 7 of this bylaw.

“Fence” means a vertical structure up to 8 cm in thickness having supporting posts and rails, used to enclose or screen a lot or area.

“Hedge” means a row of at least 5 trees or shrubs planted less than 1.25 metres apart.

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“Highway” includes all public streets, roads, ways, trails, lanes, bridges, trestles, ferry landings and approaches and any other public way.

“Invasive Plant” means a specimen of any plant species listed in Schedule A and any other plant species that the Director of Parks deems to be invasive.

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“Municipal Tree Contractor” means a company approved and contracted by the District to complete work on trees located on Municipal property.

“Natural Boundary” means the visible high water mark of the Strait of Georgia or English Bay, where the presence and action of the water are so common and usual, and so long continued in all ordinary years, as to mark on the soil of the bed of the body of water in question a character distinct from that of its banks, in vegetation, as well as in the nature of the soil itself;

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“Owner” means any person who is the registered owner or owner under agreement of real property.

“Shrub” means a specimen of any evergreen or deciduous species having several stems, and a spreading, low-growing tendency.

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“Tree” means a woody, perennial plant having one or more stems, with at least one stem having a DBH of 5 cm or more.

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“Tree cutting” means:

- a) The removal of a tree by any means from the land on which it is growing;
- b) The topping of trees, including the re-topping of trees that previously been topped; and
- c) The removal of any limb of a tree that requires ascending the tree to complete the removal.

## Part 5 Landscaping on Boulevards

5.1 The owner of land abutting a boulevard may improve the portion of the boulevard directly abutting the owner’s land by doing any of the following:

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5.1.1 Sodding or planting it with lawn and planting shrubs, ground covers, flowers, grasses or similar ornamental landscaping materials, but in no case any gravel or river rock except where permitted under section 7.5.1 herein, and in no case invasive plants; and

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5.1.2 Improving it with an encroachment that is authorized by or under this bylaw, or with a driveway crossing authorized under the Driveway Crossings Bylaw.

- 5.2 No person shall improve any boulevard in such a way as to:
  - 5.2.1 Interfere with access to, bury, expose or damage any pipe, hydrant, valve box, service post, manhole or other utility infrastructure;
  - 5.2.2 Pose a hazard or obstruction to vehicles, cyclists or pedestrians using the highway;
  - 5.2.3 Obstruct sight lines from driveways or sidewalks or, when located near an intersection, obstruct driver sight lines from intersecting streets; or
  - 5.2.4 Restrict public access to any public place.
- 5.3 It is a condition of using a boulevard under the authority of Section 5.1 that the owner, at the owner’s sole expense, keeps the boulevard in good and safe condition, including removing all litter and debris, pruning, trimming, mowing, weeding and any other activity necessary to maintain the condition required by this Section, and that the owner is at all times in compliance with any relevant encroachment agreement or driveway crossing permit.
- 5.4 Where obstruction of sight lines may be a concern within the boulevard areas, as determined by the Director, height of mature shrubs must not exceed 0.6 m. Upon review by the Director the trees may be required to be limbed so that there is a 3.0 m clearance from the grade. Additionally, landscaping within a 1.0 m setback from the edge of travelled surface must provide clear sightlines between 0.6 m and 3 m in height.
- 5.5 Sections 5.3 and 5.4 do not authorize an owner to cut any boulevard tree with a DBH of 5 cm or more without obtaining a permit under Part 8.
- 5.6 An owner who provides a landscaping plan pursuant to Section 130.16 of the Zoning Bylaw and who wishes to use an abutting boulevard under the authority of this bylaw must include the boulevard in the landscaping plan, and improve the boulevard in accordance with the approved landscaping plan and this bylaw. The landscaping plan application shall include the Boulevard Design Plan Review fee set out in Fees and Charges Bylaw No. 5025, 2019, as amended from time to time.

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- 5.7 Where a fence is permitted under section 130.17 of the Zoning Bylaw abutting the boulevard, landscaping, in accordance with Part 5, is required on the boulevard between the permitted fence and edge of travelled surface. The landscaping shall include shrubs, in accordance with this Bylaw, along the length of the fence on the street facing side. The Director may provide an exemption of the latter requirement based on an assessment of the site conditions.
- 5.8 The District may, with only such notice to the owner of the abutting land as is in the opinion of the Director reasonably practicable in the circumstances, and without compensation to the owner, interfere with or remove any improvement made to or placed on a boulevard under the authority of Section 5.1 if the use of the boulevard is required for any municipal purpose. The District has no obligation to replace or restore any such improvement.
- 5.9 The Director may, by giving 21 days' notice in writing, order any owner to maintain a boulevard in accordance with Section 5.3 or to remove improvements or other materials placed on a boulevard without permission or otherwise in contravention of this bylaw, unless the improvements or materials are creating a hazard or obstruction in which case the Director need give only such notice as is reasonably practicable. The notice may be posted on the owner's abutting land or mailed by registered mail, and shall be deemed received on the date of posting or two days after the date of mailing.
- 5.10 If an owner fails to comply with a notice given under Section 5.9, the District may carry out the maintenance or removal at the cost of the owner, and may recover the cost from the owner as a debt with interest at the rate of 6% a year compounded annually.

## Part 6 Other Encroachments on Boulevards

- 6.1 No person shall deposit any garden clippings or debris or any waste material of any kind on a boulevard.
- 6.2 No person shall plant any specimen of an invasive plant species on a boulevard.
- 6.3 No person shall, except as authorized by an Encroachment Permit under this Bylaw or a crossing permit under the Driveway Crossings Bylaw, excavate in, construct or maintain any building, structure, or physical object on a boulevard.
- 6.4 An encroachment permit is not required for any of the following:

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- 6.4.1 In any location:
  - (a) A pedestrian sidewalk up to 1.5 m in width, connecting the roadway to an abutting lot; and
  - (b) A removable canopy or awning attached to a building occupied by a commercial use.

- 6.4.2 In locations at least 2 m from the edge of the roadway:
  - (a) Access steps that are part of a pedestrian sidewalk; and
  - (b) Landscape berms under 0.6 m in height above adjacent grade.

- 6.4.3 In locations at least 3 m from the edge of the roadway:
  - (a) Measured to the nearest portion of the stem, shrubs whose foliage does not extend closer than 2 m from the edge of the roadway, provided that no hedge is permitted in the Altamont Area;
  - (b) Measured to the nearest portion of the trunk, a tree whose location takes into consideration the location of utilities and any District policy regarding the planting of trees on boulevards; and
  - (c) Rocks or similar landscaping features under 0.6 m in height, not forming a continuous wall.

6.5 The conditions on which encroachments are permitted by Section 6.4 are that the encroachment:

- 6.5.1 Does not interfere with access to, bury, expose or damage any pipe, hydrant, valve box, service post, manhole or other utility infrastructure;
- 6.5.2 Does not pose a hazard or obstruction to vehicles, cyclists or pedestrians using the highway;
- 6.5.3 Does not restrict public access to any public place;
- 6.5.4 Does not, in the opinion of the Director, interfere with any tree;
- 6.5.5 Does not obstruct sight lines from driveways or sidewalks or, when located near an intersection, obstruct driver sight lines to intersecting streets;
- 6.5.6 Is of a semi-permanent nature and may be easily removed;

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6.5.7 Is not necessarily for the exclusive benefit of the owner of the real property to which the encroachment is adjacent to in the opinion of the Director; and

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6.5.8 Has, as one of its principle purposes, in the opinion of the Director, the beautification or enhancement of the utility of such real property.

6.6 For certainty, Section 6.4 does not authorize an encroachment on any highway or lane that has not been opened to vehicular access.

6.7 An encroachment permit is not required for temporary use of a boulevard for either of the following:

6.7.1 Sediment control or tree protection fences; and

6.7.2 Temporary placement and storage of materials required for the construction of a building or structure on or the landscaping of the abutting lot;

6.8 The conditions under which temporary uses of a boulevard are permitted by Section 6.7 are that:

6.8.1 A building permit has been issued and construction is being diligently pursued on the abutting lot;

6.8.2 Neither the fence nor the materials interferes, in the opinion of the Director, with any tree;

6.8.3 The fence or materials are at least 0.5 m from the roadway; and

6.8.4 If construction has been completed on the abutting lot, not more than 29 days have elapsed since the date of final inspection of the construction by the District.

6.9 Nothing in this bylaw prevents or limits the use of a boulevard by the District, any utility, Canada Post Corporation, or any other public authority having statutory rights to occupy a highway.

## Part 7 Encroachment Permits and Procedures

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7.1 An owner of a lot abutting a boulevard or their authorized agent may apply to the Director for an Encroachment Permit in respect of any encroachment on the boulevard that is not permitted by Part 5 or Part 6, other than an encroachment that is within the scope of the Driveway Crossings Bylaw.

- 7.2 The Director may prescribe the form of encroachment permits and encroachment permit applications under this bylaw, including information requirements for applications.
- 7.3 A permit application made under this bylaw must be accompanied by the application fee specified in the Fees and Charges Bylaw.
- 7.4 The Director may defer consideration of an application that is incomplete or contains inaccurate information, until the applicant completes or revises the application.
- 7.5 The Director may issue an encroachment permit for the following types of encroachments, provided that the encroachment complies with the conditions set out in Section 6.5:

7.5.1 In any location other than a boulevard adjacent to the natural boundary:

- (a) An uncurbed, compacted surface up to 2.7 m in width and 7 m in length for one motor vehicle parking space parallel to the roadway, provided that such encroachment is consistent with and contributes to the established character of the boulevard and the street of which it forms a part and does not appear, or could not be construed, at the sole discretion of the Director, as an extension of the property or property's driveway. The Director may provide an exemption for the latter requirement based on an assessment of the site conditions; and
- (b) Retaining walls required to support a driveway authorized under the Driveway Crossings Bylaw or to stabilize natural grade.

7.5.2 In locations at least 2 m from the edge of the roadway, or such greater distance as may be required to maintain unobstructed access to water meters and ensure visibility at intersections, but not on a boulevard adjacent to the natural boundary:

- (a) Landscape berms between 0.6 and 1.2 m in height above adjacent grade;
- (b) Rocks or similar landscaping features between 0.6 and 1.2 m in height and up to 1.2 m in width, not forming a continuous wall; and
- (c) Mailbox and address pillars up to 1.5 m in height and 0.6 m in width.

- 7.5.3 In locations at least 3 m from the edge of the roadway:
- (a) Heating coils in driveways authorized under the Driveway Crossings Bylaw; and
  - (b) Underground irrigation systems.
- 7.5.4 A fence of no greater height than that permitted by the Zoning Bylaw on the abutting lot, on the near side of the centreline of an unimproved highway or lane right of way that is not adjacent to the natural boundary, provided that the applicant has given written notice of the application to the owners of every lot within 50 m of any part of the proposed fence, no reasonable objection is made, and the owner enters into a fence maintenance agreement on terms acceptable to the Director.
- 7.6 Despite Section 7.5, the Director may issue an encroachment permit in respect of the Altamont Area only for:
- 7.6.1 Retaining walls required to support driveways authorized under the Driveway Crossings Bylaw or to stabilize natural grade;
  - 7.6.2 Parking spaces surfaced with compacted crushed rock or turf stone; and
  - 7.6.3 Driveway heating coils installed at least 3 m from the roadway.
- 7.7 The Director may, but is not obliged to, issue an encroachment permit authorizing encroachments other than those described in Section 7.5, if the Director is satisfied that the encroachment complies with the conditions set out in Section 6.5 and is of the opinion that the encroachment is consistent with and contributes to the established character of the boulevard and the street of which it forms a part.
- 7.8 The Director may make an encroachment permit subject to such terms and conditions as the Director deems appropriate, in addition to those set out in Section 7.17.
- 7.9 An encroachment permit expires and is of no further force or effect if the encroachment that it authorizes has not been constructed or installed within 6 months of the date of issuance of the permit, unless an extension by the Director is granted in writing. All amounts paid by the owner with respect thereto shall be forfeited to and become property of the District, and such owner shall have no recourse whatsoever against the District by reason of the termination of the agreement or the permission granted thereunder.

- 7.10 The Director may revoke an encroachment permit if it appears to the Director that the permit was issued in error or on the basis of incorrect, false or misleading information, or the permit holder has failed to comply with the permit.
- 7.11 No person to whom an encroachment permit is issued under this Part shall transfer their interest in the lot that abuts the highway in which the encroachment is installed or constructed, without causing the transferee to apply to the District for a permit authorizing the continuation of the encroachment during the transferee's tenure of the land.
- 7.12 Every encroachment permit issued under this Part shall contain a notice to the permit holder indicating that the permit does not run with the land, and stating the permit holder's obligation under Section 7.11.
- 7.13 A person who is dissatisfied with a decision of the Director under this Part may apply to the Council for reconsideration of the decision.
- 7.14 An application for reconsideration shall be made in writing to the Municipal Clerk within 10 days of the decision being communicated to the applicant, and shall include the information that the person provided to the District with respect to their application, a copy of the decision, a statement of the decision that the applicant wishes the Council to substitute for the original decision, the applicant's reasons for requesting reconsideration, and the application fee specified in the Fees and Charges Bylaw.
- 7.15 A person who applies for reconsideration under this Part shall be provided a reasonable opportunity to make written or oral representations to the Council with respect to their application at a regular meeting of Council within 3 calendar months of the application for reconsideration being made, and the Council may require the Director to provide information with respect to the decision.
- 7.16 On reconsideration, the Council may confirm the decision of the Director or substitute for that decision any other decision that the Director could have made under this bylaw.
- 7.17 Encroachment permits issued under this bylaw are subject to the following conditions, which are deemed by this Section to be incorporated into every such permit:
- 7.17.1 It is a condition of every encroachment permit that the permit holder complies with every applicable provision of this bylaw;
  - 7.17.2 Any breach of this bylaw or the terms of the permit may result in the revocation or termination of the permit;

7.17.3 The holder of the permit must obtain any other permit or approval required by any other District bylaw before undertaking any work authorized by the permit;

7.17.4 The permit holder must keep any works authorized by the permit in good and sufficient repair;

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7.17.5 The Director may enter into and upon the premises of the owner for the purpose of constructing, inspecting, maintaining, or removing any public works or utilities that have been or may in the future be installed in the highway in proximity to any encroachment.

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7.17.6 The Director may enter into and upon the premises of the owner for the purpose of inspecting the encroachment in accordance with this Bylaw and the terms of any agreement entered into pursuant to this Bylaw.

7.17.7 The District may, with only such notice to the owner of the abutting land as is in the opinion of the Director reasonably practicable in the circumstances, and without compensation of the permit holder, interfere with or remove any improvement made to or placed on a boulevard under the authority of the encroachment permit if the use of the boulevard is required for any municipal purpose;

7.17.8 The District may, by giving 10 days' written notice to the permit holder or such lesser notice as the Director deems reasonable in an emergency, order the maintenance, repair or removal of all or any part of an encroachment authorized by the permit; and

7.17.9 If an owner fails to maintain an encroachment or comply with a notice given under Section 7.17.8, the District may carry out the maintenance or removal at the cost of the owner, and may recover the cost from the owner as a debt with interest at the rate of 6% a year compounded annually.

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7.17.10 Where a motor vehicle parking space is permitted under section 7.5.1, any remaining non-landscaped areas of the boulevard adjacent to the lot and parking space must be landscaped in accordance with Part 5.

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7.17.11 The encroachment agreement provided shall be registered as a charge against the interest of the owner in the real property to which the encroachment is adjacent to. The Director may provide an exemption of this requirement based on an assessment of the permitted encroachment and site conditions.

## Part 8 Tree Cutting on Highways

- 8.1 No person may cut a tree on a District highway including a Boulevard unless the work has been authorized by a tree cutting permit issued by the Director.
- 8.2 No person shall be entitled to the issuance of a permit to cut a tree on a highway if the Director considers that the cutting of the tree, including without limitation the re-topping of a tree that has previously been topped, would not be consistent with the established character of the boulevard and the street of which it forms a part.
- 8.3 This Part applies to any tree any portion of the trunk of which is on a highway.

## Part 9 Tree Cutting Permits and Procedures

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- 9.1 The Director may prescribe the form of tree cutting permits and tree cutting permit applications, including information requirements for applications and requirements for confirmation that affected neighbours have been notified of the application and based on a tree risk assessment completed by the District Arborist.
- 9.2 A permit application made under this bylaw must be accompanied by the application fee specified in the Fees and Charges Bylaw.
- 9.3 The Director may require a person to whom a permit is issued under Part 8, or the person who is engaged to cut the tree, to provide security in the amount determined by the Director to secure the performance of the work in a manner that causes no undue damage to either public or private property.
- 9.4 No person shall engage another person to cut a tree to which this bylaw applies without providing to that person a copy of the tree cutting permit that authorizes the cutting of the tree.
- 9.5 No person shall cut a tree to which this bylaw applies unless the person is a Municipal Tree Contractor, as specified by the Director or District Arborist.
- 9.6 The permit holder must post a tree cutting permit in a conspicuous location on the boulevard to which the permit pertains before cutting the tree, and keep the permit posted until all cutting authorized by the permit has been completed.

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- 9.7 The Director may revoke a tree cutting permit if it appears to the Director that the permit was issued in error or on the basis of incorrect, false or misleading information, or the permit holder has failed to comply with the permit.
- 9.8 A tree cutting permit expires and is of no further force or effect if the tree to which it pertains has not been cut within 6 months of the date of issuance of the permit.

## **Part 10 Offence and Penalties**

- 10.1 Every person who:
- 10.1.1 Violates a provision of this bylaw;
  - 10.1.2 Consents, allows or permits an act or thing to be done in violation of a provision of this bylaw or a permit issued pursuant to this bylaw;
  - 10.1.3 Neglects to or refrains from doing anything required to be done by a provision of this bylaw or a permit issued pursuant to this bylaw;
  - 10.1.4 Fails to comply with an order of the Director given under this bylaw; or
  - 10.1.5 Wilfully damages a boulevard or a tree, shrub, hedge, grass or other thing by which a boulevard has been improved or landscaped;
- is guilty of an offence and is liable to the penalties imposed under this bylaw.
- 10.2 For certainty, in the case of offences involving the cutting or damaging of more than one tree, shrub, or plant, an offence is committed in respect of each individual specimen and the maximum penalties imposed under this bylaw apply to each such offence.
- 10.3 For certainty, in the case of offences of a continuing nature, an offence is committed on each day during which the offence continues, and the maximum penalties imposed under this bylaw apply to each such offence.
- 10.4 Every person who commits an offence is liable on summary conviction to a fine not exceeding \$10,000.00.

- 10.5 Nothing in this Part precludes the District from seeking any civil remedy to which it is entitled in relation to trespass on District land.

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## **Part 11 Pre-existing Encroachments**

- 11.1 Nothing in this Bylaw shall be construed so as to condone the existence or the continuation of an encroachment which was constructed prior to the passage of this Bylaw without the express knowledge and permission of the District.

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## **Part 12 Indemnity**

- 12.1 Every owner who excavates for, constructs, maintains, or permits the existence of, or uses any encroachment adjacent to their real property under the provision hereof or otherwise, shall at all times be liable for and shall indemnify the District against any and every claim, loss, expense or damage, and any suit or demands which may be occasioned by or incidental to the construction, existence, use or maintenance of an encroachment, and the amount of any loss or damage occasioned to the District thereby, except as otherwise herein provided, shall be lien or charge on all real property to which such encroachment is adjacent to.

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## **Part 13 Joint and Several Liability**

- 13.1 The liability of owners under this Bylaw, where there is more than one such owner, shall be deemed to be, and shall be, for all purposes joint and several.



**Schedules**

**Schedule A – Invasive Plant Species**

READ A FIRST TIME on April 18, 2016

READ A SECOND TIME on April 18, 2016

READ A THIRD TIME on April 18, 2016

ADOPTED by the Council on April 20, 2016.

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Mayor

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Municipal Clerk

## Schedule A - Invasive Plant Species

<b>Common name</b>	<b>Latin Name</b>
1. Himalayan Blackberry	<i>Rubus armeniacus</i>
2. Evergreen Blackberry	<i>Rubus laciniatus</i>
3. Butterfly Bush	<i>Buddleja davidii</i>
4. Cherry Laurel	<i>Prunus lauracerasus</i>
5. Clematis – Old Man’s Beard	<i>Clematis vitalba</i>
6. English Holly	<i>Ilex aquifolium</i>
7. English Ivy	<i>Hedera helix</i>
8. Giant Hogweed	<i>Heracleum mantegazzianum</i>
9. Gorse	<i>Ulex europaeus</i>
10. Goutweed	<i>Aegopodium podgaria</i>
11. Hawkweed	<i>Hieracium aurantiacum</i>
12. Bohemian Knotweed	<i>Fallopia x bohemica</i>
13. Giant Knotweed	<i>Fallopia sachalinensis</i>
14. Japanese Knotweed	<i>Fallopia japonica</i>
15. Himalayan Knotweed	<i>Polygonum polystachyum</i>
16. Lamium – Yellow Archangel	<i>Lamium galeobdolon</i>
17. Periwinkle	<i>Vinca minor</i> <i>Vinca major</i>
18. Policeman’s Helmet	<i>Impatiens glandulifera</i>
19. Purple Loosestrife	<i>Lythrum salicaria</i>
20. Reed Canarygrass	<i>Phalaris arundinacea</i>
21. Scotch Broom	<i>Cytisus scoparis</i>
22. Small flowered touch-me-not	<i>Impatiens parviflora</i>
23. Spurge Laurel	<i>Daphne jaureola</i>