

The Corporation of the City of Burlington

City of Burlington By-law 65-2021

A by-law to regulate the construction, road cuts and road occupancies located on City owned road allowances, or other property under the jurisdiction of the City.

File: 570.02-1009 (ES-14-21)

Whereas pursuant to Section 44(1) of the *Municipal Act, 2001*, the municipality that has jurisdiction over a highway or bridge shall keep it in a state of repair that is reasonable in the circumstances, including the character and location of the highway or bridge; and

Whereas sections 8, 9 and 11 of the *Municipal Act, 2001* authorize the City of Burlington to pass by-laws necessary or desirable for municipal purposes, and in particular, paragraphs 4, 5, 6, 8 of subsection 11(2) authorize by-laws respecting public assets of the municipality, the economic, social and environmental well-being of City, the safety and well-being of persons, the protection of persons and property; and

Whereas the City of Burlington is responsible for ensuring that:

- Persons are protected from injury;
- property is protected from damage; and
- disruption is minimized for those using the road as well as for abutting properties,

when work is carried out and equipment is installed on, in or under its roads; and

Whereas the *Municipal Act, 2001* authorizes the City of Burlington, amongst other things, to delegate its authority, to impose fees or charges on persons for services or activities provided or done by or on behalf of it, to provide for inspections and inspection orders, and to make orders to discontinue activity or to do work;

Now therefore the Council of The Corporation of the City of Burlington enacts as follows:

PART I: DEFINITIONS

1.1 For the purposes of this by-law, the following definitions shall apply:

“City” as the context requires, means “The Corporation of the City of Burlington”;

“City Standards” means those standards, requirements and specifications set out in the City’s Engineering Standards Manual as approved by the Director from time to time and all other applicable policies and by-laws of the City as may be amended from time to time;

“Council” means the Council for the City of Burlington and includes its successor;

"Director" means the Director of Engineering Services for the City of Burlington, and includes the Director's designate or successor;

"emergency work" means work on existing equipment required to reduce or eliminate a situation or an impending situation that constitutes a danger that could result in serious harm to persons or substantial damage to property, including the loss of an essential service or damage to other infrastructure/equipment;

"equipment" includes, but not limited to, underground conduits and pipes, cabinets, poles, towers, anchors, guy wires, brackets, cross arms, insulators, foundations, overhead and underground conductors, wires, lines, cables and transformers, access nodes, ancillary appliances and fittings and reasonably required associated protective installations;

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

"non-compliant equipment" means equipment that is not installed in accordance with the requirements of this By-law, City Standards, or any terms and conditions of any permit;

"Officer" means a person appointed by Council, by the Director, or under this By-law, to administer or enforce this By-law and includes a person employed by the City whose duties are to enforce this By-law;

"permit" means a permit issued by the City in accordance with the requirements of this By-law to do work;

"Permit Application Office" means a centralized inbox (email) within the Engineering Services Department as designated by the Director from time to time.

"Permit Fee" means the amount collected by the City at the time of application for a Municipal Consent Permit as may be prescribed from time to time in the City's rates and fee schedule pursuant to the City's approved Current Budget;

"permit holder" means a person to whom a permit has been issued and includes persons doing work on behalf of the permit holder;

"person" includes any individual, firm, association, partnership, corporation, company or organization of any kind;

"road" means a road under the jurisdiction of the City and includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles, pedestrians and cyclists, and includes the area between the

lateral property lines thereof;

“**within**” means on, in, over, above, under, across or along, as applicable in the circumstances; and

“**work**” means work on equipment that affects any road and includes any excavation, or installation, material alteration, demolition, repair, replacement or extension of equipment within a road;

PART 2: BY-LAW TITLE

- 2.1 The short title of this by-law shall be “The City of Burlington Municipal Consent By-Law”.

PART 3: APPLICATION OF THE BY-LAW

- 3.1 This By-law applies to all roads in the City.
- 3.2 This By-law does not apply to:
- a. any work which is carried out by the City, its employees, agents or contractors;
 - b. work within a road under the jurisdiction of The Regional Municipality of Halton;
 - and
 - c. work within a road under the jurisdiction of the Province of Ontario.
- 3.3 The Director may waive the application of all or part of this By-law if they are satisfied that the work is adequately regulated by an agreement with the City or another form of approval given by the City.
- 3.4 Nothing in this By-law is to 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 By-law, the federal or provincial legislation prevails.

PART 4: AUTHORITY

General

- 4.1 The Director is authorized to negotiate and enter into agreements with respect to work as required to ensure compliance with this By-law, the City Standards, and to generally protect the City's interests.
- 4.2 The Director is authorized to administer and enforce this By-law including but not limited to:

- (i) arranging for:
 - (a) the assistance or work of City staff, City agents or the assistance of police officers;
 - (b) the making of orders or other requirements and the imposition of conditions as authorized under this By-law;
 - (c) the obtaining of court orders or warrants as may be required; and
 - (d) the commencement of such actions on behalf of the City to recover costs or restrain contravention of this By-law as deemed necessary.
- (ii) prescribing the format and content of any forms or other documents, including the City Standards, required under this By-law.

4.3 The Director may assign Officers to enforce this By-law and Officers so assigned or appointed by Council to enforce this By-law shall have the authority to:

- (a) carry out inspections;
- (b) make orders or other requirements as authorized under this By-law and City Specifications; and
- (c) give immediate effect to any orders or other requirements made under this By-law.

4.4 The Director may assign duties or delegate tasks under this By-law to be carried out in the Director's absence or otherwise.

4.5 All information submitted under this By-law, including all information submitted for any permit issued under this By-law, may be made available to any member of the public subject to the *Municipal Freedom of Information and Protection of Privacy Act*, if requested.

Fees

4.6 All fees referred to in this By-law, including fees for services provided, shall be as set out in the City of Burlington's Rates and Fees By-law or as otherwise set and approved by Council from time to time.

PART 5: PROHIBITIONS

5.1(1) No person shall undertake any work or alter, obstruct, damage, or engage in any activities which may result in the alteration, obstruction or damage of a road without first obtaining a permit in accordance with this By-law.

(2) Despite subsection 5.1(1), and subject to section 5.8, emergency work may be undertaken without first obtaining a permit if:

- (a) the Permit Application Office is notified no later than 48 hours after the emergency work is commenced;
- (b) a permit is applied for as soon as possible after the Permit Application Office is notified that emergency work has commenced;

(c) only work that is necessary to deal with the emergency is performed; and
(d) The person undertaking the emergency work shall hold harmless, indemnify and defend the City, its elected officials, employees, representatives and agents, from and against any claim, loss, damage, cost or expense arising directly or indirectly as a result of the emergency work being undertaken.

- 5.2 No permit holder shall carry out or permit the carrying of work that is not in compliance with this By-law, the City Standards, and all conditions of any permit issued under this By-law.
- 5.3 When undertaking work, the permit holder shall have a copy of the permit readily available at the location where work is being undertaken and shall produce a copy of the permit to the Director or an Officer upon request.
- 5.4 Every person undertaking work shall comply with all applicable statutes, regulations, standards, codes, by-laws, rules and similar requirements.
- 5.5 Every person undertaking work shall ensure that the road affected by the work is at all times maintained in a condition that allows the safe passage of vehicular, pedestrian and cycling traffic.
- 5.6 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.
- 5.7 No person shall provide false or inaccurate information in an application for a permit issued under this By-law or in any document or thing required to be submitted by this By-law.
- 5.8 No person shall provide false or inaccurate information to an Officer exercising a role or duty under this By-law.
- 5.9 Every person undertaking work on a road which requires an excavation must 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.

PART 6: PERMIT APPLICATION

- 6.1 A person applying for a permit shall submit a completed application to the Director that includes:
 - (a) the name, municipal address, telephone number and email address of the person responsible for the work and:

- (i) the name, position, telephone number and email address of an individual contact, available at all times, while the permit is in effect, for that person;
 - (ii) the name(s), telephone number(s) and email address(es) of the most senior field personnel of that person or of their agent, servant, employee, subcontractor or licensee assigned to oversee the work;
- (b) a description of the type, purpose and location of the work including the name(s) of the road(s) and the nearest municipal address(es);
- (c) the scheduled starting date of the work and length of time estimated to complete the work;
- (d) any proposed lane closure, road closure or sidewalk closure;
- (e) the requirement for any proposed removal or bagging of a parking meter, prohibition of curb parking, relocation of a bus stop, change to pavement markings or change to a traffic control device, including a temporary adjustment to traffic control signal timing or interference with a traffic signal loop;
- (f) whether the work is emergency work and the nature of the emergency;
- (g) a signed indemnity satisfactory to the Director;
- (h) evidence of insurance coverage satisfactory to the Director;
- (i) security as required by the Director;
- (j) an agreement with the City with respect to work as required by the Director;
- (k) revised or additional information to determine if the permit should be issued as required by the Director; and
- (l) payment of the prescribed application fees in a manner as required by the Director.

6.2 The Director may issue a permit after receipt of a completed application, including any revised or additional information required by them, and the prescribed application fees. In making their decision to issue or refuse a permit, the Director shall have regard for the following:

- (a) the City Standards;
- (b) moratorium on newly improved roads; and
- (c) the requirements for alignments, services, horizontal and vertical services, depth of cover, structures with surface access and common trenching.

6.3 The Director may refuse a permit if the person responsible for the work:

- (a) is not in compliance with this By-law or the City Standards;
- (b) is not in compliance with other municipal by-laws which apply to the proposed work, including but not limited to paying the required fees or security;
- (c) has been notified of non-compliance with verbal or written direction given under this By-law in the last two years, and in the reasonable opinion of the Director, having regard to the past performance, where applicable, will

- be unable to perform the work proposed in the application for a permit in a safe manner;
- (d) is not in compliance with this By-law or City Standards with respect to another permit; or
- (e) has not paid any penalty or court awarded costs resulting from a legal proceeding relating to the By-law.

6.4 A Permit expires:

- (a) on the date the work is completed or as set out in the permit, whichever comes first; or
- (b) on notice of revocation by the Director.

6.5 (1) If the work will not be completed before the permit expires under paragraph 6.4(a), the permit holder may apply for an extension not less than seven days prior to the expiry date.

(2) The Director may approve an application for an extension having regard for:

- (a) the work to be completed during the extension;
- (b) the progress of the work up until the date of the application;
- (c) the performance of the permit holder up until the date of the application;
- (d) any potential conflict that may result from the extension with other planned or ongoing work; and
- (e) the safety and convenience of the public.

(3) A permit holder cannot apply for more than one extension and shall make a fresh application under section 6.1 for any other continuation or resumption of work commenced under an expired permit.

PART 7: PERMITS - GENERAL

7.1 A permit issued under this By-law is the property of the City and is not transferable.

7.2 (1) A permit holder shall immediately inform the Director of any change to:

- (a) the information contained in an application for a permit;
- (b) the information contained in a permit that has been issued;
- (c) the characteristics of the work for which the permit has been issued; or
- (d) cancellation of the work.

(2) The Director may require any one or more of revised or additional information, additional prescribed fees, or a fresh application with respect to a change under subsection 7.2(1).

7.3 The Director may impose conditions as a requirement for obtaining or continuing

to hold a permit issued under this By-law that they consider appropriate for the protection of a road, any property abutting a road or of any person. Such conditions may include but are not limited to:

- (a) giving the Director notice of the date the work will commence at least five days in advance and identifying who will be carrying out the work;
- (b) giving the Director notice of any change to the commencement or completion dates immediately;
- (c) giving the Director notice of the date the work has been completed no more than five days after completion;
- (d) producing a copy of the permit at the location of the work upon demand;
- (e) carrying out the work diligently and in a good and workmanlike manner including:
 - (i) taking proper precautions to protect individuals from injury and property from harm;
 - (ii) damaging the road and all existing equipment as little as possible; and
 - (iii) restoring the road at least to the condition it was in before the work commenced; and
- (f) paying all prescribed fees.

7.4 The Director may, on their own initiative:

- (a) alter or revoke the terms and conditions of a permit after it has been issued; or
- (b) impose new terms and conditions in a permit.

7.5 The Director may immediately suspend or revoke a permit issued under this By-law, in writing, where the Director is satisfied that a suspension or revocation is necessary in an emergency situation of immediate threat or danger to a road, any property abutting a road or to any person.

7.6 The Director may revoke a permit if:

- (a) in their opinion the permit holder:
 - (i) fails to comply with the conditions of a permit, this By-law or City Standards;
 - (ii) fails to notify the Director immediately of any of the changes referred to in subsection 7.2(1);
 - (iii) fails, within 30 days after the issuance of the Permit, to seriously commence the work;
 - (iv) substantially discontinues the work for a period of more than 30 days;
 - (v) provides false or inaccurate information in the application for the Permit; or
- (b) any person doing work on behalf of the permit holder has failed to comply

with any applicable statutes, regulations, standards, codes, by-laws, rules or similar requirements.

- 7.7 The Director may give notice of the suspension or revocation of a permit by contacting a permit holder in writing, by telephone or by email in accordance with the contact information provided on the permit application.

PART 8: REPAIRS, RESTORATION AND NON-COMPLIANT EQUIPMENT

- 8.1 All temporary repairs, permanent restoration or work required to correct or relocate non-compliant equipment referred to in this Part shall be completed to the standards prescribed in this By-law, the City Standards and as required by the Director.

Temporary Repairs and Permanent Restoration

- 8.2 Every Permit Holder who undertakes excavation shall agree as a condition of receiving a permit, to undertake a temporary repair of the road which restores the road to standards prescribed by the City, immediately after completion of the permit holder's work, and no later than the date of expiry of the permit.
- 8.3 A permit holder shall maintain and warranty any temporary repair made to a road for a period of 24 months following completion of the temporary repair to the satisfaction of the City or until the City, or until a person with prior authorization from the City, completes permanent restoration of the road in the location of the temporary repair, whichever one is sooner.
- 8.4 A person with prior authorization from the City to carry out permanent restoration of a temporary repair shall maintain and warranty the permanent restoration for a period of 24 months from the date of completion of the permanent restoration to the satisfaction of the City.
- 8.5 Any and all costs associated with the maintenance and warranty of a temporary repair or permanent restoration referred to in sections 8.3 and 8.4 shall be at the sole expense of the permit holder.
- 8.6 Where a permit holder fails or refuses to undertake or maintain a temporary repair or permanent restoration of a road as specified in sections 8.1, 8.2, 8.3 and 8.4;
- (a) the City may require the permit holder to do work to make or correct the temporary repair or permanent restoration;
 - (b) the City may itself or by a third party contractor undertake any necessary temporary repair or permanent restoration or do work to correct a temporary repair or permanent restoration;
 - (c) the permit holder shall be solely responsible for the cost of any repair, restoration, maintenance or clean-up of the road incurred by the City or by a third party contractor;

- (d) the Director may deduct the cost of any repair, maintenance, restoration or clean-up from a deposit or security held by the City, where applicable; and
- (e) Where the cost of a repair, maintenance, restoration or clean-up exceeds the amount of a deposit or security held by the City, or no security is available, the permit holder shall pay all costs owing to the City within 30 days after receipt of an invoice from the City.

Non-Compliant Equipment

8.7 Where a permit holder installs non-compliant equipment within a road:

- (a) the City may require the permit holder to do work to correct or relocate the non-compliant equipment;
- (b) the City may itself or by a third party contractor undertake any necessary work to correct or relocate the non-compliant equipment;
- (c) the permit holder shall be solely responsible for the cost incurred by the City or by a third party contractor in carrying out work to correct or relocate the non-compliant equipment;
- (d) the Director may deduct the cost of the work required to correct or relocate the non-compliant equipment from a security or deposit held by the City, where applicable; and
- (e) where the cost of the work required to correct or relocate the non-compliant equipment exceeds the amount of a deposit or security held by the City, or no deposit or security is available, the permit holder shall pay all costs owing to the City within 30 days after receipt of an invoice from the City.

Damage to the Road or City Equipment

8.8. Any person who causes damage to a road or to City equipment in a road shall be responsible for reimbursing the City for any and all costs incurred by the City to restore the road or City equipment to the standards prescribed by the City within 30 days after receipt of an invoice.

Recovery of Costs

8.8 If a permit holder fails to pay costs owing within 30 days after receipt of an invoice from the City as set out in sections 8.6(e) and 8.7(e), or 8.8, the City may recover the costs owing by adding them to the tax roll and collecting them in the same manner as property taxes and such costs shall include an annual interest rate of 15 per cent commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full.

PART 9: ENFORCEMENT, REMEDIAL ACTIONS, AND RECOVERY OF EXPENSES

Entry and Inspections

9.1 An Officer may enter on land at any reasonable 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 being complied with:

- (a) an Order or other requirement made under this By-law;
- (b) a condition of a permit issued under this By-law; or
- (c) an Order made under section 431 of the *Municipal Act, 2001*.

9.2 An Officer, for the purposes of the inspection under section 9.1 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; 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.

9.3 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 he or she has been prevented or is likely to be prevented from carrying out an inspection under section 9.1.

Orders and Other Documents Including Delivery

9.4 If an Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred to discontinue the contravening activity.

9.5 An order under section 9.4 shall set out:

- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the premises 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.

- 9.6 If an Officer is satisfied that a contravention of this By-law has occurred, they may make an order requiring the person who has contravened this By-law or who caused or permitted the contravention or the owner or occupier of a premises on which the contravention occurred to do work to correct the contravention.
- 9.7 An order under section 9.6 shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the premises on which the contravention occurred;
 - (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.
- 9.8 An order under section 9.4 or 9.6 may be given by contacting a permit holder in writing or by email in accordance with the information provided on the permit application or, if there is no permit application, by contacting the person the Director determines to be responsible for the work personally or by registered mail at their last known address.
- 9.9 Where a time frame is set out in an order or other document for carrying out any 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.

City Carrying Out Work

- 9.10 Where a person does not comply with a direction or a requirement, including an order or a condition of a permit under this By-law to do a matter or thing, the Director, with such assistance by others as may be required, may carry out such direction, requirement or order at the person's expense.
- 9.11 Where the costs of doing a matter or thing under section 9.10 are estimated to be:
- (a) up to but not including \$100,000, the Director may proceed without further approval and in accordance with the City's Procurement Policy; or
 - (b) \$100,000 or greater, the Director may proceed with approval of an authorized person or of Council and in accordance with the City's Procurement Policy.
- 9.12 The City may recover the costs of doing a matter or thing under section 9.10 by means of any one or more of:

- (a) bringing an action;
- (b) adding the costs to the tax roll and collecting them in the same manner as property taxes and such costs shall include an annual interest rate of 15 per cent commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full;
- (c) realizing on security provided for this purpose; or
- (d) charging a fee as set out in the City of Burlington's Rates and Fees By-law or as otherwise set and approved by Council from time to time.

9.13 The amount of the City's costs, including interest to the date payment is made in full, constitutes a lien upon the land, upon the registration of a notice of lien upon the land.

PART 10: OFFENCES

- 10.1 Any Person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine and such other penalties as provided for by the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended.
- 10.2 Every person other than a corporation who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$10,000 for a first offence and not more than \$25,000 for a subsequent offence.
- 10.3 Every corporation that contravenes any provision of this By-law is guilty of an offence and upon conviction is liable for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$50,000 for a first offence and not more than \$100,000 for a subsequent offence.
- 10.4 Any person who contravenes an Order made under this By-law, or an officer or director of a corporation who knowingly concurs in such a contravention by the corporation, is guilty of a continuing offence and upon conviction is liable to a daily fine or penalty of a maximum of \$10,000 for each day or part of a day that the offence continues, and despite section 10.2 and section 10.3, the total of all the daily fines imposed for an offence is not limited by the fine amounts listed in those sections.
- 10.5 Every person who is convicted of an offence under this By-law may be liable, in addition to the fines established under sections 10.2, 10.3 and 10.4, to a special fine, which may exceed \$100,000, designed to eliminate or reduce any economic advantage or gain from contravening this By-law or failing to comply with an order made under this By-law.
- 10.6 Where a person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition

to any other remedy and to any penalty imposed by this By-law, make an order prohibiting the continuation or repetition of the offence by the person convicted.

- 10.7 Where any person contravenes any provision of this By-law, such person shall be responsible for all costs incurred by the City related to the contravention.

PART 11: MISCELLANEOUS

- 11.1 If a court of competent jurisdiction declares a part or whole of any provision of this by-law to be invalid or of no force and effect, the provision or part is deemed severable from this by-law, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its remaining terms to the extent possible under law.
- 11.2 References in this By-law to any legislation or by-law means as may be amended or preplaced from time to time and include any regulations thereunder.
- 11.3 This By-law may be referred to as the "Municipal Consent By-law".
- 11.4 This by-law comes into force on a date of its passing.

Enacted and passed this 23rd day of November 2021

Mayor Marianne Meed Ward _____

City Clerk Kevin Arjoon _____