

The Corporation of the City of Kawartha Lakes

By-Law 2020-148

A By-law to Regulate the Activity on Municipal Right-of-Ways in the City of Kawartha Lakes

Recitals

1. Section 11(2)(4) of the Municipal Act, 2001, provides that a municipality may pass by-laws respecting public assets of the municipality acquired for the purpose of exercising its authority under the Municipal Act, 2001.
2. Section 118, of the Municipal Act, 2001, provides that a municipality may, regulate the excavating, construction and use of trenches and may by by-law prohibit same unless a Road Occupancy and/or Road Closure Permit is obtained from the municipality which may also impose conditions with respect to the permit, including requiring the submission of plans
3. Section 425(1) of the Municipal Act, 2001, provides that a municipality may pass by-laws providing that a person who contravenes a by-law of a municipality is guilty of an offence.
4. Section 426(1) of the Municipal Act, 2001 provides that no person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under a by-law passed under the Municipal Act, 2001.
5. Section 429 of the Municipal Act, 2001 provides that a municipality may establish a system of fines.
6. 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 or otherwise but has failed to do.
7. Section 446 of the Municipal Act, 2001 provides that the costs incurred by a municipality in doing a thing or matter under section 446 may be recovered by adding the costs to the tax roll and collecting them in the same manner as taxes.
8. A by-law will enable Staff to better manage risks, liabilities and conflict related to activity within the municipal right of ways.

Accordingly, the Council of the Corporation of the City of Kawartha Lakes enacts this By-law 2020-148.

Section 1.00: Definitions and Interpretation

1.01 Definitions: In this by-law,

“Activity” means the temporary occupancy of a right-of-way for any purpose outside its normal intended use by the City, Utility Company, or person(s);

“Applicant” means any person who applies for a Road Occupancy and/or Road Closure Permit;

“Boulevard” means all parts of a right of way except any roadway, shoulder or sidewalk;

“City”, “City of Kawartha Lakes” or “Kawartha Lakes” means The Corporation of the City of Kawartha Lakes and includes its entire geographic area;

“City of Kawartha Lakes Standards” means The City of Kawartha Lakes Standards, as amended from time to time, and are intended as guidelines for land development and City projects to aid in providing uniform designs throughout the Municipality and are to be used in conjunction with Ontario Provincial Standard Drawings (O.P.S.D.) and Ontario Provincial Standard Specifications (O.P.S.S.);

“City Clerk” means the person appointed by Council to carry out the duties of the clerk described in section 228 of the Municipal Act, 2001;

“Construct and or Construction” includes the erection, alteration, repair, dismantling, demolition, structural maintenance, land clearing, earth moving, grading, excavating, the laying of pipe and conduit whether above or below ground level, street and highway building, application of concrete, equipment installation and the alteration and the structural installation of construction components and materials in any form or for any purpose;

“Construction Equipment” means any equipment, tool or device designed or capable of use in construction or material handling, including but not limited to pile drivers, bulldozers, tractors, excavators, trenchers, cranes, derricks, loaders, scrapers, pavers, generators, off highway haulers or trucks, ditchers, compactors and rollers, pumps, concrete mixers and graders;

“Contractor” means a person who does work;

“Council” or “City Council” means the municipal council for the City;

“Director of Engineering and Corporate Assets” means the person who holds that position and his or her delegate(s) or, in the event of organizational changes, another person designated by Council;

“Director of Public Works” means the person who holds that position and his or her delegate(s) or, in the event of organizational changes, another person designated by Council;

“Emergency Work” means work undertaken for the immediate health, safety or welfare of the inhabitants of the City or for the preservation, protection or

restoration of property. The Director of Public Works shall be responsible for determining if work is deemed to be emergency as defined in this By-Law;

“Highway” includes a common and public highway (as defined at section 26 in the Municipal Act, 2001), street, avenue, parkway, laneway, driveway, square, place, bridge, viaduct or trestle, 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;

“Inspector” means a Municipal Law Enforcement Officer, Provincial Offences Officer, Police Officer, Engineering Inspector or any other City staff delegated to enforce the By-law;

“Municipal Consent or Consent” means the written consent of the Engineering Department, with or without conditions, for access to and use of the Municipality's Rights-of-Way, subject to the obtaining of a Road Occupancy and/or Road Closure Permit as applicable;

“Municipal Law Enforcement Officer” means a person appointed by Council under Section 15 of the Police Services Act to enforce municipal by-laws;

“Obstruction” includes, but is not limited to any item, materials, equipment; construction vehicle, disposal or storage bin, etc. which has been placed on a city right of way;

“O.P.S.S.” means Ontario Provincial Standard Specifications, as amended;

“Order” means an Order to Comply issued in relation to the provisions of this By-law

“Owner” means any person, business, agency, corporation or organization which conducts an activity which would require municipal awareness and approval of the activity by the issuance of a permit;

“Person” includes a corporation and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law;

“Right of Way” means municipal property designated as Highways, Roadways, Lanes, Pathways and Walkways and includes features therein such as curbs, shoulders, boulevards, and drainage ditches;

“Roadway” means the part of a right of way that is improved, designed or ordinarily used for vehicular traffic, but does not include the curb, shoulder or boulevard;

“Road Closure” means preventing vehicle movement within a Highway which causes the need for a detour;

“Road Closure Permit” means written authorization issued by the City to undertake a Road Closure;

“Road Cut” means a surface or subsurface cut in any part of a right of way 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;

“Road Occupancy” means activity conducted within a municipal right of way without causing detour of traffic;

“Road Occupancy Permit” means written authorization issued by the City to undertake work as defined by Road Occupancy within a Right of Way;

“Settlement or Settled” means any sinking of the surface of a road cut in relation to the grade of the adjacent undisturbed right of way;

“Shoulder” means that part of a right of way immediately adjacent to the travelled portion of the roadway and having a surface that has been improved with asphalt, concrete or gravel for the use of vehicles;

“Sidewalk” means all parts of a right of way set aside for the use of pedestrians;

“Temporary Service Drops” means any infrastructure established to provide service to a customer until the permanent infrastructure is repaired or replaced.

“Traffic Control Plan” refers to a document outlining the particulars of vehicular and pedestrian traffic management required for any work conducted in a right of way.

“Utility or Utilities” means any structure(s) above or below ground which exists on a right of way used for the supply of public and private services includes, but not limited to electricity, natural gas, telephone, television and internet communication as well as water, sanitary and storm sewer use;

“Utility Company” means any company with the authority to construct within a Right of Way pursuant to provincial or federal legislation, By-law, franchise agreements or municipal access agreement;

Vehicle” means a motor vehicle, as per subsection 1.1 of the Highway Traffic Act;

“Warranty” means a guarantee by the Applicant to correct any deficiencies in relation to a Road Occupancy and/or Road Closure Permit for a period of 2 years after completion of the work; and

“Work of Major Nature or Duration” means any work that requires a road cut or that extends for a period of time greater than 12 hours.

- 1.02 **Interpretation Rules:** The words “include” and “including” are not to be read as limiting the meaning of a word or term to the phrases or descriptions that follow.
- 1.03 **Statutes:** References to laws in this by-law are meant to refer to the statutes, as amended from time to time, that are applicable within the Province of Ontario.
- 1.04 **Severability:** If a court or tribunal of competent jurisdiction declares any portion of this by-law to be illegal or unenforceable, that portion of this by-law shall be considered to be severed from the balance of the by-law, which shall continue to operate in full force and effect.

This by-law shall not exempt any person from the requirement to comply with any other City by-law. In the event of conflict between the provisions of this by-law and of any other City by-law, the more restrictive provisions shall apply.

Section 2.00: Restrictions

2.01 General Restrictions

No person shall:

- a) Construct, cause or permit construction within a right of way without a Road Occupancy and/or Road Closure Permit as required herein;
- b) Conduct any activity within a right-of-way without a Road Occupancy and/or a Road Closure Permit;
- c) Close or obstruct a highway or portion of a highway to traffic unless authorized to do so by the City;
- d) Fail to comply with any order issued pursuant to the provisions of this By-law;
- e) Conduct any activity on a right of way except in compliance with all conditions imposed by the City upon issuance of a Road Occupancy and/or a Road Closure Permit;
- f) Construct or conduct any activity on a right of way without a Road Occupancy and/or a Road Closure Permit on site and available for inspection.

Section 3.00: Permit Applications

3.01 Road Occupancy Permit Application

An applicant for a Road Occupancy Permit shall:

- a) Complete the prescribed application form and file it with the City not less than five (5) working days in advance of construction;

- b) Attach any documents required on the application form such as a Traffic Control Plan in compliance with the Ontario Traffic Manual;
- c) Provide proof of insurance which includes coverage which identifies the City as an additional insured and an endorsement to provide the City with 30 days notification of cancellation; and
- d) Provide an emergency contact individual details including a telephone number.

3.02 Road Closure Permit Application

An applicant for a Road Closure Permit shall:

- a) Complete the prescribed application form and file it with the City not less than fifteen (15) working days in advance of construction;
- b) Attach any documents required on the application form such as a Traffic Control Plan in compliance with the Ontario Traffic Manual;
- c) Provide proof of insurance which includes coverage which identifies the City as an additional insured and an endorsement to provide the City with 30 days notification of cancellation; and
- d) Provide an emergency contact individual details including a telephone number.

3.03 For applications requesting multiple road cuts, the City reserves the right to issue a single Road Occupancy and/or Road Closure Permit or request multiple Road Occupancy and/or Road Closure Permits for the works.

3.04 The Road Occupancy and/or Road Closure Permit shall become void if the work authorized by the permit is not commenced within sixty (60) calendar days of the date of issue.

3.05 Application for Extension of Existing Permit

- a) An existing Road Occupancy and/or Road Closure Permit may be extended, subject to the submission of a written request outlining any revised information and payment of the applicable fee.
- b) The City, at its discretion, may refuse to extend, or place conditions on the extension of a Road Occupancy and/or Road Closure Permit.

Section 4.00: Work Exempt from a Road Occupancy and/or Road Closure Permit

4.01 Exemptions include:

- a) Activities performed by the City's Public Works Division related to maintenance of the Right of Way which does not require a road closure;

- b) Activity or construction of less than 15 min in duration which does not cause any disruption to traffic flows, does not alter the Right of Way in any manner and does not alter any existing utilities.
- c) Work conducted on unassumed roads as part of an approved subdivision, site plan, Land Division, or Draft Plan Application prior to the subdivision being assumed by the City.
- d) Work or activity conducted in consent with Sections 41, 51, or 53 of the Planning Act and in accordance with the provision of such approval.

4.02 Emergency Work

- a) Emergency Work may be carried out prior to application for a Road Occupancy and/or Road Closure Permit, provided application is made on the same day the work is commenced.
- b) Emergency work performed by or under the direction of the Public Works Department is exempt from the permitting process.

Section 5.00: Permit Application Refusal

5.01 The City may refuse to grant a Road Occupancy and/or Road Closure Permit to any Applicant for the following:

- a) Previous violations of conditions of a Road Occupancy and/or a Road Closure Permit, or of any provisions of this By-law;
- b) Where roadway construction, reconstruction or resurfacing has occurred within the previous three years of the proposed road cut;
- c) A previously issued Road Occupancy and/or Road Closure Permit is active in the area proposed by the applicant and the granting of a secondary Road Occupancy and/or Road Closure Permit would create a construction conflict, or
- d) Any other reason the City may determine appropriate.

Where a Road Occupancy and/or Road Closure Permit has been refused, the City shall notify the Applicant in writing of the reason for the refusal.

Section 6.00: Permit Conditions

6.01 General Requirements

Every person who conducts, causes or permits any construction activity and/or temporary storage of materials on a right of way shall comply with the Road Occupancy and/or Road Closure Permit conditions below:

6.02 Notice Requirements for Road Closure

- a) Notify, in writing, residents and businesses impacted by work of major nature or duration as determined and directed to do so by the City, at least ten (10) working days prior to commencement of work with the following information:

- i. Description and rationale for the work;
- ii. The start date;
- iii. Duration of the closure;
- iv. Access restrictions and service interruptions;
- v. 24 hour, 7 day per week contractor contact information.

6.03 Locates

Locates shall be acquired in accordance with the Ontario Underground Infrastructure Notification System Act, 2012, S.O. 2012, c. 4, as amended. Damage to infrastructure shall be the sole responsibility of the Applicant.

6.04 Warning Devices, Barricades and Traffic Signs

- a) The Applicant shall supply, erect and maintain the required warning devices, barricades, and information and traffic signs, in accordance with the Occupational Health and Safety Act, R.S.O. 1990, chap. 0.1. 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).
- b) If the Applicant fails to comply with subsection 6.02(a), the City may revoke the Road Occupancy and/or Road Closure Permit and issue a stop work order.
- c) Work may only re-commence upon inspection and compliance with the Traffic Control Plan.

6.05 Contact

- a) The Applicant shall be responsible to provide 24 hour per day, 7 day per week response during the period for which the activity occurs.

6.06 Indemnification

- a) The Applicant shall indemnify the City from all causes of action, loss, costs or damages arising from the execution, non-execution or imperfect execution of any work authorized by this By-law whether with or without negligence on the part of the Applicant or the officers, agents, servants or workers of the Applicant.

6.07 Snow Removal and De-Icing

- a) Where the Road Occupancy and/or Road Closure Permit activity impedes snow removal and de-icing by the City, the Applicant 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 City.

- b) Should the Applicant fail to complete the required snow removal services and de-icing within the requirements outlined in City Policy (C 124 EPW 010 and/or C 125 EPW 001, as amended), the City, without any notice to the Applicant, may arrange for the snow and ice to be removed by others. All costs incurred by such removal shall be at the sole expense of the Applicant.

6.08 Location and Times of Construction

- a) Construction may only take place within the location limits and times as specified on the Road Occupancy and/or Road Closure Permit. Work must comply with all Municipal By-Laws such as the noise regulation By-Law. Additional restrictions may apply and work may be prohibited at specific times and dates in order to coordinate with or avoid other work or Special Events in the area.
- b) The Road Occupancy and/or Road Closure Permit site shall be adequately protected and secured at all times.

6.09 Site Conditions

- a) The Applicant is responsible for maintaining the work site and keeping the surrounding area free of dust, mud and other debris. The Applicant shall clean the road and sidewalks as required to the satisfaction of the City.
- b) Prior to the start of any construction activity, filter cloth shall be placed between the frames and covers of all catch basins within the immediate area to prevent the entry of construction dirt and debris.
- c) The Road Occupancy and/or Road Closure Permit site is to be kept in a tidy condition satisfactory to the City. Upon completion of the work, the Applicant shall remove all surplus materials as well as any rubbish accumulated, make good any defects or damage and shall leave the site in a condition satisfactory to the City.

6.10 Road Occupancy and/or Road Closure Permit Transferability

- a) A Road Occupancy and/or Road Closure Permit is not transferable.

6.11 Public Transit Accommodation

- a) The Applicant shall coordinate all staging with municipal transit services and all private bus operators that operate within the work area. Special attention shall be given to loading and unloading areas for disabled persons and school buses.
- b) The Applicant shall maintain access to all existing bus stops within the work area. Where it is not practical to maintain access, the Applicant will be responsible for relocation and reinstatement of the bus stops, under the direction of the transit authority.
- c) When the proposed works involve the removal or the replacement of a utility pole that is being used for City of Kawartha Lakes signage

including but not limited to Bus Stop Signs, Parking Signs, and Public Information Signs, the Applicant shall arrange for the removal and replacement of City owned signage.

6.12 Responsibility for Claims and Maintenance

- a) City Staff will assess the condition of repairs.
- b) The cost of all damage repairs pursuant to applicable sections of this By-Law, shall be at the expense of the Applicant and the costs incurred by the City shall be paid by the Applicant forthwith.

6.13 Entrances

- a) City Staff will assess the condition of repairs.
- b) If any gravel, asphalt, concrete, interlocking, or other surfacing material from a driveway located within the boulevard is removed or damaged in the course of work undertaken with a Road Occupancy and/or Road Closure Permit, it shall be replaced as nearly to the original condition as it was installed.

6.14 Ground Cover Material and Vegetation

- a) City Staff will assess the condition of repairs.
- b) If any ground covering material and vegetation including sod and shrubbery located within the boulevard is removed or damaged in the course of the work undertaken with a Road Occupancy and/or Road Closure Permit, it shall be replaced as nearly to the original condition as it was installed, unless otherwise directed by the City.

6.15 Posting of Road Occupancy and/or Road Closure Permit

- a) No Person shall work on a right of way without a Road Occupancy and/or Road Closure Permit on-site and available for inspection.

6.16 Street Lighting

- a) Should the work involve the removal/replacement of utility poles having City owned luminaires (street lights) attached to them, these street lights shall be, at the applicant's sole expense, moved to, and mounted on the new utility pole. The luminaire will be connected to power by a qualified electrician and set at an elevation and location that is acceptable to the City. Any coordination with relevant utilities (e.g. Hydro One) is the applicant's responsibility

Section 7.00: Construction Conditions

7.01 General Road Occupancy and/or Road Closure Requirements

- a) The Applicant shall open a road cut in such a manner as to do the least possible damage to the right of way and to any utility or municipal service.

- b) The work shall proceed expeditiously and no Applicant shall allow a road cut to remain open for more than twenty-four (24) hours unless the work is actively in progress.
- c) 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.
- d) The Applicant and contractor shall comply with and be bound by the provisions of the Ministry of Transportation's Ontario Traffic Manual, Book 7 (Temporary Conditions).

7.02 Excavated Materials and Road Cut Methods

- a) No Applicant shall place, cause or permit the placement of material or equipment in a location where, it will cause damage to the infrastructure it is placed on and/or create a traffic or safety hazard.
- b) Except as permitted by the City, where multiple road cuts are required with a separation distance of equal to or less than thirty (30) metres it shall be required that the Applicant reinstate the road cuts and resurface the right of way for the entire distance between the outer edges of each road cut.
- c) Where a road cut is made in any concrete surface, the Applicant shall break out and remove all concrete to the nearest expansion or contraction joint, using a concrete saw if necessary, to provide a clean vertical surface on all sides of the road cut; or as specified by the City.
- d) Where a road cut is made in asphalt pavement, the asphalt shall be cut with a mechanical cut device to produce a rectangular opening with edges which are vertically straight which is large enough to accommodate the proposed works without undermining the adjacent asphalt pavement.
- e) Where boring, directional drilling, jacking or tunneling is used for any subsurface road cut and if a cave-in, settlement or heaving results there from, the surface in the affected area shall be removed and reinstated by the Applicant in accordance with this By-law to the satisfaction of the City. Video inspection records shall be provided to the City upon request from a designated administrator of this By-Law.
- f) Where applicable, all works shall be completed to City Standards and Ontario Provincial Standards. City Standards shall take precedence over Ontario Provincial Standards unless otherwise directed by the City.

7.03 Reinstatement and Backfill Requirements

- a) The Applicant shall be responsible for:
 - i. The permanent restoration of a road cut subject to the provisions of this By-law; and
 - ii. The temporary restoration of every road cut that is not in a condition to be permanently restored by November 15th and is

responsible for the permanent restoration prior to May 1st of the following year.

- b) All reinstatements shall be done to current City Standards and O.P.S.S. standards. City Standards shall take precedence over Ontario Provincial Standards unless otherwise directed by the City.
- c) Temporary surfacing of a roadway with asphalt, concrete, or other surface material, the treated surface shall meet the following requirements:
 - i. The road cut shall be temporarily reinstated immediately after backfilling is completed;
 - ii. The reinstatement shall be to the same level as the adjacent surface; and
 - iii. Prior to the right- of- way being opened to traffic, the top seventy-five (75 mm) millimetres of the road cut shall be surfaced with hot mix asphalt, concrete, or, if hot mix asphalt is unavailable, with emulsified cold mix asphaltic material, all hand-tamped or rolled to a smooth, flat condition using industry standard practices and standard tamping or rolling equipment.

7.04 Contaminated Materials

- a) If contaminated material is found when excavating, the Applicant shall immediately notify the City and the Ontario Ministry of the Environment and comply with all applicable environmental, health and safety requirements. Contaminated material must not be used as backfill and must be disposed of in accordance with all legislative requirements.

7.05 Testing

- a) The City may at any time require an Applicant to provide, at their expense, such information, testing, and or certification as The City deems necessary to satisfy itself that the work as authorized is in accordance with this By-law.
- b) All testing required shall be completed in accordance with O.P.S.S.

7.06 Reporting Damage / Impact to Existing Utilities

- a) Any impact on existing utilities including, but not limited to, the protective coating, support, cathodic protection or the housing of the utilities, shall be reported to the City and applicable Utility Company immediately.
- b) The utilities shall remain exposed, with the excavation properly supported, until the utilities owner has assessed the damage and made a repair or authorized the Applicant to proceed.

7.07 Completion of Work

- a) 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 to the satisfaction of the City.

Section 8.00: Cut Failure, Restoration and Warranties

8.01 Completion of Work

- a) For temporary reinstatement of the right of way, the Applicant is responsible for the repairs necessary to correct any road cut under the Ontario Minimum Maintenance Standards for Municipal Right of way, O.P.S.S. and City Standards as applicable.
- b) The applicant shall restore all parts of the right of way to be in compliance with the provisions of this by-law, including boulevards, driveways, ground cover and trees:
 - i. The repairs necessary to correct any settlement or surface deterioration for a warranty period of two years following the date of acceptance by the City of final reinstatement of the right of way, or being the last time the applicant repaired the road cut; and
 - ii. Any costs incurred by the City for any temporary and permanent surface repairs resulting from improper backfilling or compaction of the right of way or deficient materials shall be borne by the Applicant.
- c) If the Applicant has not done the work referred to in section 8.01(2)(a) hereof within twenty-four (24) hours notification, the City may order the work to be done at the Applicant's expense.
- d) Where an applicant fails to restore the right of way, including boulevards, driveways, ground cover or trees, an Inspector may issue an Order to Comply requiring the work to be done.

8.02 Emergency Repairs

- a) If the City 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, the City may protect the area and make immediate repairs;
- b) All work done by the City pursuant to subsection 8.02(1) shall be at the expense of the Applicant and the costs of the City shall be paid by the Applicant.
- c) Where emergency repairs must be completed in relation to activities completed without a permit, the contractor and/or person who caused the road cut or damage shall be responsible for the costs incurred by the City as referred to in section 8.02(1).

Section 9.00: Roadway Obstructions

- 9.01 No person shall place or cause to be placed any obstructions including, but not limited to, construction material, landscaping material, disposal or

storage bins, construction vehicles or equipment on a right of way without obtaining a Road Occupancy and/or Road Closure Permit.

- 9.02 Where a roadway obstruction has been authorized by the City, the Applicant shall place traffic cones at each of the two roadside corners of the obstruction to delineate a potential traffic hazard.
- 9.03 No property owners shall obstruct, cause or permit the obstruction of any right of way in relation to work being done on their property without obtaining a Road Occupancy and/or Road Closure Permit.
- 9.04 A Road Occupancy and/or Road Closure Permit issued in relation to an obstruction must be posted on the adjacent property or boulevard so that it is visible from the street.

Section 10.00: Enforcement

- 10.01 This By-Law may be enforced by Municipal Law Enforcement Officers, Police, Director of Public Works or any other person designated.
- 10.02 No person shall hinder, or obstruct or attempt to hinder or obstruct, any person exercising a power or performing a duty or from conducting an inspection or a person performing corrective work under this By-law.
- 10.03 Any landscape or construction material removed from the right of way by the City may be treated as refuse by the City or become property of the City, which can be disposed of in any manner or used for any City purpose.
- 10.04 Any obstruction removed by the City may, at the discretion of the Director or Inspector, be stored at a City facility for thirty (30) days at the owner's expense
- 10.05 Any obstruction stored per section 10.4 shall only be released to the owner or applicant after the City has been paid the applicable fees for removal and storage of the obstruction. Any obstruction stored per section 10.4 for more than thirty (30) days and for which no owner or applicant has claimed and paid the applicable fees may be disposed of by the City in any manner it deems appropriate. An Inspector may:
 - a) require the production of documents or things relevant to the inspection;
 - b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - c) require information from any person concerning a matter related to the inspection; and

- d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of the inspection.

10.06 Order to Comply

- a) Where an Inspector is satisfied that there has been a contravention of any provision of this by-law, the Inspector may issue an order requiring the applicant, contractor, or owner of the property abutting the right of way on which the contravention has occurred, to stop work or do work to correct the contravention.
- b) An order shall set out:
 - i. Reasonable particulars of the contravention;
 - ii. The location of the contravention;
 - iii. The general nature of the work required to be done to restore the right of way, correct the contravention and/or stop work and obtain a permit; and
 - iv. The date by which the work must be done.
- c) An order issued to stop work may be issued for construction that is not in compliance with the conditions of a Permit, or where construction is taking place without a Permit.
- d) An order to stop work may require temporary restoration of the right of way and removal of all equipment and materials until compliance with the by-law.

10.07 Stop Work Order

- a) The City may issue a stop work order for construction that is not in accordance with the conditions of a Road Occupancy and/or Road Closure Permit or where construction is taking place without a required Permit:
 - i. A stop work order may require temporary restoration and removal of all equipment and materials off site until compliance with the bylaw is met.
 - ii. A stop work order shall be lifted once the City determines that all contraventions of this By-law have been rectified.

10.08 Remedial Action

- a) Where activity is completed without a permit, the Inspector shall investigate said activity and determine the violation.
- b) Where an order has been issued and compliance has not been achieved by the compliance date on the order, the City may cause the work set out in the order to be done.
- c) The City may recover the costs of doing any work undertaken pursuant to subsection (a) and (b), together with an administration charge equal to 25% of such costs, from the applicant, contractor or owner, by adding the cost to the property tax roll and collecting them in the same manner as property taxes, or by whatever other means available to the

municipality based on the person responsible. Any obstruction found on a roadway or right of way without a permit may be removed by the City without notice if it is deemed to be an immediate hazard.

- d) The Contractor or Person who cause the work to be performed will be required to apply for a permit. Any costs incurred by the City including but not limited to (Staff time, investigation time, PW approval, patrol and orders) will be charged to the Contractor or Person who caused the work and collected per means available within this By-Law.

10.10 Permit Revocation

- a) The Director may revoke a permit for any of the following reasons:
 - i. a violation of any condition of the Road Occupancy and/or Road Closure Permit or of any provision of this By-law;
 - ii. a violation of any provision of any other law relating to the work;
 - iii. the existence of any condition or the doing of any act constituting or creating a nuisance or endangering the lives or properties of others;
 - iv. where the Road Occupancy and/or Road Closure Permit has been issued on mistaken, false or misleading information;
 - v. where the work is not carried out in a diligent and workmanlike manner; or
 - vi. it was issued in error.

10.11 Non-Compliant Installations

- a) Where utilities are found to be constructed without a valid Road Occupancy and/or Road Closure Permit and/or in a location other than that approved by the City, the Utilities Company may be required to, at its own expense, immediately remove the utilities and/or relocate work in compliance with the approved design and restore the site to the satisfaction of the City.

10.12 Service of Order or Notice

- a) The service of all Orders or Notices from the City may be:
 - i. Served personally upon the applicant, contractor or owner;
 - ii. Same as listed
 - iii. Mailed by registered mail to the last known address of the applicant, contractor or owner.
- b) If served by registered mail, an Order shall be deemed to have been served on the fifth day after mailing

Section 11.00: Penalty and Offence

- 11.01 Offence and Penalty: It is an offence for a person to contravene any provision of this by-law, and every person who contravenes this by-law is guilty of an offence and, on conviction, is liable to a fine in accordance

with the provisions of the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended and to any other applicable penalty.

- 11.02 Offences: Any person who contravenes any provision of this by-law is guilty of an offence, and upon conviction, is liable to a maximum fine of not more than \$100,000.00, as provided for by Section 429 of the Municipal Act, 2001, S.O.2001, c.25 as amended.
- 11.03 Corporation: A director or officer of a corporation who knowingly concurs in the violation or contravention by the corporation of any provision of this by-law is guilty of an offence and upon conviction, is liable to a maximum fine of not more than \$100,000.00, as provided for by Section 429 of the Municipal Act, 2001, S.O.2001, c.25, as amended.
- 11.04 Multiple Offences: The conviction of a person for the contravention or breach of any provision of this by-law shall not operate as a bar to the prosecution against the same person for any subsequent or continued breach or contravention of any provision of this by-law. Each day that the offence continues shall be deemed a separate and distinct offence.
- 11.05 Court Order: If this By-law is contravened and a conviction entered, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty that is imposed, make an order prohibiting the continuation or repetition of the offence by the person convicted.

Section 12.00: Administration and Effective Date

- 12.01 **Administration of the By-law:** The Director of Public Works and the Director of Engineering and Corporate Assets are responsible for the administration of this by-law.
- 12.02 **Effective Date:** This By-law shall come into force on the date it is finally passed.

By-law read a first, second and third time, and finally passed, this 15th day of December, 2020.

Andy Letham, Mayor

Cathie Ritchie, City Clerk