

The Corporation of the Town of Essex

By-Law Number 2219

Being a by-law to Provide for the Protection and Regulation of Town Highways, Road Allowances and Right of Ways

Whereas sections 8, 9 and 11 of the *Municipal Act, 2001* authorize The Corporation of the Town of Essex ("Town of Essex") to pass by-laws necessary or desirable for municipal purposes, and in particular subsection 11(2) and subsection 11(3) authorize by-laws respecting highways, public assets of the municipality, the economic, social and environmental well-being of the municipality, the safety and well-being of persons, the protection of persons and property and structures;

AND Whereas the *Public Transportation and Highway Improvement Act, R.S.O. 1990*, and *The Municipal Act, 2001*, contain various sections permitting a municipality to regulate the installation of any access required to public highways within the jurisdiction of the Town of Essex and further provides for the passing of by-laws for protection in various ways of streets within a municipality;

AND Whereas Section 44(1) of the *Municipal Act, 2001*, provides that a 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** section 391(1) of the *Municipal Act, 2001*, provides that a municipality may pass by-laws imposing fees or charges on any Person for services or activities provided by the municipality or done on behalf of it;

AND WHEREAS section 436 (1) of the *Municipal Act, 2001*, provides that a municipality may pass by-laws providing for the entry onto land at any reasonable time for the purpose of carrying out an inspection to determine compliance with a by-law; **AND WHEREAS** section 429 (1) of the *Municipal Act, 2001*, provides that a municipality may establish a system of fines for a by-law passed under the *Act*;

AND WHEREAS section 444 of the *Municipal Act, 2001*, provides that a municipality may make an order to require a Person to discontinue contravening a by-law and to do the work required to correct the contravention;

AND WHEREAS section 446 of the *Municipal Act, 2001*, provides that a municipality may proceed to do things at a Person's expense which that Person is otherwise required to do under a by-law but has failed to do and the costs incurred by a municipality may be recovered by adding the costs to the tax roll and collecting them in the same manner as taxes;

And WHEREAS the Council of the Corporation of the Town of Essex desires to repeal and replace By-law 135 with an updated by-law respecting the protection and regulation of (including activities thereon) town highways, road allowances and right of ways;

Now therefore be it resolved that the Council of The Corporation of the Town of Essex enacts as follows:

PART 1 DEFINITIONS

The definitions contained within the Highway Traffic Act, R.S.O. 1990, c. H.8 shall apply in the interpretation of this Bylaw except where they are inconsistent, in which case the definition under this Bylaw shall apply. For purposes of this By-law:

"Abutting Property" means a property abutting a Road Allowance;

"Activity" means the temporary occupancy of a Highway, Road Allowance, or Right of Way for the installation, Road Cut, repair, replacement or improvement of Works of any Nature by any Utility Company, Contractor, or Person for the purposes of this By-law;

"Applicant" means any person who has applied for a Permit under this By-law;

"As-built Drawings" means a drawing that accurately depicts the location, including depth of coverage, of equipment, in such a form and to such standards as may be required by the Director;

"Boulevard" means that portion of the Highway which is not a Roadway, and includes landscaped areas and any Entrance;

"Curb Line" means the edge of the traveled portion of the Road Allowance which shall be the outer edge of the curb, or where no curb exists, the edge of asphalt or in the case of a gravel road, 0.5 m before the start of the fore slope of the ditch;

"Corporation" includes a company, corporation, cooperative, partnership, firm, sole

proprietorship, association, society, organization, any other legal entity that is not an Individual;

“Director” means the Town’s Director of Infrastructure, the holder of a successor position at the Town, or their designates as may be assigned from time to time;

“Derelict Vehicle” means a Vehicle that:

- a. is not licensed or eligible to be licensed by virtue of a current valid Safety Standards Certificate having been issued for that vehicle;
- b. is in a state of disrepair by reason of missing doors, glass or body parts;
- c. is inoperative by reason of removed wheels, battery, motor, transmission, or other parts or equipment necessary for its operation; or
- d. otherwise appears inoperable or incapable of use as a means of lawful transportation.

“Election Sign” means any sign promoting, opposing or taking a position with respect to:

- a. Any candidate, or political party in an election under the *Canada Elections Act*, the *Election Act (Ontario)*, or the *Municipal Elections Act, 1996*;
- b. An issue associated with a person or political party in an election under the *Canada Elections Act*, the *Election Act (Ontario)*, or the *Municipal Elections Act, 1996*; or
- c. A question, law or by-law submitted to the electors under the *Canada Elections Act*, the *Election Act (Ontario)*, or the *Municipal Elections Act, 1996*;

Such signs are subject to the applicable Town of Essex Election Sign By-law, as may be amended from time to time;

“Entrance” means any driveway, lane, ramp, private road, or any other structure or facility, used as a means of access to a Town Road Allowance, including any point at which a curb is interrupted or depressed to provide access from the traveled portion of a Town Road Allowance to an Abutting Property;

“Foul” means to make foul or dirty; pollute in any form.

“Frontage” means, where the side lot lines are parallel, the distance measured along the front lot line between the side lot lines. Where the side lot lines are not parallel, the distance measured from a point on each side lot line that is located equal to the required front yard from the front lot line or the hypothetical intersection of the front lot line and the side lot line.

“Highway” means a Road Allowance under the jurisdiction of the Town;

“Individual” means a natural person;

“Intersection” means the location where two or more Road Allowances converge;

“Material” includes, but is not limited to, earth, gravel, sand, ashes, snow, rocks, ice, signs, fences, hedges, trees, bushes, leaves, organic matter of any kind, waste, refuse, litter and rubbish;

“Officer” means a person appointed by Council, the Director, or under this By-law, to administer or enforce this By-law and includes a person employed by the Town whose duties are to enforce this By-law, and also includes any police or peace officer appointed under the Police Services Act, R.S.O. 1990, c.P.15;

“Owner” means any Person who is the registered or beneficial owner of a property or who leases, rents, occupies, maintains, manages, receives rent from or otherwise controls a property;

“Permit” means a permit issued by the Town pursuant to this By-law or under a repealed By-Law of the Town to which this By-Law is a successor;

“Permit Holder” means the Person to whom a Permit has been issued, or transferred to with the consent of the Director;

“Person” includes an Individual and a Corporation;

“Public Authority” includes the Town, County of Essex, the Crown in Right of Ontario, the Crown in Right of Canada or any of their ministries, agencies, boards or Crown corporations;

“Public Property” means property that is owned, leased or rented by a Public Authority.

“Private property” means property which is privately owned and is not Public Property;

“Road Allowance” includes all road allowances, highways, streets, roads, right of ways, parkways, avenues, lanes, boulevards, squares, roundabouts, trails, paths, walkways, bridges, viaducts, trestles or other structure forming part of a highway, used by or intended for use by the general public for the passage of persons or vehicles;

“Road Occupancy” means:

- a. the use of the Town Road Allowance for any work and/or construction related

- activities;
- b. the obstruction of a Town Road Allowance or hindrance of the passage of persons or vehicles;
 - c. the installation or construction of utilities or Services carried out within a Town Road Allowance;
 - d. the discharging, releasing, depositing, dumping or storage of any Material or substance within a Town Road Allowance, including without restriction, containers (bins or otherwise), Derelict Vehicles, or any other item or thing; or
 - e. any other alteration of a Town Road Allowance, including any alteration to grading, landscaping or trees;
 - f. any other activity or action that has the effect of obstructing or impeding the passage of persons or vehicles or such other normal and reasonable use of the Town Road Allowance and/or which has the effect of creating a hazardous and/or unsafe condition to the safety of any person(s) using the Town Road Allowance or any persons reasonably in the vicinity thereof.

“Services” means all servicing on any lands and easements owned or held by the Town, including, water, wastewater and storm water facilities, roads, structures, fencing, boulevard grading, sodding, tree planting, landscaping, walkways, driveways, streetlights, erosion control work, street signs, traffic control devices;

“Traffic Control Plan” means a plan that ensures that workers and the public are safe and that negative impacts on traffic operations are minimized for the duration of the activity;

“Town” means The Corporation of the Town of Essex;

“Town Road Allowance” means a Road Allowance under the jurisdiction of the Town;

“Town Standards” means those standards, requirements and specifications set out in the Town’s Development Standards Manual as may be amended from time to time and all other applicable policies and by-laws of the Town as may be amended from time to time, including without limitation, applicable zoning by-laws;

“Urban Area” means those lands within the Settlement Area Boundary as set out in the Town’s Official Plan;

“Roadway” means that part of the highway that is improved, designed or ordinarily used for vehicular traffic, including the Shoulder where applicable, and where a Highway includes two or more separate Roadways, the term “Roadway” refers to any one roadway separately and not

to all of the roadways collectively;

“Rural Area” means those lands outside the Settlement Area Boundary as set out in the force and effect Town’s Official Plan.

“Shoulder” means the portion of a Highway that provides lateral support to the Roadway and that may accommodate stopped Vehicles and emergency use;

“Vehicle” includes a motor vehicle as defined in the Highway Traffic Act, a trailer, traction engine, farm tractor, road building machine, bicycle and any vehicle drawn, propelled or driven by any kind of power, including muscular power, but does not include a motorized snow vehicle, street car, cars of electric or steam railways running only upon rails or power-assisted bicycle.

“WSIB” means Workplace Safety and Insurance Board.

PART 2 INTERPRETATION

1. Headings are for reference purposes and shall not affect in any way the meaning or interpretation of the provisions of this by-law.
2. It is declared that if any section, subsection or part or parts thereof be declared by any Court of Law to be illegal or ultra vires, such section, subsection or part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such
3. In this By-law, a word interpreted in the singular number has a corresponding meaning when used in the plural.

PART 3 PROHIBITIONS

4. No person may construct, install, widen, or alter any Entrance without a Permit;
5. No person may, without a Permit, undertake a Road Occupancy, or do, allow, permit or cause to be done any of the following:
 - (a) foul a Town Road Allowance;
 - (b) excavate, damage, encumber, grade or alter any Town Road Allowance, including any pavement, landscaping, planting, or curbing;

- (c) construct piping for the purposes of irrigation or substance removal on any highway or watercourse under the control of the Municipality within or adjacent to a highway;
- (d) obstruct or otherwise interfere with public travel or use of a Town Road Allowance;
- (e) obstruct or alter a municipal sidewalk, including the construction of scaffolding over Municipal sidewalks without Municipal approval;
- (f) install or construct any utilities or services;
- (g) obstruct or interfere with the functioning of any appurtenance to a Town Road Allowance, including but not limited to, manholes, valves, sewer cleanouts, fire hydrants, streetlights, roads, curbs, underground infrastructure, signs, line painting, shoulders, traffic signals, poles, posts, plantings, ditches, drains, etc;
- (h) deposit, store, park or plant any Material, Derelict Vehicle, item or thing, within a Town Road Allowance;
- (i) discharge, release, spill, leak, pour or spill any oils, chemicals, or other substances onto a Town Road Allowance, whether directly or indirectly;
- (j) cause a public nuisance in or upon a Town Road Allowance by fire, vapour, dust, smoke, noise or any other means whatsoever;
- (k) throw, push, plow, dump or otherwise deposit snow or ice from Private Property onto Public Property or a Town Road Allowance;
- (l) No person, other than the Municipality, shall erect a fence, construct a wall, or plant a hedge in, over, or upon a highway;
- (m) construct or maintain a gate or door which opens or swings over a Town Road Allowance;
- (n) walk, ride, drive, travel upon or otherwise disturb a newly constructed sidewalk or pavement within a Town Road Allowance before it has been opened for use by the public;
- (o) enter an area within a Town Road Allowance that has been closed to the public for construction, maintenance, emergency or other similar purposes;
- (p) move or remove a barricade, street sign, traffic sign or traffic control devices, within a Town Road Allowance;

- (q) permanently or temporarily erect a basketball net or such other sporting equipment thereof on any highway; and
 - (r) any other activity or action that has the effect of obstructing or impeding the passage of persons or vehicles or such other normal and reasonable use of the Town Road Allowance and/or which has the effect of creating a hazardous and/or unsafe condition to the safety of any person(s) using the Town Road Allowance or any persons reasonably in the vicinity thereof.
- 6. Except as otherwise permitted by this by-law or unless provided with written consent of the Town, no Person shall excavate or damage any portion of the Town Road Allowance nor place, occupy or maintain or cause a permit to be placed, occupied or maintained, upon any highway, any Personal property of any description, including but not limited to, signs, fences, decorative or landscape rocks or boulders, logs, raised planter beds, planters, trees or shrubs, or install any decorative landscape features whatsoever, including, but not limited to, statues, fountains, gravel, artificial turf, pavers or paving of any kind;
 - (a) This Section shall not apply to a Person who places, occupies, or maintains upon the highway, garbage, recycling materials or other goods, out for regularly scheduled collection by the Town, or collection undertaken at the request of the Corporation.
 - (b) This Section shall not apply to a Person who has entered into an encroachment agreement with the Town, which agreement is in good standing, concerning their personal property, which may be placed, occupied, or maintained upon the highway.
 - (c) This Section shall not apply to a Person where such placement, occupation, or maintenance is permitted by a by-law of the Corporation.
- 7. Any Person employing or using trucks, graders, loaders, construction vehicles or other vehicles in any operation which involves the passage of such vehicles to or from any property, whether for building purposes or otherwise, shall at once remove from the Town Road Allowance or from any other Public Property, all material which may fall from such trucks, graders, loaders or other vehicles otherwise be tracked onto a Town Road Allowance or Public Property.
- 8. Where a Permit has been issued, no person shall construct, install, widen or alter any Entrance, undertake any Road Occupancy or any other activity or thing prohibited by Section 6, 7, or 8, except in accordance with the plans, specifications, documents, and any other information submitted to the Town and relied upon by the Town in issuing the Permit and in accordance with any applicable terms or conditions of the Permit.

9. An Entrance, if authorized by a Permit, shall be used to provide access to the Abutting Property for which the Permit was issued and shall not be used, constructed, installed, widened or altered for any other purpose.
10. No equipment, materials, goods, Vehicles, Derelict Vehicles or things shall be placed, stored, deposited within an Entrance or Road Allowance.
11. No person shall put down, destroy, deface or in any way interfere with any municipal infrastructure, including but not limited to, any post, streetlight, manhole cover, water valve, surveyor's mark, benchmark, traffic sign, highway name sign, sign board, regulatory sign, traffic signal, traffic cone, or any other traffic control device affixed or placed on a highway.
12. A property within the Town's Urban Settlement Area identified in the Town's Official Plan with a principle residential use shall not have an Entrance on more than one lot line and this entrance shall conform to Town Standards.

PART 4 EXEMPTIONS

13. Notwithstanding Sections 5 and 6, within registered plans of subdivision whose Road Allowances have not yet been assumed by the Town pursuant to section 31(4) of the *Municipal Act, 2001*, no Permit is required for conducting work and/or construction related activities provided construction related activities are conducted in accordance with the drawings, plans and specifications approved by the Town in connection with the registration of the plan of subdivision.
14. Sections 5, 6, 7, 8 and 9 do not apply so as to prohibit the Town, its agents, contractors and employees, and Persons authorized by the Town in writing from altering, depositing material upon, or excavating, any Road Allowance within the Town, in the course of their normal operations, or in the course of Town authorized infrastructure related projects and improvements.
15. Sections 6(h) and 11 do not apply to a Vehicle, other than a Derelict Vehicle, that is parked in accordance with the Town's by-laws regulating parking.
16. The Town and County of Essex are exempt from Permit requirements.
17. Emergency Work where it is determined by the Director that imminent public safety, health, or major business interruption is at risk, an Activity may be carried out without obtaining a Permit prior to commencing the emergency work. Where it is necessary to undertake emergency work, the person undertaking such work shall:

- (a) Give notice to the Director within 24 hours of commencing the emergency

work, including the name and contact information of the person undertaking the work, the location of the emergency work, and the nature of the emergency;

- (b) apply for all required permits as required within 24 hours;
 - (c) perform only the work that is necessary to deal with the emergency;
 - (d) comply with all provisions of this By-Law and the Municipal Requirements related to performance of the emergency work as soon as possible in the circumstances; and
 - (e) hold harmless, indemnify and defend the Town, its elected officials, employees 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.
18. The Director may approve any exemptions to Part 3 in accordance with Municipal policies regarding approvals of encroachments over Municipal Highways, and shall have the right to apply such conditions to any approval as he or she may deem advisable.

PART 5 MAINTENANCE, REPAIR AND RELOCATION

19. If an Officer determines that a Road Occupancy exists on a Town Road Allowance, then Officer may if deemed necessary issue a Notice of Contravention or such other order requiring the Owner, Occupant and/or Contractor of the property from which the Road Occupancy comes from, relates to, or was created for, to discontinue causing the Road Occupancy and to remove same and repair and restore, as necessary, at the expense of the Owner, Occupant and/or Contractor, the Town Road Allowance so that the Town Road Allowance is brought back to its former condition prior to the Road Occupancy.
20. Where the issued Notice of Contravention or such other issued order is not complied with within the time period stipulated therein or where it is deemed by the Director that the Road Occupancy requires Emergency Work (imminent public safety, health, or major business interruption is at risk by reason of the Road Occupancy) the Town may alter, construct, replace or remove and dispose any Entrance, or Road Occupancy within a Town Road Allowance without notice, or compensation to any Person, including any Permit Holder or Owner. This right also extends to a third-party utility service, provided the work by the third-party utility service is approved by the Town.
21. Every owner or occupier of a property on a road within the Urban Areas shall maintain the Boulevard portion of any Highway, or part of a Highway, that abuts their property, whether in front of, or alongside the property. Maintaining the Boulevard portion of a Highway includes the following:

- (a) cutting the grass and weeds and removing the cuttings whenever the growth of grass or weeds exceeds 20 cm in height.
 - (b) keeping the boulevard clean and free from:
 - (i) hazardous objects or materials;
 - (ii) domestic animal excrement;
 - (iii) rubbish or other debris;
 - (iv) holes, ruts and excavations that are actual or potential health and safety concerns;
 - (v) fire or safety hazards; and
 - (vi) anything that may attract or harbour rodents or insects.
- 22. Every owner or occupier of a property shall maintain any Entrance in front of, alongside or at the rear of the property. Maintaining the Entrance portion of a Boulevard includes the following:
 - (a) keeping the Entrance portion of the Boulevard in a good state of repair so as to afford safe passage under normal use for persons and vehicles;
 - (b) keeping the Entrance portion of the Boulevard clear of snow and ice within 24 hours of a snowfall to provide safe passage for persons and vehicles;
 - (c) keeping the Entrance portion of the Boulevard clean and free from:
 - (i) hazardous objects or materials,
 - (ii) domestic animal excrement,
 - (iii) rubbish or other debris, and
 - (iv) holes, ruts and excavations.
- 23. If the Director determines that an owner or occupier of a property has failed to maintain a Boulevard that abuts the owner or occupier's property, and the cause of that failure is not the result of the acts of a third party beyond the control of the owner/occupier, the Director may issue an order requiring the owner or occupier to maintain the Boulevard in accordance with this By-law.
- 24. Where an order under this by-law is not complied with within the time period stipulated therein, the Municipality may carry out, or cause to be carried out, any work necessary to maintain the Boulevard in accordance with this By-law, and all the costs incurred by the Municipality in undertaking this work shall be expenses owed to the Municipality by the owner or occupier of the property.
- 25. Every owner or occupier who fails to comply with an order made under this By-law is guilty of an offence.

PART 6 APPLICATIONS FOR PERMITS

26. The following persons may apply to the Director for a Permit:
- (a) the registered or beneficial Owner of an Abutting Property, may apply for a Permit to authorize an Entrance; or
 - (b) a Person may apply for a Permit to authorize a Road Occupancy.
27. Except as provided in Section 28, an application for a Permit shall:
- (a) be in such form as approved by the Director;
 - (b) contain all such information and documents as may be required by the Director;
 - (c) provide a detailed Traffic Control Plan, if required;
 - (d) include the non-refundable fee(s) in accordance with the Town's Fees and Charges By-law as amended; and
 - (e) if required by the Director, a detailed estimate of costs for any proposed Entrance or Road Occupancy, including the costs of restoring the Town Road Allowance, which shall be subject to review and approval by the Director;
28. Where a Permit is required for an Entrance, and a complete application has been submitted for Site Plan Approval, the Applicant is exempt from the Permit application requirements set out in Sections 27.

PART 7 PERMIT APPROVAL

29. Prior to the issuance of a Permit, the Applicant shall:
- (a) complete all application requirements set out in Section 27;
 - (b) deposit with the Town financial security in the amount identified in the Fees and Charges By-Law, as amended, or as otherwise determined by the Director;
 - (c) provide proof of insurance to the satisfaction of the Director;
 - (d) current WSIB clearance certificate,
 - (e) provide any additional documents of information requested by the Director;
 - (f) obtain and provide the Director with proof of all permits, approvals and

authorizations required for the Road Occupancy or Entrance, including any required by the Essex Region Conservation Authority, the Ministry of Transportation, the Ministry of Natural Resources and Forestry and the Ministry of the Environment, Conservation and Parks or any other Public Authority; and

(g) demonstrate compliance with applicable Town Standards.

30. The Town of Essex Official Plan, as amended from time to time, may dictate that access to certain Town Road Allowances and or Town Road Allowance classifications is not to be permitted, and in such instance, notwithstanding any other provision in this By-law, no Permit shall be issued under this By-law.
31. After considering an application for a Permit, the Director may:
 - (a) issue a Permit, subject to such terms and conditions as the Director deems appropriate, provided that the Director is satisfied that Section 29 of this By-law has been complied with and the issuance of the Permit would not be contrary to Section 30; or
 - (b) decline to issue a Permit.
32. A Permit expiration shall be identified on the Permit documentation provided by the Director, if the work which is the subject of the Permit, has not commenced within that time, a new Permit including payment of the applicable fees must be obtained before proceeding with such work.
33. The work which is the subject of the Permit must be completed by the date set out in the Permit. If no date is set out in the Permit, work must be completed within (30) days of commencement of work.
34. Notwithstanding any other provisions of this By-Law, the Director may revoke, alter or amend a Permit after issuance if the Director has reason to believe it is in the public interest to do so.
35. The Town will return any financial security to the Permit Holder, in accordance with the Town's financial policies when, the Entrance or Road Occupancy which are the subject of the Permit, are completed in conformity with the Town's Standards and to the satisfaction of the Director; any applicable warranties with respect to the work conducted under the Permit have expired; and all other terms and conditions of the Permit have been satisfied.
36. A Permit Holder may not assign or transfer a Permit without the consent of the Director.

PART 8 PERMIT CONDITIONS

37. In addition to any terms or conditions imposed by the Director, the following conditions apply to all Permits:

- (a) The Permit Holder shall indemnify and save harmless the Town from all actions, causes of action, suits, claims, demands and costs whatsoever arising by reason of the Applicant, his/her agents or employees and contractors doing, failing to do, or doing incorrectly or negligently anything the Applicant is required to do under the terms of the Permit or this By-law in such form as approved by the Director.
- (b) Permit Holders 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.
- (c) When undertaking the work, a Permit Holder shall:
 - i. have a copy of the permit readily available at the location where work is being undertaken; and
 - ii. produce a copy of the permit to the Director, their delegate, or an Officer upon request.
- (d) Every person undertaking work shall comply with all applicable statutes, regulations, standards, codes, by-laws, rules and similar requirements.
- (e) the Permit Holder shall be responsible for obtaining location and stakeout information in accordance with the *Ontario Underground Infrastructure Notification System Act, 2012*, for all utilities and Services prior to the commencement of construction and shall be responsible for any damage to existing utilities and Services within the Town Road Allowance when such damages arise out of the work undertaken by the Permit Holder;
- (f) all costs associated with the constructing, installing, repairing, widening or altering a Town Road Allowance incurred as a consequence of any Permit issued, as determined by the Director, shall be the responsibility of the Permit Holder;
- (g) all construction, installation, repair or other work performed in connection with a Permit shall meet all applicable Town Standards;
- (h) the Permit Holder shall ensure that upon the earlier of
 - i. completion of the work authorized by the Permit; or
 - ii. expiration of the Permit;

the Road Allowance shall be returned to a clean and unencumbered state and shall be fully rehabilitated to the satisfaction of the Director; and

- (i) all drains, catch basins, ditches, culverts and watercourses shall be installed, and maintained in accordance with Town's Standards and the requirements of the following agencies, as applicable: the Essex Region Conservation Authority, the Ministry of Transportation, the Ministry of Natural Resources and the Ministry of the Environment, Conservation and Parks.
 - (j) Every Permit Holder shall agree as a condition of receiving the permit, to submit as-built drawings to the Town of the completed work in accordance with Municipal Requirements.
 - (k) Where a permit holder is in default of their obligations of Section 37 (j), they shall not, except where in the opinion of the Director emergency work is required or the permit is required to perform work required by the Town, be issued any further permit for the work which as-builts are outstanding, until such a time as the as-built drawings as required under this Part have been submitted to the Town.
38. In addition to any terms or conditions imposed by the Director and the terms and conditions in Section 27, the following conditions apply to all Permits for Entrances:
- (a) all entrances shall conform to Town Standards;
 - (b) all Entrances shall extend sufficiently onto the Abutting Property to allow parking on the Abutting Property and not on the Road Allowance;
 - (c) all Entrances within the urban settlement boundary must have a hard surface (consisting of such material as is approved by the Town, including asphalt or concrete);
 - (d) any Entrance to a commercial or industrial property shall conform to the Town's Site Plan Approval process;
 - (e) ramping is not permitted in lieu of an Entrance; and
 - (f) all Entrances shall have unobstructed visual sightlines for entry/exit to any part of the Road Allowance including sidewalks and/or bike trails.

PART 9 ORDERS AND POWERS

39. The Director and Officers appointed by the Town shall have all powers necessary to carry out the administration and enforcement of this By-law, including without limitation, issuing Orders. For clarity, where Part 9 of this By-Law provides that the Town may take any action or do anything:

- (a) the action or thing may be taken or done at the direction of either the Director or Officer, unless this By-Law specifies otherwise;
 - (b) the Director or Officer may enlist such forces as deemed appropriate to undertake that action or thing, including without restriction, third party contractors, agents or suppliers of goods and services.
- 40. Where the Town has reason to believe that any Person is or will be in contravention of this By-law, or any term or condition of a Permit, the Town may issue a Stop Work or such other Order directing the activities to cease immediately upon service of the Order on the Person or Persons listed in the Order.
- 41. Where the Town has reason to believe that any Person is in contravention of this By-law, or any term or condition of a Permit, the Town, may issue a Work or such other Order(s) directing the Person or Persons to take such actions as are necessary to comply with this By-law or the Permit as the case may be, within ten business (10) days of the service of the Order upon the Person or Persons listed in the Order.
- 42. Where the Town has reason to believe that a contravention of this By-law or any term or condition of a Permit, which may result in the issuing of a Order, poses a risk to public health or safety, the Order may provide that the actions set out therein be taken immediately.
- 43. Any Person to whom an Order is issued pursuant to this By-law shall comply with the terms of such Order.
- 44. Where the Person or Persons to whom a Work Order is issued fails to perform the work required by the Order within the time stipulated in the Order, the Town may without further notice perform such work as it deems appropriate.
- 45. The Town at any time and notwithstanding Sections 19 and 20 of this By-law , may without issuing a Notice of Contravention or such other Order, and without notice:
 - (a) remove, repair or alter any Entrance or Road Occupancy for which a Permit has not been issued; or
 - (b) remove, repair, alter or take any other corrective action or work with respect to anything that has not been constructed, repaired, undertaken, stored, placed, planted or deposited in accordance with this By-law or a Permit issued under this By-law.
 - (c) The decision to act pursuant to this Section 45 shall be at the sole discretion of the Director acting reasonably.
- 46. Where the Town undertakes any removal, repair, alteration, corrective action or work

pursuant to this By-law:

- (a) anything removed may be destroyed or disposed of without notice or compensation to any Person.
- (b) Any motorized equipment, containers, trailers, or motorized tools removed by the Town may, at the discretion of the Director, be deposited at the property from which the Road Occupancy or Obstruction comes from, relates to, or was created for, or be stored at a facility for sixty (60) days at the owner's expense.
- (c) Any such item in subsection (b) shall only be released to its owner after the owner has paid the Town any and all applicable expenses for the removal and storage of the item.
- (d) Any item in subsection (b) that is stored at a facility for more than sixty (60) days and for which an owner has not been identified may be disposed of by the Town in any manner that it deems appropriate.
- (e) Any item in subsection (b) that is stored at a facility for more than sixty (60) days and for which the owner, having been identified, has failed to pay the applicable expenses and claim the item, may be disposed of pursuant to the provisions of the *Repair and Storage Liens Act*, R.S.O. 1990, c.R.25, as amended.
- (f) A Permit Holder, Owner and any other Person the Town reasonably determines is in contravention of this By-law or any term or condition of a Permit may be subject to such fines, fees or charges as may be assessed by the Town and shall be jointly and severally responsible for all costs of the Town incurred in the exercise of the powers thereunder, including administrative costs and interest. Such fines, fees, charges or costs, as determined by the Director, shall constitute a charge under the *Municipal Act, 2001, S.O. 2001, c. 25* as amended, and may be added to the tax roll and collected in the same manner as taxes relating to Property held by the Permit Holder, Owner or other Person in the manner provided for therein.

PART 10 SERVICE

47. An Order may be served by any of the following means:

- (a) delivered personally;
- (b) posted on an Abutting Property;
- (c) emailed to the last known email address of the Person to whom the Order is

directed;

- (d) deposited in the mailbox or mail slot of the Person to whom the Order is directed;
- (e) sent by prepaid regular mail to the last known address of the Person to whom the Order is directed; or
- (f) sent by registered mail to the last known address of the Person to whom the Order is directed.

48. Where service is affected by:

- (a) regular mail, it shall be deemed to be made on the fifth (5th) day after the date of mailing;
- (b) registered mail, it shall be deemed to be made on the second (2nd) day after the date of mailing;
- (c) any other means, it shall be deemed effective on the day the document served was delivered, posted, emailed or deposited;
- (d) service by multiple means, it shall be deemed effective on earliest applicable date set out in Subsections (a)-(c).

PART 11 ENFORCEMENT

49. For the purpose of ensuring compliance with this By-law, the Director or an Officer may, at all reasonable times, enter upon and inspect any land, including without limitation Private Property, to determine whether or not the following are being complied with:

- (a) this By-law;
- (b) a direction or order made under this By-law; or
- (c) a prohibition order made under s. 431 of the *Municipal Act, 2001*.

50. An Officer may, for the purposes of the inspection under Section 49:

- (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 the officer from any person concerning a matter related to the inspection; or
 - (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.
- 51. Any cost incurred by the Town in exercising its authority to inspect, including but not limited to the cost of any examination, test, sample or photograph necessary for the purposes of the inspection, shall be paid by the Owner of the property where the inspection takes place.
- 52. 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* where he or she has been prevented or is likely to be prevented from carrying out an inspection under Sections 49 and 50 of this By-law.
- 53. No person shall hinder or obstruct, or attempt to hinder or obstruct, an Officer from carrying out inspections of land to ensure compliance with this By-law
- 54. Sections 49, 50 and 52, do not restrict the authority of the Director, Town Municipal Law Enforcement Officers, Town employees, agents, contractors and other Persons authorized by the Town from entering upon Town Road Allowances, including Entrances, at any time to conduct inspections or for any other Town purpose.

PART 12 OFFENCES AND PENALTIES

- 55. Every Person who contravenes any provision of this By-law or an Order issued pursuant to this By-Law is guilty of an offence, and, upon conviction is liable to a fine or Penalty in accordance with the provisions of the By-Law.
- 56. Every Person who contravenes any provision of this By-law, and every director or officer of a corporation who concurs in such contravention by the corporation, is guilty of an offence and is liable to a fine, as provided for in the Provincial Offences Act, R.S.O. 1990, c.P.33, and/or such other penalties including such administrative penalties as may be provided for by this by-law and the Municipal Act, 2001, as both may be amended from time to time.
- 57. In addition to Section 56, any Person who is charged with an offence under this By-law in accordance with Part III of the Provincial Offences Act and is found guilty of the offence, is liable, in addition to any other penalties:
 - (a) If a person, to a fine of not more than \$25,000; or
 - (b) If a corporation, to a fine of not more than \$50,000.

58. Where a contravention of a provision of this By-law or an Order is committed on or continues for more than one day, the Person who commits it is liable to be convicted for a separate offence for each day on which it is committed or continued. For clarity, in the case of an Order, a contravention continues for every day or part of a day past the date set out in the Order by which the work must be complete, or action taken, as the case may be.
59. Where a contravention of this By-law has occurred, the Owner or Permit Holder may be charged with and convicted of an offence for which any Person subject to this By-law may be charged and, on conviction, the Owner or Permit Holder is liable to pay the penalty prescribed for the offence.
60. Pursuant to Section 431 of the Municipal Act, 2001, S.O. 2001, c. 25, if a Person has been convicted of an offence under this By-Law, a court of competent jurisdiction may, in addition to any penalty imposed on the Person convicted, issue an order: a) prohibiting the continuation or repetition of the offence by the Person convicted; and b) requiring the Person convicted to correct the contravention in the manner and within the period that the court considers appropriate.
61. If a Person is required to pay an administrative penalty under this By-Law in respect of a contravention of this By-Law, the Person shall not be charged with an offence in respect of the same contravention.
62. In accordance with Section 398(2) of the Municipal Act, 2001, S.O. 2001, c. 25, the Town may add unpaid fees, charges, and fines under this By-Law to the tax roll and collect them in the same manner as municipal taxes.
63. An Owner or Permit Holder is not liable under Section 57 where the Owner or Permit Holder can establish that:
- (a) the contravention of this By-law was without the knowledge and consent of the Owner or Permit Holder, as the case may be;
 - (b) upon becoming aware of the contravention, the Owner or Permit Holder, as the case may be, took all reasonable steps to stop and rectify the contravention of this By-law; and
 - (c) in the case of a contravention of an Order, the Owner or Permit Holder was not named in the Order.

PART 14 SEVERABILITY

64. When a court of competent jurisdiction declares any section or part of this By-law invalid,

the remainder of this By-law shall continue in force unless the court makes an order to the contrary.

PART 15 SHORT TITLE

65. This By-law may be cited as the "Protection of Highways By-law".

PART 16 REPEAL

66. Town of Essex By-law No. 135, as amended are repealed upon the coming into force and effect of this By-law.

PART 17 EFFECT

67. That this By-Law shall come into full force upon the final passing thereof.

Read a first, a second and a third time and finally passed on February 6, 2023

Mayor

Clerk