

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2017 - 81

By-law to Regulate Activity on Town Highways, Road Allowances and Right of Ways.

WHEREAS under Section 9 of the Municipal Act 2001, S.O., 2001, c. 25, as amended, a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

WHEREAS under Section 8 and 11 of the Municipal Act 2001, S.O., 2001, c. 25, as amended, as part of the power to regulate or prohibit a matter, a municipality may, among other things, require persons to do things respecting the matter and provide for a system of permits;

WHEREAS under Section 27 of the Municipal Act 2001, S.O., 2001, c. 25, as amended, a municipality may enact by-laws regarding highways it has jurisdiction over;

WHEREAS under Sections 444, 445 and 446 of the Municipal Act 2001, S.O., 2001, c. 25, as amended, a municipality possesses enforcement powers including the authority to undertake remedial action and recover the costs for such action from the person responsible;

NOW THEREFORE the Council of the Corporation of the Town of Amherstburg hereby enacts as follows:

1. DEFINITIONS

In this by-law:

“**Activity**” includes the temporary occupancy of a Highway, Road Allowance or Right of Way for the installation, Road Cut, repair, replacement or improvement of Works of any nature by any Utility Company, Contractor or Person and includes Hoarding for the purposes of this By-law;

“**Applicant**” means any Person, Utility Company or Contractor making application for a Permit;

“**Business Days**” means the days between and including Monday to Friday and do not include public holidays and weekends;

“**Contractor**” means any Person, company or firm engaged in providing labour, equipment, materials or any other work or materials as necessary to complete the work described;

“**County**” means The Corporation of the County of Essex;

“**Director**” means the Director of Engineering and Public Works for the Town, or their designate;

“**Highway**” means a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, designed and intended for, or used by, the general public for the passage of vehicles and includes the area between the lateral property lines thereof;

“**Hoarding**” means the stringing or erection of temporary fencing/enclosure of the Right-of-Way for construction purposes. (Includes but not limited to fencing, barrels, storage equipment, materials, and vehicles);

“**Inspector**” means the Manager of Public Works for the Town, or their designate;

“Municipal Law Enforcement Officer” means an individual appointed by the Town for the purpose of enforcing Town by-laws;

“Parks” mean all lands owned or operated by the Town, which may be designated as open space or environmental protection area and used by the public for active or passive recreational use including sporting activities and games, or as gathering places or which may be left in their natural state for environmental reasons;

“Permit” means an authorization granted in writing by the Director or designate of the Town pursuant to this By-law identified in Schedule “A”;

“Permit Holder” means a Person to whom a Permit has been issued by the Director;

“Person” means any individual, Contractor, Utility Company, owner, occupant, association, firm, partnership, corporation, agent or trustee and the heirs, executors, or other legal representatives of a person to whom the context can apply according to law;

“Public Land” means any properties under the care and control of the Town;

“Right of Way” means the total area of the Highway, Road Allowance, curb, shoulder, sidewalk, ditch and boulevard combined and/or Parks and Public Lands;

“Road Allowances” means all road allowances made by the Crown surveyors that are located in the Town and all road allowances shown along the water, Highways, streets and lanes on a registered plan of subdivision;

“Road Cut” means a surface or subsurface cut in any part of a highway made by any means including but not limited to any excavation, reconstruction, cutting, saw cutting, overlaying, crack sealing, breaking, boring, directional drilling, jacking or tunneling operations;

“Town” means The Corporation of the Town of Amherstburg;

“Traffic Control Plan” means a plan that ensures that workers and the public are safe and that negative impacts on traffic operations are minimized during the duration of the Activity;

“Utility” means any structures above or below ground which exist on a Right of Way and include buried and aerial hydro cable and ducts, bell, cable, television and internet communication cables, trees, water, including underground pipes, hydrants and valves, sanitary and storm sewer pipes, gas and steam pipes, meters and valves;

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

“Works” means works supplying the general public with necessities or conveniences and includes but is not limited to works for production, supply and transmission of gas, oil, sewage, water and electric power or energy and all telephone, cable television and other telecommunication lines.

2. INTERPRETATION

2.1 In this by-law, a word interpreted in the singular number has a corresponding meaning when used in the plural.

2.2 Nothing in this by-law shall be interpreted as reducing or eliminating compliance with the provisions of all applicable Federal or Provincial statutes and regulations as amended.

2.3 Words importing the singular number or the masculine gender only, include more persons, parties or things of the same kind than one and females as well as males and the converse.

3. **PERMITS**

3.1 Any Person who will be undertaking Activity on Town Highways, Right of Ways or Road Allowances shall make application for a Permit in accordance with the following terms:

3.1.1 An application must be completed and submitted to the Town in the timelines outlined in Appendix A.

3.1.2 The Applicant shall:

3.1.2.1 Complete the prescribed application form and identify the Permit being applied for;

3.1.2.2 Provide complete details of the Activity that shall include, but not be limited to the specifications outlined on the application and any attached schedules;

3.1.2.3 Provide a detailed Traffic Control Plan if required;

3.1.2.4 Pay the non-refundable Permit fee;

3.1.2.5 Provide such other information as required by the Director.

3.2 A Permit shall not be issued until:

3.2.1 Proof of Insurance and Indemnification in accordance with the requirements of this by-law is received;

3.2.2 Indemnity Deposit is received by the Town to cover the faithful performance of the terms of the Permit including maintenance, repair and restoration carried out by the Permit Holder and every other obligation arising under and imposed upon the Permit Holder.

3.2.3 The Permit fee has been paid;

3.2.4 An Emergency contact telephone number for the Permit holder is provided. The Permit holder shall maintain and answer a telephone at all times during the period for which the Permit holder is responsible for the Activity.

3.3 When the Applicant is requesting multiple Road Cuts the Town reserves the right to issue a single Permit or multiple Permits for the Activity;

3.4 If it is the intent of the Applicant to complete Activity within a Right of Way that is minor (at the discretion of the Director) and of short duration, (i.e. does not cause any disruption to traffic flows, does not break ground and does not create a potential for damages to existing utilities) then a Permit may not be required.

3.5 The Permit shall become void if the Activity authorized by the Permit is not commenced within six (6) months of the date of issue.

3.6 Any Person required to renew and/or extend a Permit shall submit a new application form to the Director.

3.7 The Director reserves the right to issue or deny issuing a Permit.

- 3.8 A Permit granted by the Director may be revoked whenever, in their discretion, the Permit Holder of such Permit is in non-compliance with its terms or there are concerns for the safety of the public.

4. PERMIT CONDITIONS

- 4.1 The Permit Holder shall be responsible for the restoration and reinstatement of all Town Right of Ways to the approval of the Director.
- 4.2 The Permit Holder will be responsible to request marking or other location information to determine the location and to provide safeguards for all utilities.
- 4.3 Where the Activity is of a major nature or duration and will cause general inconvenience to all residents and businesses located beside or near the Activity, the Permit Holder shall be responsible to provide in writing to every resident and business located beside or near the Activity (minimum 50 metre radius) within at least ten (10) working days prior to commencing the Activity of the following:
- 4.3.1 Description of the Activity
 - 4.3.2 Approximate start day and duration of the Activity
 - 4.3.3 Access restrictions and service interruptions
 - 4.3.4 Contact information for the Permit Holder
- 4.4 It shall be at the sole discretion of the Director to determine for reasons of public safety or events in the Town when Activity may occur.
- 4.5 The Permit Holder shall supply, erect and maintain warning devices, barricades and traffic signs where applicable, in accordance with the Occupational Health and Safety Act, R.S.O 1990, chap. O.1, as amended and any applicable provincial traffic regulations, including, but not limited to the Ministry of Transportation's Ontario Traffic Manual.
- 4.6 In the event the Permit Holder requires closure of a Highway or limit the Highway to one direction of traffic the Permit Holder shall notify the Police Service, Fire Service, Ambulance Service and any other person, department or agent requiring notice.
- 4.7 The Permit Holder shall supply, locate, relocate, erect, operate and maintain all traffic control, detour and information signs in accordance with the Traffic Control Plan and Ontario Traffic Manual.
- 4.8 The Permit Holder is responsible for maintaining the Work site and surrounding area free of dust and mud. The Permit Holder shall clean the Highway as required to the satisfaction of the Inspector.
- 4.9 The Director may impose further conditions on the Permit as deemed necessary.
- 4.10 The issuance of a Permit under this By-law does not relieve the Applicant from the necessity of acquiring any other licence or Permit or complying with any other applicable laws, by-laws, regulations and requirements of the Town or other authorities having jurisdiction.

5. PERMIT EXEMPTIONS

- 5.1 The Town and County are exempt from the Permit requirement.

- 5.2 Emergency Work where public safety or health or a major business interruption in Works is concerned, an Activity may be carried out without obtaining a Permit prior to commencing the emergency Work.
- 5.3 Where emergency Work has been undertaken, the Person undertaking the Work shall, on the same day the Work is commenced, or if the Town offices are closed, no later than the start of the next working day, notify the Director of the following:
- 5.3.1 The name of the Person, Utility Company or Contractor undertaking the Work;
 - 5.3.2 The nature of the Work;
 - 5.3.3 The location of the Work;
 - 5.3.4 The estimated duration of the Work;
 - 5.3.5 The reason for proceeding without obtaining a Permit and without providing the required notice; and retroactively comply with all requirements of this by-law including obtaining a Permit.
- 5.4 The Director may require any or all information to confirm the validity of the emergency Work. 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 the Work without a Permit.

6. PROHIBITIONS

- 6.1 No Person shall obstruct or damage or cause or permit the obstruction or damage of any Town Highway, Road Allowance or Right of Way.
- 6.2 Except as provided in Section 5 no Person shall undertake any Activity within a Town Right of Way without a Permit.
- 6.3 No Permit Holder shall undertake Activity except in accordance with the conditions of the Permit.
- 6.3 No Person shall fail to comply with a stop work order.
- 6.4 No Person shall obstruct, hinder or otherwise interfere with a Municipal Law Enforcement Officer or an Inspector in the lawful carrying out of their duties and responsibilities under the provisions of this by-law.

7. INSURANCE

- 7.1 The Applicant shall obtain and submit proof of Commercial General Liability insurance subject to limits of not less than Five Million Dollars (\$5,000,000.00) per occurrence including bodily injury including death, personal injury, property damage, tenants legal liability, non-owned automobile and contain a cross liability/severability of interest clause. Such insurance shall be in the name of the Applicant and shall name the Town of Amherstburg as an additional insured thereunder.

8. INDEMNIFICATION

- 8.1 The Applicant shall indemnify and save harmless the Town of Amherstburg from any and all claims, demands, causes of action, loss costs or damages that the Town of Amherstburg may suffer, incur or be liable for resulting from the performance of the Applicant as set out in the by-law whether with or without negligence on the part of the Applicant, the Applicant's employees, directors, contractors and agents.

9. PERMIT FEES

- 9.1 The non-refundable Permit application fee is set out in the Town's User Fee By-law as amended from time to time.
- 9.2 The indemnity deposit amount is set out in the Town's User Fee By-law as amended from time to time.

10. INSPECTION & ENFORCEMENT

- 10.1 A Municipal Law Enforcement Officer, Inspector or other duly appointed individuals shall enforce the provisions of this by-law.
- 10.2 A Municipal Law Enforcement Officer or Inspector may at all reasonable times enter on any land, for the purpose of carrying out an inspection to determine whether or not the provisions of this by-law, a direction or order, a condition of a Right of Way Permit or an Order are being complied with.
- 10.3 For the purposes of an inspection, Municipal Law Enforcement Officer, Inspector or other duly appointed individual may:
- 10.3.1 Require the production for inspection of documents or things relevant to the inspection; and,
 - 10.3.2 Require information from any person concerning a matter related to the inspection.
- 10.4 A Municipal Law Enforcement Officer or Inspector may at their discretion issue a stop work order.
- 10.5 Stop work orders are issued where a Municipal Law Enforcement Officer or an Inspector finds Activity occurring that is not in accordance with the conditions of an issued Permit or where an Activity is occurring without a Permit.
- 10.6 A stop work order shall be lifted once it is determined that all contraventions of this by-law have been rectified.

11. OFFENCES AND PENALTIES

- 11.1 Every person who contravenes any section of this by-law is, upon conviction, guilty of an offence and shall be liable to a fine as provided for by the Provincial Offences Act, R.S.O. 1990, c.P. 33, as amended, and be subjected to any other penalties permitted by law for each offence.
- 11.2 Where a Person is in default of doing the matter or things required to be done under this by-law, the Inspector may revoke a Permit and remediate and/or restore the Town Right of Ways. All costs related to the remediation will be taken from the indemnity deposit and any further costs will be invoiced to the Permit Holder.

12. SEVERABILITY

- 12.1 Should any paragraph, clause or provision of the By-law be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of the By-law as a whole or any part of thereof, other than the part which was declared to be invalid.
- 12.2 When any requirement of this by-law is at variance with any other by-law in effect in the Town or with any applicable provincial or federal statute or regulation, the more restrictive requirement shall apply unless otherwise stated in such legislation.

13. EFFECTIVE DATE

- 13.1 This by-law will become effective January 1, 2018.

14. SHORT TITLE

- 14.1 This by-law may be referred to as the Right of Way Permit By-law.

Read a first, second and third time and finally passed this 11 day of December, 2017.



MAYOR – ALDO DICARLO



CLERK – PAULA PARKER

Schedule "A"

Permit Type	Description	Application Deadline
Curb Cutting Permit	Required to create or widen a driveway entrance on a Highway which has a curb and/or gutter.	Not less than two (2) business days prior to the commencement of the proposed Activity
Road Occupancy Permit	Required prior to any Work or Activity proceeding within the Road Allowance-Highway	Not less than two (2) business days prior to the commencement of the proposed Activity
Driveway Entrance Culvert Permits	Required when creating a new driveway entrance, widening an existing driveway entrance or installing a temporary driveway entrance.	Not less than two (2) business days prior to the commencement of the proposed Activity
Municipal Access Permit	Required when accessing Town Right of Ways for construction purposes, pursuant to a building permit or pool enclosure permit.	Not less than ten (10) business days prior to the commencement of the proposed Activity
Municipal Consent Permit	Required by Utility Companies and Contractors performing Activity or Works within a Highway, Right of Way or Road Allowance.	Not less than ten (10) business days prior to the commencement of the proposed Activity
Hoarding Permit	Hoarding is required when temporary fencing/enclosure of the right-of-way for construction purposes (typically fencing, barrels, storage equipment, materials, vehicles).	Not less than ten (10) business days prior to the commencement of the proposed Activity