

By-law Number 25-40

The Corporation of the Township of Clearview

Being a By-law to regulate and address encroachments on municipally owned property in the Township of Clearview

(Encroachment By-law)

Whereas Section 8 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, 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 do 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;

And Whereas Council of the Corporation of the Township of Clearview at its meeting held on July 31, 2024, directed staff to report back with options and recommendations for the safe and appropriate placement of pollinator gardens in Clearview Township;

And Whereas The Corporation of the Township of Clearview passed an Encroachment Agreement Policy under By-law 13-37, to regulate and address encroachment on municipally owned property;

And Whereas staff recommend that pollinator gardens be regulated through the Encroachment Agreement By-law, outlining the regulations and rules for boulevard garden encroachments;

Now Therefore Council of the Corporation of the Township of Clearview hereby enacts as follows:

1. Definitions

1.1. For the purpose of this by-law the following definitions shall apply:

"Clerk" means the Clerk for the Corporation of the Township of Clearview, or their designate.

"Easement" means an interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose, but does not include an interest created by a licence.

"Encroachment" means any type of vegetation, man-made object or item of personal property of a person which exists wholly upon, or extends from a person's premises onto, public lands and shall include any aerial, surface or subsurface encroachments.

"Encroachment agreement" means a document prepared by the Township allowing an encroachment on public lands and shall take either of the following forms:

- a) a permit for boulevard garden encroachments located on the non-travelled portion of a public highway in accordance with the Schedule "A" to this by-law, which shall be approved by Director of Public Works or their designate; and,
- b) an agreement for all other types of encroachments, which will be executed by the Mayor and Clerk on behalf of the Township.

"Expenses" means any and all sums of money actually spent or required to be spent by the Township, and shall include but not be limited to all charges, costs, administrative fees, HST, outlays, legal fees and losses.

"Highway" means a common and public highway under the jurisdiction of the Township of Clearview and includes any street, sidewalk, bridge, trestle, viaduct or other structure forming part of the highway and, except as otherwise provided, includes a portion of a highway.

"Owner" means the registered owner of a parcel of property as such person is described in the records of the land registry office.

"Person" means an individual, partnership, association, firm or corporation, business entity or club, incorporated group or organization, federal or provincial government, crown agents, school boards and regional municipalities, to whom the context can apply in accordance with the Interpretation Act of Ontario, as amended, but specifically excludes the Township.

"Personal property" means any object or item of property other than real property.

“Premises” means a parcel of real property under registered ownership and includes all buildings and structures thereon.

“Public lands” means lands owned by, leased, licensed to or under the management of the Township, and shall include but not be limited to any public highway, road, street, avenue, parkway, lane, alley, square, place, viaduct or trestle, water, thoroughfare, way or bridge, park, woodland, greenbelt, storm water management facility, open space, municipal golf course or cemetery, and all parts thereof, including any surface, grassed area, boulevard, ditch, curb, gutter and sidewalk.

“Right-of-way” means a person's legal right, established by usage or by contract, to pass through grounds or property owned by another person.

“Township” means the Corporation of the Township of Clearview.

“Unauthorized encroachment” means any encroachment not authorized by this by-law.

2. Prohibited Encroachments

- 2.1 No person shall erect, place or maintain, or cause to be erected, placed or maintained, an encroachment of any kind on public lands, or on any right-of-way or easement in favour of the Township, except where permitted to do so in accordance with this by-law.
- 2.2 Notwithstanding subsection 3.1, the provisions of this by-law do not apply to the following classes of encroachments:
 - a) signs, as authorized through the Township’s Sign By-law;
 - b) properties which are designated by by-law of the Township as being of historic or architectural value or interest pursuant to the Ontario Heritage Act, as amended;
 - c) a temporary encroachment arising as a result of construction, maintenance or other activity as authorized under a valid temporary permit issued by the Township;
 - d) encroachments permitted under the Township’s On-street/Sidewalk Patio Policy and authorized through a valid permit;
 - e) encroachments permitted as a result of a written and signed agreement with the Township, other than an encroachment agreement;
 - f) encroachments arising as a result of a Committee of Adjustment decision permitting the owner of residential premises to widen their driveway, provided a curb cut permit from the Township is also issued to the owner; and,

- g) encroachments arising from surface changes made in connection with residential driveways, provided such encroachments do not:
 - i. alter the established elevation of the public lands or public highway lands leading to the residential driveway; or
 - ii. results in the breach of any other municipal by-law or regulation.
- 2.3 The Township shall not bear any responsibility for any form of damage or deterioration occurring to these encroachments, howsoever or whenever caused, and the current property owner using the residential driveway shall cause such repairs to be made to the encroachments as may be necessary, at the property owner's sole cost and expense.

3. Application for Encroachment

- 3.1 Any person requesting authorization to erect, install or maintain an encroachment on public lands shall be required to submit an application to the Township Clerks Department seeking permission to do so, along with payment of the non-refundable application fee, as outlined in the Township's Fees and Charges By-law.
- 3.2 The form and content of the application shall be as prescribed by the Clerk, and a copy may be obtained from the Township office or online.
- 3.3 A completed application form shall include the following documentation:
 - Registered Plan (R Plan); or,
 - Survey; or,
 - Drawing,

Depicting the property and exact location of the encroachment and any photographs that may assist in illustrating the encroachment.
- 3.4 The Clerk's Department will assess the application, which may include a site visit with Township staff or its agents and receive comments from internal departments to determine the effect of the encroachment on public lands.
- 3.5 The Clerk will provide a report to Council seeking a decision on the encroachment. The report will look at the following, at minimum, to assist in determining the recommendation (approve or refuse):
 - Conformity to the By-law;
 - Conforms with the Township's Zoning By-law;
 - Support from internal departments;
 - Health and safety of the public;
 - Public's best interest;
 - Whether minor or major in nature; and,

- Whether concerns presented by internal departments can be resolved satisfactorily.
- 3.6 Where an application to erect, install or maintain an encroachment has been approved, an encroachment agreement will be prepared, and once the applicant has been notified in writing that the encroachment agreement is ready for execution, the applicant shall have thirty (30) calendar days to execute same.
- 3.7 Where an applicant fails to execute an encroachment agreement, within the thirty (30) calendar days, the applicant shall be deemed to have abandoned the application.

4. Registration of Agreement

- 4.1 Where the Clerk deems it appropriate, an encroachment agreement may be registered against title to the applicant's property with the land registry office and all expenses in doing so shall be paid for in advance by the applicant. The recommendation to register an agreement on title will be included in the report to Council.
- 4.2 In circumstances where an encroachment has been discontinued in accordance with this By-law and an agreement has been registered on title, the Clerk will proceed forward with the deregistration process.

5. Revocation

- 5.1 The execution of an encroachment agreement in respect of an encroachment does not create any vested right in the owner or occupant of the premises to which the encroachment is appurtenant, or in any other person, and the encroachment agreement may be revoked in accordance with the terms set out therein.

6. Access to Encroachments

- 6.1 No person shall obstruct, hinder or interfere with the free access to any encroachment by an employee, officer or agent of the Township.

7. Discontinuance of Encroachments

- 7.1 If the owner of any premises to which an encroachment is appurtenant desires to permanently discontinue the encroachment, they shall notify the Clerk in writing and the Clerk shall thereafter cause a notice to be sent to the owner

advising that the encroachment shall be removed or filled in and closed up, and the public lands shall be restored to their former condition by the owner at their own expense.

- 7.2 If the Clerk is at any time of the opinion that a breach of the terms and conditions attached to an encroachment agreement has occurred and that the encroachment should be discontinued, or where an encroachment agreement has expired, the Clerk may cause a notice to be sent to the owner advising that the encroachment be removed or filled in and closed up, and the public lands be restored to their former condition by the owner at their own expense.
- 7.3 Where an owner fails to comply with the notice described in subsection 7.1 and/or 7.2 within thirty (30) days of receipt of same, the encroachment may be removed or filled in and closed up by the Township, and the public lands restored to their former condition at the expense of the owner, such expense to be recovered in full in the manner provided in section 10 below, and until the encroachment is so removed or filled in and closed up and the public lands restored to their former condition, all expenses incurred by the Township in respect thereto shall continue to be paid by the owner.

8. Emergency Situations

- 8.1 If the Clerk deems that an emergency exists or may exist as a result of any encroachment being or about to become a source of danger to the health and safety of the public, the Clerk may,
- a) notify in writing the owner of the premises to which the encroachment is appurtenant, requiring the repair, removal, filling in or closing up of the encroachment and restoration of the public lands to their former condition at the expense of the owner, so that the encroachment is no longer deemed to be a source of danger or potential danger to the public by the Clerk; and/or,
 - b) take such measures on behalf of the owner, without notice to the owner, as the Clerk may deem necessary to remove the danger or potential danger created by the encroachment.
- 8.2 Where the notice described in subsection 8.1 a) is not complied with within the time period stipulated therein, the Township may repair, remove, fill in or close up the encroachment and restore the public lands to their former condition, at the expense of the owner, such expense to be recovered in full in the manner provided in section 10 below.
- 8.3 Where the Clerk elects to take any action under subsection 8.1 b), the expenses incurred by the Township in so doing shall be recovered in full in the manner provided in section 10 below.

9. Removal of Unauthorized Encroachments

- 9.1 Where the Township becomes aware of an unauthorized encroachment, the Township may give notice in writing to the owner of the premises to which an unauthorized encroachment is appurtenant, to forthwith remove, fill in or close up the encroachment and to restore the public lands to their former condition at the expense of the owner.
- 9.2 Where the notice in subsection 9.1 is not complied with within thirty (30) days of the date of the notice, the Township may, on behalf of the owner, remove, fill in or close up the unauthorized encroachment and restore the public lands to their former condition at the expense of the owner, such expense to be recovered in full in the manner provided in section 10 below.
- 9.3 Any materials or structures forming part of or attached to the encroachment and removed by the Township may, at the discretion of the Clerk, either be deposited at the owner's premises or be stored for thirty (30) days at the owner's expense, such expense to be recovered in full in the manner provided in section 10 below. Any item so stored and not claimed by the owner within the said thirty (30) day period shall be disposed of by the Township in such manner as it deems appropriate.

10. Recovery of Expenses

- 10.1 All expenses incurred by the Township in connection with the enforcement of this by-law shall be paid within thirty (30) days of their billing date, and in the event of failure to pay the entire amount due within the said thirty (30) days, at the discretion of the Township, the outstanding balance of the invoice may thereafter be added to the tax roll as of the year in which the expenses were billed.
- 10.2 The Township may also recover all expenses owing under this by-law by a court action as a debt due to the Township.

11. Infractions and Penalties

- 11.1 Every person who contravenes any of the provisions of this by-law is guilty of an offence and on conviction is liable to pay a fine, exclusive of costs, as provided for in the Provincial Offences Act of Ontario, as amended.

12. Prohibition Order

- 12.1 When a person has been convicted of an offence under this by-law,

- a) the Superior Court of Justice, or
- b) any other court of competent jurisdiction,

may, in addition to any other penalty imposed on the person convicted, issue an order prohibiting the continuation or repetition of the offence or the doing of any act or thing by the person convicted directed toward the continuation or repetition of the offence.

13. Enforcement

- 13.1 This By-law shall be administered by the Director of Public Works and By-law Enforcement Officers of the Township or such other person(s) as Council may, by by-law, appoint and be considered inspectors under the following terms of this by-law:
- a) Has the power to enter upon and examine any yards, vacant lots and grounds other than a dwelling at any reasonable time or times; and,
 - b) May be accompanied by such other person or persons, as they deem necessary to properly carry out their duties under this by-law.

14. Schedules

- 14.1 That Schedule A "Boulevard Garden Encroachments" attached hereto forms part of this by-law.

15. Exceptions and Grandfathering

- 15.1 Notwithstanding subsection 2.1, any encroachment authorized under an encroachment agreement or permit determined by the Township to be valid and binding at the date of enactment of this by-law, shall not require further authorization pursuant to this by-law until the encroachment agreement has expired or is terminated.

16. Validity, Severability and Interpretation

- 16.1 Should a court of competent jurisdiction declare a part or whole of any provision of this by-law to be invalid or of no force and effect, the provision or part is deemed severable from this by-law and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its terms to the extent possible under law.

16.2 Whenever any reference is made in this by-law to a statute or regulation of the Province of Ontario, such reference shall be deemed to include all subsequent amendments to such statute or regulation and all successor legislation to such legislation.

16.3 Words importing singular number shall include the plural.

17. Repeal

17.1 That By-law 13-37 and all amending by-laws are hereby repealed.

18. Force and Effect

18.1 This by-law shall take force and effect upon final passage hereof.

18.2 Schedule A of this By-law (Boulevard Garden Encroachments) is a pilot project for a one (1) year period, ending on May 24, 2026. If the pilot project is not continued beyond May 24, 2026, the property owner and/or applicant agrees to take all necessary steps to remove the boulevard garden from public lands by this date.

By-law Number 25-40 read a first, second and third time and finally passed this 2nd day of June, 2025.

Original signed by

Douglas Measures, Mayor

Original signed by

Sasha HelmKay, Director of Legislative Services/Clerk

By-law 25-40 – Encroachment By-law
The Corporation of the Township of Clearview

Schedule A – Boulevard Garden Encroachments

1. Definitions

1.1 For the purposes of this Schedule “A”, the following definitions shall apply:

“Boulevard” means the non-travelled portion of a public highway under the jurisdiction of the Township of Clearview, consisting of the grassed or earthed area between the roadside curb, or edge of a ditch where there is no curb, and the property line of the abutting property owner, save and except for the Sidewalk, if applicable.

“Director” means the Director of Public Works of the Corporation of the Township of Clearview and their designate.

“Hardscaping” means paving stones, boulders, stones, gravel, concrete asphalt, rail or any other hard materials.

“Invasive Plant/Species” has the meaning ascribed to it by the Nottawasaga Valley Conservation Authority.

“Noxious Weed” means a plant that is deemed to be a noxious weed under the Weed Control Act, 1990.

“Raised Planter” means any above-ground container or frame holding soil and/or plants.

“Sidewalk” means the non-travelled portion of the public highway, whether paved or not, intended for the use of pedestrians and/or cyclists and is generally situated between the public highway curb and property line of the abutting property owner.

“Sight Triangle” means a triangular open area formed at a driveway or a corner lot where the two streets meet. This open area increases street visibility for pedestrians and traffic.

2. Application for Permit

2.1 Any person requesting a permit for a boulevard garden encroachment shall be required to submit a signed and completed permit application to the Township not less than five (5) business days in advance of the proposed installation date, along with the payment of the non-refundable application fee, as outlined in the Fees and Charges By-law.

- 2.2 Notwithstanding the above, as approved by Council resolution, the fee for a permit is waived for the first year of the pilot project only, ending May 24, 2026.
- 2.3 The permit application shall include the following:
- a) two copies of a detailed plan or sketch on a minimum of 8.5" x 11" paper showing:
 - the proposed boulevard garden, including dimensions and its location relative to fixed features, and delineating any sight triangle restrictions;
 - all topographical features;
 - all boundary lines for the lots abutting the garden;
 - street names and municipal addresses; and
 - north arrow depicting true north.
 - b) property owner's consent, if applicable;
 - c) copies of any additional municipal permits, if applicable.
- 2.4 Where an applicant has not complied with the terms, conditions and requirements of this by-law, the Director may refuse to approve the permit application.
- 2.5 Upon submittal of a completed permit application, the Director will inspect the public land to confirm it has been brought up to the municipal standard.

3. Conditions

- 3.1 Where a boulevard garden encroachment permit has been granted, the permit holder is solely responsible for ensuring that the boulevard garden complies with the Encroachment By-law and the terms contained herein.
- 3.2 A garden is only permitted within the Boulevard of the public highway. The permit holder is responsible for ensuring the garden falls within Boulevard portion of the public highway.
- 3.3 Permits will only be issued for the Boulevard area directly abutting lands owned, rented or leased by the permit holder.
- 3.4 The permit holder is responsible for locating all utility services, including but not limited to gas, phone, hydro and cable, prior to commencing any works on the Boulevard.

- 3.5 Gardens shall not pose any danger to the public, compromise drainage, impede any sightlines or adversely affect the delivery of municipal maintenance activities, as determined by the Director and Public Works staff.
- 3.6 Invasive Plant material and noxious weeds shall not be permitted in gardens.
- 3.7 Plant material not in a sight triangle shall not exceed 1 metre in height.
- 3.8 Plant material in the following sight triangles shall not exceed 0.6 m:
 - a) driveway sight triangle is 3 m by 3 m.
 - b) Intersection sight triangle for a collector road to a local road is 7.5 m on the collector roadside and 3 m on the local road side.
 - c) Intersection sight triangle for a local road to a local road is 3 m by 3 m.
- 3.9 Notwithstanding the above, all plant material shall comply with the following requirements, unless otherwise approved by the Director in writing:
 - a) fire hydrants must be easily visible and accessible from both the public highway and the Sidewalk. Any plant material within a 1.5 m radius of the fire hydrant shall be no higher than 15 cm;
 - b) no plant material of any kind shall be planted within a 1 m radius of a utility structure;
 - c) plants shall not overhang the Sidewalk or path or pose a hazard to pedestrians or other users of same;
 - d) plant material shall not interfere with proper water flow or proper draining, including but not limited to within roadside ditches and drainages swales;
 - e) no plants of any kind, with the exception of grass, shall be planted, grown or maintained within a 1 m radius of any Boulevard tree.
- 3.10 The following are not permitted, unless otherwise approved by the Director in writing:
 - a) permanent fixtures, chattels, equipment or any non-plant installations, including but not limited to below surface irrigation systems;
 - b) Raised Planters or other above-ground planting structures;
 - c) any Hardscaping materials or landscaping stones;
 - d) any garden or outdoor furniture;
 - e) any railings, hoarding or fencing.
- 3.11 The garden shall be at the same grade as the adjacent Sidewalk or path.
- 3.12 The garden shall be used for planting and shall not be used for parking. If the garden area is subsequently used as a parking area, the permit will be revoked

without notice and the permit holder shall restore the Boulevard to its former condition within thirty (30) calendar days.

- 3.13 The permit holder accepts full sole responsibility for the garden and assumes all risk, responsibility and expense related to its presence, installation and maintenance, including any damage arising out of any works undertaken by the Township or by other agencies or damage from any other means.
- 3.14 The permit holder is responsible for ensuring the garden complies with the terms and conditions of this by-law and the Township shall not be responsible for any damage to the garden whatsoever.

4. Discontinuance of Permit

- 4.1 The Director reserves the right to revoke a permit at any time, effective immediately, and shall provide written notice to the permit holder of the revocation of the permit.
- 4.2 Where a permit has been revoked or discontinued, the permit holder shall restore the public lands to their former condition at the permit holder's sole cost and expense within thirty (30) calendar days.

5. Removal of Boulevard Garden

- 5.1 At any time following written notice, the Director may order the removal or alteration of any garden within the public highway which has not been:
- a) permitted;
 - b) installed in accordance with the permit issued;
 - c) adequately maintained in accordance with this and/or any other applicable by-law.
- 5.2 If a permit holder fails to remove or alter the garden or restore the Boulevard to its former condition in accordance with this by-law or upon the termination of the permit, the Township may, on behalf of the permit holder, remove or alter the garden, and/or restore the public lands to their former condition at the expense of the permit holder and the property owner, and the Township may recover these expenses by adding same to the tax roll of the property owner in accordance with section 10 of this by-law.

6. Property Standards

- 6.1 For the purpose of permitting boulevard gardens on Township owned lands, the provisions set forth herein apply, and the regulations outlined in the Township's Property Standards By-law and Clean and Clear By-law do not apply.