

THE CORPORATION OF THE TOWNSHIP OF WILMOT

BY-LAW NO. 2025-XX

BEING A BY-LAW OF THE CORPORATION OF THE TOWNSHIP OF WILMOT TO REGULATE ENCROACHMENTS ON BOULEVARDS

WHEREAS the Municipal Act, 2001, S.O. 2001, c.25 (hereinafter the "Municipal Act, 2001") provides that a municipality may pass by-laws within the following spheres of jurisdiction: Highways, including parking and traffic on highways at section 11(1) 1; Culture, parks, recreation and heritage at section 11(1)5 and Structures, including fences and signs at section 11(1)7;

AND WHEREAS section 8 of the Municipal Act, 2001 provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Municipal Act;

AND WHEREAS section 9(1) of the Municipal Act, 2001 provides that sections 8 and 11 shall be interpreted broadly so as to confer broad authority on municipalities to (a) enable them to govern their affairs as they consider appropriate, and (b) enhance their ability to respond to municipal issues;

AND WHEREAS section 391(c) of the Municipal Act, 2001 provides that a municipality may pass by-laws imposing fees or charges on any class of persons for the use of its property including property under its control;

AND WHEREAS section 427(1) of the Municipal Act, 2001 provides that a municipality may proceed to do things at a person's expense which that person is otherwise required to under a by-law or otherwise but has failed to do;

AND WHEREAS section 427(3) of the Municipal Act, 2001 provides that the costs incurred by a municipality in doing a thing or matter under section 427(1) may be recovered by adding the costs to the tax roll and collecting them in the same manner as taxes;

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF WILMOT ENACTS AS FOLLOWS:

Short Title

1. This By-law shall be known and may be cited as the "Encroachment By-law".

Part 1 – Definitions

1.1 In this By-law:

"*Adjacent boulevard*" means the *boulevard* immediately adjacent to the front, side, rear or exterior side of a property;

"*Adjacent sidewalk*" means the *sidewalk* immediately adjacent to the front, side, rear or exterior side of a property;

"*Boulevard*" means the portion of a *highway* which may be paved, unpaved, grassed or landscaped with other materials, and is situated between the *curb* or edge of the *roadway* and the adjacent property line on both sides of a *highway*;

"*Boulevard garden*" means plants, flowers, hedges, shrubs or vegetation, or combination thereof, that is planted in an *adjacent boulevard*, but does not include noxious weeds or invasive plant species;

"*Curb*" means the lateral boundary of the *roadway*, whether such lateral boundary is physically marked or not;

"*Director*" means the Director of Infrastructure Services for the Township of Wilmot or any successor position, or his or her designate;

"*Encroachment*" means any type of *soft landscaping*, tree edging, vegetation, natural or man-made object or item of *personal property* not belonging to the *Township* which exists wholly upon, or extends from *private property* onto the *boulevard*, and can be aerial, surface or subsurface;

- "aerial encroachment" means an encroachment that is located at least .304 meters (12 inches) above the surface of public lands;
- "surface encroachment" means an encroachment that is located anywhere between the following: the surface of public lands to a height less than .304 metres (12 inches)

and beneath the surface of public lands to a depth of not more than 2.54 centimetres (1 inch).

- “sub-surface encroachment” means an encroachment that is located beneath the surface of public lands to a depth exceeding 2.54 centimetres (1 inch);

“*Encroachment agreement*” means an agreement between an *owner* and the *Township* that may be required as part of an *encroachment permit*;

“*Encroachment permit*” means a document issued by the *Township* granting a *person* permission to erect, plant, place or continue an *encroachment*;

“*Highway*” means a common and public *roadway*, avenue, parkway, *boulevard*, driveway, square, place, bridge, cul-de-sac, viaduct or trestle, any part of which is intended for or used by the public for passage of vehicles or pedestrians, and includes the area between the lateral property lines thereof;

“*Minor Encroachment*” means any *encroachment* onto the *boulevard* that the *Township* has determined may be allowed without the need for an *encroachment permit* and includes *soft landscaping* and tree edging;

“*Municipal boundary*” means the geographic boundary encompassing the Township of Wilmot;

“*Officer*” means an individual that is an employee of the *Township* who has been appointed pursuant to a *Township* By-law as a Municipal By-law Enforcement Officer and shall include the Director, Chief Building Official and Municipal Law Enforcement Services;

“*Owner*” means a *person* holding registered title to *private property*;

“*Person*” means an individual, corporation, association, firm, sole-proprietorship, partnership, trust, organization and includes the directors and officers of a corporation, a corporation created under the *Condominium Act, 1998*, S.O. 1998, c. 19, as amended, and the trustees, agents, heirs, executors or other legal representatives of a person to whom the context can apply according to law;

“*Personal property*” means any object or item of property other than real property, and including any fixture to real property, that is owned by a *person*;

“*Private property*” means a parcel of real property, as it is described in the records of the land registry office and which is within the *municipal boundary* of the *Township*, that is owned by a *person*, including all buildings and structures thereon, and does not include *public land*;

“*Public land*” means any land owned by the *Township*, made available to the *Township* by lease, agreement or otherwise, or under the management of the *Township*;

“*Receptacle*” means any container, bin, cart or bag used to contain waste material;

“*Region*” means the Regional Municipality of Waterloo;

“*Roadway*” means part of a *highway* used or intended to be used for vehicular travel by the general public;

“*Sidewalk*” means an improved portion of a *highway* between the *roadway* and the adjacent property line intended for the use of pedestrians and includes a multi-use trail or path;

“*Shoulder*” means the area adjacent to the *roadway* where there is no *curb*, but does not include a *sidewalk* and may have an asphalt or granular surface;

“*Soft landscaping*” means a *boulevard garden*, grass or wood chips;

“*Township*” means The Corporation of the Township of Wilmot;

“*Utility*” means any utility infrastructure including, but limited to, streetlight poles and conduit, natural gas lines and associated appurtenances, Bell boxes and conduit, Rogers or cable TV boxes and Hydro power boxes and conduit;

Part 2 – Application

2.1 This By-law does not apply to the following:

- (1) signs erected on behalf of the *Township* or any other sign as authorized by the By-law 2002-68, as amended, or its successor by-law;
- (2) *receptacles* or waste items set out on the *boulevard* for collection services in compliance with the standards as set out in the *Region’s Waste Collection By-law 17-007*, or its successor by-law;
- (3) rural and Canada Post community mailboxes erected on the *boulevard* and

maintained in compliance with the requirements of the Mail Receptacles Regulations under the *Canada Post Corporation Act*;

- (4) an *encroachment* permitted as a result of a written agreement with the *Township*, other than an *encroachment permit*;
- (5) roadside memorials in accordance with the following:
 - (a) does not create a public safety hazard;
 - (b) does not inhibit or obstruct *Township* operations;
 - (c) does not inhibit or obstruct access to fire hydrants, post office boxes, or any installations belonging to the *Township*, *Region* or *utility* provider; or
- (6) *utility* infrastructure.

Part 3 – Encroachments Prohibited

- 3.1 No *person* shall erect, plant, place or continue, or cause to be erected, planted, placed or continued an *encroachment* on *public land*.
- 3.2 Notwithstanding Section 3.1, an *owner* may, without any further approval from the *Township*, erect, plant, place or continue a *minor encroachment* on an *adjacent boulevard* directly abutting their *private property* in accordance with Part 4 of this By-law.
- 3.3 Fences and/or walls, for the delineation of property or privacy shall be in accordance with the Township Fence By-Law 2009-36. Further, no fence or wall shall be placed within the municipal right of way. Property lines shall be established prior to installation of any fence or wall and delineation of such shall be the responsibility of the property owner. Further, should work be required within the Municipal Right of Way for the installation of the proposed fence, a Road Occupancy Permit shall be obtained as per by-law 2022-046

Part 4 – Minor Encroachments

Soft Landscaping

- 4.1 Every *owner* shall be permitted to plant a *boulevard garden* in accordance with the following:
 - (1) shall not be planted in, or overhang a *shoulder*, *sidewalk* or *roadway*;
 - (2) shall be maintained so as to not exceed seventy-six (76) centimeters (approximately thirty (30) inches) in height;
 - (3) shall be at grade with any *adjacent sidewalk*; and
 - (4) shall not be planted within thirty (30) centimeters (approximately twelve (12) inches) of a *sidewalk* or *curb*.
- 4.2 Every *owner* shall be permitted to place sod, seed or otherwise grow grass on an *adjacent boulevard* in accordance with the following:
 - (1) shall not be grown on the *shoulder* or *sidewalk*; and
 - (2) shall not exceed twenty (20) centimeters (approximately eight (8) inches) in height.
- 4.3 Every *owner* shall be permitted to place wood chips around the base of a *boulevard tree* and the wood chips shall not exceed ten (10) centimeters (approximately four (4) inches) in height.

Tree Rings

- 4.4 Every *owner* shall be permitted to erect tree rings around the base of a *boulevard tree* in accordance with the following:
 - (1) shall not exceed fifteen (15) centimeters (approximately six (6) inches) in height;
 - (2) shall have a minimum radius of sixty (60) centimeters (approximately twenty-four (24) inches) from the base of the tree;
 - (3) shall have a minimum setback of thirty (30) centimeters (approximately twelve (12) inches) from a *sidewalk*;
 - (4) shall be kept in good repair; and
 - (5) shall be modular and not rely on a fixed foundation for its support.

General Prohibitions

- 4.5 No *owner* shall erect, plant, place or continue, or cause to be erected, planted, placed or continued a *minor encroachment*:
 - (1) that is sharp or dangerous in any way, or which may cause damage or injury to a

person or thing;

- (2) that obstructs the visibility of motorists or pedestrians, traffic sightlines or which obstructs or detracts from the visibility or effectiveness of any traffic sign or control device;
- (3) that extends onto the *boulevard* fronting any neighboring property when the common lot line is projected perpendicular to the *roadway*;
- (4) that inhibits or obstructs *Township* operations including but not limited to snow ploughing, maintenance of *Township* trees or the repair and maintenance of *Township* Infrastructure;
- (5) that inhibits or obstructs access to fire hydrants, post office boxes, or any installations belonging to the *Township*, *Region* or *utility* provider; or
- (6) in a ditch, swale or any other *Township* infrastructure which is designed or exists for the purpose of storing or carrying storm water.

Removal

4.6 The *Director* may at any time remove any *minor encroachment* located on a *boulevard* without compensation, restoration or replacement.

Part 5 – Encroachment Permit

- 5.1 Any *encroachment* on the *boulevard* that is not in accordance with Part 4 shall only be permitted by way of an *encroachment permit*.
- 5.2 Every application for an *encroachment permit* shall be made to the *Director* prior to commencement of the *encroachment* and shall include:
 - (1) a complete application form on the form provided by the *Director*;
 - (2) plans, surveys and other information as required by the *Director*;
 - (3) location and description of the proposed *encroachment*;
 - (4) payment of application fee in the amount as described in the applicable *Township* fees and charges by-law;
 - (5) cost estimate reasonably estimating the costs of performing the portion of the proposed *encroachment* which lies entirely on or under the *boulevard*;
 - (6) if applicable, a security deposit for the proposed *encroachment* in an amount and form as required by the *Director*;
 - (7) an indemnity agreement in the form provided by the *Director* signed by the applicant or, where the applicant is a contractor of an *owner*, signed by the *owner*, whereby the signatory agrees to indemnify and save harmless The Corporation of the Township of Wilmot from any and all claims, demands, causes of action, loss, costs or damages that the *Township* may suffer, incur or be liable for resulting from actions or works on or under the *boulevard*, whether with or without negligence on the part of the signatory, its vendors, suppliers, subcontractors or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors in the course of performance of the signatory's obligations under, or otherwise in connection with, the application;
 - (8) proof of comprehensive general liability insurance in an amount not less than \$5,000,000 naming The Corporation of the Township of Wilmot as an additional insured in a form satisfactory to the *Director*; and
 - (9) such further and other information as the *Director* may require.
- 5.3 The *Director* may require an *encroachment agreement* to be executed between the *owner* and the *Township* before an *encroachment permit* can be issued.
- 5.4 Where the *Director* deems it appropriate, an *encroachment agreement* may be registered against title to the *owner's* property with the land registry office and all expenses in doing so shall be paid in advance by the *owner* applying for the *encroachment permit*.
- 5.5 The *Director*, after receipt of all application materials required under Section 5.2 and execution of an encroachment agreement under Section 5.3, if applicable, may issue an *encroachment permit* with such conditions as the *Director* considers appropriate.
- 5.6 In addition to any other conditions imposed by the *Director* under Section 5.5, the following conditions shall apply to an *encroachment permit* issued:
 - (1) prior to commencement of the *encroachment*, the permit holder shall obtain such *utility* location stakeouts, clearance letters and written consent as may be necessary to ensure that *utilities* are not damaged by the permit holder in the course of performing the *encroachment*;

(2) the permit holder and individuals performing the *encroachment* on the permit holder's behalf shall perform the *encroachment* in accordance with:

- (a) applicable statutes, regulations and bylaws including Provincial traffic regulations; and
- (b) applicable *Township* standards including those standards for the restoration of the municipal services and restoration of the *boulevard* to the satisfaction of the *Township*. Further should work be required within the Township Right of Way a Road Occupancy Permit shall be obtained as per bylaw 2022-046.

5.7 The *Director* shall review an application for an *encroachment permit* and upon the discretion of the *Director*, may object to the erection, planting, placing or continuing of an *encroachment* on the *boulevard* on the basis that:

- (1) the *encroachment* interferes with the *Township*'s intent and purpose in holding the *boulevard*;
- (2) the *encroachment* creates an unsafe condition;
- (3) the *encroachment* creates a situation that is contrary to any *Township* By-law, policy or resolution, or any Provincial or Federal regulation or legislation;
- (4) the *encroachment* interferes with work, plans, efforts or initiatives of the *Township* to maintain the *boulevard*; or
- (5) the *encroachment* interferes with any *utility* or similar installation located on the *boulevard*.

5.8 Where there are objections from any *Director* to the erection, planting, placing or continuing of an *encroachment* on the *boulevard* on any basis set out in Section 5.7, the application shall be denied and the applicant shall be notified in writing that the application has been denied and the reason thereof, and the applicant may be provided a refund, if applicable, in accordance with the *Township*'s Fees By-law.

Permit Holder Requirements

5.9 Where an application for an *encroachment permit* has been approved and the permit holder has been notified in writing that the *encroachment permit* is ready for execution, the permit holder shall have thirty (30) days to execute same and pay any applicable fees.

5.10 Where a permit holder fails to execute an *encroachment permit* or pay the applicable fees within thirty (30) days as prescribed in Section 5.9, the permit holder shall be deemed to have abandoned the application and forfeited any fees paid.

5.11 An *encroachment permit* issued under this By-law is non-transferable.

5.12 The issuance of an *encroachment permit* under this By-law shall not relieve the permit holder from compliance with any other applicable law.

5.13 Every *person* who holds an *encroachment permit* shall comply with the conditions of the permit.

No Vested Rights

5.14 Nothing in this By-law, including the issuance of an *encroachment permit* or execution of an *encroachment agreement*, creates a vested right to any *boulevard* in the *owner* or in the occupant of the *private property* to which an *encroachment* is appurtenant, or in any other *person*, and any *encroachment* may be revoked in accordance with the provisions of this By-law or the conditions of an *encroachment permit* issued or *encroachment agreement* executed under this By-law. There shall be no adverse possession of the *boulevard* on which the *encroachment* is located.

Revocation and Suspension of Permit

5.15 The *Director* may revoke or suspend, without prior notice to the permit holder or any other *person*, the *encroachment permit* issued pursuant to this By-law without a refund of any fee paid.

5.16 The *Director* may impose conditions as a requirement of reinstating the *encroachment permit* suspended under Section 5.15.

5.17 Where the permit holder fails to perform the actions or works proposed in the permit application, including restoration works, to the standards required by the *Director* and it becomes necessary, in the opinion of the *Director* acting reasonably, to repair or restore that portion of the *boulevard* or municipal services affected by the actions or works of the permit holder, the *Director* will use the security deposit to engage contractors or may direct *Township* staff to perform the actions or works.

5.18 The *Director* may invoice the *owner* for the *Township*'s costs to complete the actions

or works in Section 5.17 and will credit the amount of the security deposit against such invoices.

- 5.19 Where the expense incurred or the amount of the invoice in Section 5.18 exceeds the amount of the security deposit and the invoice remains unpaid after demand for payment has been made, the expense incurred or unpaid amount of the invoice may be added to the tax roll and collected in the same manner as property taxes.
- 5.20 The *Director* shall hold the security deposit until the *Township* is satisfied that the *boulevard* is left in a proper state of repair and that the actions and works are performed to the standards required by the *Director*. The *Township* will not pay interest on any monies held as the security deposit.

Discontinuance of Permit

- 5.21 If an *owner* intends to permanently discontinue an *encroachment*, the *owner* shall notify the *Director* in writing and shall thereafter remove the *encroachment* and restore the *boulevard* to its former condition at the *owner's* expense.
- 5.22 If the *Director* determines that a breach of the terms and conditions of an *encroachment permit* has occurred, or that the term of said *encroachment permit* has expired, and that the *encroachment* should be discontinued, an *Officer* may issue an order requiring the *owner* to remove the *encroachment* and restore the *boulevard* to its former condition at the *owner's* expense.

Part 6 – Owner's Responsibility

- 6.1 The *owner* is solely responsible for all claims related to an *encroachment*. This includes but is not limited to, property damage, bodily injury, work, enhancements or property on the *Township's* right of way.
- 6.2 The *Township* is not liable for any damages, losses or injuries caused by or to an *encroachment*.
- 6.3 For further clarity, the *Township* is not liable for any damages caused to an *encroachment* as a result of the *Township's* operations including, but not limited to, snow ploughing, tree maintenance or the repair and maintenance of *Township* Infrastructure.

Part 7 – Enforcement

- 7.1 This By-law shall be enforced by *Officers*.

Powers of Entry and Inspection

- 7.2 The *Director*, *Officers* and any agent on behalf of the *Township* may at any reasonable time enter upon any land for the purpose of carrying out an inspection to determine whether the following are being complied with:
 - (1) this By-law;
 - (2) any direction or order pursuant to this By-law;
 - (3) any condition of an *encroachment permit* issued under this By-law; or
 - (4) an order issued pursuant to Section 431 of the *Municipal Act, 2001*.
- 7.3 No *person* shall hinder or obstruct, or attempt to hinder or obstruct, the *Director*, any *Officer*, or any agent on behalf of the *Township* who is exercising any power or authority, or performing a duty as permitted pursuant to this By-law.

Orders

- 7.4 Where an *Officer* is satisfied that a contravention of this By-law has occurred, the *Officer* may make an order requiring the *person* who caused or permitted such contravention to discontinue the contravening activity.
- 7.5 Where an *Officer* is satisfied that a contravention of this By-law has occurred, the *Officer* may make an order requiring the *person* who caused or permitted such contravention to do work to correct the contravention.
- 7.6 An order may be delivered:
 - (1) personally, with service deemed effective on the date the order is given;
 - (2) by providing it to any suspected adult individual on the land where the contravention occurred or at the last known address of any *person* named in the order, with service deemed effective on the date the order is given;
 - (3) by registered mail to the address where the contravention occurred or the last

known address of any *person* named in the order, with service deemed effective on the 5th day after mailing;

- (4) by posting the order in a conspicuous location on the land where the contravention occurred or at the last known address of any *person* named in the order, with service deemed effective on the day after posting; or
- (5) by e-mail transmission only if the order is also delivered by registered mail and such e-mail transmission may be delivered to the last known e-mail address of any *person* named in the order, with service deemed effective on the 5th day after transmission.

7.7 An *Officer* may enter upon any land for the purpose of delivering an order pursuant to Section 7.6.

7.8 Every *person* to whom an order is issued shall comply with the order.

7.9 Any order issued pursuant to this By-law may be rescinded by the Director, Building and Municipal Law Enforcement Services at any time.

7.10 An *Officer* may extend the time for compliance with an order made pursuant to this By-law.

7.11 No order issued under this By-law shall be appealed to any board, tribunal or similar body.

Remedial Action

7.12 Wherever an order, issued pursuant to this By-law, directs or requires any matter or thing to be done by any *person* within a specified time period, in default of it being done by the specified time period, the Director, Building and Municipal Law Enforcement Services or an *Officer* may initiate remedial action and the *Township* may recover, from any *person* directed or required to do the matter or thing, the costs incurred through legal action or by adding the costs to the tax roll and collecting them in the same manner as property taxes.

7.13 For the purposes of taking remedial action under section 7.12, the *Township*, its staff and its agents may enter, at any reasonable time, upon any lands on which a default occurred to carry out a required matter or thing.

Part 8 – Offences

8.1 Every *person* who contravenes any provision of this By-law is guilty of an offence.

8.2 Every *person* who is charged with an offence under this By-law by the filing of a certificate of offence under Part I of the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended, upon conviction is liable to a fine as provided for by the aforesaid act.

8.3 Every *person* who is charged with an offence under this By-law by the laying of an information under Part III of the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended, upon conviction is liable to a fine as follows:

- (1) to a minimum fine of \$500 and to a maximum fine of \$100,000;
- (2) for each day or part of a day that the offence continues, to a minimum fine of \$500 and a maximum fine of \$10,000, and the total of all daily fines for the offence is not limited to \$100,000; and
- (3) in the case of multiple offences, for each offence included in the multiple offence, to a minimum fine of \$500 and a maximum fine of \$10,000, and the total of all fines for each included offence is not limited to \$100,000.

8.4 The court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the *person* convicted and such order shall be in addition to any other penalty imposed upon the *person* convicted.

Part 9 – Severability

9.1 Each and every one of the foregoing provisions of the by-law is severable and if any provisions of the by-law is severable and if any provisions of this by-law should, for any reason, be declared invalid by any court, it is the intention and desire of this Council that each and every one of the remaining provisions shall remain in full force and effect.

READ a first and second time this th day of , 2025.

READ third time and finally passed in open Council this th day of , 2025.

Mayor

Clerk