



## CORPORATION OF THE TOWN OF NEWMARKET

### BY-LAW NUMBER 2015-16

A BY-LAW TO REGULATE THE TEMPORARY CLOSURE OR OCCUPANCY OF HIGHWAYS UNDER THE JURISDICTION OF THE MUNICIPALITY.

**AND WHEREAS** Section 23.1 of the *Municipal Act, 2001* as amended (the "**Act**") provides that a municipality may delegate its powers and duties under the *Act* subject to such conditions and limits as the council of the municipality consider appropriate;

**AND WHEREAS** Section 35 of the *Act* provides that a municipality may by by-law remove or restrict the right of passage by the public over a highway and access to the highway by an owner of land abutting the highway;

**AND WHEREAS** Section 118 of the *Act*, provides that a municipality may by by-law regulate the excavating, construction and use of trenches and may prohibit same unless a Permit is obtained from the municipality which may also impose conditions with respect to the Permit, including requiring the submission of plans;

**NOW THEREFORE** the Council of the Corporation of the Town of Newmarket enacts as follows;

#### 1. DEFINITIONS

1.1 In this by-law:

- (a) "**Applicant**" means any person making application for a Road Occupancy Permit;
- (b) "**Date of Final Acceptance**" means the date that is 24 months after the Date of Reinstatement;
- (c) "**Date of Reinstatement**" means the day, following the period of occupancy or closure, that the Highway has been repaired or restored to the satisfaction of the Director;
- (d) "**Director**" means the Director of Public Works Services or designate;
- (e) "**Emergency**" means a situation that poses a threat to public health or safety and includes a disruption of Utility Service;
- (f) "**Highway**" has the meaning ascribed thereto in Section 26 of the *Act* and includes a common and public highway any bridge, trestle, viaduct, roadway, adjacent shoulder, sidewalk, pathway, boulevard, unimproved land or other structure forming part of the highway, and includes a portion of a highway and all land between the lateral property lines thereof;
- (g) "**Highway Repairs**" has the meaning ascribed thereto in Section 7.2 (k);
- (h) "**Newmarket Standard**" means The Town of Newmarket Standards, as amended from time to time and are intended as Guidelines for land development and Town projects to aid in providing uniform designs throughout the municipality and are to be used in conjunction with Ontario Provincial Standard Drawings ("**O.P.S.D.**");
- (i) "**Permit**" means an authorization granted in writing by the Director;
- (j) "**Permit Holder**" means the Applicant named in a Permit;

- (k) **"Person"** means a natural individual, and their heirs, executors, administrators or other legal representatives, a corporation, partnership or other form of business association or a receiver or mortgagee in possession and includes a Public Utility;
- (l) **"Public Utility"** means a municipality, a municipal board or commission, or a corporation that provides Utility Service under the authority of any statute, charter, by-law or franchise;
- (m) **"Region"** means the Regional Municipality of York;
- (n) **"Regular Fine"** means a fine levied pursuant to Section 13.5;
- (o) **"Security"** means, one or more of the following: cash, certified cheque, or letter of credit (in the form approved by the Town Solicitor) provided to the Town to secure the performance by the Permit Holder of all its obligations under a Permit and this by-law;
- (p) **"Special Fine"** has the meaning ascribed thereto in Section 13.6 (b);
- (q) **"Town"** means the municipal Corporation of the Town of Newmarket;
- (r) **"Traffic Management Plan"** means a document outlining the particulars of a proposed Highway occupancy or closure that is submitted to the Town for review by the Applicant. The Traffic Management Plan shall contain such information as may be required by the Director respecting the Applicant's proposed occupancy or closure including but not limited to:
  - i) description of the nature of the work or activity that necessitates Highway occupancy/closure;
  - ii) proposed start and completion times of Highway occupancy/closure;
  - iii) proposed location of occupancy/closure;
  - iv) requirement to occupy or close a Highway during peak hours, if any;
  - v) lane use requirements;
  - vi) extent of public notification proposed to be undertaken;
  - vii) identification of parking meters affected by occupancy/closure;
  - viii) identification of temporary signage requirements;
  - ix) identification of any public transit routes and bus stops affected by the Highway occupancy/closure; and
  - x) proposed traffic re-routing and detour requirements where necessary.
- (s) **"Utility Service"** means the production, transmission or supply to the public by a Public Utility of necessities or conveniences and includes, but is not limited to, the production, transmission and supply of gas, oil, water, electricity, sewage and storm water services, telephone service, cable television, and any other telecommunications service;
- (t) **"Warranty Period"** means the 24 month period commencing the Date of Reinstatement and terminating on the Date of Final Acceptance during which period the Permit Holder guarantees the satisfactory performance of the Highway Repairs;

## 2. EXEMPTIONS

- 2.1 Neither the Town, the Region nor a Public Utility are required to have a Permit before occupying or closing a Highway in order to undertake the following work:
  - (a) raising or lowering utility service boxes;
  - (b) performing work upon a Highway in a new subdivision prior to the Town having assumed the Highway for public use by passing an assumption by-law; and
  - (c) performing work in manholes, valve chambers, and transformer vaults.

- 2.2 Notwithstanding that a Permit is not required under subsection 2.1, in performing work contemplated in Section 2.1, the Town, the Region and every Public Utility shall comply with the requirements of the Ministry of Transportation's Traffic Control Manual for Roadway Work Operations as amended or replaced from time to time.
- 2.3 In the case of an Emergency, the Town, the Region or a Public Utility may, without a Permit, close or occupy a Highway to perform work, provided that:
- (a) telephone notice shall immediately be given to the Director advising of:
    - i) the nature of the Emergency;
    - ii) the name of the contractor(s) performing the work;
    - iii) the nature of the work;
    - iv) the location of the work;
    - v) the estimated duration of the work;
  - and;
  - (b) the Town, the Region or the Public Utility shall apply for a Permit on the next business day.
- 2.4 The Town, the Region or the Public Utility shall provide any information that the Director may consider necessary to confirm the Emergency nature of the work failing which the work shall be deemed to have occurred in contravention of this by-law.
- 2.5 This by-law shall not apply to activity undertaken by any police force, fire department, paramedic, or ambulance service in the course of their regular duties.
- 2.6 This by-law shall not apply to Highway closures for social, recreational or community purposes.

### **3. PROHIBITION**

- 3.1 No Person shall close obstruct, occupy, encumber, injure or foul any Highway;
- (a) unless exempted by Section 2.1, 2.5 and 2.6 of this by-law; or
  - (b) except in accordance with the conditions set out in a Permit.
- 3.2 No Person shall install or cause to be installed any driveway, driveway widening, driveway culvert or driveway curb cut on a Highway without first obtaining a Permit.
- 3.3 No Person shall build or cause to be built or maintained any fence, planting, or structure upon a Highway without first obtaining a Permit.

### **4. PERMITS**

- 4.1 Unless otherwise exempted by this by-law, every Person who wishes to close, obstruct, occupy, encumber, injure or foul a Highway shall apply for a Permit.
- 4.2 The Town hereby delegates to the Director, the power to issue a Permit under this by-law and to impose conditions to such Permits.

### **5. APPLICATION PROCESS**

- 5.1 Every Person who wishes to close, obstruct, occupy, encumber, injure or foul any Highway shall first complete and submit an application for a Permit in the form approved by the Director.
- 5.2 An application for a Permit shall:
- (a) be made in the name of the Applicant, and not in the name of any agent or contractor acting on behalf of the Applicant;
  - (b) be submitted on such form(s) as the Director may require;

- (c) be submitted at least five (5) working days in advance of any proposed activity that requires a Permit;
- (d) be accompanied by the applicable non refundable fee prescribed in the Town of Newmarket's Fees and Charges by-law;
- (e) state the purpose for which the Permit is required;
- (f) contain a description of the proposed activity;
- (g) include a Traffic Management Plan if required by the Director; and
- (h) include such other documentation and information as the Director may require.

5.3 The Director may require separate applications for works and activity that the Director, in his/her discretion, considers to be discrete.

5.4 If an Applicant does not provide all the documentation required by the Director within the timeframe as may be specified by the Director, or if the application is Sixty (60) days old and the Applicant has not taken any action to provide the Director with all of the required documentation in the last Thirty (30) days, the Applicant shall be deemed to have withdrawn the Applicant's application and shall not be entitled to a refund of the Applicant's application fee and the Director may close the application file.

## **6. ISSUANCE OF A PERMIT**

6.1 The Director shall not issue a Permit where:

- (a) the application is incomplete;
- (b) the Permit fee has not been paid;
- (c) proof that the Applicant has obtained the required insurance has not been provided to the Director in such form as the Town Clerk may require;
- (d) any required Security has not been provided;
- (e) any agent has not provided proof that it is the duly authorized agent of the Applicant; and
- (f) a 24 hour Emergency contact telephone number has not been provided.

6.2 The Director, in his/her sole discretion, may refuse to issue a Permit where:

- (a) the Applicant or their agent or contractor have persistently violated the conditions of previously issued Permits;
- (b) the Applicant or their agent or contractor has committed a serious violation of a condition of any previously issued Permit;
- (c) the Applicant or their agent or contractor has otherwise committed a serious offence under this by-law;
- (d) the Applicant has failed to reimburse the Town's costs and expenses incurred in the administration of any previously issued Permit;
- (e) the Applicant proposes to damage a Highway which Highway was constructed, reconstructed or resurfaced within the previous three years;
- (f) and for such other reason as the Director may deem proper which reasons shall be delivered in writing to the Applicant upon request.

## 7. PERMIT CONDITIONS

7.1 The Director may issue a Permit subject to those conditions that s/he deems advisable, including but not limited to:

- (a) hours of work, occupancy and/or closure;
- (b) specifying who may perform the work/activity and specifying the manner in which the work/activity shall be performed;
- (c) specifying the quality of the work to be performed and the equipment and materials that may be used;
- (d) the requirement of notice to affected parties;
- (e) the requirement of field inspections by the Town or its agents, and payment by the Applicant of any associated fees;
- (f) the requirement of laboratory tests and engineering reports and certificates;
- (g) the provision of barricades, warning devices, signage and other measures in the interest of public health and safety;
- (h) requiring the deposit of Security with the Town sufficient to cover the faithful performance by the Permit Holder of the terms of the Permit including the cost of Highway Repairs and the cost of any maintenance or repairs that the Director may require during the Warranty Period, together with a reasonable contingency not to exceed 20% of the estimate cost to complete the Highway Repairs.

7.2 It shall be a condition of every Permit that the Permit Holder and its officers, directors, employees, contractors and agents shall:

- (a) comply with all conditions of the Permit specified thereon and the provisions of this by-law;
- (b) provide and maintain until the date of Final Acceptance: Comprehensive/Commercial General Liability insurance acceptable to the Town and subject to limits of not less than five million dollars (\$5,000,000.00) inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof. Such Comprehensive / Commercial General Liability insurance policy shall be in the name of the Permit Holder and shall name the Town as additional insured. The insurance policy shall contain endorsements to provide for severability of interests; waiver of subrogation against the Town, its elected officials, employees and agents; and Thirty (30) days written notice to the Town of cancellation or material change;
- (c) be liable for all costs, losses and expenses incurred by the Town, which costs and expenses shall be payable by the Permit Holder forthwith upon demand, failing which the Town may, without limit to its legal recourse, draw upon any Security and/or add any outstanding amount to the tax roll for any real property of the Permit Holder situate within the municipality which amount may be collected in like manner as municipal taxes;
- (d) hold harmless, indemnify and defend the Town, its elected officials employees and agents, from and against any action, claim, loss, damage, cost or expense arising directly or indirectly as a result of the issuance of a Permit to the Permit Holder;
- (e) notify the Region, police, emergency medical services, the fire department, any Person operating a public transportation service or school bus service, and any Person whose access to their own property may be affected by the closure or occupancy, of the commencement and termination of the said closure or occupancy;

- (f) cause to be provided all signs barricades, traffic control devices, flag persons, and such other Persons and equipment as may be required by the Town, prior to the commencement of, and for the duration of, the closure or occupancy;
- (g) cause to be maintained at all time access to all public and private property and to keep such access free and clear of all mud, debris and other materials;
- (h) maintain and answer a telephone at all times (24 hours, seven days-a-week) during the period of occupancy/closure so that the Permit Holder may respond to an Emergency and /or be notified by the Director of any necessary repairs or remedial work;
- (i) keep the Permit available on site for inspection during the period of occupancy and closure;
- (j) in the event the permitted work or activity cannot be completed within the time set out in the Permit, to notify the Director of the additional required time and the reasons therefor, and shall request an extension of the Permit which extension may be granted at the discretion of the Director who may impose additional conditions upon the Permit;
- (k) effect all repairs and make all improvements to the Highway as may be deemed necessary by the Director to reinstate the Highway to the Newmarket Standard (the "**Highway Repairs**");
- (l) effect all repairs to real and personal property adjacent to the Highway that has been damaged or destroyed in the course of the Highway occupancy or closure as may be necessary to restore it to its pre-occupancy/closure condition;
- (m) acknowledge that where a Highway or Utility Service has been damaged by a Permit Holder, that the Town or the Public Utility shall, as the case may be, have the sole right to determine who, at the expense of the Permit Holder, may carry out any necessary repairs;
- (n) maintain and guarantee the performance of the Highway Repairs during the Warranty Period to the satisfaction of the Director and shall effect, at the Applicant's sole cost and expense, any maintenance and/or remedial work to the Highway Repairs as may be required by the Director to the satisfaction of the Director;
- (o) acknowledge that the Director may give notice to the Permit Holder, before or after the Date of Reinstatement, specifying the maintenance or remedial work that the Director requires to be performed;
- (p) acknowledge that if the Permit Holder, having received notice from the Director, has not done the work required by the Director within such time as may be specified by the Director, the Director may arrange for the work to be done by the Town or a third party, all at the Permit Holder's expense;
- (q) acknowledge that upon the Date of Final Acceptance the Town shall assume responsibility for maintaining the Highway Repairs, any further maintenance or repair works and release the Security or the remaining balance thereof to the Permit Holder.

7.3 A Permit is the property of the Town and is not transferable unless authorized by the Director and any applicable fee has been paid.

7.4 A Permit shall become void if the work or activity authorized by the Permit is not commenced within sixty (60) calendar days of the date that the Permit issued and a new Permit shall be required if the work or activity is to proceed.

## 8. COMPLIANCE

8.1 The Director may revoke a Permit at any time:

- (a) for a violation of any condition of the Permit or of any provision of this by-law;
- (b) for a violation of any provision of any other law relating to the permitted work or activity;
- (c) for the existence of any condition or the doing of any act: constituting a threat to public health and safety; is a nuisance; or endangers life or property;
- (d) where the Permit has been issued on mistaken, false or misleading information; and
- (e) where the permitted work or activity is not carried out in a diligent and workmanlike manner.

8.2 Where a Permit has been revoked, the Permit Holder shall immediately cease and desist all activities for which the Permit was issued and immediately restore the Highway to the Newmarket Standard. Such restoration shall be carried out at the Permit Holder's sole cost and expense, and if the Permit Holder should fail to carry out such restoration, the Highway may be restored to the Newmarket Standard by the Town, and the entire cost of so doing shall be paid by the Permit Holder forthwith upon demand.

8.3 The Director shall have the authority to issue an order to any Person who has closed, is occupying, obstructing, encumbering, injuring or fouling any Highway to immediately cease and desist from such activity and/or to restore the Highway to the Newmarket Standard.

## 9. EMERGENCY REPAIRS

9.1 If the Director is of the opinion that any activity taken, or purportedly taken pursuant to a Permit has created an Emergency situation the Director may protect the area and make immediate repairs or take any other steps deemed necessary to protect persons and property.

9.2 All work done by the Town pursuant to Sections (9.1) hereof shall be at the expense of the Permit Holder and shall be paid by the Permit Holder forthwith upon demand.

## 10. POWERS OF ENTRY

10.1 The Town may enter on a property at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- (a) the provisions of this by-law;
- (b) an order issued under this by-law; or
- (c) an order made under Section 431 of the *Act*.

10.2 Where an inspection is conducted by the Town, the person conducting the inspection 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 and extracts;
- (c) require information from any Person concerning a matter related to the inspection including their name, address, phone number and identification; and

- (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.

10.3 The Town may undertake an inspection pursuant to an order issued under Section 438 of the *Act*.

10.4 The Town's power of entry may be exercised by an employee, officer or agent of the Town or by a member of a police force with jurisdiction, as well by any person under his or her direction.

## **11. ORDERS AND REMEDIAL ACTION**

11.1 If a Person contravenes any of the provisions of this by-law, the Director may issue an order to the person, and to the Permit Holder to discontinue the contravening activity. The order shall set out the reasonable particulars of the contravention adequate to identify the contravention, the location of the property on which the contravention occurred, and the date by which there must be compliance with the order.

11.2 If a Person has contravened a provision of this by-law, the Director may issue a work order to the Person who contravened the by-law, and to the Permit Holder, to do work to correct the contravention. The order shall set out the reasonable particulars of the contravention adequate to identify the contravention, the location of the property on which the contravention occurred, and the date by which there must be compliance with the order. The order may also provide that if the Person or Permit Holder fails to correct the contravention, the Town may do the work to correct the contravention at the expense of the Person and the Permit Holder.

11.3 If the Director has issued an order directing or requiring that a Person or Permit Holder do a matter or thing to correct a contravention of this by-law, and the Person or Permit Holder fails to correct the contravention, the Town may do all work necessary to correct the contravention, and the Town may recover the cost of the doing of the matter or thing from the Person directed or required to do it by action or by adding the costs to the tax roll of property owned by the Person or Permit Holder located in the municipality and collecting them in the same manner as property taxes.

11.4 An order may be served by:

- (a) delivering it personally to the Permit Holder and/or the Person in contravention of the by-law;
- (b) sending it by registered mail to the last known address of the Permit Holder and/or the Person in contravention of the by-law, which service shall be deemed effective five (5) days after mailing, which deemed service may be rebutted by the Person proving on the balance of probabilities that they did not receive the order; or
- (c) posting it at the site where the contravention has occurred.

## **12. APPEALS**

12.1 An Applicant may appeal to Council:

- (a) if the Director refuses to issue a Permit, within 30 days after the refusal;
- (b) if the Director fails to make a decision on the application, within 45 days after the application is deemed to have been received by the Director; or
- (c) if the Applicant objects to a condition in the Permit, within 30 days after the issuance of the Permit.

12.2 Where an order has been served, the Permit Holder or the Person to whom the order is being served may apply for a hearing to appeal the order to Council within thirty (30) days of being served with the order.



### **13. OFFENCE**

- 13.1 Any Person who contravenes any provision of this by-law; the conditions of a Permit; or an order issued under this by-law; is guilty of an offence.
- 13.2 Any officer or director of a corporation who knowingly concurs in the contravention of any provision of this by-law; the conditions of a Permit; or an order under this by-law; is guilty of an offence.
- 13.3 If a condition of a Permit issued under this by-law has not been complied with, the contravention of the Permit shall be deemed to be a continuing offence for each day or part of a day that the Permit condition is not complied with.
- 13.4 If an order has been issued under this by-law, and the order has not been complied with, the contravention of the order shall be deemed to be a continuing offence for each day or part of a day that the order is not complied with.
- 13.5 Every Person who is guilty of an offence under this by-law shall be subject to the following penalties:
- (a) upon a first conviction, the minimum fine shall be \$350.00 and the maximum fine shall be \$100,000.00.
  - (b) upon a second or subsequent conviction for the same offence, a fine shall be a minimum of \$500.00 and the maximum fine shall be \$100,000.00.
  - (c) upon conviction for a continuing offence, the minimum fine shall be \$500.00 and the maximum fine shall \$10,000.00 for each day or part of a day that the offence continues. The total of the daily fines may exceed \$100,000.00.
  - (d) upon conviction for a Multiple Offence, for each offence included in the Multiple Offence, the minimum fine shall be \$500.00 and the maximum fine shall be \$10,000.00. The total of all fines for each included offence may exceed \$100,000.00.
- 13.6 For the purpose of this by-law, "Multiple Offences" means an offence in respect of two or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of this by-law.
- 13.7 For the purpose of this by-law, an offence is a second or subsequent offence if the act giving rise to the offence occurred after a conviction had been entered at an earlier date for the same offence.
- 13.8 In addition to any other remedy or penalty provided by law, the court in which the conviction has been entered, or any other court of competent jurisdiction may make an order:
- (a) prohibiting the continuation or repetition of the offence by any Person;
  - (b) require the Person to pay a Special Fine, in addition to a Regular Fine, which fine shall eliminate any economic gain or advantage derived by the Person as a result of contravening this by-law.

### **14. VALIDITY AND INTERPRETATION**

- 14.1 Words importing the singular number shall include the plural, and words importing the masculine gender shall include the feminine, and the converse of the foregoing also applies, unless the context of the by-law requires otherwise.
- 14.2 If a court of competent jurisdiction declares any provisions of this by-law to be invalid or to be of no force and effect, it is the intention of Council in enacting this by-law that the remainder of the by-law shall continue in force and be applied and enforced in accordance with its terms to the fullest extent possible according to law.

**15. GENERAL**

15.1 The short title of this by-law is the "Road Occupancy By-Law"

15.2 This by-law shall come into effect on the date of its enactment;

AND By-law 2009-32 be hereby repealed.

ENACTED THIS 20TH DAY OF APRIL, 2015.

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Tony Van Bynen, Mayor

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Andrew Brouwer, Town Clerk