

**The Corporation of The Municipality of Hastings Highlands
Bylaw 2023-074**

A Bylaw to Regulate Work and Occupancy of Municipal Roads

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

And Whereas subsection 11(3) of the Act provides that the Corporation of the Municipality of Hastings Highlands may pass by-laws with respect to the use of its highway and matters concerning drainage;

And Whereas subsection 391(1) of the Act provides that without limiting sections 9, 10 and 11, those sections authorise the Corporation of the Municipality of Hastings Highlands to impose fees or charges on person, for a) Services or activities provided or done by or on behalf of it; b) Costs payable by it for services or activities provided or done by or on behalf of any other municipality or any local board; and c) The use of its property including property under its control;

And Whereas Section 10 of Ontario Regulation 584/06 under the Act authorises the Corporation of the Municipality of Hastings Highlands to impose fees and charges to recover the municipality’s reasonable costs for issuing permit with respect to telecommunications, electricity and gas services and activities to place the works on a municipal highway and to cut the pavement of or otherwise dig up a municipal highway for the works;

And Whereas subsection 27(1) of the Act authorises the Corporation of the Municipality of Hastings Highlands to pass bylaws in respect of a highway under its jurisdiction;

And Whereas Council of the Corporation of the Municipality of Hastings Highlands deems it desirable that criteria should be established to govern the installation of objects in, on, within or under roads, sidewalks and road allowances under the jurisdiction of the Corporation of the Municipality of Hastings Highlands;

Now Therefore the Council of the Corporation of the Municipality of Hastings Highlands hereby enacts as follows:

1.0 Definitions

For the purpose of this Bylaw,

“**applicant**” shall mean a person, group, or corporate body who applies to the Municipality for a Road Occupancy Permit or Municipal Consent;

“boulevard” shall mean that part of a road which is not used, or not intended to be used, for vehicular travel by the public, and is situated between the portion of the road used for vehicular travel by the public and the adjoining property line;

“emergency work” shall mean work that is required to reduce or eliminate a situation or an impending situation that constitutes a danger that could result in serious harm to a person or substantial damage to property, including the loss of an essential service or damage to infrastructure or equipment, including, but not limited to:

- a) A washout or cave-in;
- b) Drainage impediment or ponding;
- c) Softspot;
- d) Settlement of the roadway surface greater than 50 mm;
- e) Damaged or leaking gas pipe;
- f) Damaged underground electrical or communications facility;
- g) Damaged or downed aboveground or overhead utility structure including, but not limited to, a pole, anchor, guy wire, support stand, cable, splice enclosure, pedestal or cabinet; or
- h) Unscheduled interruption of utility service;

“engineering investigation” shall mean exploratory excavation, and the installation and use of boreholes and monitoring wells in the road;

“equipment” shall include underground conduits and pipes, municipal storm water, water and sanitary sewer services and service connections, cabinets, poles, towers, anchors, guy wires, brackets, cross arms, insulators, foundations, overhead and underground conductors, wires, lines, cables and transformers, access nodes, grade level boxes, manholes, pedestals, boreholes, monitoring wells, ancillary appliances and fittings and reasonably required associated protective installations;

“excavation” shall mean breaking, digging up, tearing up, tunneling, boring, coring, attaching to, cutting into, or removing any portion of the surface or subsurface of a road, including pavement, sidewalk, curbs, ditches, gutter or boulevard;

“infrastructure” includes, but is not limited to, any public or private utility structure, copper or coaxial wire, fibre optic cable, pipe, conduit, pedestal, cabinet, antenna, vault, support structure, culvert, noise barrier, fence, guiderail, barricade, traffic island, traffic control device, sign, light, rail facility, pavement, subgrade, catch basin, handwell, valve chamber, valve box, curb, gutter, sidewalk, driveway, mailbox, hydrant, sod, berm, ditch or watercourse;

“Municipality” shall mean the Corporation of the Municipality of Hastings Highlands;

“Municipal Consent” or **“MC”** shall mean the written consent of the Municipality, with or without conditions, to allow a public utility service to perform work within the Road. For clarity, a Municipal Consent is consent given by the Municipality for a proposed location for a public utility service to perform work within the Road;

“Officer” shall mean a person designated by Council as an Officer for the purposes of enforcing bylaws and for purposes of exercising any power of entry under this Bylaw.

“Operations Manager” shall mean the Operations Manager of the Municipality, or designate;

“Permit” shall mean any permit issued under Section 4 of this Bylaw and may be referred to as a Road Occupancy Permit, Work in Right-of-Way (ROW) Permit, Road Cut Permit, or Road Work Permit;

“Permit Holder” shall mean the person to whom a Permit is issued and includes an authorized owner, a property owner, an individual, an association, a partnership or a corporation or any other agents or contractor carrying out works within the right-of-way;

“public utility service” shall mean any telecommunications, electricity and gas services company and shall include an individual, an association, a partnership or a corporation or any other agents, contractor subcontractors carrying out any works for the company;

“road” shall mean a common and public Highway, street, avenue, parkway, driveway, square, place, bridge, viaduct, trestle, or an unopened and unassumed Highway, any part of which is intended for or used by the general public for the passage of vehicles and pedestrians and includes the area between the lateral property lines thereof under the jurisdiction of the Municipality;

“Road Cut” shall mean a surface or subsurface cut in any part of a Road made by any means, including any excavation, reconstruction, cutting, saw cutting, overlaying, crack sealing, breaking, boring, jacking or tunneling operations;

“temporary road occupation” shall mean the temporary occupation of any portion of a road for the placing or operation of any machinery, vehicles, storage containers, waste bins, materials, mobile cranes, construction safety fencing, overhead construction safety fencing, temporary/mobile construction office trailers, hoists and platforms, temporary construction driveway accesses, crane booms extending from other land into the airspace over a road;

“work” means, but is not limited to, any temporary road occupation, road cut, excavation, engineering investigation, installation, removal, construction, maintenance, repair, replacement, relocation, adjustment, breaking up, disturbance or alteration of equipment within a road.

2.0 Application of this Bylaw

- 2.1 This Bylaw applies to all roads in the Municipality.
- 2.2 This Bylaw does not apply to work within a road for which the Province of Ontario has jurisdiction.
- 2.3 The Operations Manager may waive the permit application of all or part of this Bylaw if the Operations Manager is satisfied that the work is adequately regulated by an agreement with the Municipality or another form of approval given by the Municipality.
- 2.4 Nothing in this Bylaw shall be construed as permitting anything which is prohibited under federal or provincial legislation, and where there is a conflict in this respect between federal or provincial legislation and this Bylaw, the federal or provincial legislation prevails.

3.0 General Requirements, Prohibitions and Exemptions

- 3.1 No person shall undertake any work without first obtaining a permit issued in accordance with this Bylaw.
- 3.2 No person shall close or obstruct a road or a portion of a road to traffic unless authorized to do so in accordance with this Bylaw.
- 3.3 Notwithstanding subsections 3.1 and 3.2, emergency work may be undertaken without first obtaining a permit if the Operations Manager is notified within 24 hours of the emergency work being commenced with all required permits being applied for.
- 3.4 Any work shall be undertaken as far as feasibly possible from infrastructure and be as close as possible to be within 1 metre of the boundary or edge of a road. For clarity, the boundary or edge of a road is the lateral property lot lines of a road allowance or, in the case of a forced road, the furthest maintained portion of a forced road.
- 3.5 A copy of the Road Occupancy Permit and/or Municipal Consent shall be on site at all times and available for review upon request.
- 3.6 Every person undertaking work shall comply with this Bylaw, all applicable statutes, regulations, standards, codes, bylaws, rules and similar requirements.
- 3.7 The Permit Holder shall undertake work in such a manner as to do the least possible damage to the road and to any utility.
- 3.8 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 Bylaw.

- 3.9 No person shall provide false or inaccurate information in an application for a permit issued under this Bylaw or in any document or thing required to be submitted under this Bylaw.
- 3.10 Every person undertaking work on a road which requires an excavation shall submit a request to Ontario One Call to locate and mark underground infrastructure prior to the commencement of any work, in accordance with the *Ontario Underground Infrastructure Notification System Act, 2012*.
- 3.11 The Operations Manager may grant an exemption to any person from any provision of this Bylaw and impose conditions for such exemption as may be considered reasonable and necessary provided such exemption does not interfere with the general integrity of this Bylaw.
- 3.12 A permit is not required by a person undertaking any work for or on behalf of the Municipality or for road occupancy or closures ordered by the Operations Manager.
- 3.13 This Bylaw shall be read in conjunction with the Municipality's Entrance Bylaw and any other applicable federal and provincial legislation and municipal bylaw.

4.0 Road Occupancy Permit and Municipal Consents

4.1 Application

- 4.1.1 Every application for a Road Occupancy Permit and for a Municipal Consent shall be made to the Operations Manager on the prescribed form and no permit shall be issued until the required information and material is provided to the Operations Manager as may be required by the Municipality and the required permit fees and security deposit, as prescribed in the applicable User Fees and Service Charges Bylaw or Municipal Access Agreement, has been paid and deposited to the Municipality.
- 4.1.2 Every application for a Municipal Consent shall include:
- a) the name, signature and position of the contact individual for the applicant and the applicant's organization name, street address, telephone number, and e-mail address;
 - b) a description of the location for the work;
 - c) description of the type and purpose of the work;
 - d) a description of the design of the work including whether the work is in, on, over, under, across or along the road, the placement of the work, and the proposed depth, width and length of any excavation, cut or trench;
 - e) construction design drawings and other related documentation for the work;
 - f) any proposed closure of a road or sidewalk or part thereof;
 - g) whether the work is emergency work, and if so, the nature of the emergency; and

- h) any additional information or documentation for the purposes of administering this Bylaw.

4.1.3 Every application for a Road Occupancy Permit shall include:

- a) the name, signature and position of the contact individual for the applicant and the applicant's organization name, street address, telephone number, and e-mail address;
- b) the name and telephone number of the most senior field personnel of the applicant or of the proponent's agent, servant, employee, subcontractor or licensee who is assigned to oversee the work;
- c) a description of the location for the work;
- d) description of the type and purpose of the work;
- e) where the Operations Manager does not require Municipal Consent, a description of the design of the work including whether the work is in, on, over, under, across or along the road, the placement of the work, and the proposed depth, width and length of any excavation, cut or trench;
- f) where the Operations Manager requires Municipal Consent, a copy of the Municipal Consent and any associated construction design drawings;
- g) the scheduled starting date of the work and length of time estimated to complete the work;
- h) any proposed closure of a road or sidewalk or part thereof;
- i) the requirement for any proposed prohibition of shoulder parking, change to pavement markings or change to a traffic sign;
- j) whether the work is emergency work, and if so, the nature of the emergency;
- k) a signed indemnity, satisfactory to the Operations Manager, indemnifying and saving harmless the Municipality from any and all claims, demands, suits, actions and judgments made, brought or recovered against the Municipality and from all loss, costs, damages, charges or expenses that may be incurred, sustained or paid by the Municipality by reason of the granting of the permit; and
- l) any additional information or documentation for the purposes of administering this Bylaw.

4.1.4 The applicant shall provide the Operations Manager with a certificate of insurance in accordance with the provisions as identified on the Road Occupancy Application form, Municipal Consent form, or otherwise as satisfactory to the Operations Manager.

4.1.5 Where work will be occupying a road or part thereof, or where work will require the closing or occupation of a road or part thereof, the applicant shall submit a Traffic Control Plan to the satisfaction of the Operations Manager. The Operations Manager is authorized to require that a Traffic Control Plan be submitted with any application. The Operations Manager is authorized to have discretion to require, review, approve, refuse, revoke, and request amendments to a Traffic Control Plan.

4.1.6 Where the applicant is planning to undertake the work by means of an agent, subcontractor or licensee, then the agent, subcontractor or licensee shall provide the Operations Manager with a certificate of insurance in accordance with the provisions as identified on the Road Occupancy application form, the Municipal Consent form, or otherwise as satisfactory to the Operations Manager.

4.1.7 This Bylaw shall not apply so as to require a security deposit from a public utility service or a subcontractor acting on behalf of the public utility service in the Municipality unless stated otherwise in the executed Municipal Access Agreement between the Municipality and the public utility service.

4.2 Timing

4.2.1 The applicant shall submit their application to the Operations Manager at least 10 business days prior to the commencement of the proposed work.

4.2.2 The applicant shall consult with the Operations Manager as early as possible about the work prior to its commencement, taking into consideration the scale and complexity of the work.

4.3 Review, Approval, Refusal, Revocation

4.3.1 The Operations Manager is authorized to receive and consider all applications, and to conduct all investigations necessary to determine whether a Road Occupancy Permit or Municipal Consent should be issued.

4.3.2 The Operations Manager shall have the authority to approve, refuse, administer and/or revoke all Road Occupancy Permits and Municipal Consents, and may include any conditions in a permit that they deem appropriate, including, but not limited to, the applicant having a Municipal Access Agreement with the Municipality.

4.3.3 The Operations Manager shall have the authority to determine and, from time to time, amend the forms, information, and special conditions required in the administration of this Bylaw.

4.3.4 Prior to making a decision on any application, the Operations Manager shall consult with such other persons or agencies as they consider necessary.

4.3.5 When reviewing an application, the Operations Manager shall consider:

- a) Any potential adverse impact on public health and safety;
- b) Any potential adverse impact to existing and future roads and infrastructure;
- c) Any work shall be undertaken as far as feasibly possible from infrastructure and be as close as possible to be within 1 metre of the boundary or edge of a road. For clarity, the boundary or edge of a road is the lateral property lot lines of a road allowance or, in the case of a forced road, the furthest maintained portion of a forced road;

- d) Any potential contraventions to the public;
- e) Any potential traffic impacts, including the adequacy of detour routes;
- f) Any concerns for the security of persons or property; and
- g) The past or present conduct of the Applicant affords reasonable grounds to believe the construction, maintenance or other works may not be adequately managed in accordance with this Bylaw.

4.3.6 When the applicant is requesting work, the Operations Manager reserves the right to issue a single Road Occupancy Permit or multiple Road Occupancy Permits for the works, including, but not limited to, the scope of work involved, work occurring at different locations, and quantity of work.

4.3.7 The Operations Manager may revoke a Road Occupancy Permit at any time without prior notice to the Permit Holder if:

- a) It was issued in error;
- b) It was issued as a result false, mistaken, incorrect or misleading information in the application;
- c) There are reasonable grounds to believe that the continuation of the road occupancy may pose a risk to the factors outlined in 4.3.5 above.

4.4 Expiry, Extension, Renewal

4.4.1 If a Permit Holder has obtained a Municipal Consent or a Road Occupancy Permit and has not commenced construction of the approved work associated with a particular Municipal Consent or Road Occupancy Permit within one (1) year of the date of issuance of the Municipal Consent or Road Occupancy Permit and has not sought and received an extension to the Municipal Consent or the Road Occupancy Permit from the Municipality, which extension shall not be unreasonably withheld, the Municipal Consent or Road Occupancy Permit shall be null and void.

4.4.2 If onsite work has not commenced within ninety (90) days of issuance of the Road Occupancy Permit in relation to a particular Municipal Consent or Road Occupancy Permit and the work will be commencing within one (1) year of the date of issuance of the Municipal Consent or Road Occupancy Permit, the public utility service or permit holder must notify the Operations Manager two (2) weeks prior to starting the work. The Operations Manager reserves the right to approve or deny requests.

4.4.3 The Operations Manager may, upon application, renew or extend any permit issued under this Bylaw, at no charge to the applicant, if he deems it expedient. An application to renew or extend any permit issued under this Bylaw shall be submitted a minimum of five (5) business days prior to the Permit expiry date and such application shall include any modified documentation from the permit issued or any information and material deemed necessary by the Operations Manager.

4.5 Appeal

4.5.1 Any applicant who has been refused a Road Occupancy Permit, has had a Road Occupancy Permit revoked, is denied an extension or renewal, or who objects to conditions imposed may appeal to Council and the decision of Council shall be considered final and binding on the applicant.

4.5.2 In review of the Appeal, Council shall make their decision with regard to the intent and purpose of this Bylaw with special consideration for 4.3.5 above.

4.6 Restoration

4.6.1 The Permit Holder shall be responsible for:

- a) The temporary and permanent restoration of a Road Cut subject to the provisions of this Bylaw;
- b) The maintenance of temporary restorations as provided for in this Bylaw on every Road Cut which on or after November 15th in any year is not in a condition to be permanently reinstated and is carried over for permanent restoration prior to May 31st of the following year.

4.6.2 A Road shall be restored with:

- a) Materials and specifications meeting Municipal standards with;
- b) The removal of all debris, refuse and excess excavated material from the work area leaving it in a neat, safe and clean condition free from nuisance and similar to or better than the work area condition prior to the work to the satisfaction of the Operations Manager; and
- c) Accompanying geotechnical information/verification where required by the Operations Manager.

4.6.3 Temporary surfacing of a road with asphalt, concrete, or surface treatment shall meet the following requirements:

- a) The Road Cut shall be temporarily restored immediately after backfilling is completed;
- b) The restoration shall be to the same level as the adjacent surface;
- c) Prior to the road being opened to traffic, the Road Cut shall be surfaced with hot mix asphalt, concrete, or if hot mix asphalt is unavailable, with high performance emulsified cold mix asphaltic all hand tamped or rolled to a smooth fill condition;
- d) Leave the work area in a neat, safe and clean condition; and

4.6.4 All restoration activity shall be to the satisfaction of the Operations Manager.

4.7 Completion of Work

- 4.7.1 Upon completion of the temporary surfacing or permanent restoration of the Road Cut, all excess material shall be removed from the area of the Road Cut and the area shall be left in a safe, neat and clean condition, similar to the condition of the road area adjacent to the Road Cut, all to the satisfaction of the Operations Manager.

5.0 Administration and Enforcement

5.1 General

- 5.1.1 Any administrative forms required under this Bylaw may be prescribed from time to time by the Operations Manager.
- 5.1.2 The Operations Manager is authorized to negotiate and enter into agreements with respect to work as required to ensure compliance with this Bylaw and to generally protect the Municipality's interests.
- 5.1.3 This Bylaw may be enforced by the Operations Manager, an Officer, or a police officer.

5.2 Inspections

- 5.2.1 An Officer may enter on land at any time and in accordance with the conditions set out in Sections 435 and 437 of the *Municipal Act*, 2001 for the purpose of carrying out an inspection to determine whether or not the following are complied with:
- a) An Order or other requirement made under this Bylaw;
 - b) A permit issued under this Bylaw;
 - c) A term or condition of a permit issued under this Bylaw; or
 - d) An Order made under Section 431 of the *Municipal Act*, 2001.
- 5.2.2 An Officer, for the purposes of the inspection under Section 5.2.1 and in accordance with the conditions set out in Section 436 of the *Municipal Act*, 2001, may:
- a) Require the production for inspection of documents or things relevant to the inspection;
 - b) Inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - c) Require information in writing or otherwise as required by an Officer from any person concerning a matter related to the inspection;
 - d) 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 the inspection.

5.2.3 An Officer may undertake an inspection pursuant to an Order issued by a Provincial judge or justice of the peace under Section 438 of the *Municipal Act*, 2001, in accordance with the conditions set out in that Section, where they have been prevented or likely to be prevented from carrying out an inspection under Section 5.2.1.

5.3 Order

5.3.1 If an Officer is satisfied that a contravention of this Bylaw has occurred, they may make an Order requiring the person who contravened the Bylaw or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity.

5.3.2 An Order under Section 5.3.1 shall set out:

- a) Reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and
- b) The date or dates by which there must be compliance with the Order, which may be of immediate effect should the Officer determine that the circumstances warrant.

5.3.3 If an Officer is satisfied that a contravention of this Bylaw has occurred, they may make an Order requiring the person who has contravened this Bylaw or caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention.

5.3.4 An Order under Sections 5.3.1 or 5.3.3 shall set out:

- a) Reasonable particulars of the contravention adequate to identify the contravention and the location of the land;
- b) The work to be completed which may include but is not limited to requiring that prior to performing any work, all necessary permits or other approvals be applied for and obtained;
- c) The date or dates by which the work must be completed; and
- d) Notice that if the Order is not complied with, then the work may be done at the expense of the person ordered to do the work.

5.3.5 An Order under Sections 5.3.1 or 5.3.3 may be given verbally and shall be confirmed in writing within two (2) business days and may be served:

- a) Personally on the person to whom it is directed;
- b) To an email address provided on a permit application form;
- c) By registered mail to the last known address of a person who committed the contravention, and in the case of the permit holder, the address of the permit holder on the permit application form;
- d) In a conspicuous place on the road where the contravention occurred; or
- e) In a conspicuous place on or near the property affected by the work where the contravention occurred.

- 5.3.6 Where an Order under this Bylaw is served personally or by email by the Municipality, it shall be deemed to have been served on the date of delivery to the person or persons named.
- 5.3.7 Where an Order issued under this Bylaw is sent by registered mail, it shall be sent to the address of the Permit Holder noted on the application, or last known address of the person that committed the contravention, and shall be deemed to have been served on the next business day following the date of mailing.
- 5.3.8 If there is no Road Occupancy Permit Application with respect to an Order issued under this Bylaw, the Officer may issue the Order to the person the Officer determines to be responsible for the work and the Order may be served in accordance with Section 5.3.5.
- 5.3.9 Where a time frame is set out in the Order or other document for carrying out the action, an Officer may extend the time for compliance beyond the established time frame provided such extension is required and is acceptable to the Officer.

5.4 Offences

- 5.4.1 Any person who contravenes any provision of this Bylaw, the conditions of a Permit, or an Order issued under this Bylaw is guilty of an offence.
- 5.4.2 If a condition of a Permit issued under this Bylaw has to been complied with, the contravention of the Order shall be deemed a continuing offence for each day or part of day that the Order is not complied with.
- 5.4.3 Every person who contravenes a provision of this By-law is guilty of an offence and upon conviction is liable to a fine as provided for in the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended.

5.5 Severability

If any court of competent jurisdiction finds that any of the provisions of this Bylaw are ultra vires the jurisdiction of Council, or are invalid for any reason, such provision shall be deemed to be severable and shall not invalidate any of the other provisions of the Bylaw, which shall remain in full force and effect.

5.6 Short Title

This Bylaw may be referenced as the "Road Occupancy Bylaw."

5.7 Repeal

- 5.7.1 That any former Bylaws pertaining to this matter are hereby repealed.

Enacted and Passed in Council this 15th day of November, 2023

Tony Fitzgerald, Mayor

Suzanne Huschilt, Municipal Clerk