



## The Corporation of the Town of Fort Erie By-law 136-2024

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### Being a By-law to adopt a Policy for the Occupancy of Municipal Property in the Town of Fort Erie and to Repeal By-law 120-2015

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**Whereas** section 8 of the *Municipal Act, 2001*, S.O. 2001, c. 25 (“*Municipal Act, 2001*” or “the statute”) provides that the powers of a municipality under the statute or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality’s ability to respond to municipal issues; and

**Whereas** section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the statute or any other Act; and

**Whereas** section 11 of the *Municipal Act, 2001* provides that a lower-tier municipality may pass by-laws respecting the economic, social and environmental well-being of the municipality, the health, safety and well-being of persons and the protection of persons and property; and

**Whereas** section 27 of the *Municipal Act, 2001* provides that a municipality may pass by-laws respecting highways under its jurisdiction; and

**Whereas** section 110 of the *Highway Traffic Act*, R.S.O. 1990, c. H.8 (“*Highway Traffic Act*”) provides that a municipality with jurisdiction over a highway may grant permits for the use of the highway by vehicles that exceed dimensional, and weight limits set out in the *Highway Traffic Act*; and

**Whereas** section 127 of the *Highway Traffic Act* provides that a municipality with jurisdiction over a highway may designate the dates of reduced load periods on the highway or any portion thereof; and

**Whereas** section 391 of the *Municipal Act, 2001* provides that a municipality may impose fees or charges on persons for services provided by or on behalf of the municipality and for the use of its property, including any property under its control; and

**Whereas** section 425 of the *Municipal Act, 2001* provides that a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality passed under the statute is guilty of an offence; and

**Whereas** section 429 of the *Municipal Act, 2001* authorizes a municipality to establish a system of fines for offences under its by-laws; and

**Whereas** section 434.1 of the *Municipal Act, 2001* authorizes a municipality to establish a system of administrative monetary penalties to assist the municipality in promoting compliance with its by-laws; and

**Whereas** section 444 of the *Municipal Act, 2001* provides that a municipality, if satisfied that a contravention of a by-law of the municipality has occurred, may make an order requiring the person who contravened the by-law or who caused or permitted the contravention to discontinue the contravening activity; and

**Whereas** section 445 of the *Municipal Act, 2001* provides that a municipality, if satisfied that a contravention of a by-law of the municipality has occurred, may make an order requiring the person who contravened the by-law or who caused or permitted the contravention, to do work to correct the contravention; and

**Whereas** section 446 of the *Municipal Act, 2001* provides that if a municipality has authority to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense; and

**Whereas** at the Council of the Corporation of the Town of Fort Erie convened on December 2, 2024, and approved the recommendations in Report IS-12-2024; and

**Whereas** it is deemed desirable, the Council of The Corporation of the Town of Fort Erie deems it necessary and desirable to adopt a policy to regulate the use and occupancy of municipal property and to enact this By-law for that purpose; and

**Now therefore** the Municipal Council of The Corporation of the Town of Fort Erie enacts as follows:

**1.0 SHORT TITLE**

1.1 The short title of this By-law is the "Municipal Property Occupancy By-law".

**2.0 ADOPTION OF POLICY**

2.1 The Municipal Property Occupancy Policy, which is attached hereto as Schedule "A" and forms part of this By-law, is hereby authorized, approved and adopted ("the Municipal Property Occupancy Policy").

**3.0 GENERAL PROHIBITION**

3.1 No Person shall Occupy any Highway or Municipal Property except in accordance with the provisions of the Municipal Property Occupancy Policy.

**4.0 OFFENCES AND PENALTIES**

4.1 Every Person who contravenes any provision of this By-law is, upon conviction, guilty of an offence and is liable to a fine,

- a. If an individual, to a fine of not more than \$25,000 for a first offence, and not more than \$50,000 for a subsequent offence;
- b. If a corporation, to a fine of not more than \$50,000 for a first offence, and not more than \$100,000 for a subsequent offence.

4.2 A director or officer of a corporation who knows that the corporation is violating or has violated a provision of this By-law is guilty of an offence and, upon conviction, is subject to the penalties as set out in this By-law.

4.3 Where an Enforcement Authority is satisfied that a Person has failed to comply with any provision of this By-law, the Enforcement Authority may issue a penalty notice imposing an administrative penalty.

4.4 Administrative Penalty By-law 111-2019 applies to each administrative penalty issued pursuant to this By-law.

4.5 Every Person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance Administrative Penalty By-law 111-2019, be liable to pay to the Town an administrative penalty in accordance with that By-law.

**5.0 GENERAL**

- 5.1 Where this By-law conflicts with any previous Town By-law or policy pertaining to the occupancy of Municipal Property, this By-law shall prevail.
- 5.2 If any provision or part of a provision of this By-law is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative in particular circumstances, the balance of the By-law, or its application in other circumstances, shall not be affected and shall continue to be in full force and effect.
- 5.3 In this By-law, unless the contrary intention is indicated, words used in singular shall include the plural and words used in the male gender shall include the female gender and vice versa.
- 5.4 Any reference to legislation in this By-law includes the legislation referred to and its amendments as well as any subsequent legislation which may replace the legislation referred to, and its amendments thereto.
- 5.5 The Clerk of the Town is authorized to affect any minor modifications, corrections or omissions, solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.
- 5.6 By-law 120-2015 is hereby repealed and replaced.
- 5.7 This By-law shall come into force and effect on the date of passage.

Read a first, second and third time and finally passed this 16th day of December 2024.

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Mayor

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Clerk

**SCHEDULE “A” TO BY-LAW 136 - 2024**

**POLICY FOR THE OCCUPANCY OF  
MUNICIPAL PROPERTY IN THE TOWN OF FORT ERIE  
 (“The Municipal Property Occupancy Policy”)**

**1.0 DEFINITIONS**

1.1 The following terms are defined for the purposes of this Policy:

“**Administrative Penalty**” means a monetary penalty administered pursuant to Town By-law 111-2019, as amended from time to time.

“**Applicant**” means a Person applying for a Permit under this Policy.

“**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 structural installation of construction components and materials in any form or for any purpose.

“**Council**” means the municipal Council of The Corporation of the Town of Fort Erie.

“**Damage**” means any harm or injury to Municipal Property arising from Occupancy of the Municipal Property by any Person, including but not limited to disturbance, displacement, cracking, gouging or defacement of any Highway or Street Furniture and/or any other damage the Town deems such and applicable under this By-Law.

“**Damage Deposit**” means a sum of money paid by an Applicant to guarantee the repair of any Damage to restore a Municipal Property to its pre-Construction condition.

“**Director**” means the Director of Infrastructure Services of the Town and/or their respective designate, successor whatever the case may be.

“**Enforcement Authority**” means the Director, a municipal law enforcement officer of the Town, a member of the Niagara Regional Police Service or the Ontario Provincial Police, an enforcement officer of the MTO and any other provincial offences officer designated under the *Provincial Offences Act*, R.S.O. 1990, c. P.33 (“*Provincial Offences Act*”).

“**Equipment**” means any device designed and intended for use in construction, or material handling, including but not limited to hand tools, power tools, air compressors, pile drivers, pneumatic or hydraulic tools, bulldozers, tractors, excavators, trenchers, cranes, derricks, loaders, scrapers, pavers, generators, off-highway haulers or trucks, ditchers, compactors and rollers, pumps, concrete mixers, graders, and any other material-handling equipment.

“**Highway**” means the same as defined in the *Highway Traffic Act*, R.S.O. 1990, c. H.8, (“*Highway Traffic Act*”) and shall include, but not be limited to, shoulders, ditches, boulevards, landscaped and sodded areas, sidewalks, and Street Furniture.

“**Journey**” means, unless otherwise prohibited, the travel of a Vehicle weighing more than five (5) tonnes per axle over any section of a Highway described in Part VI of Town By-law 2000-89, as amended from time to time, from a point of origin to a destination.

“**MTO**” means the Ministry of Transportation of the Province of Ontario.

**“Municipal Property”** means any land or premises owned by the Town, including but not limited to Highways, parks, beaches, lots and vacant land and includes any improvements, buildings and structures located on the said land or premises.

**“Occupancy”** means the temporary use of Municipal Property by any Person arising from or in any way related to Construction on Property, including but not limited to use that:

- a. restricts access to Municipal Property;
- b. disrupts or impedes vehicular or pedestrian traffic on Municipal Property;
- c. places supplies, Equipment or materials on Municipal Property;
- d. places a moving container or disposal bin on Municipal Property;
- e. involves Persons, Vehicles or Equipment to cross a boulevard to gain access to a Property under Construction that does not have a depressed curb or driveway;
- f. requires Persons, Vehicles or Equipment to be situated on Municipal Property to carry on or support the Construction; or
- g. results in one (1) or more Journeys, or such other number of Journeys as may be determined by the Director, on one (1) or more Routes or such other number of Routes as may be determined by the Director.

and **“Occupy”** and **“Occupied”** have corresponding meanings.

**“Owner”** means the registered owner(s), their associates, firms, partners, corporations, trusts, organizations, trustees, agents, employees, contractors, their heirs, executors, and/or legal representatives, and/or anyone acting in the owner’s capacity but and also includes a lessees, tenants, mortgagees in possession and/or occupants who appears to have care and control of a property and/or obstruction, activity, material, construction, and/or any other contravention under this By-law, whichever the case may be.

**“Permit”** means a permit for Occupancy issued under this Policy.

**“Person”** means an individual, association, firm, partnership, corporation, trust, organization, trustee, or agent, and their heirs, executors, or legal representatives of the Person to whom the context can apply according to law.

**“Policy”** means the Municipal Property Occupancy Policy.

**“Property”** means any land or premises within the Town, as well as private lands situated in neighboring municipalities bordering the Town, where access is provided through Municipal Property of the Town. This includes, but is not limited to, private roads, yards, lots, vacant land, and includes any improvements, buildings, or structures located on the said lands or premises.

**“Route”** means the course travelled by a Vehicle from a point of origin to a destination.

**“Street Furniture”** means all above-ground structures, fixtures and/or objects situated on Municipal Property and appurtenant to municipal infrastructure including but not limited to benches, hand rails, tables, garbage and recycling receptacles, signs, streetlights, poles, posts and fire hydrants.

**“Town”** means The Corporation of the Town of Fort Erie or the geographic area of the municipality, as the contest requires.

**“Vehicle”** has the same meaning as set out in the *Highway Traffic Act*, R.S.O. 1990, c. H.8 (*“Highway Traffic Act”*) and shall further include a combination of Vehicles operating as a single unit.

## **2.0 PURPOSE**

- 2.1 The Town is required to keep Highways in state of repair that is reasonable in the circumstances and to take such care as is reasonable in all the circumstances to ensure the reasonable safety of persons entering Municipal Property.
- 2.2 The purpose of this Policy is to protect and preserve Municipal Property and to promote the safety and well-being of the Town and its inhabitants by regulating the Occupancy of Municipal Property, including but not limited to:
  - a. determining whether a proposed Occupancy is necessary;
  - b. ensuring that Occupancy is conducted in a safe and reasonable manner;
  - c. ensuring that Occupancy activities are coordinated to minimize public impact;
  - d. avoiding Damage or, if Damage occurs, ensuring that it is rectified, repaired or remediated to the satisfaction of the Town.

## **3.0 APPLICATION OF POLICY**

- 3.1 This Policy applies to Municipal Property other than any land or premises that are subject to or governed by Town By-law 89-07, being a by-law to adopt a policy for encroachments on municipal road allowances, and/or Town By-law 46-2014, being a by-law to adopt a policy to regulate outdoor patios on municipal land, as amended from time to time.
- 3.2 This Policy does not apply to land or premises that are under the jurisdiction of any other municipality or governmental authority.

## **4.0 ADMINISTRATION**

- 4.1 This Policy shall be administered by the Director, who shall undertake and perform all administrative functions conferred upon him or her under this Policy and, subject to sections 4.2 and 4.3 but otherwise without limitation, may:
  - a. develop and implement forms and procedures to implement this Policy;
  - b. issue Permits in accordance with this Policy;
  - c. impose terms, conditions or limitations on a Permit that the Director considers to be necessary and appropriate;
  - d. refuse to issue a Permit in accordance with this Policy; and
  - e. revoke a Permit in accordance with this Policy.
- 4.2 Notwithstanding section 4.1, where an Applicant disputes the terms, conditions or limitations imposed on a Permit, the refusal to issue a Permit or the revocation of a Permit, the Applicant may request that the matter be determined by Council.
- 4.3 Notwithstanding section 4.1, Council may at any time require an application for a Permit to be submitted to Council for approval prior to its issuance by the Director.

## **5.0 PERMIT REQUIREMENTS**

- 5.1 Any Person shall obtain a Permit prior to commencing any Occupancy, unless advised in writing by the Director that no Permit is required.
- 5.2 A Person requesting Occupancy shall:
- a. Submit an application in a form determined by the Director no less than five (5) business days in advance of the planned Occupancy date. The submission period may be altered at the discretion of the Director, who shall provide written notice of any such change; and
  - b. The application form shall be accompanied by a non-refundable application fee in the amount established by the Town's Fees and Charges By-law 176-2023, as amended from time to time.
- 5.3 The Director may issue a Permit where he or she is satisfied that:
- a. the pre-Construction condition of the Municipal Property has been established;
  - b. a complete application has been submitted;
  - c. the Occupancy is necessary;
  - d. the Applicant will not cause Damage or, if Damage occurs, the Applicant will rectify, repair or remediate it to the satisfaction of the Town; and
  - e. the Applicant has paid the Damage Deposit required by section 6 of this Policy.
- 5.4 Notwithstanding section 5.3, the Director may at any time impose terms, conditions and/or limitations on a Permit as the Director considers necessary and appropriate.
- 5.5 The Director may refuse or revoke a Permit where the requirements of section 5.3 and any other terms, conditions or limitations imposed by the Director are not met.
- 5.6 Permit(s) issued in accordance with this Policy are valid only for the date(s), time(s), location(s), use(s) and operation(s) listed on the Permit and are not transferable to any Person other than the Applicant.
- 5.7 Permit(s) issued under this Policy shall be posted at the Property under Construction and shall be carried in any Vehicle making a Journey. The driver of the Vehicle shall produce the Permit for inspection upon demand by an Enforcement Authority.
- 5.8 Notwithstanding any other provisions of this Policy, the issuance of a Permit does not constitute, and shall not be taken to constitute, approval by the Town of any Construction at a Property. The Applicant and/or the Owner of the Property remain responsible for obtaining all approvals and permits required for the Construction.

## **6.0 DAMAGE DEPOSIT**

- 6.1 Upon approval of a Permit application by the Director, but prior to issuance of the Permit, the Applicant shall submit to the Town a Damage Deposit in the amount established by the Town's Fees and Charges By-law 176-2023, as amended from time to time, in the form of cash, certified cheque, letter of credit, bond or other means of security acceptable to the Town.
- 6.2 The Town shall hold the Damage Deposit, without interest, until such time as the Occupancy has ended and the Director is satisfied that no Damage has occurred.

- 6.3 Where the requirements of section 6.2 are met, the Town, upon application by the Person that paid the Damage Deposit, shall refund it to that Person.
- 6.4 In the event of Damage, the Director shall give written notice to the Person to whom the Permit was issued of the Damage and the work or repairs necessary to restore the Municipal Property to its pre-Construction condition.
- 6.5 If the Person to whom the Permit was issued fails to restore the Municipal Property to its pre-Construction condition within ten (10) days of written notice given under section 6.4, the Town may draw on the Damage Deposit to the extent necessary to restore the Municipal Property to its pre-Construction condition, and pay all costs and expenses incurred, from the proceeds so drawn.
- 6.6 Whether or not a Damage Deposit has been established, if the Town determines that the cost of restoring the Municipal Property to its pre-construction condition exceeds the amount deposited, the Director shall give written notice to the Person to whom the Permit was issued of the excess amount and requiring that amount to be paid to the Town within ten (10) days.
- 6.7 If the Person to whom the Permit was issued fails to pay the excess amount within ten (10) days of written notice given under section 6.6, the Town may, at its sole discretion, pursue any remedy available to it in law, including but not limited to the commencement of legal proceedings or adding the excess amount to the tax roll of the Property in relation to which the Permit was issued and collecting the amount in the same manner as municipal taxes.

## **7.0 INSURANCE**

- 7.1 During the period of any Occupancy authorized by a Permit, the Person to whom the Permit was issued shall obtain and maintain a policy of Commercial General Liability Insurance with limits of not less than five million dollars (\$5,000,000.00) per occurrence and naming the Town as an additional insured. The Town reserves the right, in its sole discretion, to amend the minimum policy limits to ensure that there is adequate coverage for the use(s) and operation(s) listed on the Permit.
- 7.2 Coverage shall include but not be limited to bodily injury including death, personal injury, property damage including loss of use, premises and operations liability and tenant legal liability and shall contain cross liability and severability of insured clauses. Such insurance shall be primary and will not call into contribution any other insurance that may be available to the Town.
- 7.3 The policy shall be endorsed to provide the Town with not less than thirty (30) days' written notice of cancellation.
- 7.4 The Town shall be provided with a Certificate of Insurance evidencing all required coverages prior to issuing a Permit and, if requested, a certified true copy of the policy certified by an authorized representative of the insurer.
- 7.5 In the event that a policy of insurance described in section 7.1 is cancelled for any reason, the Person to whom the Permit was issued shall immediately cease the Occupancy that was previously authorized by the Permit.



## **8.0 INDEMNITY**

- 8.1 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 Municipal Property 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 Municipal Property, 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 Municipal Property 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.

## **9.0 OCCUPANCY REQUIREMENTS**

- 9.1 No Person shall Occupy any Municipal Property until the Town has given notice of any associated service disruption as required by the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11 and the regulations thereto.
- 9.2 No Person shall Occupy any Municipal Property prior to obtaining utility locates as required by the *Ontario Underground Infrastructure Notification System Act, 2012*, S.O. 2012, c. 4 and the regulations thereto.
- 9.3 No Person shall Occupy any Municipal Property without giving prior notice of the pending Occupancy to all emergency services including fire, police and ambulance services, public transit providers and any other Person identified by the Director.
- 9.4 No Person engaged in an Occupancy activity shall cause or permit a Vehicle to be parked less than three (3) metres from a fire hydrant, less than six (6) metres from any marked or unmarked crosswalk, or in any area signed as a "No Parking" or "No Stopping" zone, unless such parking is expressly authorized by the Permit.
- 9.5 No Person engaged in an Occupancy activity shall cause or permit any hose, cord, pipe or other apparatus to be situated, placed or used on any portion of Municipal Property used by pedestrians in a manner that creates a tripping or accessibility hazard or that otherwise impedes pedestrian traffic.

## **10.0 ENFORCEMENT**

- 10.1 This Policy shall be enforced by the Town, the Director or Enforcement Authorities.
- 10.2 An Enforcement Authority may, for the purpose of enforcing this Policy, exercise any power, authority or remedy granted to the Town pursuant to the *Municipal Act, 2001*, including but not limited to entering and inspecting any Property to determine if this Policy is being complied with and making orders to discontinue any activity that contravenes this Policy.

10.3 No Person shall obstruct or hinder, or attempt to obstruct or hinder, the Town, the Director or an Enforcement Authority in the exercise of a power or the performance of a duty under this Policy.