



The Municipal Corporation of the Town of Fort Erie

By-law No. 120-2015

Being a By-law to Adopt a Policy to Regulate the Use, Alteration and Occupancy of Highways (Highway Occupancy Policy)

Whereas at the Council-in-Committee Meeting held on September 21, 2015, Report No. IS-33-2015 was approved, authorizing the adoption of a Policy to regulate the use, alteration and occupancy of highways with respect to works carried out on private property, and authorizing the delegation of authority to the Director of Infrastructure Services in implement and administer the Policy, and to approve and enforce permits related thereto; and

Whereas it is deemed desirable to adopt a Policy to regulate the use, alteration and occupancy of highways, and delegate authority to the Director of Infrastructure Services in relation thereto;

Now therefore the Council of the Town of Fort Erie enacts as follows:

1. Adoption

- 1.1 This by-law, being a by-law to adopt a Policy to regulate the use, alteration and occupancy of highways attached hereto as Schedule "A" and forming part of this by-law, is authorized, approved and adopted.

2. Short Title

- 2.1 This by-law shall be known as "The Highway Occupancy Policy".

3. Definitions

- 3.1 For the purposes of this Policy, the following definitions shall apply:
- a) "alter" shall mean to change in any manner, and includes to restore, renovate, repair or disturb, and "alteration" has a corresponding meaning.
 - b) "Applicant" shall mean the registered owner of land abutting a highway who makes an Application for a Permit, or a tenant or contractor who has been authorized by such owner to make an Application for a Permit.
 - c) "construction" shall mean anything done in the erection, installation, extension or material alteration, demolition, or repair or other improvement to a private property, including without limitation, to a building or structure, utility or surface, grading, and deliveries by suppliers and workers, and "construct" has a corresponding meaning.

- d) “damage” shall mean harm or injury to the highway, including without limitation, disturbance, cracking, gouging or displacement of or to the pavement, curb, boulevard, landscaping, trees, retaining walls, street furniture or sidewalk resulting from the use and occupancy by a person to carry out construction to private property, such that, in the sole opinion of the Director, the highway is not in its pre-construction condition.
- e) “Damage Deposit” shall mean a deposit to guarantee restoration of damage to the highway’s pre-construction condition.
- f) “Director” shall mean the Town’s Director of Infrastructure Services from time to time, or the holder of the office exercising the functions presently performed by the said Director, and includes his or her designate.
- g) “highway” shall mean:
 - i. all highways that existed on December 31, 2002,
 - ii. all highways established by by-law on or after January 1, 2003,
 - iii. all highways transferred to the municipality under the *Public Transportation and Highway Improvement Act*,
 - iv. all road allowances made by the Crown surveyors located in the municipality, and
 - v. all road allowances, highways, streets and lanes shown on a registered plan of subdivision,

over which the Town has jurisdiction, and which have not been permanently closed by by-law pursuant to the *Municipal Act, 2001*, as amended from time to time, or its predecessor legislation.

For greater clarity, a highway includes the area between the lateral highway boundary lines beyond the improved or travelled roadway, consisting of without limitation, shoulders, ditches, boulevards, landscaped and/or sodded areas, street furniture, and sidewalks.

- h) “occupy” shall mean the temporary use of a highway or any part thereof for construction related to private property abutting the highway, and “occupancy” has a similar meaning.
- i) “Permit” shall mean the “Highway Occupancy Permit” approved by the Director of Infrastructure Services.
- j) “person” shall mean any human being including his/her heirs, trustees, and other legal representatives, and any association, firm, partnership, and corporation, including its successor.
- k) “Policy” shall mean the requirements, conditions and restrictions for the temporary use, alteration and occupation of a highway regulated by this Policy, including the procedural and administrative processes and forms related thereto.

- l) “street furniture” shall mean and includes without limitation, benches, garbage containers, hand rails, tables, signs, posts and any other above ground appurtenances on a highway.
- m) “Town” shall mean The Corporation of the Town of Fort Erie.

4. Delegation of Authority

- 4.1 The Director is delegated authority to administer this Policy, including the development and implementation of forms and procedures for the administration thereof.
- 4.2 The Director is further delegated authority to refuse or approve a Permit with such changes and/or conditions as the Director deems necessary and appropriate in the circumstances, subject to:
 - a) In the event the Director and an Applicant are unable to agree on the terms of a Permit, then the Applicant may request the Application be submitted to Council for approval, and
 - b) Council may require a Permit be submitted to it for approval, prior to issuance by the Director.

5. Prohibition

- 5.1 No person shall use, alter or occupy or permit to be used, altered or occupied, any portion of a highway related to construction on private properties necessitating the utilization of a portion of a highway for the purposes of such construction, except in accordance with this Policy.

6. Enforcement

- 6.1 The Director is designated as the Town official responsible for the enforcement of this Policy, and any other requirements which may be imposed or approved by the Municipal Council of the Town. The Town’s Municipal Law Enforcement Officers shall be responsible to carry out enforcement under the *Provincial Offences Act*, R.S.O., 1990, c.P.33, as amended or replaced from time to time, and the Town’s by-laws in place from time to time.

7. Penalties

- 7.1 Every person who contravenes any provision of this Policy is guilty of an offence and upon conviction is liable to a fine in the amount provided for in the *Provincial Offences Act*, R.S.O., 1990, c.P.33, as amended or replaced from time to time.

8. Application of Policy

8.1 This Policy shall be read and applied fairly with such variations as circumstances or the nature of the subject matter require provided that the general purpose, intent, meaning and spirit of the Policy are maintained.

8.2 This Policy shall not apply to occupancy of a highway under the jurisdiction of or governed by any other authority or applicable legislation, including but not limited to the following municipal by-laws as amended or replaced from time to time:

- a) The Municipal Road Allowance Encroachment Policy being By-law No. 89-07; and
- b) The Outdoor Patios on Municipal Land Policy being By-law No. 46-2014;

9. Corrections

9.1 The Clerk of the Town is authorized to effect any minor modifications or corrections solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.

Read a first, second and third time and finally passed this 28th day of September, 2015.

Mayor

Clerk

I, Laura Bubanko, the Clerk, of The Corporation of the Town of Fort Erie certifies the foregoing to be a true copy of By-law No. 120-2015 of the said Town. Given under my hand and the seal of the said Corporation, this _____ day of _____, 2015.

Highway Occupancy Policy

1. Policy Statement

- 1.1 The Town is responsible for ensuring that its highways are kept in a state of repair that is reasonable in the circumstances, and to ensure the safety of persons using its highways. This policy regulates, through a permitting process, the use, alteration and occupancy of all highways with respect to construction on private properties necessitating the occupancy of a portion of a highway within and under the jurisdiction of the Town.
- 1.2 The purpose of the permit system regulated by this Policy is to:
- a) determine whether a proposed highway occupation is necessary;
 - b) ensure highway occupancy is carried out in a safe manner;
 - c) ensure that activities are coordinated to minimize public impact; and
 - d) ensure Town infrastructure is protected from damage, and if damage occurs, is remediated to the satisfaction of the Town.

2. Permit Required

- 2.1 Any person proposing any construction on private property which may necessitate a highway to be occupied in a manner which, including without limitation:
- a) restricts access to the highway;
 - b) disrupts or impedes vehicular and/or pedestrian traffic on a highway;
 - c) requires placement of materials and/or equipment of any kind on the highway;
 - d) requires placement of a moving container or disposal bin;
 - e) requires storage of construction or landscaping materials;
 - f) requires crossing of a boulevard by workers and/or vehicles to gain access to the private property where there is no depressed curb or driveway; and/or
 - g) requires occupation of the highway by workers to support the construction;

shall be required to make an Application for a Road Occupancy Permit, prior to the commencement of any construction, unless determined by the Director that a Permit is not required.

3. Application Fee

- 3.1 Every Applicant shall submit a non-refundable Highway Occupancy Permit Application Fee as established in Schedule "IS-J" of the Town's Fees and Charges By-law No. 40-09, as amended or superseded from time to time, with the submission an Application for a Permit.

4. Damage Deposit

- 4.1 Upon approval of a Permit by the Director and prior to issuance of the Permit, every Applicant shall submit a Damage Deposit in the amount established in Schedule IS-J" of the Town's Fees and Charges By-law No. 40-09 as amended or superseded from time to time, in the form of cash or certified cheque.
- 4.2 Upon Application by the person who paid the Damage Deposit, the Damage Deposit shall be refunded to that person, subject to Subsections 4.3, 4.4 and 4.5 below.
- 4.3 The Damage Deposit shall be held by the Town, without interest, until such time as the Director has determined that the Damage Deposit is not required, subject to Subsection 4.4 below.
- 4.4 In the event of damage to the highway, and the Applicant fails to restore the highway within ten (10) calendar days of written notice of the damage to be restored, the Town may draw on the Damage Deposit to the extent necessary to return the highway to its pre-construction condition, and pay all costs and expenses incurred thereby, from the proceeds so drawn.
- 4.5 In the event the Director determines that the costs of restoring the highway to its pre-construction condition exceeds the amount of the Damage Deposit held by the Town, the Town shall send a written notice to the Applicant, specifying the amount of such excess monies to be paid to the Town by the Applicant within ten (10) calendar days. In the event the Applicant fails to pay within ten (10) calendar days, the Town may add the amount to the tax roll of the lands to which the Permit was applied for, and collect same in the same manner as property taxes, without prejudice to any other remedies of the Town to recover same.

5. Permit Conditions

5.1 Posting of Permit

The Applicant shall be required to post the Permit on-site at all times during the time frame stated in the Permit, which shall serve as confirmation of approval of the construction pursuant to the information supplied in the Application. Permits are valid only for the dates, times, location(s) and construction listed.

5.2 Other Approvals

Approval and issuance of a Permit does not constitute approval for the works being carried out on the abutting private property, and it remains the

responsibility of the Applicant to satisfy and obtain any other required approvals in relation thereto.

5.3 Indemnity

The Applicant shall indemnify and save harmless the Town from any liability (including reimbursement of reasonable legal fees and all costs) for damages to any person or any property in or upon the highway at the Applicant's invitation, or for damages to any person or property resulting from the actions of the Applicant, its agents, servants, employees, licensees or invitees (including damages caused by or resulting from the existence of the occupation) on the highway, unless the damages are caused by, or are the result of, the misconduct or negligence of the Town or any of the Town's agents, servants, employees, licensees or invitees.

Notwithstanding any provisions herein to the contrary, it is understood and agreed that all property kept, installed, stored or maintained in or upon the highway by the Applicant will be so installed, kept, stored or maintained at the risk of the Applicant.

The Town will not be responsible for any loss or damage to the Applicant's equipment or other materials related to its construction and which might result from tornadoes, lightning, wind storms, or other Acts of God; provided, however, the Town will be responsible for, and agrees to hold the Applicant harmless from any liability (including reimbursement of reasonable legal fees and all costs), for damages to any person or any property in or upon the highway arising out of the misconduct or negligence of the Town or any of the Town's agents, servants, employees, licensees or invitees.

5.4 Insurance

The Applicant shall provide and maintain at his/her/its sole expense including payment of the required deductible:

- i) Commercial general liability insurance in the minimum amount of two million dollars (\$2,000,000) inclusive per occurrence. Coverage shall include but not limited to bodily injury including death, damage to property including loss of use thereof, personal injury, premises and operations liability, tenant legal liability and shall contain a cross liability, severability of insured clause. Such policy shall be endorsed to protect the Town as an additional insured as the owner of the highway against all liability but only with respect to the construction of the Applicant.
- ii) Such insurance shall be primary and will not call in to contribution any other insurance that may be available to the Town.

- iii) The Applicant shall provide an insurance certificate to the satisfaction of the Town that confirms the Town's requirements as stated above. If requested by the Town the Applicant is to provide a certified true copy of the policy certified by an authorized representative of the insurer
- iv) The policy shall be endorsed to provide the Town with not less than thirty (30) days' written notice of cancellation. If the policy is cancelled for any reason or if the permit holder fails to confirm that insurance coverage is in place at all times the permit holder will be required to immediately remove their operations from the Town's premises.

5.5 Traffic Control

The Applicant shall prepare and submit to a traffic control plan which shall conform to the Ministry of Transportations' Book 7 Signing Requirements for Temporary Conditions, as amended or replaced from time to time, at the Applicant's sole expense.

5.6 Vehicle Parking

Unless permission is specifically given in the Permit, vehicles of any kind, are not to be parked any closer than 3 metres to a fire hydrant, and no closer than 6 metres from a crosswalk, whether marked or unmarked. "No Stopping" Zones, whether Full-Time, Part-Time, or during rush hours, shall be adhered to.

5.7 Sidewalks

Any hoses, cords, pipes or other apparatus which crosses a sidewalk shall be securely ramped so as not to cause a tripping or accessibility hazard to pedestrian traffic.

5.8 Notification to Emergency Services & Public Transit

The Applicant shall notify all Emergency Services, including fire, police, ambulance, and public transit providers, with a copy of the Highway Occupancy Permit prior to construction taking place.

5.9 Utility Locates

The Applicant shall obtain utility locates prior to commencement of construction, as determined by the Director based on the type of construction, and shall not interfere with any public or municipal utility.

5.10 Pre-Construction Condition of Highway

The Applicant shall photograph the part or parts of the highway upon which construction will take place, and provide the photographs to the Director, together with a written list of any deficiencies to the highway, prior to commencing construction.

5.11 Notice of Service Disruption

The Applicant shall not commence construction until the Town has given notice of service disruption in accordance with the requirements of the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c.11 and regulations thereto, as may be amended or replaced from time to time.