

THE CORPORATION OF THE TOWN OF  
NEW TECUMSETH

**BY-LAW**

**Number 2013-161**  
**“ROAD OCCUPANCY PERMIT BY-LAW”**

A By-Law to regulate Road Occupancy on Municipal Highways  
within the Town of New Tecumseth

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**WHEREAS** Section 8, of the *Municipal Act, 2001* (S.O. 2001, c. 25) as amended provides that the Powers of a municipality shall be interpreted broadly so as to confer broad authority on municipalities to (a) enable municipalities to govern their affairs as they consider appropriate and (b) enhance their ability to respond to municipal issues;

**AND WHEREAS** Section 9 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 Act;

**AND WHEREAS** Section 11 (3) 1 of the *Municipal Act, 2001*, provides that a municipality may pass By-Laws within the following sphere of jurisdiction: Highways, including parking and traffic on Highways;

**AND WHEREAS** Section 118 of the *Municipal Act, 2001*, provides that a municipality may regulate the construction and use of scaffolding and any other thing used in constructing, repairing or altering buildings or other structures, as well as regulate the excavating, construction and use of trenches and may by By-Law prohibit same unless a permit is obtained from the municipality which may also impose conditions with respect to the permit, including requiring the submission of plans;

**AND WHEREAS** Section 391(1) of the *Municipal Act, 2001*, provides that a municipality may pass By-Laws imposing fees or charges on any Person for services or activities provided by the municipality or done on behalf of it;

**AND WHEREAS** Section 429 (1) of the *Municipal Act, 2001*, provides that a municipality may establish a system of fines for a By-Law passed under the Act;

**AND WHEREAS** Section 444 of the *Municipal Act, 2001*, provides that a municipality may make an order to require a Person to discontinue contravening a By-Law and to do the work required to correct the contravention;

**AND WHEREAS** Section 446 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, but has failed to do and the costs incurred by a municipality may be recovered by adding the costs to the tax roll and collecting them in the same manner as taxes;

**NOW THEREFORE** the Council of The Corporation of the Town of New Tecumseth hereby enacts as follows:

**1.0** **DEFINITIONS**

For the purpose of this By-Law;

**1.1** **ACTIVITY** – Includes temporary occupancy of a Highway for any construction related purpose for a defined period of time outside of its normal intended use by the Town, Utility Company(s), or Person(s);

**1.2** **APPLICANT** - Means any person, utility company, sub-contractor, or corporation making application for a Road Occupancy Permit;

- 1.3 **BOULEVARD** - The municipally owned portion on the road allowance between the back edge of the curb or back slope of a ditch and the private property line;
- 1.4 **DELETERIOUS MATERIAL** - Subsurface soils of an undesirable nature such as but not limited to highly organic materials, and soils containing noxious or hazardous chemicals or waste;
- 1.5 **DIRECTOR-** Director of Public Works of the Town of New Tecumseth, or authorized delegates;
- 1.6 **HEAVE** - Any rise in the surface of a road cut in relation to the grade of the adjacent undisturbed Highway;
- 1.7 **HIGHWAY** - A common and public Highway, street, avenue, parkway, driveway, square, place, bridge, viaduct, trestle, or an unopened and unassumed Highway, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof under the jurisdiction of the Town of New Tecumseth;
- 1.8 **MUNICIPAL CONSENT** - The written consent of the Engineering department with or without conditions, for use of the municipal Highway;
- 1.9 **ROAD OCCUPANCY PERMIT** - An authorization granted in writing by the Director of Public Works pursuant to this By-Law to occupy a Highway;
- 1.10 **ROAD CUT** - means a surface or subsurface cut in any part of a Highway made by any means, including but not limited to any excavation, reconstruction, cutting, saw cutting, overlaying, crack sealing, breaking, boring, directional drilling, jacking or tunneling operations;
- 1.11 **ROADWAY** - means the part of a Highway that is improved, designed and ordinarily used for vehicular traffic, but does not include the curb, shoulder or boulevard;
- 1.12 **SETTLEMENT or SETTLED** - means any sinking of the surface of a road cut in relation to the grade of the adjacent undisturbed Highway;
- 1.13 **SHOULDER** - means that part of a Highway immediately adjacent to the Roadway and having a surface which has been improved for the use of vehicles with asphalt, concrete or gravel;
- 1.14 **TOWN** – means the Town of New Tecumseth;
- 1.15 **TRAFFIC CONTROL PLAN** - means a standard document outlining the particulars of proposed work on any Highway within the Town of New Tecumseth that is submitted by the contractor to the Town for review. The traffic control plan shall contain the information respecting how the Permit Holder intends to comply with this By-Law including but not limited to the following:
  - (a) start and completion times of work;
  - (b) specific location of work;
  - (c) requirement to work during peak hours, if any;
  - (d) lane use requirements;
  - (e) requirements for lane restrictions and lane closures;
  - (f) public notification undertaken;
  - (g) parking affected by work; and
  - (j) traffic routing and detour requirements where required.

**1.16 UTILITY COMPANY**- means any company with the authority to construct within a Highway pursuant to provincial or federal legislation, a By-Law, a franchise agreement or a municipal access agreement.

**1.17 VERY SHORT DURATION** – means a period of time as defined in the Ontario Traffic Manual Temporary Conditions Book 7 as follows; any maintenance activity which occupies a fixed location for up to 30 minutes duration, including set-up and take down of the traffic control provisions. The work or maintenance activity may be moved along the road and make frequent stops.

**1.18 WARRANTY** - means a guarantee by the Permit Holder that the work for which a Road Occupancy Permit has been issued has been carried out in accordance with the Town's requirements.

**2.0 GENERAL PROVISIONS**

**2.1 REQUIREMENT TO OBTAIN A ROAD OCCUPANCY PERMIT FOR ACTIVITY**

- (1) No person shall undertake any activity within a highway within the Town of New Tecumseth without a permit to do so or an exception under section 7.0;
- (2) No person shall close or obstruct a Highway or portion of a Highway to traffic unless authorized to do so by the Director;
- (3) A completed application for a Road Occupancy Permit shall be submitted to the Town no less than ten (10) working days in advance of the start date of activity. When applying for a permit, the Applicant shall:
  - a) complete an application in the form as from time to time approved by the Director;
  - b) submit information as the Director may require including but not limited to a traffic management plan; and
  - c) submit the completed application.
- (4) When filing the completed application, the Applicant shall pay a non-refundable permit fee as set out in the Town of New Tecumseth's Fees and Charges By-Law, as amended;
- (5) When the Applicant is requesting multiple road cuts the Director reserves the right to issue a single permit or multiple permits for the works;
- (6) A Road Occupancy Permit shall not be issued until:
  - a) proof of insurance has been submitted as required by Section 2.8;
  - b) the permit fee(s) required have been paid or a satisfactory arrangement have been made with the Director;
  - c) an emergency contact telephone number for the permit holder or his authorized agents has been provided;
  - d) approval for Municipal Consent has been issued and any conditions have been complied with, if applicable; and
  - e) a security deposit has been provided if required by the Director.

**2.2 APPLICATION FOR RENEWAL AND/OR EXTENSION OF PERMIT**

- (1) Any person required to renew and or extend a Road Occupancy Permit previously granted under this By-Law, shall contact the Town requesting renewal or extension of the Permit at a minimum 3 business days prior to Permit expiry and provide any requested modified documentation as required by this By-Law or

as deemed necessary by the Director. The Director reserves the right to approve or deny requests for renewals or extensions of permits.

**2.3 NOTICE REQUIREMENTS FOR ROAD OCCUPANCY**

(1) Where the work is of a major nature or duration and will cause general inconvenience to all the residents and businesses located beside or near the Highway where the work will occur, every Permit Holder or person responsible for the road activity shall, at least ten (10) working days prior to commencing the work, provide in writing to every resident and business located beside or near the Highway where the work will occur the following information:

- a) description and rationale for the work;
- b) the approximate start date;
- c) the duration of the work;
- d) access restrictions and service interruptions; and
- e) contact information for the Permit Holder.

**2.4 LOCATES**

(1) It shall be the sole responsibility of the Permit Holder to request, from the appropriate Utility Company, marking or other location information to determine the location and to provide safeguards for all utilities. Should the Permit Holder, in carrying out the work allowed under the Road Occupancy Permit, cause damage to any such utilities, the entire cost and responsibility of restoring any such utilities shall be at the sole expense of the Permit Holder.

**2.5 TRAFFIC CONTROL NOTIFICATIONS, DEVICES, SIGNS AND CLOSURES**

- (1) The Permit Holder shall supply, erect and maintain warning devices, barricades and traffic signs where applicable, in accordance with the *Occupational Health and Safety Act*, R.S.O. 1990, chap. O .1, as amended, and any applicable provincial traffic regulations, including but not limited to the Ministry of Transportation's Ontario Traffic Manual, Book #7 (Temporary Conditions);
- (2) If the Permit Holder fails to comply with subsection 2.5 (1) hereof, the Director may order the erection and maintenance of any warning devices, barricades and signs considered necessary at the Permit Holder's expense and charge back such expenses to the Permit Holder;
- (3) No Permit Holder shall close a Highway to traffic or one direction of traffic on a Highway unless:
  - a) the written consent of the Director for the closing is obtained; and
  - b) Notifications have been made to O.P.P, Fire and Emergency Service, Ambulance Service, and any other person, department or agent requiring notice, from time to time affected by the occupancy, for the commencement and duration of the activity;
- (4) The Director is authorized to issue a Road Occupancy Permit to any person, group or agency wishing to occupy a Highway as defined in this by law;
- (5) The style of the Occupancy Permit, its forms, the information contained thereon and special conditions shall be at the sole discretion of the Director.

**2.6 STOP WORK ORDER**

(1) The Director shall be entitled to issue a stop work order in the event of any activity occurring that is not in accordance with the conditions of an issued Road Occupancy Permit or where an activity is taking place without a Road Occupancy Permit.

**2.7 REFUSAL OF PERMIT ISSUANCE**

- (1) The Director may refuse to grant a Permit to any Applicant for any of the following reasons:
- a) persistent and/or serious violations of any condition of a Road Occupancy Permit previously issued to the Applicant;
  - b) nonpayment or late payment of monies due to the Town as a result of inspection, or of any necessary work undertaken by the Town, in the course of administering any provision of this By-Law;
  - c) where Roadway construction, reconstruction or resurfacing has occurred within the previous three years of the proposed road cut; or
  - d) such other reason as the Director may deem proper which reason shall be delivered in writing to the Applicant if so requested.

**2.8 INSURANCE**

- (1) Every Applicant for a Road Occupancy Permit shall provide and maintain Comprehensive/Commercial General Liability insurance acceptable to the Town of New Tecumseth and subject to limits of not less than two million dollars (\$2,000,000) inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof. Such Comprehensive/Commercial General Liability insurance policy shall be in the name of the Applicant and shall name the Town of New Tecumseth as an additional insured. The insurance policy shall *remain in place* until all warranty requirements are fulfilled.

**2.9 SNOW REMOVAL AND DE-ICING**

- (1) Where the Permit Holder's work impedes snow removal and de-icing by the Town of New Tecumseth on areas where vehicular and pedestrian traffic are being maintained, as reasonably determined at the sole discretion of the Director, the Permit Holder shall be responsible for providing ice and snow removal services within the limits of the work site. Such areas shall be cleared of ice and snow to the satisfaction of the Director;
- (2) Should the Permit Holder fail to complete the required snow removal services and de-icing within the set deadlines, the Director, without any notice to the Permit Holder, may arrange for the snow and ice to be removed by others. All costs incurred by such removal shall be charged to the Permit Holder.

**2.10 SITE CONDITIONS**

- (1) The Permit Holder is responsible for maintaining the work site and surrounding area free of dust and mud. The Permit Holder shall clean the road and sidewalks as required to the satisfaction of the Director;
- (2) The Permit Holder shall keep the site and work in as tidy a condition as practicable and to the satisfaction of the Town. The Permit Holder shall not deposit any material on any portion of street, sidewalk, boulevard, grass plot, or other Town property, without the permission of the Director, and shall remove same without delay when and as directed by the Director. Upon completion of the work, the Permit Holder shall remove all surplus materials as well as any rubbish accumulated on account of the work, make good any defects or damage and shall leave the site in a condition satisfactory to the Town;
- (3) Should the Permit Holder fail to comply with this requirement and maintain the street in a satisfactory condition, the Director, without further notice, may issue a stop work order, cancel the Road Occupancy Permit, charge the Permit Holder under applicable bylaws and/or arrange for the site to be cleaned immediately by others. All costs incurred in cleaning the dust and mud resulting from the Permit Holder's work shall be charged to the Permit Holder.

**2.11 TRANSFERABILITY**

- (1) A Road Occupancy Permit is not transferable without the written consent of the Director.

**3.0 ROAD WORK**

**3.1 GENERAL REQUIREMENTS**

- (1) The Permit Holder shall open a road cut in such a manner as to do the least possible damage to the Highway and to any utility or municipal service;
- (2) The work shall proceed expeditiously and no Permit Holder shall allow a road cut to remain open unless the work is actively in progress;
- (3) The site shall be kept clean and safe, and sources of dust and mud controlled at all times until the final reinstatement has been completed. All dust and mud nuisance that is tracked from the site shall be promptly cleaned;
- (4) The Permit Holder and contractor shall comply with and be bound by the provisions of the Occupational Health and Safety Act, R.S.O. 1990, Chap. 0.1, as amended;
- (5) All persons employing or using trucks or other vehicles entering or leaving construction sites for any purpose whatsoever, shall immediately remove from the Highway any rubbish, earth, or other material which has fallen from such vehicles.

**3.2 EXCAVATED MATERIAL AND ROAD CUT METHODS**

- (1) No Permit Holder shall place, cause the placement or allow the placement of material or equipment on any Roadway or sidewalk at any time or in a location where, it will cause damage to the infrastructure it is placed on and/or create a traffic or safety hazard unless authorized to do so by the Director in writing;
- (2) Except as permitted by the Director, where multiple road cuts are required it may be required that the permit holder reinstate the road cuts and resurface the Roadway for the entire distance between the outer edges of each road cut;
- (3) Where a road cut is made in any concrete surface, the Permit Holder shall break out and remove all concrete:
  - a) to the nearest expansion joint, or contraction joint, using a concrete saw if necessary;
- (4) Where a road cut is made in asphalt pavement, the asphalt shall be cut with a mechanical cut device to produce:
  - a) a rectangular opening with edges which are vertically straight; and
  - b) a cut, which is large enough to accommodate the proposed works without undermining the adjacent asphalt pavement;
- (5) Where boring, directional drilling, jacking or tunneling is used for any subsurface road cut:
  - a) the method used shall be approved by the Director; and
  - b) if a cave-in, settlement or heaving results therefrom, the surface in the affected area shall be removed and reinstated by the Permit Holder in accordance with this By-Law to the satisfaction of the Town.

**3.3 REINSTATEMENT OF HIGHWAY**

- (1) The Permit Holder shall be responsible for:

- a) the temporary and permanent reinstatement of a road cut subject to the provisions of this By-Law;
  - b) the maintenance of temporary reinstatements, as provided for in this By-Law, on every road cut which on or after November 15th in any year is not in a condition to be permanently reinstated, and is carried over for permanent reinstatement prior to May 31st of the following year;
- (2) A Highway shall be reinstated with,
- a) the same type of material, except for deleterious material, and to the same thickness as the adjoining construction when originally constructed; or
  - b) material of a thickness that has been approved by the Director;
- (3) Temporary surfacing of a Roadway with asphalt, concrete, or surface treated surface shall meet the following requirements:
- a) the road cut shall be temporarily reinstated immediately after backfilling is completed;
  - b) the reinstatement shall be to the same level as the adjacent surface; and
  - c) prior to the Highway being opened to traffic, the road cut shall be surfaced with hot mix asphalt, concrete, or, if hot mix asphalt is unavailable, with high performance emulsified cold mix asphaltic material, all hand-tamped or rolled to a smooth, flat condition;
- (4) All reinstatement activity shall be to the satisfaction of the Town.

**3.4 PAVEMENT DEGRADATION FEES**

- (1) Every permit holder that performs a cut in the Roadway shall be subject to pay the pavement degradation fees as set out in the Town of New Tecumseth Fees and Charges By-Law;
- (2) Any person or corporation who completes a cut in the Roadway without a Road Occupancy Permit or fails to identify the road cut through the permit application process shall be liable for fees as assessed by the Town representative on site;
- (3) Outstanding or unpaid fees shall be paid to the Town prior to any further Road Occupancy Permits being granted by the Director.

**3.5 COMPLETION OF WORK**

- (1) Upon completion of the temporary surfacing or permanent reinstatement of the road cut, all excess material shall be removed from the area of the road cut and the area shall be left in a safe, neat and clean condition, similar to the condition of the Highway area adjacent to the road cut, all to the satisfaction of the Town.

**4.0 TRENCHLESS INSTALLATIONS**

- (1) Where the work being undertaken uses trenchless installation methods, preservation and protection of existing facilities shall be according to OPSS 491;
- (2) Minimum horizontal and vertical clearances to existing facilities as specified in OPSS shall be maintained. Clearances shall be measured from the nearest edge of the largest back reamer required to the nearest edge of the facility being paralleled or crossed;
- (3) Existing underground facilities shall be exposed to verify its horizontal and vertical locations when the bore path comes within 1.0 metre horizontally or vertically of the existing facility. Existing facilities shall be exposed by non-destructive methods. The number of pilot holes required to monitor work

progress and the proposed location of such pilot holes must be clearly depicted on the application drawing. All pilot holes and any other damage to the street infrastructure shall be restored as per the requirements of this By-Law.

**5.0 UTILITY COMPANIES**

**5.1 SERVICE DROPS (INCLUDING TEMPORARY)**

- (1) Temporary service drops shall be permitted as a temporary means to supply servicing to a resident with the permanent service being installed at a future date. Installation of cables shall be performed in a manner that ensures the safety of residents, pedestrians, and vehicles and placed with due regard for aesthetics. When within the boulevard, a cable shall be shallow depth buried such that it does not constitute a tripping hazard;
- (2) Cables shall not cross sidewalks, driveways or walking paths along the surface. When crossing a road, sidewalk, driveway or walking path, the height of the cable shall be no less than 4.5 metres;
- (3) Cables shall not lie unprotected on the ground at any location;
- (4) Cables shall not be strung using trees;
- (5) The Permit Holder shall make its best effort to install the permanent service as soon as possible. In the winter or early spring, frost conditions may delay the permanent installation; however, in general, temporary service drops shall be removed within 30 days;
- (6) Immediately upon installation of the permanent service, regardless of whether or not restoration has been completed, all materials and equipment associated with the temporary service drop shall be removed from the site.

**6.0 ROAD CUT FAILURES AND WARRANTY PERIODS**

**6.1 WARRANTY PERIODS**

- (1) For temporary reinstatement of the Highway, a Permit Holder is responsible for the repairs necessary to correct any road cut considered under the Ontario Minimum Maintenance Standards for Municipal Highway, and OPSS as applicable;
- (2) Following permanent reinstatement of the Highway a Permit Holder is responsible for the repairs necessary to correct any settlement or surface deterioration for a warranty period of twelve (12) months following the date of final reinstatement of the Highway, being the last time the Permit Holder repaired the road cut;
- (3) If the Permit Holder has not done the work referred to in section 6.1 subsection (1) within twenty four (24) hours notification, the Director may order the work to be done at the Permit Holder's expense. All costs incurred by the Town shall be paid by the Permit Holder forthwith on demand.

**6.2 EMERGENCY REPAIRS**

- (1) If the Director is of the opinion that a road cut reinstatement or lack of reinstatement, has created an emergency situation which can cause damage to vehicles or endanger the public, Director may protect the area and:
  - a) Make immediate repairs; or
  - b) Contact the Permit Holder advising the Permit Holder as to the repair work which must be carried out;



- (2) All work done by the Town pursuant to section 6.2 subsection (1) hereof shall be at the expense of the Permit Holder and the costs of the Town shall be paid by the Permit Holder.

**7.0 EXEMPTIONS**

- (1) The Director may grant an exemption to any person from any provision of this By-Law and impose conditions for such exemption as may be considered reasonable and necessary, provided such exemption does not interfere with the general integrity of this By-Law.

**8.0 SEVERABILITY**

- (1) That should any section, subsection, clause, paragraph or provision of this By-Law, including any part of Schedules be declared by a court of competent jurisdiction to be *ultra vires*, invalid or illegal for any reason, the same shall not affect the validity of the rest of the By-Law.

**9.0 SHORT TITLE**

- (1) That this By-Law shall be cited as the "Road Occupancy Permit By-Law".

**10.0 OFFENCES**

- (1) Any person who contravenes any provision of this By-Law, the conditions of a permit; or an order issued under this By-Law; is guilty of an offence;
- (2) If a condition of a Permit issued under this By-Law has to been complied with, the contravention of the order shall be deemed a continuing offence for each day or part of day that the order is not complied with;
- (3) Every person who contravenes the provisions of any section of this By-Law and every Director or Officer of a Corporation, who knowingly concurs in the contraventions by the Corporation, is guilty of an offence and liable on conviction to a penalty where a minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$100,000 exclusive of costs under the provisions of the *Municipal Act 2001, S.O. 2001, c. 25* as amended;
- (4) In the case of a continuing offence, for each day or part of a day that the offence continues, a minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$10,000. However, despite paragraph 1, the total of all of the daily fines for the offence is not limited to \$100,000;
- (5) In the case of a multiple offence, for each offence included in the multiple offence, a minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$10,000. However, despite paragraph 1, the total of all fines for each included offence is not limited to \$100,000.

**11.0 REPEAL**

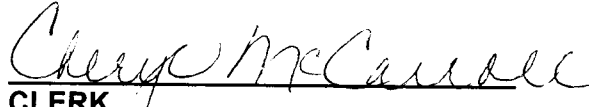
- (1) That Town of New Tecumseth By-Law No. 91-91 Road Occupancy By-Law be repealed.

**12.0 FORCE AND EFFECT**

- (1) That this By-Law shall come into force and take effect on January 1, 2014 following the date of passing thereof.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 25<sup>TH</sup> DAY OF NOVEMBER, 2013.**

  
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**MAYOR**

  
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**CLERK**