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M.F.I.P.P.A 14(1)

Request to Update the Boulevard Bylaw for Accessibility, Equity, Biodiversity, and Resident Wellbeing

Supporting Rationale:

1. Alignment with City-Endorsed Values and Programs

- The **information package presented at the June Special Council Meeting**, distributed to the Mayor, Council, and senior City staff, outlined clear benefits of boulevard gardens—**many of which the City acknowledges** in its own **Garden Exemption Form**.
- The bylaw should be updated to reflect the City's own initiatives encouraging biodiversity, such as:
 - The **Bee City** application and renewals.
 - City's website that **encourage pollinator habitat and native planting**.

2. Legal Precedents Supporting Biodiverse and Expressive Landscaping

- **Sandy Bell v. Toronto (1993)**: The Ontario Court of Justice found that the Toronto bylaws were void for vagueness and therefore invalid and unenforceable, and violated the freedom of expression guaranteed by the Charter and that the subsequent bylaw of a 20 cm height restriction would lead to the same decision.
- **Douglas Counter v. Etobicoke**: Ontario Superior Court determined that Etobicoke was only able to restrict planting to “the extent that the City determines driver and pedestrian safety to be at risk”. Etobicoke did not present any evidence of a safety risk.
- **Sinclair Case & Others**: Confirm growing legal recognition of residents' rights to use their property—including boulevards—for **environmental expression** and **sustainable practices**.

3. Shifting Societal Norms and Municipal Trends

- Cities across Ontario and Canada are modernizing their bylaws to support **urban biodiversity, climate resilience**, and **resident-led sustainability efforts** – examples include Toronto and Ottawa (that have a higher pedestrian and vehicle traffic) and do not require a boulevard setback.

- The Mayor has received letters from **at least 43 Oshawa residents** urging an update to bylaws in support of biodiversity (as well as the corresponding city councillor).

4. Inconsistencies With Oshawa's Current Practices

- The **Boulevard Bylaw is not aligned** with the **Property Standards Bylaw**, **Lot Maintenance Bylaw**, and current **City of Oshawa terminology** (Bylaws that also need updating)
- The City's own landscaping practices—such as the installation of tall decorative structures and pollinator plantings—contradict the enforcement of restrictions on residents.
- Inconsistent enforcement (typically only after complaints) suggests these plantings are not real safety concerns, but instead reflect a **bylaw in need of modernization**.

Benefits of Modernizing the Boulevard Bylaw (and other related bylaws):

- Improves **environmental outcomes** through increased pollinator habitat and stormwater absorption.
- Promotes **mental and physical health**, community pride, and neighbourhood beautification.
- Encourages **climate resilience** at no cost to the City.
- Demonstrates **leadership and innovation**—positioning Oshawa as a forward-thinking municipality.
- Reduces resident conflict and improves relations with the City through **clearer, fairer, and more empowering regulations**.

Clarifying Naturalization vs. Neglect through Terminology and Education

Concerns about distinguishing between **gardening**, **intentional naturalization**, and **neglected, uncut grass** can be effectively addressed through:

- **Clear, updated terminology** within the bylaw that defines naturalized gardens as purposeful plantings that use native species and clearly defining turf grass as non-native species.
- **Training for enforcement officers** to recognize the difference between ecological stewardship and property neglect.
- **Public education campaigns** to inform residents about the benefits of naturalization and the standards required for compliance.

This approach avoids penalizing residents who are actively contributing to environmental goals, while still maintaining community standards and aesthetics.

There is currently inconsistency between city practices and enforcement standards. The City's own landscaping and decorating choices—such as placing large concrete planters over 3 feet tall on boulevards and planting vegetation alongside pathways—**demonstrate that such features are not inherently viewed as safety risks.** Additionally, enforcement patterns show that **boulevard gardens lacking required setbacks are not consistently treated as violations**, as orders are typically issued **only after a complaint** is made.

This inconsistency reveals two key issues:

1. **The City does not apply the same standards to itself as it does to residents.**
2. **The selective enforcement of boulevard garden bylaws indicates these regulations are not always considered necessary for public safety.**

Implication:

If these conditions **do not trigger proactive enforcement or pose a safety concern when implemented by the City**, then residents should be afforded the same leniency and flexibility. Enforcement practices must align with the City's demonstrated standards—or the bylaws themselves should be updated to reflect what is actually enforced and necessary for public safety.

Conclusion:

Updating the Boulevard Bylaw is not only **legally and ethically necessary**, but also a **powerful opportunity** for Oshawa to lead by example. This change would align our policies with court rulings, resident values, the City's own recommendations, and a growing national movement toward biodiversity, equity, and sustainability.

Imagine the **positive national attention** and **community goodwill** Oshawa could receive by taking this progressive step—**transforming boulevards into spaces of life, expression, and the city reaping all the benefits they provide.**

Offer to Support the Review and Modernization of the Boulevard Bylaw

I have submitted a detailed list of **proposed changes to the Boulevard Bylaw**, along with recommended updates to the **Lot Maintenance** and **Property Standards Bylaws**, in the information packages that were provided to Council, the Mayor, and senior staff during the **June Special Council Meeting**.

To ensure that these bylaws are updated effectively and in alignment with best practices, I would be willing to **participate in an advisory or consulting group**, similar to the collaborative model used by the City of Toronto when updating its own bylaws.

As referenced in the June information packages, the **Ecodesign Lab** has also produced a valuable guidance document outlining how municipal bylaws can be modernized to support **urban biodiversity and sustainable landscaping**. This resource could serve as a useful foundation for Oshawa's bylaw reform efforts.

Proposed Changes to the Boulevard Bylaw:

- Main version should be a readily accessible version for a lower reading level (ie. similar to how Toronto and Clarington's bylaws are presented).
- Should have a beginning paragraph stating - "Oshawa encourages citizens to create a garden on the boulevard abutting their property. Native Ontario plants are encouraged as they provide the greatest benefit to our native pollinators."
- Issue with the definition in 1.6.2 related to "health and safety of the public and to maintain clean and tidy conditions". Ontario Superior Court rulings have shown that this is unenforceable.
- To increase accessibility - attach a diagram to the bylaw showing which portion of property is "city property" (current image is difficult to find and does not clearly show a situation with a sidewalk).
- Definition issues with "Landscaping" and "Maintenance" – should clearly state that leaves/twigs/stems used as mulch or in a natural garden are permitted.
- Reference to another document of prohibited plants (This list should contain known invasives such as lily of the valley, goutweed, periwinkle., etc and include latin names).
- 3.0 Boulevard Standards
 - 3.1.1 i) a/b) This is too large of a setback and makes it difficult for the average resident to establish a garden on their boulevard (and their front yard). Other municipalities have a setback of 0 feet (Toronto and Ottawa (which has a higher vehicle and foot traffic) and Clarington) or 1 foot of setback (Barrie). Current sentence in the bylaw is difficult to read and with the use of "or" can make it seem like there is a choice of which measurement from an object is required to be followed. There should be no setback requirement as the Ontario Superior Court ruling was that

cities can only restrict gardening in relation to safety concerns. The city has demonstrated in their own landscaping and decorating that they do not see a safety issue with objects on boulevards (including over 3 feet in height) and plants on either side of pathways. As well, the city has demonstrated in their own enforcement policies and procedures that gardens on boulevards without the current setback are not a safety issue due to enforcement not issuing violations to all gardens that are in violation without a complaint.

- 4.0 Boulevard and Fixture Maintenance Standards
 - 4.1.2 i) issue with not defining “debris” and “waste” (definition exists for “waste” in a different bylaw). This definition needs to clearly state that leaves/twigs/stems used in a maintained garden are permitted.
 - iii) Difficult to understand this whole paragraph. Should be changed to state “non-native” grasses and or state “turf”.
 - 4.1.4 – Should have a point regarding boulevard gardens (ie. viii) Residents from improving their abutting boulevards by adding a garden.
- 6.0 Exemptions
 - Make it clear what exemptions might be considered and associated fees. Previously a resident needed an exemption for a boulevard garden (although very difficult to find), however it appears this is now not required (although the Lot Maintenance Bylaw still references a Boulevard Garden Program).
 - Make it clear how to contact this person for an exemption – ie. call Service Oshawa for questions regarding an exemption.
 - Issue that no exemption is able to be appealed or subject to review by any court.