

# THE CORPORATION OF THE TOWN OF WASAGA BEACH

## BY-LAW NO. 2019-13

A By-law to regulate road occupation, establish a permit system and to consolidate various By-laws regulating road occupation and permits and to repeal By-law 2012-16 as amended

**WHEREAS** pursuant to the Municipal Act, 2001, SO. 2001, C.25, as amended, Section 11(3), a Municipality may pass by-laws respecting matters within their jurisdiction which includes highways, including opened and unopened road allowances and rights of way under the jurisdiction of the Town, and to permit temporary encroachment thereupon;

**AND WHEREAS** Council of the Town of Wasaga Beach deems it expedient to regulate the use of all municipally owned rights of way, and to establish a permit system to allow construction within and along such rights of way in accordance with municipal policy;

**NOW THEREFORE**, the Council of the Corporation of the Town of Wasaga Beach hereby enacts as follows:

### **1. INTERPRETATION**

- a. Short Title: This By-law may be cited as the "Road Occupation By-law"
- b. Severability: 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 the balance of this By-law shall not be affected and shall continue to be in full force and effect.
- c. Headings: Section and paragraph headings are inserted solely for ease of reference.

### **2. DEFINITIONS:**

- a. "Applicant" shall mean either the Owner or utility company identified on an application for a Road Occupation Permit.
- b. "Boulevard" shall mean the strip of property within a Road Allowance between the edge of the Roadway and the abutting property and includes features existing thereupon.
- c. "Construction or Maintenance Purposes" shall mean any construction, repair or improvement of the Road Allowance or a portion thereof or any Works under, over, along, across or upon the Road Allowance, and also includes building construction, repair or maintenance operations by the Owner or occupant of land

adjoining the Road Allowance, including the storage of materials used for such construction.

- d. "Contractor" shall mean that person, firm or corporation hired by an Owner to conduct construction Works on a Road Allowance/right of way as indicated on the Road Occupation Permit.
- e. "Director" shall mean the Director of Public Works or his or her designate.
- f. "Owner" shall mean the person, firm or corporation issued a Road Occupation Permit pursuant to this By-law.
- g. "Vehicle" shall mean an automobile, a boat, a commercial motor vehicle, a trailer, a farm implement, a motorcycle, a snowmobile, a personal watercraft, a truck or a tourist vehicle, or any other similar vehicle or vessel whether or not such vehicle or vessel is capable of mechanical operation.
- h. "Road Allowance" shall mean land owned by the Corporation of the Town of Wasaga Beach and dedicated for the location of public roads, sewers, water mains, utilities, sidewalks, and walkways, including the Boulevard and Roadway as defined herein, and "right-of-way" or "municipal right-of-way" shall have the same meaning.
- i. "Road Occupation Permit" shall mean a permit issued pursuant to the Road Occupation Policy and "permit" shall have the same meaning.
- j. "Road Occupation Policy" shall mean the policy issued by the Public Works department and approved and adopted by the Town, as amended.
- k. "Roadway" shall mean that part of the Road Allowance that is improved, designed or ordinarily used for vehicular traffic.
- l. "Stop Work Order" shall mean an Order issued by the Director pursuant to subsection 4.2 of this By-law.
- m. "Surface Reinstatement" shall mean reinstatement of the surface and subsurface of the disturbed area within the Road Allowance to the same or to a superior condition as existed prior to the implementation of the Works.
- n. "Town" shall mean the Corporation of the Town of Wasaga Beach.
- o. "Works" shall mean all proposed construction, which is the subject of an application for a Road Occupation Permit approved by the Town.

### **3. GENERALLY PROHIBITED CONDUCT ON ROAD ALLOWANCES**

- a. Except as otherwise authorized by by-law or a Road Occupation Permit

issued by the Town, no person shall do or cause to be done any of the following prohibited activities:

- a. place equipment or materials of any kind upon or within a municipal right-of-way;
- b. close a municipal right-of-way in whole or in part;
- c. undertake any activity that negatively impacts the use and function of a municipal right-of-way;
- d. deface any permitted features within a municipal right-of-way;
- e. permit oils, chemicals or substances to be deposited or spilled on a municipal right-of-way including spillage of any substances from a vehicle;
- f. encumber or damage a municipal right-of-way by any means;
- g. permit or allow any materials to be transferred from private property onto or across a municipal right-of-way by any means including natural forces;
- h. obstruct a drain, gutter, water course or culvert along or upon a municipal right-of-way;
- i. throw, pile, store or cause any material, including but not limited to snow, ice, leaves, garbage or debris to be thrown, piled or placed across or on a municipal right-of-way;
- j. display or exhibit merchandise or articles of any nature or kind within a municipal right-of-way except when permit issued by the Town;
- k. solicit or sell any real or personal property or merchandise within a municipal right-of-way;
- l. remove or alter any material, equipment or device placed within a municipal right-of-way by the Town;
- m. place or maintain any box for the dispensing of newspapers or any other merchandise including clothing, electrical or any other collective devices on any portion of a municipal right-of-way;
- n. construct, widen, remove or alter any driveway or curb cut within a municipal right-of-way;

- o. allow any part of a tree, shrub, sapling, hedge or any other plant to extend over or upon any municipal right-of-way, so as to interfere with, impede or endanger persons using the municipal right-of-way;
- p. place stonework or other landscaping/ornamental features and/or plant trees or shrubs within a Road Allowance;
- q. Infill any ditch located partially or wholly within a municipal right-of- way;
- r. prevent or impede vehicular or pedestrian traffic along a municipal right-of-way;
- s. discharge sump pump outlets directly in the Road Allowance and/or into the roadside ditch otherwise than in accordance with Town Engineering Standards;
- t. pull down, destroy, deface or in any way interfere with, any municipal infrastructure, including but not limited to, any post, surveyor's mark, bench mark, traffic sign, transit-system shelters, Roadway name sign, sign board, regulatory sign, traffic signal, traffic cone, or any other traffic control device, affixed, or placed on a municipal right-of-way;
- u. permit any flood light to directly or indirectly illuminate a municipal right-of-way;
- v. bring a vehicle upon a municipal Roadway unless there has been removed from the wheels thereof as completely as is reasonably practicable, all mud, clay, lime, and similar material, or any fertilizer or manure which is likely, if not removed, to cause an obstruction or dangerous condition or nuisance in a municipal right-of-way or cause damage to the surface of the Roadway;
- w. place or install any marker, post, rod, or any other object on a municipal right-of-way; or
- x. park or leave any vehicle on a municipal right-of-way for a period exceeding twenty-four (24) hours

#### **4. ROAD OCCUPATION PERMITS**

- a. For the purpose of this By-law, the Director or his or her designate shall have authority to grant Road Occupation Permits under this By-law, and to impose conditions thereon.
- b. The Director or a Municipal Law Enforcement Officer shall have the authority to issue a Stop Work Order, requiring stoppage of work on the Road

Allowance where a Road Occupation Permit has not been issued or where the conditions of a Road Occupation Permit, or the provisions of this By-law, have not been complied with, and to revoke a Road Occupation Permit if the Owner or Contractor does not meet the requirements of the permit or of this By-law. No person shall continue work on a Town Road Allowance following issuance of a Stop Work Order.

## 5. APPLICATION

- a. Road Occupation Permits Required: No person shall, for Construction or Maintenance Purposes, close, occupy, obstruct, encumber, injure or foul any Road Allowance or any part thereof by any means whatsoever without first obtaining an approved Road Occupation Permit from the Town.
- b. Compliance with Terms and Conditions of Road Occupation Permit: No Owner or Contractor shall fail to comply with any of the terms or conditions set out in a Road Occupation Permit.
- c. Compliance with Agreement: No Owner or Contractor shall violate any terms of Agreement entered into between the Owner and the Town on which the issuance of a Road Occupation Agreement is predicated.
- d. Compliance with Plans as Submitted: No Owner or Contractor shall deviate from or permit deviation from plans submitted to the Town as part of an Application for a Road Occupation Permit without informing the Director as soon as practicable and submitting an amended Application including reference to such deviation.
- e. Production of Permit: No Owner or Contractor shall fail to keep a Road Occupation Permit at the site of the Works or fail to produce a Road Occupation Permit if required to do so by the Director or by any other person who is authorized to enforce the by-laws of the Town.

## 6. PERMIT FEES AND DEPOSITS

- a. Fees: The fee required to obtain a Road Occupation Permit shall be as set out in the *By-law to Establish Fees and Charges to be Collected by the Corporation of the Town of Wasaga Beach*, as amended.
- b. Deposits: The deposit required to obtain a Road Occupation Permit shall be as set out in the *By-law to Establish Fees and Charges to be Collected by the Corporation of the Town of Wasaga Beach* as amended.
- c. Exemption from fees and deposits: The payment of Permit Fees and Deposits by a utility company, or a county, provincial or federal government department or

agency thereof may be waived at the discretion of the Director of Public Works or his or her designate.

## **7. ROAD OCCUPANCY FOR CONSTRUCTION OR MAINTENANCE PURPOSES**

- a. Town Works exempt: A Road Occupation Permit is not required by a person undertaking any Works for or on behalf of the Town.
- b. Extensions of time: No Owner or Contractor shall fail to notify the Town in the event that additional time is required to complete the Works if other than as indicated on the permit, and the reason(s) therefore.
- c. Deviation from permit: No Owner or Contractor shall fail to notify the Town of the extent of any alteration to the approved Works immediately upon recognizing that the approved Works might or will deviate from those set out on the permit.
- d. Temporary Repairs: If it is necessary to alter, break or disturb an existing pavement, sidewalk or Boulevard, the Owner or Contractor shall undertake a temporary repair to the satisfaction of the Town within 7 working days unless alternative arrangements are made with the Town and evidenced in writing. The Owner or Contractor shall maintain the temporary repair until it can undertake permanent restoration, all of which shall be at the expense of the Owner or Contractor. No Owner or Contractor shall fail to comply with this sub-section.
- e. Sodded areas: No Owner or Contractor shall fail to permanently restore all sodded areas with topsoil and sod to the satisfaction of the Town within 7 working days unless alternative arrangements are made with the Town as evidenced in writing. The Owner shall be responsible for adequately grading the area and maintaining the sod until it has re-established and maintained a functioning root system, to the satisfaction of the Town, for one year from the date of installation or re-installation.
- f. Failure to Effect Repairs: In the event that any Owner fails to effect temporary repairs as provided in sub-sections 7d), or permanent restoration of sodded areas as provided in sub-section 7e), the Town may restore the sodded areas and maintain them at the expense of the Owner or any other person who benefitted from or who contracted for the Works. In addition to any other penalty and without limiting any collection remedy otherwise available to the Town, the cost to effect the repairs to and maintenance of, the sodded areas, may be added to the tax roll for any real property within the Town owned by the Owner, and the amount may be collected in like manner as municipal taxes.
- g. Owner or Contractor Assumes All Costs: The Owner or Contractor shall be responsible for all costs incurred by the Town as a result of any necessitated closure of any roadway and upon default in payment, the Town may add the outstanding expense to the tax roll for any real property within the Town owned

by the person responsible for paying the expense, and the amount may be collected in like manner as municipal taxes.

- h. Owner Assumes All Risk: The Owner shall be solely responsible for all accidents or injury to any person or property by reason of the Construction or Maintenance Purposes and/or the Works identified in the Road Occupation Permit, and the Owner and Contractor shall both hold the Town harmless and indemnify it from all claims arising from any negligence of the Owner or Contractor. Notwithstanding the issuance of a Road Occupation Permit, the Owner and Contractor shall take all further steps as in the opinion of the Director or a Municipal Law Enforcement Officer may be necessary for the protection and safety of the public.
- i. Access to Public/Private Properties: No person shall fail to maintain access to all public and private properties during the course of the construction of the approved Works.

## 8. GENERAL REQUIREMENTS

- a. Insurance: Prior to commencement of the Works, the Contractor shall provide the Town with a Certificate of Insurance, in a form satisfactory to the Town, evidencing a general liability policy under which the Works are insured in an amount not less than \$2,000,000.00 and under which the Town is indemnified from any loss, claim, or damages in connection with the Works. Such policy shall name the Town as an additional insured. No Owner or Contractor shall proceed with the Works without complying with this subsection.
- b. Completion of Surface Reinstatement: No Owner shall fail to complete Surface Reinstatement in accordance with the general requirements of the Road Occupation Policy and the specific requirements, if any, of the Road Occupation Permit within 7 days following completion of the Works.
- c. Excess Costs to Repair or Complete Works: Where the cost of repairing and restoring the municipal right-of-way exceeds any amount held on deposit or posted as security, the excess amount of the costs shall be a debt owing to the Town, and in addition to any other remedy available to it, the Town may recover the excess amount of the costs by action or by adding the excess amount of the costs to the tax roll of the permit holder's lands and collecting them in the same manner as taxes.
- d. Compliance with Other Statutes and By-laws: Owners and Contractors shall at all times comply with the requirements of the *Public Transportation and Highway Improvement Act*, the *Occupational Health and Safety Act*, and any other relevant provincial statute or regulation, and any other municipal by-law.

## **9. PENALTIES**

- a. Every person who contravenes any of the provisions of this By-law is guilty of an offence and upon conviction is liable to a maximum fine of \$25,000 for a first offence and a maximum fine of \$50,000 for any subsequent offence.
- b. Where a corporation is convicted of an offence under this By-law, the maximum fine is \$50,000 for a first offence and \$100,000 for any subsequent offence.
- c. Offences under Section 9a) and 9b of this By-law are designated as continuing offences and, upon conviction, persons or corporations guilty of these offences shall be liable to a maximum fine of \$10,000.00 for each day, or part of a day, that the offence continues.

## **10. CONFLICTS**

- a. THAT By-Laws No. 93-34, No 93-35, No. 96-41 and No. 99-67 and all previous by-laws and resolutions and parts of by-laws and resolutions relating to the regulation of road occupation in the Town of Wasaga Beach inconsistent with the provisions of this by-law, are hereby repealed.

## **11. FORCE AND EFFECT**

- a. THAT this By-law shall come into force and take effect on the date of its final passing.
- b. THAT By-law #2012-16 is hereby repealed.

**BY-LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS  
19<sup>TH</sup> DAY OF FEBRUARY, 2019.**

**THE CORPORATION OF THE TOWN OF WASAGA BEACH**

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Nina Bifulchi, Mayor

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Dina Lundy, Director, Legislative Services & Clerk