WHEREAS section 11(3)1. of the Municipal Act, 2001, S.O. 2001, c. 25, as amended (the "Municipal Act, 2001"), authorizes a municipality to pass by-laws respecting highways;

AND WHEREAS section 27(1) of the Municipal Act, 2001 states that a municipality may pass by-laws in respect of a highway only if it has jurisdiction over the highway;

AND WHEREAS section 35 of the Municipal Act, 2001 states that a municipality may pass bylaws removing or restricting the common law right of passage by the public over a highway and the common law right of access to the highway by an owner of land abutting a highway;

AND WHEREAS section 128 of the Municipal Act, 2001 provides that a local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council arc or could become public nuisances;

AND WHEREAS section 425 of the Municipal Act, 2001 provides that a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality is guilty of an offence;

AND WHEREAS section 436 of the Municipal Act, 2001 provides that a municipality has the power to pass by-laws providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not a by-law of the municipality is being complied with;

THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE CITY OF WATERLOO ENACTS AS FOLLOWS:

1. DEFINITIONS
1.1. In this By-law,

(a) “Alter” means to change, modify or make different, and “Alteration” shall have a corresponding meaning;

(b) “Buffer Strip” means a 15 centimetre portion of the Boulevard that abuts the curb and located between the curb and the sidewalk; where there is no sidewalk, it means the 15 centimetre portion of the Boulevard that abuts the travelled portion of the Highway;

(c) “Boulevard” means the portion of the Highway under the jurisdiction of the City that is situated between the edge of the roadway (or shoulder, where one exists) and the adjoining property line;

(d) “City” means The Corporation of the City of Waterloo;

(e) “City of Waterloo Standards” may, at the discretion of the Director, include the following items as amended from time to time:

1. Relevant by-laws of the City;

2. Relevant regulations, legislation and statutes;

3. The City of Waterloo Development Manual and all corresponding appendices;

4. The Regional Municipality of Waterloo’s “Region of Waterloo and Area Municipal Design Guidelines and Supplemental Specifications for Municipal Services” (“DGSSMS”);

5. The Regional Municipality of Waterloo’s “Standard Construction Contract Specifications” (“SCCS”) as amended; and


(f) “Damage” means harm or injury to the Highway, or any part thereof, including without limitation, harm, injury, disturbance, cracking, gouging or displacement of or to the pavement, curb, Boulevard or sidewalk, other than reasonable wear and tear;

(g) “Director” means the Director of Transportation Services for the City, or their designate;

(h) “Emergency Medical Services” means the Region of Waterloo Paramedic Services;
(i) “Fees and Charges By-law” means a by-law passed by Council from time to time pursuant to section 391 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended from time to time or any successor thereof, establishing the fees and charges for services or activities provided by or on behalf of the Township;

(j) “Highway means a “highway” as defined by the Highway Traffic Act, R.S.O. 1990, c. H. 9, as amended from time to time or any successor thereof, and for greater certainty, a Highway includes boulevards and sidewalks;

(k) “Herbaceous Plant” means a plant that has no woody stem above ground and that has leaves and stems that die at the end of the growing season;

(l) “Municipal Law Enforcement Officer” means an individual appointed by the City from time to time to enforce City by-laws;

(m) “Inorganic Ground Cover” includes but is not limited to gravel, stone, concrete, asphalt, paving stones and interlocking brick;

(n) “Interfere” means to Alter, block, close, damage, hinder, obstruct or occupy, and “Interfered” and “Interference” shall have corresponding meanings;

(o) “Maintain” means the performance of such activities as cutting grass or snow removal;

(p) “Order” means an order under either Sections 8 or 9 of this By-law;

(q) “Permit” means a permit under Section 4 of this By-law, and may otherwise be known as a “Work Permit”;

(r) “Permit Holder” means a person to whom a Permit is issued;

(s) “Person” includes an individual, sole proprietor or corporation, and without limitation, includes a Person providing utility services;

(t) “Police Officer” means a person appointed as a police officer under the Police Services Act, R.S.O. 1990, c. P. 15, as amended from time to time or any successor thereof; and

(u) “Region” means the Regional Municipality of Waterloo.

[Section 1.1, deleted and replaced by By-law 2021-032, April 19, 2021]

2. GENERAL
2.1. No Person shall Interfere with a Highway, by any means whatsoever, without a Permit.

2.2. No Person shall fail to comply with a term or condition of a Permit.

2.3. No Person shall cause or permit anything to remain on a Highway that is dangerous, that is likely to injure a pedestrian or that is likely to cause damage to vehicular traffic.

[Section 2.3, deleted and replaced by By-law 2021-032, April 19, 2021]

2.4. No Person shall permit anything to remain on a Highway that is likely to impair a Person’s ability to see pedestrians or vehicular traffic, including anything that is located between two residential driveways, except as otherwise permitted by law.

[Section 2.4, deleted and replaced by By-law 2021-032, April 19, 2021]

2.5. No Person shall construct a Buffer Strip with any material other than Inorganic Ground Cover.

2.6. No Person shall locate any sports equipment on a Boulevard, including but not limited to basketball nets, hockey nets or skateboarding equipment.

3. EXEMPTIONS

3.1. This By-law docs not apply to:

(a) employees or agents of Emergency Medical Services, Waterloo Fire Rescue and the Waterloo Regional Police Services, who are acting within the scope of their duties; or

(b) employees or agents of the City, who are acting within the scope of their duties.

4. PERMIT PROCESS

4.1 A Person may apply to the Director for a Permit authorizing an activity or event that would Interfere with a Highway or Alter a Boulevard. A person applying for a Permit shall submit the following to the director:

(a) a complete Application in the form prescribed by the Director;

(b) the applicable fee, in accordance with the Fees and Charges By-law; and

(c) any other documents that the Director considers appropriate for reviewing the application.
4.2 After considering the merits of a Permit application, the Director may:

(a) grant the Permit, subject to such terms or conditions as the Director considers appropriate; or

(b) deny the Permit application.

4.3 The Director may prescribe such forms as may be required from time to time, in order to implement the provisions of this By-law.

4.4 The Director may impose such terms and conditions on a Permit as he or she considers appropriate, including without limitation:

(a) a requirement that the Permit Holder shall provide notice of the activity or event authorized by the Permit to every owner of land that is adjacent to the subject land, at least seven (7) calendar days prior to the commencement of the authorized activity or event.

(b) a requirement that the Permit Holder provide proof of insurance satisfactory to the City, and indemnify the City in relation to the authorized activity or event; and

(c) a requirement that the Permit Holder enter into an Agreement satisfactory to the City, containing all terms and conditions of the Permit as deemed appropriate by the Director.

4.5 Without limiting the generality of section 4.2 above, the Director may, in his or her sole discretion, deny a Permit application for any activity or event that would interfere with the travelled portion of a Highway or that would alter a Boulevard between December 1st and March 31st.

4.6 The Permit Holder shall keep the Permit at the site of the authorized activity or event at all times and shall produce the Permit forthwith upon request by the Director, Police Officer or Municipal Law Enforcement Officer.

4.7 A Permit may be immediately revoked by the Director if an applicant, or any Person acting on the applicant’s behalf:

(a) provided false or misleading information on the Permit application;

(b) violates any term or condition of the Permit; or

(c) violates any provisions of this By-law, or any other applicable law or policy.
4.8 In addition to any other condition of a Permit, every Permit Holder shall maintain or repair the Right-of-Way under the terms and conditions of the Permit until accepted as satisfactory by the Director and shall restore the Right-of-Way to City of Waterloo Standards.

4.9 The Permit Holder shall deposit a Security with the City of Waterloo in an amount acceptable to the Director and in a form acceptable to the City’s Chief Financial Officer, to cover the faithful performance of the terms of the Permit and of any agreement required in relation thereto, including maintenance, repair and restoration required to be carried out by the Permit Holder and every other obligation arising under and imposed upon the Permit Holder pursuant to this By-law. The Director may require that such Security be provided prior to the issuance of any Permit.

[Section 4, deleted and replaced by By-law 2021-032, April 19, 2021]

5. BOULEVARD

5.1. No Person shall Alter a Boulevard, or cause or permit the Alteration of a Boulevard, without a Permit.

5.2. Where the City, the Region or utility company, or agents and contractors thereof, Alter a Boulevard, the City, the Region or utility company shall restore the Boulevard to its original condition prior to Alteration.

5.3. Any Alteration of the Boulevard shall be limited to sod or grass seed, unless otherwise permitted by the Director.

[Section 5.3, deleted and replaced by By-law 2021-032, April 19, 2021]

5.4. No Person shall be permitted to Alter a Boulevard that is Maintained by the City.

[Section 5.4, deleted and replaced by By-law 2021-032, April 19, 2021]

5.5 Notwithstanding section 5.1 above, a Person may Alter a Boulevard, or cause the Alteration thereof, without a Permit, provided that the portion of the Boulevard that is Altered abuts lands owned by the Person and that any Alteration complies with the following:

(a) a Person may plant Herbaceous Plants on the portion of a Boulevard that is immediately adjacent to lands which are owned by the Person, provided that:

i. the Herbaceous Plants do not exceed a height of 45 centimetres (18 inches); and
ii. the Herbaceous Plants are of a species approved by the Director;

(b) no Person shall located Herbaceous Plants within a Buffer Strip;

(c) no Person shall place Inorganic Ground Cover consisting of stone or gravel that exceeds 19 millimetres (3/4 inches) in diameter within the Buffer Strip or Boulevard;

(d) no Person shall fail to ensure that any Inorganic Ground Cover located within the Buffer Strip or Boulevard is confined to that area and does not overflow onto the travelled portion of the Highway; and

(e) no Person shall install an irrigation system in the Boulevard without written permission from the City.

[Section 5.5, deleted and replaced by By-law 2021-032, April 19, 2021]

5.6 No Person shall permit grass or weeds on the portion of a Boulevard that is immediately adjacent to lands which are owned by the Person to exceed a height of 45 centimetres (18 inches).

[Section 5.6, added by By-law 2021-032, April 19, 2021]

6. WORK SITE RESTORATION

6.1. Where a Permit authorizing the Interference or Alteration has been revoked, the Person who caused or permitted the Interference or Alteration shall forthwith restore the lands to the satisfaction of the Director.

[Section 6.1, deleted and replaced by By-law 2021-032, April 19, 2021]

6.2 In addition to any other condition of a Permit, when work ceases on each day, the Permit Holder shall:

(a) bring all excavations, cuts or trenches in the City road to grade in accordance with City of Waterloo Standards, unless permission is first obtained from the Director, in writing, to do otherwise;

(b) bring all driveways to grade so that the driveways provide safe and convenient passage, unless the Permit Holder has made reasonable alternative arrangements to the satisfaction of the Director, in writing, in consultation with the owner of the property serviced by the driveway; and

(c) leave the work zone in a safe and clean condition.
6.3 In addition to any other condition of a Permit, as soon as is practical upon completing the work, the Permit Holder shall:

(a) restore all infrastructure in, on, over, under, across or along the City road in accordance with City of Waterloo Standards, unless permission is first obtained from the Director, in writing, to do otherwise; and

(b) remove all debris, refuse and excess excavated material from the work zone leaving it in a neat, clean and safe condition free from nuisance and similar to or better than the work zone condition prior to the work.

[Sections 6.2 and 6.3, added by By-law 2021-032, April 19, 2021]

7. MAINTENANCE AND WARRANTY

7.1 The Permit Holder shall maintain any infrastructure that has been disturbed and restored by the Permit Holder in accordance with City of Waterloo Standards for the duration of the warranty period.

7.2 The warranty period referred to in section 7.1 above shall be defined in accordance with the terms and conditions of the Permit.

7.3 The Permit Holder shall maintain their utility structure in, on, over, under across or along a City road in a safe and clean condition, including maintaining their appurtenances on a City road to meet the tolerances in City of Waterloo Standards.

[Section 7, deleted and replaced by By-law 2021-032, April 19, 2021]

8. WORK ORDER

8.1. Where the Director or a Municipal Law Enforcement Officer has reasonable grounds to believe that a contravention of this By-law has occurred, the Director or the Municipal Law Enforcement Officer may make an Order requiring the Person who contravened this By-law, or who 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.

8.2. An Order under section 8.1 above 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 work to be done and the date by which the work must be done.
8.3. An Order under section 8.1 above may require work to be done even though the facts which constitute the contravention of this By-law were present before this By-law came into force.

8.4. Any Person who fails to comply with an Order under section 8.1 above is guilty of an offence.

[Section 8.4, deleted and replaced by By-law 2021-032, April 19, 2021]

9. ORDER TO DISCONTINUE ACTIVITY

9.1. Where the Director or a Municipal Law Enforcement Officer has reasonable grounds to believe that a contravention of this By-law has occurred, the Director or the Municipal Law Enforcement Officer may make an Order requiring the Person who contravened this By-law, or who permitted or caused the contravention, or the owner or occupier of the land on which the contravention occurred, to discontinue the contravening activity.

9.2. An Order under section 9.1 above 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 by which there must be compliance with the Order.

9.3. Any Person who fails to comply with an Order under section 9.1 above is guilty of an offence.

[Section 9.3, deleted and replaced by By-law 2021-032, April 19, 2021]

10. REMEDIAL ACTION

10.1. If a Person is ordered to do work under section 8.1 of this By-law and that Person fails to comply with that Order, the City may take steps to remediate the contravention at the expense of the Person who was directed or required to do the work.

10.2. The City may recover the costs of doing any remedial work from the Person directed or required to do the work by action or by adding the costs to the tax roll of that Person and collecting them in the same manner as municipal property taxes.

10.3. The costs outlined in section 10.2 above shall include interest calculated at a rate of fifteen percent (15%) per annum, calculated for the period commencing on the
first day the City incurs the costs and ending on the day the costs, including the interest, are paid in full or added to the tax roll.

11. PENALTIES AND OFFENCE

11.1. Every Person who contravenes any of the provisions of this By-law is guilty of an offence and, pursuant to section 429 of the Municipal Act, 2001, all contraventions of this By-Law are designated as continuing offences.

11.2. Any Person, excluding a corporation, who is convicted of an offence, is liable to a minimum fine of Five Hundred Dollars ($500.00) and a maximum fine of Twenty-Five Thousand Dollars ($25,000.00) for the first offence and a maximum fine of One Hundred Thousand Dollars ($100,000.00) for a subsequent offence.

[Section 11.2, deleted and replaced by By-law 2021-032, April 19, 2021]

11.3. Every corporation which is convicted of an offence is liable to a minimum fine of One Thousand Dollars ($1,000.00) and a maximum fine of One Hundred Thousand Dollars ($100,000.00) for the first offence and Two Hundred Thousand Dollars ($200,000.00) for a subsequent offence.

[Section 11.3, deleted and replaced by By-law 2021-032, April 19, 2021]

11.4. In addition to the fine amount set out in sections 11.2 and 11.3 above, for each day or part of a day that an offence continues, the minimum fine shall be One Thousand Dollars ($1,000.00) and the maximum fine shall be Twenty-Five Thousand Dollars ($25,000.00). The total of all daily fines for the offence is not limited to Two Hundred Thousand Dollars ($200,000.00).

[Section 11.4, deleted and replaced by By-law 2021-032, April 19, 2021]

12. SEVERABILITY

12.1. If a court or tribunal of competent jurisdiction should declare any section or part of this By-law to be invalid, such section or part shall not be construed as having persuaded or influenced Council to pass the remainder of the By-law and it is hereby declared that the remainder of the By-law shall be valid and remain in full force and effect.

13. REPEAL/TRANSITION

13.1. Except as provided by section 13.2 below, By-law No. 09-111 and By-law No. 04-094, as amended, are repealed on the date this By-law comes into force and effect.
13.2. Notwithstanding section 13.1, By-law No. 09-111 and By-law No. 04-094, as amended, are deemed to continue in force and effect with respect to any and all orders, appeals or prosecutions issued, filed or commenced under those by-laws, including those issued, filed or commenced subsequent to this By-law coming into force and effect, and any assessment, rate, charge, tax, fee, liability or penalty outstanding under By-law No. 09-111 and By-law No. 04-094 may be collected as if such by-laws had not been repealed.

13.3. Where the provisions of any other by-laws are inconsistent with the provisions of this By-law, the provisions of this By-law shall prevail.

14. FEES AND CHARGES

14.1. Council may impose fees and charges to recover its costs in relation to the administration and enforcement of this By-law through the Fees and Charges By-law.

15. SHORT TITLE

15.1. This By-law may be cited as the “Highway Occupancy By-law”.

[Section 15.1, deleted and replaced by By-law 2021-032, April 19, 2021]

16. COMING INTO FORCE

16.1. This By-law shall come into force and effect on the final passing of this By-law.

ENACTED this 26th day of May, 2014.

*Original signed by Mourell*

Acting Mayor

*Original signed by Olga Smith*

O. Smith, City Clerk