



THE CORPORATION OF THE CITY OF WATERLOO

BY-LAW NO. 2014 – 054

BEING A BY-LAW TO REGULATE WORK ON HIGHWAYS AND BOULEVARDS

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 by-laws 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 are 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 a 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 not used, or intended to be used, for vehicle travel by the general public, and is situated between the travelled portion of the Highway and the adjoining property line;
- (d) “City” means The Corporation of the City of Waterloo;
- (e) “Damage” means harm or injury to the Highway, 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;
- (f) “Director” means the Director of Transportation Services for the City, or their designate;
- (g) “Highway” means a “highway” as defined by the *Highway Traffic Act*, R.S.O. 1990, c. H. 8, as amended, and for greater certainty, a Highway includes Boulevards and sidewalks;
- (h) “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;
- (i) “Municipal Law Enforcement Officer” an individual appointed by the City pursuant to section 15 of the *Police Services Act*, R.S.O. 1990, c. P. 15, as amended;
- (j) “Fees and Charges By-law” means a by-law passed by Council pursuant to section 391 of the *Municipal Act, 2001* establishing the fees and charges for services or activities provided by or on behalf of the Township, as amended and replaced from time to time;
- (k) “Inorganic Ground Cover” includes but is not limited to gravel, stone, concrete, asphalt, paving stones and interlocking brick;
- (l) “Interfere” means to Alter, block, close, Damage, hinder, obstruct or occupy, and “Interfered” and “Interference” shall have corresponding meanings;
- (m) “Maintain” means the performance of such activities as cutting grass or snow removal;
- (n) “Order” means an order under either Parts 8 or 9 of this By-law;

- (o) “Permit” means a permit under Part 4 of this By-law, and may otherwise be known as a “Work Permit”;
- (p) “Permit Holder” means a person to whom a Permit is issued;
- (q) “Person” means an individual, owner, sole proprietorship, partnership, unincorporated association or corporation;
- (r) “Police Officer” means a person appointed as a police officer under the *Police Services Act*, R.S.O. 1990, c. P. 15, as amended; and,
- (s) “Region” means the Regional Municipality of Waterloo.

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 permit anything to remain on a Highway that is dangerous, that may injure a pedestrian or that may cause damage to vehicular traffic.
- 2.4. No Person shall permit anything to remain on a Highway that may impair a Person’s ability to see pedestrians or vehicular traffic, including anything that may be located between two residential driveways, subject to other applicable laws.
- 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 does 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. 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. 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 between December 1st and March 31st.
- 4.4. Notice of the activity or event authorized by the Permit shall be sent to every owner of land that is adjacent to the subject land, at least seven (7) days prior to the commencement of the authorized activity or event.
- 4.5. The Permit Holder shall keep the Permit at the site of the authorized activity or event at all times and shall produce the Permit upon request by the Director, Police Officer or Municipal Law Enforcement Officer.
- 4.6. 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.

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 include sod or grass seed, unless otherwise permitted by the Director.
- 5.4. A Person shall not be permitted to Alter a Boulevard adjacent to their property that is Maintained by the City.
- 5.5. In addition to the other requirements of this By-law, a Person may Alter a Boulevard subject to the following:
- (a) no Person shall permit grass or weeds on the Boulevard to exceed a height of 45 centimetres (18 inches);
 - (b) a Person may plant Herbaceous Plants on a Boulevard, provided:
 - 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;
 - (c) no Person shall locate Herbaceous Plants within a Buffer Strip;
 - (d) 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;
 - (e) every Person shall 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,
 - (f) no Person shall install an irrigation system in the Boulevard without written permission from the City.

6. WORK SITE RESTORATION

- 6.1. Where land has been Interfered with contrary to this By-law or where a Permit authorizing the Interference has been revoked, the Person who caused or permit the Interference shall restore the land to the satisfaction of the Director.

7. ENFORCEMENT

- 7.1. The Director, a Police Officer or a Municipal Law Enforcement Officer may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
- (a) this By-law;
 - (b) an Order issued under this By-law;
 - (c) a condition of a Permit issued under this By-law; or,
 - (d) an order made under section 431 of the *Municipal Act, 2001*.
- 7.2. 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. 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 contravenes an Order under section 8.1 above is guilty of an offence.

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 contravenes an Order under section 9.1 above is guilty of an offence.

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. Every Person, excluding a corporation, who is convicted of an offence, is liable to a minimum fine of Two Hundred and Fifty Dollars (\$250.00) and a maximum fine of Twenty-Five Thousand Dollars (\$25,000.00) for the first offence and a maximum fine of Fifty Thousand Dollars (\$50,000.00) for a subsequent offence.

11.3. Every corporation which is convicted of an offence is liable to a minimum fine of Five Hundred Dollars (\$500) and a maximum fine of Fifty Thousand Dollars (\$50,000.00) for the first offence and One Hundred Thousand Dollars (\$100,000.00) for a subsequent offence.

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 Four Hundred Dollars (\$400.00) and the maximum fine shall be Ten Thousand Dollars (\$10,000.00). The total of all daily fines for the offence is not limited to One Hundred Thousand Dollars (\$100,000.00).

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 “Road Occupancy By-law”.

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 26 day of May, 2014.

Approval	Date	Print Name	Initials		Original signed by Melissa Durrell
DS					B. Halloran, Mayor
Legal					Original signed by Olga Smith
Finance					O. Smith, City Clerk

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