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**Consolidated Version**

*Last revised on July 23, 2024*

<b>Revision History:</b>	<b>Passed On:</b>	<b>Description of Amendment</b>
2024-092	July 22, 2024	Original

**Consolidated for Convenience Only**

This is a consolidation copy of a City of Owen Sound By-law for convenience and information. While every effort is made to ensure the accuracy of this by-law, it is not an official version or a legal document. The original by-law should be consulted for all interpretations and applications on this subject. For more information or to view by-laws please contact the Clerks Department.

The Corporation of the City of Owen Sound

By-law No. 2024-092

A By-law to regulate activities that require  
a temporary encroachment of City lands

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WHEREAS subsection 5(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25 (the "Municipal Act") requires that the powers of a municipality be exercised by its Council and subsection 5(3) requires that such powers be exercised by by-law including a capacity, right, power and privilege under section 9 unless specifically authorized to do otherwise; and

WHEREAS subsection 11(2) of the Municipal Act provides that a municipality may pass by-laws respecting the health, safety and well-being of persons; and

WHEREAS subsection 11(3) of the Municipal Act provides that a municipality may pass by-laws respecting highways, including parking and traffic on highways; and

WHEREAS section 118 of the Municipal Act provides that a municipality may regulate the excavating, construction and use of trenches and may by by-law prohibit the same unless a permit is obtained from the municipality which may also impose conditions including requiring submissions of plans; and

WHEREAS subsection 391(1) of the Municipal Act 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 subsection 429(1) of the Municipal Act provides that a municipality may establish a system of fines for a by-law passed under the Act; and

WHEREAS subsection 436(1) of the Municipal Act provides that a municipality may pass by-laws providing for the entry onto land at any reasonable time for the purpose of carrying out an inspection to determine compliance with a by-law; and

WHEREAS subsection 444(1) of the Municipal Act 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 subsection 445(1) of the Municipal Act provides that a municipality may make an order requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention; and

WHEREAS section 446 of the Municipal Act 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; and

WHEREAS on July 8, 2024, the Council of The Corporation of the City of Owen Sound (the "City") passed Resolution No. R-240708-012 directing staff to bring forward the subject by-law for approval and to repeal By-law No. 2010-169, in

consideration of staff report OP-24-009 presented to the Operations Committee meeting on June 20, 2024;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF OWEN SOUND HEREBY ENACTS AS FOLLOWS:

### **Part I. Short Title, Purpose and Scope**

#### **Short Title**

1. This by-law may be referenced as the "Temporary Encroachment By-law" and when so referenced includes all future amendments, unless otherwise specified.

#### **Purpose**

2. This by-law has been enacted to:
  - a. ensure that users of City lands have methods to safely pass a location where activity related to a temporary encroachment is being undertaken;
  - b. protect the design and construction of City lands; and
  - c. ensure homeowners and contractors are aware of their responsibility to comply with the requirements listed herein.

#### **Scope**

3. This by-law applies to all activities that require use of City lands.

### **Part II. Interpretation**

#### **Headings**

4. The division of this by-law into parts and the insertion of headings are for convenient reference only and do not affect the interpretation of the by-law.

#### **Gender and Number**

5. In this by-law, unless the contrary intention is indicated, words used in the singular include the plural and words imparting a gender include all genders, where applicable.

#### **References to Applicable Law**

6. All references to applicable law are ambulatory and apply as amended, extended or re-enacted from time to time.

#### **Severability**

7. In the event any provisions of this by-law are deemed invalid or void, in whole or in part, by any court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

#### **Definitions**

8. For the purposes of this by-law:

"activity" means the temporary encroachment of City lands for any purpose for a defined period of time outside its normal intended use by the City, utility company or person(s);

"applicant" means any person, utility company, or corporation making application for a street occupancy permit;

- “article” means an item of tangible personal property other than a fixture;
- “boulevard” means the portion of a highway between a property line and the edge of the curb, or where there is no curb, that portion of the highway which is travelled or designed to be travelled by vehicles;
- “business day” means any day that City Hall is open to the public, generally Monday to Friday excluding statutory holidays;
- “City” means the City of Owen Sound and a reference to the City is a reference to the geographical area of the City of Owen Sound or to the Corporation of the City of Owen Sound as the context requires;
- “City lands” means any property under the care and control of the City of Owen Sound;
- “City standards” means the City of Owen Sound development standards, as amended, and is intended as guidelines for land development and City projects to aid in uniform designs throughout the municipality;
- “contractor” means a person who makes an agreement with another to undertake an activity, retaining in themselves control of the means, method and manner of producing the results to be accomplished;
- “County” means The Corporation of the County of Grey;
- “date of final acceptance” means the date that is twenty-four (24) months after the date of reinstatement;
- “date of reinstatement” means the day, following the period of occupancy or closure, that the highway has been repaired or restored to the satisfaction of the Director;
- “Director” means the City’s Director of Public Works and Engineering, or any successor job title, or their designate;
- “emergency” means a situation that poses a threat to public health or safety and includes a disruption of utility service;
- “Engineering Services Division” means the Engineering Services Division for the City of Owen Sound;
- “Environmental Services Supervisor” means the Environmental Services Supervisor for the City of Owen Sound or their designate or a successor job title;
- “highway” means a common and public highway, street, avenue, parkway, 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;
- “landscape or construction material” includes, without limitation, gravel, soil, sod, bricks, paving stones, landscaping rocks, wooden planks, and boards;
- “municipal consent” means the written consent of the Engineering Services Division with or without conditions, for access to and use of City lands, subject to obtaining a Temporary Encroachment Permit;
- “obstruction” means encumber, damage, foul, or alter;
- “occupant” means a lessee, tenant, mortgagee in possession or any other person who appears to have care and control of any property;

“Occupational Health and Safety Act” means the Occupational Health and Safety Act, R.S.O. 1990, c. O.1, as amended;

“officer” means any person authorized by the City to enforce by-laws and includes a Municipal Law Enforcement Officer appointed to enforce the by-laws of the City or a police officer while in the course of his or her duties;

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

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

“order” includes work order, order to comply, stop work order and an order to discontinue;

“permit holder” means the applicant named in a permit;

“public lands” means any property under the care and control of the City of Owen Sound;

“security” means one or more of the following: cash, certified cheque, or letter of credit (in the form approved by the City) provided to the City to secure the performance by the permit holder of all its obligations under a permit and this by-law;

“service company” means a company or business that primarily provides skilled services to its clientele rather than physical products;

“temporary encroachment permit” means a document issued and authorized by the City for the encroachment or closure of any City lands for any purpose;

“temporarily encroach” means to use, alter, obstruct or damage, or cause or permit the use, alteration, obstruction or damage to, or interfere with winter operations on lands owned by a third party;

“traffic management plan” means a document outlining the particulars of a proposed temporary encroachment or closure that is submitted to the City for review by the applicant. The traffic management plan must contain information required by the Director respecting the applicant’s proposed encroachment or closure including but not limited to:

- i. description of the nature of the activity that necessitates a temporary encroachment/closure;
- ii. proposed start and completion times of the temporary encroachment/closure;
- iii. proposed location of the encroachment/closure;
- iv. requirement to encroach upon or close City lands, such as a highway, during peak hours, if any;
- v. lane use requirements;
- vi. extent of public notification proposed to be undertaken;
- vii. identification of temporary signage requirements;
- viii. identification of any public transit routes and bus stops affected by the temporary encroachment/closure;
- ix. proposed traffic re-routing and detour requirements where necessary.

“temporarily encroach” means to use

“utility company” means a municipality, municipal board or commission, or a corporation that provides utility services under the authority of any statute, charter, by-law or franchise;

“utility locate package” means the documents produced by Ontario One Call to show the location of underground services;

“utility service” means the production, transmission, or supply to the public by a utility company of necessities or conveniences and includes but is not limited to the production, transmission and supply of gas, oil, water, electricity, sewage and storm water services, and telephone, television and other telecommunication services;

“warranty period” means the twenty-four (24) month period commencing the date of reinstatement and terminating on the date of final acceptance during which period the permit holder guarantees the satisfactory performance of the highway repairs; and

“WSIB” means the Workplace Safety and Insurance Board.

### **Part III. Prohibition**

#### **No temporary encroachment without permit**

9. No person may temporarily encroach on any City lands without first obtaining a Temporary Encroachment Permit, unless exempted by this by-law or by the Director.
10. Without limiting the generality of section 9, no person may temporarily encroach on any City lands by any of the following:
  - a. the depositing, throwing, spilling or tracking of any material, including but not limited to waste, oil, chemicals, soil, debris, or other substance onto any City lands;
  - b. the depositing of snow or ice onto any City lands that are not contiguous with the property from where the snow was removed;
  - c. the placement of snow or ice, or any material or equipment, or any structure within 1.0m, in any direction of a fire hydrant;
11. Without limiting the generality of section 9, no person may temporarily encroach on any City lands by any of the following without having obtained a permit pursuant to this by-law:
  - a. the altering of any boulevard;
  - b. the placement of any equipment, container, trailer, or any landscape or construction material on City lands;
  - c. the cutting, altering, extending, in any manner whatsoever, or a concrete curb, open or contained culvert, culvert overpass, driveway, or similar structure or landscape;
  - d. the allowance of a crane boom or any portion of a stationary tower crane to travel over, hoist, or otherwise occupy the space above City lands;
  - e. the excavation or damage to any portion of City lands, including sod, trees, light poles, street signs or other objects with the lands;
  - f. the closure or occupancy of any City lands; and

- g. the placement of unattended sporting equipment, including but not limited to basketball nets, hockey nets, skateboard ramps and bicycle ramps on City lands.

#### **Part IV. Permits**

##### **Delegation of authority**

12. The City hereby delegates to the Director the power to issue a permit under this by-law and to impose conditions to such permits.

##### **City staff**

13. City staff who undertake any type of activity for or on behalf of the City, that requires or will result in a temporary encroachment on City lands, are required to provide notice to the Engineering Services Division at least ten (10) business days in advance of commencing the activity.
14. When notice pursuant to section 13 above is provided, the Director, in their sole discretion, will determine if a Temporary Encroachment Permit is required for the activity by considering the level of impact on the affected City lands and the lands and inhabitants within 120m of the activity.

##### **City contractor**

15. Any third-party person or contractor who undertakes any type of construction activity for or on behalf of the City is required to obtain a permit but is not required to pay a permit fee. All other requirements continue to apply.
16. Any third-party person or contractor who undertakes any other type of activity for or on behalf of the City is required to provide notice to the Engineering Services Division at least ten (10) business days in advance of commencing the activity.
17. When notice pursuant to section 16 above is provided, the Director, in their sole discretion, will determine if a Temporary Encroachment Permit is required for the activity by considering the level of impact on the affected City lands and the lands and inhabitants within 120m of the activity.

#### **Part V. Application Process**

##### **Application required**

18. Every person who wishes to temporarily encroach on any City lands must first complete and submit an application for a Temporary Encroachment Permit in the form approved by the Director.

##### **Application requirements**

19. An application for a permit will:
  - a. be made in the name of the contractor or the individual undertaking the activity. If the homeowner is the individual that will be undertaking the activity, they will be named as the applicant;
  - b. be submitted on such form(s) as the Director may require;
  - c. be submitted at least ten (10) business days in advance of any proposed work or activity that requires a permit;
  - d. be accompanied by the applicable non-refundable fees as provided for in the City's Fees and Charges By-law;



- e. state the purpose for which the permit is required;
  - f. contain a description of the proposed work or activity;
  - g. contain a diagram, sketch or drawing using metric units, that accurately depicts the location and measurements of the area being occupied, which meets with the satisfaction of the Director;
  - h. include the Ontario One Call locate request number, if applicable;
  - i. include a traffic management plan in accordance with Ontario Traffic Manual Book 7, if required by the Director;
  - j. include such other documentation and information as the Director may require.
20. The Director may require separate applications for any activities that the Director, in their sole discretion, considers to be separate and distinct.

### **Application fees**

21. The fees for Temporary Encroachment Permit applications and any inspections required pursuant to them will be the amount determined by the City's Fees and Charges Bylaw and payable to the City at the time of application. No Temporary Encroachment Permits will be issued or inspections carried out until such fees have been paid, and there will not be a refund of any fees for any cause.

### **Securities**

22. The permit holder may be required to deposit a security deposit to cover the faithful performance of the terms of the Temporary Encroachment Permit including maintenance, repair or restoration of the works carried out by the permit holder. When required, such security must be provided forthwith prior to the issuance of any Temporary Encroachment Permit.

## **Part VI. Issuance of Permit**

### **Mandatory refusal**

23. The Director will not issue a permit where:
- a. the application is incomplete;
  - b. the permit fee(s) has not been paid;
  - c. proof that the applicant has the required insurance has not been provided to the Director in such form as the City may require;
  - d. any required security has not been provided;
  - e. the twenty-four (24) hour emergency contact telephone number has not been provided; or
  - f. municipal consent has not been provided.

### **Discretionary refusal**

24. The Director, in their sole discretion, may refuse to issue a permit where:
- a. the applicant or contractor has violated the conditions of one or more previously issued permits;
  - b. the applicant has failed to reimburse the City for costs and expenses incurred in the administration of any previously issued permits;

- c. the applicant proposes to damage a highway, which highway was constructed, reconstructed or resurfaced within the previous three (3) years; or
- d. for such other reason as the Director may deem proper which reasons will be delivered in writing to the applicant upon request.

### **Appeal**

- 25. If an applicant who has been refused a permit in accordance with section 24 wishes to appeal the refusal, such appeal will be to the City Manager.
- 26. An appeal of a permit refusal will be effected by submitting a request for review to the office of the City Manager within fourteen (14) days of the refusal.
- 27. Where a permit is refused, the Director will advise the applicant of the appeal option and provide further information on the process in effect at the time of the refusal.

### **No relief from other requirements**

- 28. The issuance of a permit under this by-law does not relieve any person from the necessity of acquiring any other licence or permit or complying with any other applicable laws, by-laws, regulations and requirements or other governmental authority.

## **Part VII. Permit Conditions**

### **Specific conditions**

- 29. The Director may issue a permit subject to specific conditions that they deem advisable, including but not limited to:
  - a. hours of encroachment and/or closure;
  - b. specifying who may perform the activity and specifying the manner in which the activity must be performed;
  - c. specifying the quality of any work to be performed and the equipment and materials that must be used;
  - d. the requirement of notice to affected parties;
  - e. the date when the work or activity may be commenced;
  - f. the requirement of field inspections by the City or its agents, and payment by the applicant of any associated fees;
  - g. the requirement of laboratory tests and engineering reports and certificates;
  - h. the provision of barricades, warning devices, signage and other measures in the interest of public health and safety; and/or
  - i. requiring the deposit of security with the City sufficient to cover the faithful performance by the permit holder of the terms of the permit, including the cost of repairs and the cost of any maintenance or repairs that the Director may require during the warranty period, together with a reasonable contingency not to exceed twenty per cent (20%) of the estimated costs to complete the repairs.

### **General conditions**

- 30. It is a condition of every permit that the permit holder and its officers, directors, employees, contractors and agents will:

- a. maintain or repair the City lands encroached upon under the terms of the Temporary Encroachment Permit, to City standards, until accepted as satisfactory by the Engineering Services Division;
- b. comply with all conditions of the permit specified thereon and the provisions of this by-law;
- c. comply with and be bound by the provisions of the Occupational Health and Safety Act;
- d. comply with and be bound by the provisions of the Ministry of Transportation's Ontario Traffic Manual, Book 7 (Temporary Conditions);
- e. be liable for all costs, losses and expenses incurred by the City, which costs and expenses are payable by the permit holder forthwith upon demand, failing which, the City may, with limit to its legal recourse, draw upon any security and/or add any outstanding amount to the tax roll for any real property of the permit holder situation within the municipality, which amount may be collected in like manner as municipal taxes;
- f. hold harmless, indemnify and defend the City, its elected officials, employees and agents, from and against any action, claim, loss, damage, cost or expense arising directly or indirectly as a result of the issuance of a permit to the permit holder;
- g. notify the County, police, emergency medical services, the fire department, any person operating a public transportation service or school bus service, and any person whose access to their own property may be affected by the encroachment or closure, of the commencement and termination of the said encroachment or closure;
- h. cause to be provided all signs, barricades, traffic control devices, flag persons, and such other persons and equipment as may be required by the City, prior to the commencement of, and for the duration of, the encroachment or closure;
- i. maintain access to all private and public properties during any encroachment or closure and keep such access free and clear of all debris and other materials;
- j. ensure that City lands are kept clean and safe, and sources of dust and mud are controlled at all times until the final reinstatement has been completed. All dust and mud that is tracked from the site must be promptly cleaned;
- k. ensure that no road cut remains open for more than twenty-four (24) hours unless the work is actively in progress and ensure that all work proceeds expeditiously;
- l. maintain and answer a telephone at all times (24 hours, seven days a week) during the period of encroachment or closure so that the permit holder may respond to an emergency and/or be notified by the Director or an officer of any necessary repairs or remedial work;
- m. keep the permit available on site for inspection during the period of encroachment or closure;

- n. request and obtain a utility locate package from Ontario One Call in advance of commencing the activity for which the permit was applied;
- o. keep the complete utility locate package available on site for inspection during the period of encroachment or closure and safeguard against damage to all utility services;
- p. in the event the permitted work or activity cannot be completed within the time set out in the permit, notify the Director of the additional required time and the reasons therefor, and will request an extension of the permit which extension may be granted at the discretion of the Director who may impose additional conditions upon the permit including the requirement to pay an additional fee(s);
- q. effect all repairs and make all improvements as may be deemed necessary by the Director to reinstate the City lands to City standards, O.P.S.D. and O.P.S.S. Where conflict occurs, City standards will prevail;
- r. effect all repairs to real and personal property, adjacent to the occupied/closed City lands, that has been damaged or destroyed in the course of the encroachment or closure as may be necessary to restore it to its pre-encroachment/closure condition;
- s. maintain and guarantee the performance of any repairs during the period of temporary encroachment, to the satisfaction of the Director, and effect, at the permit holder's sole cost and expense, any maintenance and/or remedial work to the repairs as may be required by the Director, to the satisfaction of the Director;
- t. ensure any road cuts are done in such a manner as to do the least possible damage to a highway including any utility or municipal service;
- u. acknowledge and agree that:
  - i. where City lands or a utility service has been damaged by a permit holder or contractor, the City or the utility company, as the case may be, has the sole right to determine who, at the expense of the permit holder, may carry out any necessary repairs;
  - ii. the Director may give notice to the permit holder, before or after the date of reinstatement, specifying the maintenance or remedial work that the Director requires to be performed;
  - iii. if the permit holder, having received notice from the Director, has not done the work required by the Director within such time as may be specified by the Director, the Director may arrange for the work to be done by the City or a third party, all at the permit holder's expense;
  - iv. upon the date of final acceptance the City assumes responsibility for maintaining the repairs, undertaking any further maintenance or repair work, and releasing the security or the remaining balance thereof to the permit holder, upon request;

- v. a permit is the property of the City and is not transferable unless authorized by the Director and any applicable fee(s) has been paid; and
- vi. a permit will become void if the activity authorized by the permit is not commenced within sixty (60) calendar days of the date that the permit issued and a new permit will be required if the activity is to proceed.

### **Revocation**

31. In addition to any other enforcement proceedings against the permit holder as permitted by law, the Director may revoke a permit at any time:
  - a. for a violation of any condition of the permit or of any provision of this by-law;
  - b. for a violation of any provision of any other law relating to the permitted activity;
  - c. for the existence of any condition or the doing of any act constituting:
    - i. a threat to public health and safety;
    - ii. a nuisance; or
    - iii. an endangerment to life or property;
  - d. where the permit has been issued on mistaken, false or misleading information; and
  - e. where the permitted activity is not carried out in accordance with the approved application.
32. Where a permit has been revoked, the permit holder must immediately cease all activities for which the permit was issued and, if applicable, immediately restore the City lands and any services to City standards or to the satisfaction of the Director. Such restoration shall be carried out at the permit holder's sole cost and expense, and if the permit holder should fail to carry out such restoration, the lands may be restored by the City, and the entire cost of so doing shall be paid by the permit holder forthwith upon demand.
33. The permit holder of a revoked permit must immediately cease or ensure the immediate cessation of all the activities for which a permit has been issued.

## **Part VIII. Special circumstances**

### **Major work**

34. Where the activity is of a nature or duration that will cause general inconvenience to any resident(s) or business(es) located beside or near the lands where the work will occur, as determined by the Director in their sole discretion, the activity will be deemed to be "major work".
35. Where major work is being undertaken, the permit holder must, at least ten (10) business days prior to commencing the activity, notify every resident and business located beside or within 120m of where the activity will occur of:
  - a. the description and rationale for the activity;
  - b. the approximate start date;

- c. the duration of the activity;
- d. access restrictions and service interruptions; and
- e. contact information for the permit holder.

### **Emergency work**

- 36. In the case of an emergency, a utility company may undertake an activity without regard to the prior notification provisions and application timelines of this by-law. All other requirements continue to apply.
- 37. Where an emergency activity has been undertaken, the utility company undertaking the activity must, on the same day that the activity is commenced, or if the City offices are closed, no later than the start of the next working day, notify the Engineering Services Division of:
  - a. the name of the person or company undertaking the activity;
  - b. the nature of the activity;
  - c. the location of the activity;
  - d. the estimated duration of the activity; and
  - e. the reason for proceeding without obtaining a permit and without providing required notice.
- 38. In addition to the requirements of section 37 above, the person or company undertaking the activity must comply with all requirements of this by-law, including obtaining a permit.
- 39. The Director may require any or all information to confirm the validity of an emergency. Should insufficient proof of an emergency be submitted, the applicant may be notified in writing that they are subject to the same restrictions and penalties as performing an activity without permission.

### **Emergency situations**

- 40. If the Director or an officer is of the opinion that any activity taken, or purportedly taken pursuant to a permit has created an emergency situation, the Director or an officer may protect the area and take any necessary steps to make immediate repairs or take any other steps deemed necessary to protect persons and property.
- 41. Any work done by the City pursuant to section 40 above will be at the expense of the permit holder and the costs of the City will be paid by the permit holder forthwith.

### **Obstructions**

- 42. If the Director or an officer determines that an obstruction of City lands exists, the Director or an officer may issue a notice of obstruction requiring the owner, occupant and/or contractor of the property from which the obstruction comes from, relates to, or was created for, to discontinue causing the obstruction and to remove the obstruction and repair, as necessary, at the expense of the owner, occupant, and/or contractor so that the City lands are brought back to their former condition prior to the obstruction.
- 43. Where the notice of obstruction described in section 42 above is not complied with within the time period stipulated therein, the City may remove the obstruction and repair, as necessary, the City lands and all the costs incurred by the City in undertaking this work shall be expenses owed

to the City by the owner, occupant, and/or contractor of the property from which the obstruction comes from, relates to, or was created for.

### **Snow removal and de-icing**

44. Where the permit holder's activity impedes snow removal and de-icing by the City on areas where vehicular and pedestrian traffic are being maintained, as reasonably determined at the sole discretion of the Public Works division, the permit holder must provide ice and snow removal services within the limits of the site for which the permit was issued. Such areas must be cleared of ice and snow to the satisfaction of the City.

### **Watermains**

45. No permit holder may operate watermain valves, service water and/or hydrants. If operation of any water supply valves is required, the permit holder must contact the City Water Distribution staff to arrange access.
46. No person may operate valves or hydrants or interfere with a potable water system in any manner that will cause the water to become non-potable.

### **Trenchless installations**

47. Where the activity being undertaken uses trenchless installation methods, preservation and protection of existing facilities must be according to OPSS 491.
48. Minimum horizontal and vertical clearances to existing facilities as specified in OPSS must be maintained. Clearances will be measured from the nearest edge of the largest backreamer required to the nearest edge of the facility being paralleled or crossed.

### **Transit**

49. The permit holder must coordinate all staging with the Student Transportation Service Consortium of Grey Bruce or any transit company or school board known to the permit holder that may have a bus stop or may travel within the area of the activity. Special attention must be given to loading and unloading areas for school buses and persons with disabilities.
50. The permit holder must maintain access to all existing bus stops within the area of the activity. Where it is not practical to maintain access, the permit holder will be responsible to coordinate relocation and reinstatement of the bus stops, under the direction of the Environmental Services Supervisor.

### **Boulevards**

51. No person may permit anything to remain on a boulevard that is dangerous, that may injure pedestrian or vehicular traffic.
52. No person may permit anything to remain on a boulevard that impairs the ability to see pedestrian or vehicular traffic.
53. No person may place inorganic ground covering exceeding 19mm in diameter and every person must ensure that any inorganic ground cover located within a boulevard is confined to that area and does not overflow onto to travelled portion of the road or sidewalk.
54. No person may place concrete, interlocking stone, gravel stone, or soil to protrude above the existing boulevard grade.

55. When restoring a boulevard pursuant to a Temporary Encroachment Permit, an owner may plant herbaceous plants in a boulevard provided:
  - a. plants and shrubs do not exceed a height of 45cm.
  - b. plants do not impair drainage.
  - c. sod or grass does not exceed 15cm.
56. If any sod from a boulevard or asphalt from the apron of a driveway located within the boulevard is removed or damaged for any reason in the course of any undertaking by the City, the County, or any public utility or service company, it must be replaced as nearly as may be to the condition in which it was prior to that undertaking. Neither the City nor any public utility or service company will be obligated to restore any improvements located on any boulevard other than sod and asphalt.
57. No person may install an irrigation system or electrical wiring in or over a boulevard without written permission from the City.
58. No person may damage or destroy any pipe, wire, cable, or property located on or beneath the surface of a boulevard.

#### **Disposing of material and equipment**

59. Any landscape or construction material removed by the City from City lands under this by-law may be directly deposited onto the property from which the obstruction comes from, relates to, or was created for, or the material 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.
60. Any equipment, container, trailer, or other article removed by the City may, at the discretion of the Director or an officer, be deposited at the property from which the obstruction comes from, relates to, or was created for, or be stored at a City facility for thirty (30) calendar days at the owner's expense.
61. Any item in section 60 above will only be released to the owner or permit holder after the owner or permit holder has paid the City any applicable expense for the removal and storage of the item.
62. Any item in section 60 above that is stored at a City facility for more than thirty (30) days and for which an owner has not been identified may be disposed of by the City in any manner that it deems appropriate.
63. Any item in section 60 above that is stored at a City facility for more than thirty (30) days and for which the owner, having been notified, has failed to pay the applicable expenses and claim the item, the City may dispose of the item pursuant to the provisions of the *Repair Storage and Liens Act*, R.S.O. 1990, c. R.25, as amended.

### **Part IX. Insurance and Indemnification**

#### **Insurance**

64. The permit holder, unless exempt by virtue of section 66 below, must provide and maintain insurance until the date of final acceptance. The policy must:
  - a. be Commercial General Liability insurance acceptable to the City and subject to limits of not less than five million dollars (\$5,000,000) inclusive per occurrence;



- b. include an extension for a standard provincial and territorial form of non-owned automobile liability policy; and
  - c. include but not be limited to:
    - i. name the City as an additional insured;
    - ii. cross-liability and severability of interest;
    - iii. blanket contractual;
    - iv. products and completed operations
    - v. premises and operations liability;
    - vi. owners and contractors protective;
    - vii. broad form property damage;
    - viii. 30 days' notice of cancellation;
    - ix. attached machinery.
65. The permit holder will provide the City with confirmation of coverage in the form of a certificate of insurance prior to any work being undertaken by the permit holder.
66. If the following conditions are met, no Commercial General Liability insurance will be required:
- a. the applicant is the home/land owner and the property is insured under a personal lines policy; and
  - b. no contractor or third party is or will undertake any activity on their behalf with respect to the Temporary Encroachment Permit.
67. Where an applicant meets the conditions in section 66 above, Homeowner's Liability insurance will be required that:
- a. is satisfactory to the City;
  - b. underwritten by an insurer licensed to conduct business in the Province of Ontario;
  - c. provides coverage for bodily injury, property damage, and personal injury; and
  - d. has a limit of liability not less than \$2,000,000.
68. The applicant must provide proof of a Homeowners Liability Policy by way of a letter from the Broker.

### **Indemnification**

69. The applicant will defend, indemnify and save harmless the City, its elected officials, officers, employees, and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever, including but not limited to bodily injury, sickness, disease or death or to damage to or destruction of tangible property including loss of revenue or incurred expense resulting from disruption of service, arising out of or allegedly attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of the applicant, its directors, officers, employees, agents, contractors and subcontractors, or any of them, in connection with or in any way related to the delivery or performance of the activity being undertaken under the permit terms. This

indemnity is in addition to and not in lieu of any insurance to be provided by the applicant in accordance with this by-law, and survives this by-law.

70. The applicant agrees to defend, indemnify and save harmless the City from and against any and all claims of any nature, actions, or damages of every kind whatsoever arising out of or related to the applicant's status with WSIB. This indemnity is in addition to and not in lieu of any proof of WSIB status and compliance to be provided by the applicant in accordance with this by-law, and survives this by-law.

### **Part X. Orders and Remedial Action**

#### **Orders**

71. If a person contravenes any of the provisions of this by-law, the Director or an officer may issue an order to the person or to the permit holder requiring them to discontinue the contravening activity. The order must set out:
- a. the reasonable particulars of the contravention adequate to identify the contravention;
  - b. the location of the property on which the contravention occurred; and
  - c. the date by which there must be compliance with the order.
72. If a person has contravened a provision of this by-law, the Director or an officer may issue a work order to the person who contravened the by-law, or to the permit holder requiring them to do work to correct the contravention. The order must set out:
- a. the reasonable particulars of the contravention adequate to identify the contravention;
  - b. the location of the property on which the contravention occurred; and
  - c. the date by which there must be compliance with the order.
73. An order issued under section 72 above, may also provide that if the person or permit holder fails to correct the contravention, the City may do the work to correct the contravention at the expense of the person or permit holder.
74. The Director or an officer may, at their own discretion, issue a stop work order. Stop work orders are issued where the Director or an officer finds an activity occurring that is not in accordance with the conditions of a permit or where an activity is taking place without a permit. A stop work order will be lifted once the Director determines and is satisfied that all contraventions of this by-law have been rectified.

#### **Notice**

75. Any order issued pursuant to this by-law may be given in writing in any of the following ways and is effective:
- a. on the date on which a copy is delivered to the person to whom it is addressed;
  - b. on the fifth day after a copy is sent by mail to the person's last known address;

- c. upon the sending of a copy by e-mail transmission to the person's last known email address; or
  - d. posting at the site of the contravening activity, on the date of posting.
76. For the purpose of section 75 above, a person's last known address and last known email address are deemed to include information on the last revised assessment roll and on a permit application submitted pursuant to this by-law.

### **Remedial action**

77. If a Director or officer has issued an order directing or requiring that a person or permit holder do a matter or thing to correct a contravention of this by-law, and the person or permit holder fails to correct the contravention, the City may do all work necessary to correct the contravention, and the City may recover the cost of doing the matter or thing from the person directed or required to do it by action or by adding the costs to the tax roll of property owned by the person or permit holder located in the City and collecting them in the same manner as property taxes.

## **Part XI. Cost recovery and power of entry**

### **Recovery of costs**

78. Where the City, its employees or authorized agents have performed the work required for compliance with this by-law, all expenses incurred by the City in doing the work as well as any related fees, will be deemed to be a debt to the City and may be collected by action or the costs may be added to the tax roll for the property and collected in the same manner as taxes.

### **Power of entry**

79. The City may enter on a property at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
- a. the provisions of this by-law;
  - b. an order issued under this by-law; or
  - c. an order made under section 431 of the Municipal Act.
80. Where an inspection is conducted by the City, the person conducting the inspection may:
- a. require the production for inspection of documents or things relevant to the inspection;
  - b. inspect and remove documents or things relevant to the inspection for the purpose of make copies and extracts;
  - c. require information from any person, concerning a matter related to the inspection including their name, address, phone number and identification; 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 purposes of the inspection.
81. The City may undertake an inspection pursuant to an order issued under section 438 of the Municipal Act.

82. The City's power of entry may be exercised by an employee, officer or agent of the City or by any member of the Owen Sound Police Services, as well as by any person acting under their direction.

## **Part XII. Enforcement and penalties**

### **Enforcement**

83. A Municipal Law Enforcement Officer, Police Officer, Director, or other duly appointed individual may enforce the provisions of this bylaw.
84. No person may hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising power or performing a duty under this by-law.
85. No person may fail to comply with a notice or an order issued pursuant to this by-law.
86. An officer who has reasonable grounds to believe that a person has contravened any provision of this by-law may require that person to provide identification.
87. Every person who is required by an officer to provide identification under section 86 above must identify themselves to the officer. Providing their correct name, date of birth and address constitutes sufficient identification. Failure to provide identification will constitute obstruction of the officer as per section 84 of this by-law.

### **Offence and Penalties**

88. Every person who contravenes any provision of this by-law is guilty of an offence and liable on conviction to a penalty not exceeding \$5,000, exclusive of costs, and the provisions of the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended, will apply to said fine.
89. 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 contravention by the corporation, is guilty of an offence under the provisions of the Municipal Act.
90. 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 the minimum fine will not exceed \$500.00 and a maximum fine will not exceed \$100,000.00 exclusive of costs under the provisions of the Municipal Act.
91. For the purpose of continuous offences, every person who contravenes any provision of this by-law, and every director or officer of a corporation who knowingly concurs in the contravention of a by-law of the corporation, is guilty of an offence and liable on conviction to a penalty not exceeding \$10,000, exclusive of costs under the provisions of the Municipal Act.
92. Notwithstanding the provisions of the Municipal Act, the total of all daily fines for the offence is not limited to \$100,000.00.
93. For the purposes of multiple offences, every person who contravenes any provision of this by-law and every director or officer of a corporation who knowingly concurs in the contravention of a by-law of the corporation is guilty of an offence and liable on conviction to a penalty not exceeding \$10,000.00, exclusive of costs under the provisions of the Municipal Act.

- 94. In addition to any other remedy or penalty provided by law, the court in which the conviction has been entered, or any other court of competent jurisdiction may make an order:
  - a. prohibiting the continuation or repetition of the offence by any person; and
  - b. requiring the person to pay a special fine, in addition to a regular fine, which fine must eliminate any economic gain or advantage derived by the person as a result of contravening this by-law.

**Part XIII. Exemptions**

**Director authority to grant**

- 95. 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.

**Part XIV. Conflict and Transition**

**Conflict**

- 96. In the event the provisions of this by-law are inconsistent with the provisions of the Municipal Act or any other act or the regulations thereunder, the provisions of the act or regulation prevail.
- 97. If there is a conflict between a provision in this by-law and a provision of any other municipal by-law, the provision that establishes the highest standard to protect the health, safety and welfare of the general public apply.

**Repeal**

- 98. By-law No. 2010-169 is repealed.

**Enactment**

- 99. This by-law will come into full force and effect on the date it is passed, at which time all by-laws, policies and resolutions that are inconsistent with the provisions of this by-law are hereby amended or repealed insofar as it is necessary to give effect to the provisions of this by-law.

FINALLY PASSED AND ENACTED this 22<sup>nd</sup> day of July, 2024.

signature on file  
 Mayor Ian C. Boddy

signature on file  
 Briana M. Bloomfield, City Clerk