

B Y - L A W N U M B E R 25-2010

A BY-LAW TO PROVIDE FOR THE
PROTECTION OF HIGHWAYS IN WINDSOR

Passed the 1st day of February, 2010

WHEREAS section 10(2) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that municipalities may pass By-laws respecting public assets of the municipality, the health, safety and well-being of persons and for the protection of property;

AND WHEREAS section 110 of the Highway Traffic Act, R.S.O. 1990, c. H.8 as amended, provides that municipalities may pass by-laws to permit the use of the highway by a vehicle, load or structure that is in excess of the dimensional limits or weight limits set out in the said Act, and such permits may be issued by an officer of the municipality named therein;

AND WHEREAS Council deems it necessary and desirable to pass a By-law providing for the protection of highways in Windsor;

THEREFORE the Council of The Corporation of the City of Windsor enacts as follows:

Part 1- Definitions

1. In this By-law,

“City Engineer” means the person appointed by the Council of The Corporation of the City of Windsor as the City Engineer, and his or her designate.

“Corporation” means The Corporation of the City of Windsor.

“Driveway approach” means the portion of the highway that is improved to permit the passage of persons or vehicles from a highway to abutting property.

“Highway” means a street, road, avenue, parkway, alley, lane, median, sidewalk, trail, square, place, bridge, viaduct, or other public way under the jurisdiction of the Corporation.

“Hoarding” means the temporary, placement, and/or storage of materials or equipment on a highway, or work on the highway, including the erection of fencing or placement of barriers to enclose such areas of storage or work.

“Manager of Purchasing and Risk Management” means the person holding the position of Manager of Risk Management for The Corporation of the City of Windsor, and his or her designate.

“Occupant” means any person or persons over the age of eighteen (18) years in possession of property and includes an owner, as defined in this By-law, who is in possession of the property.

“Owner” means the person in whom is vested the ownership, or title of property and includes his or her agent, or trustee in bankruptcy.

“Parking By-law” means the Corporation’s By-law Number 9023, as amended from time to time, or any successor thereto.

“Permit” means a permit issued by the City Engineer under the provisions of this By-law.

“Person” includes a corporation, and the heirs, executors, administrators or other legal representatives of an individual to whom the context can apply according to law.

“Private connection” means the lateral water pipe which connects a building to the municipal water service system.

“Private sewer connection” means the lateral sewer pipe which connects a building to the municipal sewer system.

“Vehicle” means a motor vehicle, and trailer as defined in the *Highway Traffic Act*, R.S.O. 1990, c. H.18, as amended, and any vehicle drawn, propelled or driven by any kind of non-muscular power, but does not include a farm tractor or road building machine.

Part 2 - Placing of Goods and Personal Property on the Highway

- 2.1 Except as permitted by the Parking By-law, no person shall place or cause to be placed upon any highway, any goods, wares or merchandise of any description whatever for a longer period than is actually necessary for shipping or receiving the same, and in no case for longer than thirty (30) minutes.
- a) Section 2.1, shall not apply to sidewalk sales organized by a Business Improvement Area Board of Management, as approved by the Corporation.
- 2.2 Except as otherwise permitted by this by-law, no person shall place, occupy or maintain or cause to be placed, occupied or maintained upon any highway, any personal property of any description, including but not limited to, signs, fences, decorative or landscape rocks or boulders, logs, raised planter beds, planters, trees or shrubs, or install any decorative landscape features whatsoever, including, but not limited to, statues, fountains, gravel, pavers or paving of any kind.
- a) Section 2.2 shall not apply to persons who place, occupy, or maintain upon the highway, garbage, recycling materials or other goods, out for weekly collection by the Corporation, or collection undertaken at the request of the Corporation.
- b) Section 2.2 shall not apply to persons who have entered into an encroachment agreement with the Corporation, which agreement is in good standing, concerning their personal property which may be placed, occupied, or maintained upon the highway.
- c) Section 2.2 shall not apply to persons where such placement, occupation, or maintenance is permitted by a by-law of the Corporation.

Part 3 – Short Term Use of Highway

- 3.1 No person shall use any portion of any highway for a period for longer than 1 hour but less than 24 hours for construction operations, for the storage of materials or equipment, or for the operation of overhead cranes or booms, unless:

- a) such person is the owner or occupant of lands adjoining such highway or is the authorized agent of such person and provides evidence of such satisfactory to the City Engineer; and
 - b) the owner or occupant of lands adjoining such highway or the authorized agent of such person is the holder of a valid permit issued by the City Engineer.
- 3.2 Every person who makes application for a permit to use a portion of a highway under the provisions of this part shall make application to the City Engineer, on the form and in the manner specified from time to time and such application shall be accompanied by the General Permit Requirements and such information as required by the City Engineer.
- 3.3 A permit issued under this part shall indicate the portion of the highway which may be occupied, the time or times during which it may be so occupied, the applicable terms and conditions of such occupation, the General Permit Requirements and shall be subject to cancellation at any time, without notice, at the discretion of the City Engineer.

Part 4 - Long Term Use of Highway

- 4.1 No person shall use any portion of any highway during construction operations for the erection of hoarding, or for the operation of overhead cranes or booms, for longer than 24 hours, unless:
- a) such person is the owner or occupant of lands adjoining such highway or is the authorized agent of such person and provides evidence of such satisfactory to the City Engineer; and
 - b) the owner or occupant of lands adjoining such highway or the authorized agent of such person is the holder of a valid permit issued by the City Engineer.
- 4.2 Every person who makes application for a permit to use a portion of a highway under the provisions of this part shall make application to the City Engineer, on the form and in the manner specified from time to time and such application shall be accompanied by the General Permit Requirements and such information as required by the City Engineer.
- 4.3 A permit issued under this part shall indicate the portion of the highway which may be occupied, the time or times during which it may be so occupied, the applicable terms and conditions of such occupation, the General Permit Requirements and shall be subject to cancellation at any time, without notice, at the discretion of the City Engineer.
- 4.4 In no event shall a permit issued under this part authorize the occupation of any portion of a highway beyond the limits of the frontage of the lands upon which construction operations take place, as projected, unless the Owner and/or Occupant of the land abutting such portion of the highway consents, in writing, in a form and manner specified by the City Engineer from time to time, to the issue of a permit for such enlarged occupation and waives all claims against the Corporation for damages arising directly or indirectly from such extended occupation.
- 4.5 No permit issued under this part shall authorize or be deemed to authorize, expressly or impliedly, the placing of any materials or the doing of any act, matter

or thing that will obstruct the free passage of water in drains, gutters, ditches or watercourses on any highway.

- 4.6 A permit issued under this part may allow occupation of a part of a highway for one continuous period of time or may be only for a portion of each day during which the permit is in effect, but if the permit is granted for a portion of each day only, this fact shall not affect the scale of fees payable for the permit.
- 4.7 In all cases where material or hoarding have been placed on a portion of a highway under the authority of a permit issued under this part, the holder of a permit shall, if such material or hoarding is on a highway between dusk and dawn, place and maintain on the material or hoarding a number and type of warning lights and barricades as specified by the City Engineer, to warn the public of the obstruction.
- 4.8 The holder of a permit issued under this part shall keep any hoarding, fence or barricade, covered, in a neat and tidy condition, free of signs, posters or advertising material, and if constructed of lumber, shall be neatly painted.
- 4.9 Where the construction is carried out on a building or structure located within 4.5 meters of the highway, and a permit has been issued under this part, the permit holder shall also comply with the requirements provided in Ontario Regulation 213/91, as amended from time to time, issued under the *Occupational Health and Safety Act*, R.S.O. 1990, c. O1, as amended.
- 4.10 The holder of a permit issued under this part shall forthwith upon the expiration or termination of, or upon completion of the construction operations upon the land subject to the permit (whichever date occurs first), at the permit holder's own expense and without notice so to do, remove from the highway all fences, barricades, hoarding, covered-ways, building materials, machinery and apparatus and restore the highway to the condition it was in before the same was placed thereon, to the satisfaction of the City Engineer.

Part 5 - Breaking up of Highway

- 5.1 No person shall, for any purpose whatever, break up or remove any earth or portion of the material of any highway or construct anything at all upon any highway within the City of Windsor without having first obtained a permit from the City Engineer.
- 5.2 Any person seeking a permit from the City Engineer for the purposes of breaking up or removing any portion of the material of any highway within the City of Windsor shall apply to the City Engineer in the form and manner established by the City Engineer from time to time.
- 5.3 A permit issued under this part shall indicate the portion of the highway, which may be broken up or removed, the time or times during which it may be occupied by the permit holder and shall be subject to cancellation at any time, without notice, at the discretion of the City Engineer
- 5.4 Every person breaking up or removing any portion of the material of any highway within the City of Windsor under the authority of a permit issued by the City Engineer shall:
 - a) exercise all possible precaution against injury to persons or property resulting from such work; and
 - b) leave no trenches, pits, holes or excavations uncovered, without providing sufficient protection at all times; and

- c) install, erect and provide barricades, signs, traffic cones, flashers, lights, plates, warning and other devices, materials and personnel in accordance with the provisions of the “Ontario Traffic Manual – Book 7, Temporary Conditions”, issued by the Ontario Ministry of Transportation, as amended from time to time.
- 5.5 No permit issued under this part shall authorize or be deemed to authorize, expressly or impliedly, the placing of any materials or the doing of any act, matter or thing that will obstruct the free passage of water in drains, gutters, ditches or watercourses on any highway.
- 5.6 A permit issued under this part may allow occupation, break-up and/or removal of a part of a highway for one continuous period of time or may be only for a portion of each day during which the permit is in effect, but if the permit is granted for a portion of each day only, this fact shall not affect the scale of fees payable for the permit.
- 5.7 Any person performing any work under the authority of a permit issued under this part shall restore the highway in accordance with the Corporation’s Standard Specifications for such work to the satisfaction of the City Engineer.
- 5.8 Permits issued under this part are not transferable.
- 5.9 Every owner shall maintain the driveway approach(s) to their property so as not to cause injury to persons or damage to property. The owner shall maintain the driveway approach(s) with a paved surface, constructed flush to the boulevard grade, without raised curbs, or trip hazards and with straightline flares to match the width of the curb cut.

Part 6-Private Sewer Connection/Private Connection

- 6.1 No person shall, repair, construct or install a private sewer connection/private connection upon any highway, attach a private sewer connection/private connection to a municipal sewer or waterline, as the case may be, or alter or modify a municipal sewer or waterline located within any highway within the City of Windsor without having first obtained a permit from the City Engineer.
- 6.2 Section 5.2 to 5.7 inclusive, of this By-law; apply with necessary modifications to a permit issued under this part.

Part 7 - Sampling Manholes

- 7.1 No person shall install sampling manholes on any highway pursuant to the Corporation’s Sewer Use By-law, as may be amended from time to time, without first obtaining a permit for the installation of such sampling manholes from the City Engineer.
- 7.2 Any person seeking a permit from the City Engineer for the purposes of installing sampling manhole(s) on any highway within the City of Windsor shall apply to the City Engineer in the form and manner established by the City Engineer from time to time.

Part 8 - Discharge of Oil and other Contaminants from Vehicles onto Highway

- 8.1 No person shall park any portion of a vehicle on any highway where such vehicle is leaking any fluid, including but not limited to, oil or gasoline, but not including water from the vehicle's air conditioning unit.**
- 8.2 Where a vehicle parked in contravention of subsection 8.1 of this By-law leaks any fluid onto any portion of any highway, the owner of the vehicle shall cause the fluid to be cleaned up to the satisfaction of the City Engineer.**
- 8.3 If the owner of the vehicle fails to comply with subsection 8.2 the Corporation may, in addition to any other remedy, clean up the fluid at the vehicle owner's expense and the Corporation may recover the expense by action or in like manner as municipal taxes.**

Part 9 - Heavy and Over-Sized Loads

- 9.1 No person shall move a vehicle, load, object, or structure in excess of the weight limits or dimensional limits set out in the Highway Traffic Act, R.S.O. 1990, c. H.8, as amended, over any highway in the City of Windsor without a permit issued under this part by the City Engineer.**
- 9.2 Any person seeking a permit for the purposes of moving a vehicle, load, object or structure in excess of the weight limits or dimensional limits set out in the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended, shall apply to the City Engineer in the form and manner established by the City Engineer from time to time.
- 9.3 Every person seeking a permit under this section shall provide a written description and drawing of the proposed route of travel to the City Engineer as part of the application and upon request, shall provide a scale drawing of the vehicle illustrating the number of, and dimensions between each axle, and specifying the loading on each axle.
- 9.4 Every person issued a permit under this part, shall, forty-eight (48) hours before commencing movement for which the permit is issued, give notice to the departments, companies, agencies and utility companies as set out in the permit, indicating the route to be traveled and the time of commencement of such the movement.

Part 10 – General Permit Requirements

- 10.1 In all instances, application for a permit described in this By-law shall be accompanied by:
- a) The permit fee for the category of permit, and any other applicable fees as set out in the Corporation's Fees & Charges By-law, as may be amended from time to time; and
 - b) Such security or deposit, in an amount calculated by the City Engineer, based upon his or her estimate of the cost which will be incurred to reinstate the highway and for other services provided by the Corporation; and
 - c) Commercial General Liability Coverage or public liability and property damage insurance of not less than \$2,000,000 for bodily injury including death, personal injury and property damage arising from any one accident or occurrence or such other higher amounts as determined by the Manager of Purchasing and Risk Management, for the entire duration of the permit.

The policy shall hold harmless the Corporation from and against all liability under such statutes, laws, and regulations and in respect to all claims that may arise or be made against the Corporation resulting from its use or occupancy of the highway. Proof of the insurance shall be in form satisfactory to the Manager of Purchasing and Risk Management prior to the commencement of any work or activity being performed and the coverage provided by any policy required under this subsection will not be changed or amended in any way to the detriment of the Corporation, nor cancelled, by the permit holder until thirty (30) days after written notice has been sent by registered mail of such change or cancellation to the City Engineer and Manager of Purchasing and Risk Management. Specifically, The Corporation of the City of Windsor shall be:

- i) Named as an additional insured in the policy of insurance; and
 - ii) Indemnified from any and all claims, demands, losses, costs, or damages resulting from the use or occupancy of a highway.
- 10.2 Upon satisfactory completion of the work that is subject to the permit issued pursuant to this By-law, and following a maintenance period of one year, or other time period as deemed appropriate by the City Engineer, the amount of the Security or Deposit which exceeds any costs incurred by the Corporation related to restoration of any highway related to work that is subject of the permit, will be returned to the permit holder, or in the case where the costs incurred by the Corporation exceeded the Security or Deposit, the permit holder shall pay the amount invoiced, within thirty (30) days of the date of the invoice.
- 10.3 A permit issued under this part shall be valid for a period of 5 years from the date of issuance. To extend the granted permission, a new permit shall be issued and the original permit closed and indemnity fee returned.
- 10.4 A permit issued under this part shall be revoked by the City Engineer and the indemnity fee forfeited to the City, if the work is incomplete after 5 years and a permit has not been renewed.
- 10.5 The City Engineer may require, as a condition to a permit issued pursuant to this By-law, that the work site be attended and supervised at all times.
- 10.6 The City Engineer may require, as a condition to a permit issued pursuant to this By-law, that the work within the highway be inspected by the City Engineer at specified times.
- 10.7 The City Engineer may require, as a condition to a permit issued pursuant to this By-law that flagmen, uniformed police officer, and/or traffic warning devices be provided by the permit holder.
- 10.8 The City Engineer may require, as a condition to a permit issued pursuant to this By-law, that barricades, platforms or other structures be erected by the permit holder, for the protection of the public.
- 10.9 The City Engineer may require, as a condition to a permit issued pursuant to this By-law, compliance with any other condition as in his or her opinion is reasonably necessary for the protection of the public safety and right to travel along a highway.
- 10.10 The City Engineer may require, as a condition to a permit issued pursuant to this By-law, that construction drawings of the proposed works be submitted prior to the issuance of a permit and/or as-constructed drawings be submitted prior to the return of security deposit(s) in accordance with Section 10.2.

- 10.11 The City Engineer may, without notice, revoke any permit issued pursuant to this By-law if the work, for whatever reason, constitutes a danger, in the opinion of the City Engineer.
- 10.12 The holder of a permit issued pursuant to this By-law shall ensure that the work authorized by the permit is conducted in a manner only as approved by the City Engineer.
- 10.13 The holder of a permit issued pursuant to this By-law shall ensure that the work authorized by the permit is conducted only at a date and time as authorized by the permit.
- 10.14 The holder of a permit issued pursuant to this By-law shall ensure that notification is given to all required utilities prior to the commencement of the work authorized by the permit.
- 10.15 The holder of a permit issued pursuant to this By-law shall ensure that the highway and existing municipal and utility infrastructure are protected within the construction zone.
- 10.16 The City Engineer may require, as a condition to a permit issued pursuant to this By-law, the payment of costs for outstanding sewerage fees and, or, contributions directly associated with the works authorized by the said permit.

Part 11 - General Exception

- 11.1 The provisions of this By-law shall not apply to works undertaken by the Corporation, or by any agents or contractors employed by or engaged by the Corporation, acting under the direction of the City Engineer.
- 11.2 The provisions of this By-law shall not apply to works undertaken pursuant to a franchise agreement or legislation.

Part 12 - Offences & Enforcement

- 12.1 If any restoration or work required to be done under the provisions of this By-law are not so done by the holder of a permit issued under the provisions of this By-law, the City Engineer may make an Order requiring the person who contravened the requirements of the By-law to do work to correct the contravention.
- 12.2 Any restoration or work required to be done under the provisions of this By-law or pursuant to an Order issued under this part that are not so done by the holder of a permit issued under the provisions of this By-law, may be done, or caused to be done by the Corporation and the costs of such work will be added to the property tax roll for the property of the permit holder, or the person authorizing an agent to apply for the permit, as the case may be and will be collected in the same manner as property taxes.
- 12.3 Every person who contravenes any provision of this By-law is guilty of an offence and on conviction is liable to a fine not exceeding the maximum fine from time to time prescribed by the *Provincial Offences Act*, R.S.O. 1990, c.P.33, as amended, or any legislation passed in succession thereto.
- 12.4 This By-law shall be administered and enforced by the City Engineer.

Part 13 - Repeals and Enactment

- 13.1 By-law Number 25 and all amendments thereto are hereby repealed.
- 13.2 By-law Number 4923 and all amendments thereto are hereby repealed.
- 13.3 This By-law shall come into force and take effect on the day of the final passing thereof.

EDDIE FRANCIS, MAYOR

CLERK

First Reading - February 1, 2010
Second Reading - February 1, 2010
Third Reading - February 1, 2010