

THE CORPORATION OF THE TOWNSHIP OF WARWICK

BY-LAW NO. 10 of 2018

Being a by-law to regulate occupancy on the streets and roads and right of ways on the Township of Warwick owned roadways

WHEREAS Section 9 of the Municipal Act, R.S.O. 2001, C.25 provides that a municipality has the rights, powers and privileges of a natural person for the purpose of exercising its authority;

AND WHEREAS Section 8(1) of the Municipal Act, 2001, S.O. 2001, c.25, as amended, hereinafter the (“Municipal Act, 2001”) provides that the powers of a municipality under any Act shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate, and to enhance their ability to respond to municipal issues;

AND WHEREAS Section 11(3)1 of the Municipal Act, 2001, provides that a municipality may pass by-laws within the following spheres of jurisdiction: Roadways, including parking and traffic on Roadways;

AND WHEREAS Section 391(1) of the Municipal Act, 2001, 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 Section 436(1) of the Municipal Act, 2001, 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 Section 429(1) of the Municipal Act, 2001, provides that a municipality may establish a system of fines for a by-law passed under the Act;

AND WHEREAS Section 444 of the Municipal Act, 2001, 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 Section 446 of the Municipal Act, 2001, 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;

NOW THEREFORE the Council of Corporation of The Township of Warwick hereby enacts as follows:

1.0 SHORT TITLE

1.1 This By-law shall be known as the “Road Occupancy By-law”

2.0 DEFINITIONS

2.1 In this By-law:

Alter means to change in any manner and includes to restore, renovate, repair or disturb and “alteration” has a corresponding meaning.

Boulevard means the portion of the road allowance between a street line and the edge of the curb, or where there is no curb, that portion of the roadway which is travelled or designed to be travelled by vehicles.

Township means the Corporation of The Township of Warwick.

Construction means anything done in the erection, installation, extension or material alteration, demolition, or repairs of a building or structure, utility or surface, grading of property and includes the installation of building units fabricated or moved from elsewhere and installation of an in-ground/on-ground swimming pool including the installation of a hot tub, above ground-pool or landscaping.

Contractor means any person alone or with others undertaking construction on a property or a road allowance.

Damage means harm or injury to the street, including without limitation, harm, injury, disturbance, cracking, gouging or displacement of or to the pavement, curb, boulevard, landscaping, trees, retaining walls, street furniture or sidewalk resulting from the use of the street to access work such that, in the sole opinion of the Manager of Public Works, the street is not in its pre-construction condition.

Manager means the Manager of Public Works for the Township or designate.

Roadway includes a common and public roadway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, including the area between the lateral property lines thereof and includes unopened and unassumed road allowances.

Landscape or Construction Material includes gravel, soil, sod, bricks, and paving stones, landscaping rocks, wooden planks or boards.

Municipal Law Enforcement Officer (“Officer”) includes an employee of the Township who has been appointed by by-law to enforce the provisions of Township by-laws and a member of Ontario Provincial Police.

Notice of Obstruction includes an order issued under this by-law.

Obstruct(ion) includes encumber, damage, foul, or alteration.

Occupant means a lessee, tenant, mortgagee in possession or any other person who appears to have care and control of any property.

Order includes Work Order, Order to Comply, Order to Discontinue.

Person includes a corporation and its Managers and officers and their successors and assigns unless the context otherwise requires and includes an Officer. Publication means a newspaper or other similar printed document which is published.

Road Occupancy Permit ("Permit") includes a road occupancy permit and any other permit as required to undertake work on a road allowance.

Street Furniture includes benches, garbage containers, hand rails, tables, signs, posts, any other above ground appurtenance that is owned and used by the public.

3.0 GENERAL PROVISIONS

3.1 No person shall alter, obstruct or damage, or cause or permit the use, alteration, obstruction or damage of any roadway without first having obtained a Road Occupancy Permit.

3.2 No person shall undertake construction on land abutting on a roadway which may affect the drainage of the roadway or require alteration of street furniture without first having obtained a Road Occupancy Permit.

3.3 No person shall fail to comply with a Notice of Obstruction or an Order issued pursuant to this by-law.

3.4 Without limiting the generality of subsection 3.1, no person shall alter, obstruct or damage, or cause or permit the use, alteration, obstruction or damage of any roadway by any of the following:

3.4.1 the depositing, throwing, spilling or tracking or cause or permit the depositing, throwing, spilling or tracking of any material, waste or soil onto any roadway;

3.4.2 the depositing of snow or ice on travelled portion of the roadway or onto a boulevard not contiguous with the property from the snow was moved from;

3.4.3 the placement of any snow or ice, or any materials or equipment, or any structures within 1.2m, in any direction of a fire hydrant;

3.4.4 the placement of leaves, grass clippings, and debris from private property to the portions of the roadway normally used for pedestrian or vehicular traffic;

3.4.5 the altering of the grade on any boulevard unless the person without having obtained a Road Occupancy Permit, pursuant to this by-law;

3.4.6 the parking of equipment, motorized equipment other than motorized equipment permitted and licensed under the regulations of the Ministry of Transportation of Ontario, containers, trailers, or any Landscape or Construction Material on a roadway without having obtained a Road Occupancy Permit;

3.4.7 the cutting, altering, extending, in any manner whatsoever of a concrete curb, open or contained culvert, culvert overpass, or similar structure or landscape without having obtained a Road Occupancy Permit;

3.4.8 the allowance of a crane boom or any portion of a stationary tower crane to travel over, hoist, or otherwise occupy the space above a roadway or any part thereof without having obtained a Road Occupancy Permit;

3.4.9 the excavation or damage to any portion of a roadway, including sod, trees, light poles, street signs or other objects within the roadway without having obtained a Road Occupancy Permit;

3.4.10 the placement of donation bins on a roadway;

3.4.11 the placing or depositing of sporting equipment, including but not limited to basketball nets, skateboard ramps and bicycle ramps, on a roadway;

3.4.12 place or move any street furniture on a roadway without having obtained a Road Occupancy Permit;

3.4.13 allow the discharge of irrigation systems onto a sidewalk or the travelled portion of a roadway; and,

3.4.14 no person shall use or occupy a roadway for the purpose of the sale, or offering to sale, of any goods and services, including the sale of event tickets.

4.0 REMOVAL OF ROADWAY OBSTRUCTION

4.1 If an Officer determines that an obstruction of a roadway exists, the 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 roadway is brought back to its former condition prior to the obstruction.

4.2 Where the Notice of Obstruction described in subsection 4.1 is not complied with within the time period stipulated therein, the Township may remove the obstruction and repair, as necessary, the roadway and all the costs incurred by the Township in undertaking this work shall be expenses owed to the Township by the owner, occupant and/or contractor of property from which the obstruction comes from, relates to, or was created for.

5.0 REMOVAL OF HAZARDOUS CONDITION

5.1 Where an Officer determines that an obstruction of a roadway is, or may create, a hazardous condition to the safety of any person using the roadway, the Officer may take any action necessary to have the obstruction immediately removed and the roadway repaired, if necessary, and all the costs incurred by the Township in undertaking this work shall be expenses owed to the Township by the owner, occupant and/or contractor of the property from which the obstruction comes from, relates to, or was created for.

6.0 ROAD OCCUPANCY PERMITS- ADMINISTRATION

6.1 A person may apply for a permit under this by-law if the person:

6.1.1 completes an application for the permit on the forms as provided by the Manager;

6.1.2 submits the application along with the applicable fees and charges as provided for in Schedule "A" to this by-law; and,

6.1.3 provides any documentation, deposit or security as set out in Schedule "B" to this by-law, or insurance certificates, as required by the Manager as prerequisites and requirements for the issuance of the permit.

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

6.3 A permit is the property of the Township and is not transferable unless otherwise authorized by the Manager.

6.4 Every applicant shall post with the Township the required deposit or security, by way of cash, certified cheque, debit card, or letter of credit, in a form satisfactory to the Township. The Township does not accept payments for deposits or securities by credit card.

7.0 PERMIT CONDITIONS

7.1 A permit holder shall comply or ensure compliance with all provisions and conditions of the permit and this By-law.

7.2 A permit holder shall provide and maintain a contact phone number that the Manager or an Officer may reach the permit holder at all time.

7.3 Failure to comply with any provision or condition of a permit or this by-law may result in the revocation of the permit by the Manager, in addition to any other enforcement proceedings against the permit holder as permitted by law.

7.4 The permit holder of a revoked permit shall immediately cease or ensure the immediate cessation of all the activities for which a permit has been issued upon revocation of the permit under subsection 7.3.

7.5 Every Permit holder and every owner and occupier of land shall forthwith rectify damaged conditions on a roadway, on land or to municipal services and shall reinstate the roadway, the land and the municipal services, as the case may be, to the satisfaction of the Manager.

7.6 Every Permit holder and every owner and occupier of land shall provide all signs, barricades, traffic control devices, flag persons, and other persons and equipment required by the Manager.

7.7 Every Permit Holder shall maintain access to all private and public properties during any roadway closure and occupancy.

7.8 Every Permit Holder shall provide a Letter of Credit/ Security Deposit as required in Schedule "A" and "B" to this By-law.

8.0 ENFORCEMENT

8.1. Municipal By-law Enforcement Officers are hereby authorized and empowered to enforce the provisions of this By-law.

8.2 No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this by-law.

8.3 Municipal By-law Enforcement Officers and persons under their direction may at any reasonable time enter onto any lands within the Township to determine if the provisions of this by-law are being complied with or may enter onto any lands within the Township to carry out the remedial actions required to bring the property into conformity with the by-law.

8.4 Municipal By-law Enforcement Officers are empowered for the purposes of inspection to determine compliance with the by-law to:

8.4.1 require the production for inspection of documents or things relevant to the inspection, including the removal of the documents for the purposes of making copies or extracts;

8.4.2 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 inspection; and,

8.4.3 require information from any person concerning a matter related to the inspection.

9.0 NOTICE OF OBSTRUCTION

9.1. A Municipal By-law Enforcement Officer may enter upon any land or property at any reasonable time with proper identification to determine if the owner, contractor or permit holder is complying with the provisions of this by-law and may take photographs of the property's and roadway's condition.

9.2. Where a roadway is not maintained in accordance with the requirements of this bylaw or a permit issued under this by-law:

9.2.1 the Township may serve the owner, contractor, or permit holder a Notice of Obstruction in writing directing the owner, contractor, or permit holder to bring the roadway into conformance with the requirements of this by-law; and,

9.2.2 the owner, contractor, or permit holder shall repair, remove or clean up all contraventions identified on the Notice of Obstruction within the time period specified.

10.0 NOTICE OF OBSTRUCTION – DELIVERY- WHEN DEEMED SERVED

10.1. The Notice of Obstruction from the Township may be:

10.1.1 served personally upon the owner, contractor, or permit holder;

10.1.2 posted on site; or,

10.1.3 mailed by regular mail to the last known address of the owner, contractor, or permit holder according to the current assessment rolls.

10.2. If served by regular mail, a Notice of Obstruction under subsection 10.1.3. shall be deemed to have been served on the fifth day after mailing.

11.0 DISPOSING OF MATERIAL AND EQUIPMENT

11.1 Any landscape or construction material removed by the Township from a roadway 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 Township or become property of the Township which can be disposed of in any manner or used for any Township purpose.

11.2 Any landscape or construction material, motorized equipment, containers, trailers, or motorized tools removed by the Township may, at the discretion of the Manager or the Officer, be deposited at the property from which the obstruction comes from, relates to, or was created for, or be stored at a Township facility for sixty (60) days at the owner's expense.

11.3 Any item in subsection 11.2 shall only be released to the owner or permit holder after the owner or permit holder has paid the Township any applicable expense for the removal and storage of the item.

11.4 Any item in subsection 11.2 that is stored at a Township facility for more than sixty (60) days and for which an owner has not been identified may be disposed of by the Township in any manner that it deems appropriate.

11.5 Any item in subsection 16.2 that is stored at a Township facility for more than sixty (60) days and for which the owner, having been notified, has failed to pay the applicable expenses and claim the item, may be disposed of pursuant to the provisions of the Repair Storage and Liens Act, R.S.O. 1990, c.R.25, as amended.

12.0 EXEMPTIONS

12.1 Lambton County, the Ontario Clean Water Agency (OCWA), Bluewater Power, Brooke Telecom, Bell Canada, Rogers Cable Systems, Union Gas, or any other utility or their respective agent will not require a Road Occupancy Permit to undertake the following types of work:

12.1.1 installing, maintaining or relocating a pole line;

12.1.2 raising or lowering utility service boxes;

12.1.3 work on shut-off valves except for repair work on valves within the travelled portion of the roadway or within a sidewalk;

12.1.4 initial work conducted in new subdivisions to installation of sidewalk, curb, and gutter and asphaltic concrete pavement; and,

12.1.5 work in manholes, valve chambers, and transformer vaults.

12.2 Notwithstanding a Road Occupancy Permit is not required under section 12.1, the above agencies shall comply with the requirements of the Ministry of Transportation Traffic Control Manual for Roadway Operations, as may be amended or replaced from time to time.

12.3 Subject to section 12.1, when the Regional Municipality of York, Powerstream, Bell Canada, Telus, Rogers Cable Systems, Enbridge Consumers Gas, or any other utility or their respective agent closes or occupies a roadway or a portion of a roadway as a result of an emergency, telephone notice shall be given immediately to the Township and on the next working day application for a permit as required by this by-law shall be made.

13.0 SERVICE FEES

13.1. The municipal service fees for the administration and enforcement of this bylaw shall be in accordance with the fees established in Schedule "A" any revisions thereto.

13.2. Service fees for the administration and enforcement of this by-law may be applied when a contravention has been confirmed by an Officer.

14.0 RECOVERY OF COSTS

14.1 Where the Township, its employees or authorized agents have performed the work required for compliance with this by-law, all expenses incurred by the Township in doing the work as well as any related fees, shall be deemed to be a debt to the Township 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.

15.0 OFFENCES

15.1 Every person who contravenes any of the provision of this by-law or fails to comply with a Notice of Obstruction or an Order issued under this by-law or who obstructs or attempts to obstruct an Officer or an employee or agent of the Township in carrying out his or her duties under this By-law is guilty of an offence and is liable, upon conviction to a maximum fine as established pursuant to the Provincial Offences Act, R.S.O.,1990, c.P.33.

15.2 Pursuant to subsection 441.1 of the Municipal Act, 2001. S.O. 2001, c.25, the treasurer of a municipality may add any part of a fine for a commission of a provincial offence that is in default under section 69 of the Provincial Offences Act to the tax roll for any property in the local municipality for which all of the owners are responsible for paying the fine and collect it in the same manner as municipal taxes.

16.0 ADMINISTRATION AND INTERPRETATION

16.1 The Manager shall be responsible for the administration of this by-law.

16.2 Unless the context otherwise requires, words importing the singular shall include the plural, and words importing the masculine gender shall include the feminine.

16.3 The headings inserted in this by-law are for convenience only.

16.4 Schedules "A" and "B" attached to this by-law shall form part of this by-law.

17.0 SEVERABILITY

17.1 Notwithstanding that any section or sections of this by-law, or any part, or any part thereof, may be found by any court of law to be invalid or beyond the power of the Council to enact, such clause, Schedule or parts thereof shall be deemed to be severable, and all other clauses and Schedules of this by-law or parts thereof, are separate and independent therefrom and enacted as such.

18.0 INTERPRETATION

18.1 The provisions of the Legislative Act 2006, shall apply to this by-law.

19.0 FORCE AND EFFECT

20.1 This by-law shall come into force and effect on the date of enactment and passage.

READ A FIRST AND SECOND TIME THIS 9th DAY OF April, 2018.

READ A THIRD TIME AND FINALLY PASSED THIS 9th DAY OF April, 2018.

Mayor – Todd Case

Administrator/Clerk – Amanda Gubbels

Schedule "A" to By-law 10 of 2018

Fee Schedule for Road Occupancy Permits

Fee Type	Fee
Application Fee	\$150
Certified Deposit	\$2,500, or as specified by the Manager of Public Works

Schedule "B" to By-law 10 of 2018
Road Occupancy Permit
Application Fee is \$150

Applicant Information		
Applicant/Company Name:		
Contact Name:		
Current address:		
City:	Province:	Postal Code:
Telephone:	Fax:	Email:
Location Information:		
Address/Cross Road Name:		
Location Description		
Description of Work		
Further Details:	Which Side of Road:_____ Depth Below Road.Grade:_____ Distance from Road Centre Line:	
Date of Work:		
Start:_____		
Finish:_____		
Sketch Showing Extent and Location of Work:		

Conditions of Permit

1. The applicant agrees to provide a Certificate of Public Liability and Property Damage Insurance of not less than \$2,000,000.00 (two million) naming the Township of Warwick as an additional insured. (This clause must be typed on the Certificate of Insurance)
2. The applicant agrees to provide a certified cheque in the sum of \$2,500 (if required) to be deposited with the Township of Warwick to offset any damage to Municipal Infrastructure during construction. This sum to be returned not later than thirty (30) days after the date of completion, less charges against the account.
3. The application must be fully completed, and all necessary signatures obtained before the application can be processed. Fourteen (14) days may be required for approvals before the issuance of permit.
4. The applicant agrees prior to beginning any work on the road allowance to properly set up signage and safety devices and this shall be in conformance with the Manual of Uniform Traffic and Control Devices. Upon completion of the work all signage and safety devices shall be removed. It is the applicant's responsibility to provide all necessary and signage and safety devices.
5. All road crossings are to be bored. The asphalt road surface is not to be cut. All disturbed areas are to be restored to the original condition including any necessary sod, topsoil, and seeding. Damage to sidewalks or the road surface, curb and gutter, ditches shall be repaired by the applicant. If the applicant fails to restore any such damage to the satisfaction of the Township of Warwick, the Township of Warwick shall use the deposit to restore the damages and any further or additional costs will be invoiced to the applicant for payment.
6. After the permit is issued, the Applicant must give confirmation to all applicable utilities/agencies/police services at least 7 days' notice prior to the move taking place and personally arrange with various parties involved for any escorts, raising of wires, etc. and pay these individuals involved for any charges.
7. The road allowance shall not be closed at any time. If the road is to be restricted to one lane of traffic the use of properly trained traffic control persons, minimum of two, shall be used to control the flow of traffic.
8. The applicant shall ensure that all utility locates have been obtained. The applicant will be responsible for any utility repairs that are necessary if they are cut.
9. The applicant shall ensure that all surface and subsurface drainage are maintained at all times and any such drainage works that are damaged are repaired to the satisfaction of the Township of Warwick.
10. A copy of the Building Permit is required, if applicable.

Signature of applicant:

Date:

Payment (please make all cheques payable to the Township of Warwick)

Cheque

Debit

Cash

Towship of Warwick (Office Use Only)

Approval Signature

Deposit & Fee Received/Date

Deposit Released/Date

Distribution

Applicant____ File____

Public Works Manager____