

The Corporation of the County of Peterborough

By-law No. 2014 - 50

A By-law to regulate uses that occupy County of Peterborough right-of-ways (Road Cut/Occupancy Permit/Municipal Consents/Special Events on County Roads Permit)

Whereas Section 5(3) of the Municipal Act, S.O. 2001, c. 25 (hereinafter referred to as the "Act") provides that a municipal power, including a municipality's capacity, rights, powers and privileges under Section 9, shall be exercised by by-law, unless the municipality is specifically authorized to do otherwise;

And Whereas section 9 of the Act provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

And Whereas section 8(1) of the Act, further provides that section 8 shall be interpreted broadly so as to confer broad authority on municipalities,

- (a) to enable them to govern their affairs as they consider appropriate; and
- (b) to enhance their ability to respond to municipal issues.

And Whereas Section 11(2) of the Act provides that an upper-tier municipality may pass such By-laws respecting matters including the health, safety and well-being of persons of the municipality in matters not specifically provided for by this Act as may be deemed expedient and are not contrary to law;

And Whereas Section 11(3) of the Act provides that an upper-tier municipality may pass such By-laws respecting matters within the sphere of jurisdiction for highways;

And Whereas Section 425(1) of the Act provides that a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality under this Act is guilty of an offence;

And Whereas Section 429(1) of the Act provides that, subject to subsection (4), a municipality may establish a system of fines for offences under a by-law of the municipality passed under this Act;

And Whereas Section 429(3) of the Act provides that a minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$100,000;

And Whereas the Provincial Offences Act, R.S.O. 1990, c. P.33 as amended from time to time provides for enforcement of this by-law;

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And Whereas at the County Council Meeting of May 21, 2014, County Council accepted the recommendation of the Director of Public Works contained in the Manager, Engineering & Design's report "Road Cut/Occupancy By-law" wherein he recommended:

"That Council authorizes the Warden and Clerk to execute the appropriate By-law; and further

That Council directs the Clerk to amend the Tariff of Fees By-law to reflect the inclusion of fees in support of the Road Cut/Occupancy By-law.";

Now Therefore the Council of the Corporation of the County of Peterborough in Session duly assembled enacts as follows, that:

1. In this By-law, the following definitions of terms shall apply:

"Activity" means any of the following:

- place equipment, materials or structures of any kind upon or within a County right-of-way;
- close a County right-of-way in whole or in part;
- undertake any activity that negatively impacts the use and function of a County right-of-way;
- deface or place graffiti on any permitted features with a County right-of-way;
- permit oils, chemicals or substances to be deposited or spilled on a County right-of-way including spillage of any substances from a vehicle;
- encumber or damage a County right-of-way by any means;
- permit or allow any materials to be transferred from private property onto or across a County right-of-way by any means including natural forces;
- obstruct a drain, gutter, water course or culvert along or upon a County right-of-way;
- infill any ditch located within a County right-of-way;
- discharge sump pump outlets directly into the County right-of-way unless in accordance with County standards;

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- construct, install or maintain a mailbox unless in accordance with Canada Post standards;
- throw, pile, store, or cause any material, including snow and ice, to be thrown, piled or placed across or on a County right-of-way;
- display or exhibit merchandise or articles of any nature or kind within a County right-of-way;
- solicit or sell any real or personal property or merchandise with a County right-of-way;
- remove or alter any material, equipment or device placed within a County right-of-way by the municipality;
- move or cause any building or structure to be moved into, along, or across a County right-of-way;
- place or maintain any box for the dispensing or collection of any materials on any portion of a County right-of-way;
- install or construct a culvert within any County right-of-way;
- place landscaping features within a County right-of-way;
- allow any part of a tree, shrub, sapling, hedge or any other plant to extend over or upon any County right-of-way, so as to interfere with, impede or endanger persons using the municipal right-of-way;
- conduct an event including parades, community walks, fund raisers, concerts, races or activities involving the assembly of persons;
- commercial filming activities.

“Applicant” means a person or organization applying to the Director for a Permit.

“County” means the Corporation of the County of Peterborough.

“Director” means the Director of Public Works for the County of Peterborough or designated representative.

“Emergency work” means work that must be completed immediately because public health, safety or the provision of essential services may be endangered.

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“Excavation” means a construction, repair, boring, coring, tunneling, installation or removal that involves the digging, cutting, drilling, disturbing, installing or otherwise damaging of the asphalt, pavement, curb, sidewalk, concrete, gravel, grass, turf, sod, earth, shrub, plant, landscaping or other surface within a County right-of-way as described by the applicant in a Permit.

“Municipal Consent” means authorization granted by the Director to an applicant to proceed with an application for a Road Cut/Occupancy or Special Events on County Roads Permit, having reviewed a comprehensive design submission which involves a formal drawing submission of the proposed placement of apparatus within County’s right-of-way.

“Public utility” means a system, works, plant, equipment or service for the production, transmission, delivery or furnishing of water, communications, electricity, artificial or natural gas, steam or hot water, either directly or indirectly to or for the public.

“Permit” means either a “Road Cut/Occupancy Permit” or a “Special Events on County Roads Permit” as described herein and in a form to the satisfaction of the Director;

“Public utility company” means an organization that maintains the infrastructure for a public service and may include, but not necessarily be limited to, communications cable, telephone, electricity, natural gas, potable water and sewage.

“Right-of-way” means land owned by the County as opened or unopened road allowances for the purposes of operating a public highway under the Act, but excludes any other owned or operated County lands.

“Road Cut/Occupancy Permit” means a form provided by the County and issued by the Director to an applicant for permission to perform an excavation or to perform another activity within a County right-of-way for the purpose described by the applicant in the form.

“Special Events on County Roads Permit” means a form provided by the County and issued by the Director to an applicant for permission to hold or perform an event, parade, procession or other activity along a designated route on a County roadway(s) for the purpose described by the applicant in the form.

“Roadway” means that part of the County right-of-way that is used for vehicular traffic.

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“Traffic control” means the provision, servicing, maintenance and removal of the traffic control devices and certified traffic control person as required by the Ministry of Transportation Ontario (MTO) Ontario Traffic Manual Book 7, the Occupational Health and Safety Act (OHSA) and Ontario Regulation 145/00 for Construction Projects, the Highway Traffic Act and all other applicable legislation and the County.

2. The Director is authorized to issue a Permit to an applicant for an activity to be performed within a County right-of-way that is deemed by the Director to be appropriate for the purposes of the County.
3. Every applicant shall complete a Permit application to the satisfaction of the Director.
4. Every applicant to be issued a Permit shall provide and maintain a certificate of insurance in an amount and a form satisfactory to the Director, naming the County of Peterborough as additional insured.
5. Every applicant to be issued a Permit by the Director shall maintain a traffic control plan for the duration of a Permit, as may be required.

Road Cut/Occupancy Permit

6. No group, association or individual shall undertake an excavation or other activity within a County right-of-way without having received authorization by the Director through issuance of a Road Cut/Occupancy Permit, except as otherwise provided in this By-law.
7. The Director may require an applicant to seek municipal consent prior to proceeding with an application for a Road Cut/Occupancy Permit.
8. The Director may require an applicant to submit an application fee for a Road Cut/Occupancy Permit to be paid upon submission of a completed Permit form, at the determination of the Director.
9. In the event that an application for a Road Cut/Occupancy Permit is not approved by the County for issuance, the application fee is non-refundable.
10. Every applicant to whom a Road Cut/Occupancy Permit is to be issued shall submit proof of registration with the Workplace Safety Insurance Board to the County in a form satisfactory to the Director.

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11. Every applicant to whom a Road Cut/Occupancy Permit has been issued for the purpose of performing an excavation within a County right-of-way shall carry out restoration of an excavation in a manner to the satisfaction of the Director.
12. Every applicant to whom a Road Cut/Occupancy Permit has been issued for the purpose of performing an excavation within a County right-of-way shall be responsible for the maintenance and repairs of any nature to all excavated areas for a period of one (1) year from the date of issuance of a Road Cut Permit.
13. Every applicant to whom a Road Cut/Occupancy Permit has been issued for the purpose of performing an excavation within a County right-of-way may submit a security, deposit or bond in the amount of 100% of the estimated cost of the works and in a form satisfactory to the County for the purpose of guaranteeing the restoration of an excavation undertaken by the applicant within a County right-of-way, at the determination of the Director.
14. Every applicant who is required to submit security, deposit or a bond with a Road Cut/Occupancy Permit application shall be reimbursed by the County the amount of the security, deposit or bond upon satisfactory completion of the one (1) year period from the date of issuance of a Road Cut/Occupancy Permit as determined by the Director.
15. Every applicant shall complete subsurface crossings of a paved hard surface County roadway using trenchless technologies, wherever possible. Open cut excavations on/to a paved hard surface County road may only be permitted after a reasonable effort (up to three (3) attempts) is undertaken utilizing trenchless technologies.
16. Every applicant shall acknowledge that subsurface crossings utilizing open cut excavations of a paved hard surface County roadway that is five (5) years old or less will not be permitted.
17. Every applicant to whom a Road Cut/Occupancy Permit has been issued shall notify the Director and any affected agency if a hazardous condition arises during the completion of the excavation.

Emergency

18. In the event of an emergency situation requiring an excavation within a County right-of-way, notification shall be given immediately to the Director by electronic

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mail or telephone communication and an application for a Road Cut/Occupancy Permit shall be made as soon as possible after commencement of the excavation and within one (1) business day following the emergency situation unless the Director agrees that such an application is not necessary.

Municipal Consent

19. An applicant shall consider seeking municipal consent from the Director prior to applying for a Road Cut/Occupancy Permit on the basis of the potential scope or complexity of a Road Cut/Occupancy Permit application.
20. The Director may grant municipal consent to a public utility company, commission, agency, municipal department or private applicant which has the authority to construct, operate and maintain their infrastructure within a County right-of-way.
21. Prior to granting municipal consent, the Director may require an applicant to prepare and submit drawings of adjacent surface and subsurface structures, adjacent infrastructure and existing topography and conditions that may be impacted by the issuance of a Road Cut/Occupancy permit or is located within applicable minimum clearance distances.
22. Where required under the guidelines established by the Professional Engineers of Ontario, drawings submitted for municipal consent shall be signed and sealed by a Professional Engineer.
23. An applicant shall submit confirmation of clearance from all other public utilities, agencies and commissions that may be impacted by a proposed work prior to the Director granting a municipal consent.
24. Upon the granting of municipal consent by the Director, an applicant may apply for a Road Cut/Occupancy Permit.

Special Events on County Roads Permit

25. No group, association or individual shall hold or perform an event, parade, procession or other activity on a County roadway(s) without having received authorization by the Director through issuance of a Special Events on County Roads Permit, except as otherwise provided in this By-law.
26. Every applicant to whom a Special Events on County Roads Permit is to be issued shall submit a certificate of insurance to the County in an amount and a form satisfactory to the Director.

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27. Every applicant to whom a Special Events on County Roads Permit is to be issued is required to include a sketch or diagram and description indicating the location of the route over which approval is being sought and indicating the location of the Special Event and Traffic Control Plan. If a banner will be used to indicate the height, including height of bottom of banner over road – a minimum clearance of 4.7 metres is required.
28. Every applicant to whom a Special Events on County Roads Permit is to be issued shall include a waste management plan demonstrating how the mandatory recycling By-law No. 11-1996, being a By-law to ban certain items from landfill sites and transfer stations within the County of Peterborough, is to be achieved.
29. Every applicant to whom a Special Events on County Roads Permit is to be issued shall submit written authorization provided by identified public agencies and officials of their agreement for the issuance of a Special Events on County Roads Permit.

General

30. No Permit shall be transferrable.
31. The activities of the County, its agents or the Police are exempt from the provisions of this By-law.
32. Activities conducted by a public utility company who are carrying out maintenance work on existing utility infrastructure where that activity does not require excavation within a County right-of-way are exempt from the provisions of this By-law.
33. Every applicant shall comply with any applicable law, regulation, By-law or standard that may apply to an excavation or activity to be performed by the applicant within a County right-of-way.
34. Every private entrance on or within a County right-of-way that complies with the requirements of the applicable County By-law regulating development adjacent to a County right-of-way or that is constructed in accordance with the terms and conditions of a subdivision or site plan agreement within the County is exempt from the provisions of this By-law.
35. Every private sign on or within a County right-of-way that complies with the requirements of the applicable County By-law regulating the placing, erecting or

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altering of signs upon or adjacent to a County road is exempt from the provisions of this By-law.

36. If an applicant fails to comply with any provisions of this By-law, they shall be given notice in writing by the Director indicating the required action and time wherein compliance must be achieved, failing which the County shall complete the required action and shall recover any costs incurred from security deposits as available.
37. Every applicant to whom a Permit has been issued shall ensure that access for emergency vehicles, to all public and private properties, is available at any and all times.
38. Issuance of a Permit by the Director shall not be deemed to be assumption by the County of any risk or liability associated with a Permit as issued to an application.
39. Every applicant agrees to save and hold harmless the County from any actions, causes, suits, claims, demands and costs whatsoever arising by reason of the applicant, his agents or employees doing, failing to do or doing incorrectly or negligently anything the applicant is required to do under the terms of a Permit and the applicant shall be responsible for damages, injuries or accidents resulting from his operations or caused by reason of the existence of location or condition of the site under consideration of the Permit or of any materials, plant or equipment used in connection with the excavation or activity considered in the Permit.
40. Refer to the County of Peterborough Tariff of Fees By-law for applicable fees, security deposits and certificate of insurance amounts as may be updated from time to time.

Penalty

41. a. Every person who contravenes any of the provisions of this by-law is guilty of an offence and on conviction is liable of a penalty where the minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$100,000 exclusive of costs under the provisions of the Municipal Act, 2001, S.O. 2001, c. 25, as amended and the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended.
- b. When a person has been convicted of an offence under this by-law, the Ontario Court of Justice or any court of competent jurisdiction thereafter, may, in addition to any other penalty imposed on the person convicted, issue an order prohibiting the continuation or repetition of the offence or the doing

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of any act or thing by the person convicted directed toward the continuation or repetition of the offence.

42. The Director may refuse to issue a Permit to an applicant for any of the following reasons:
- a. Violation of any condition of a Permit or provision of this By-law or any applicable law or regulation as previously issued to the applicant;
 - b. Non-payment of monies due to the County as may be applicable in administering this By-law;
 - c. Chronic or serious violations of any By-law or regulation of the County in the past and in any way related to the type of work proposed.
43. Any Permit issued by the Director may be revoked upon giving written notice to the applicant for any of the following reasons:
- a. The Permit has been issued in error by the County;
 - b. Violation of any condition of the Permit or provision of this By-law or any applicable law or regulation;
 - c. The existence of any condition that constitutes or creates a nuisance or risk to public health and safety;
 - d. Where mistaken, false or misleading information has been presented in relation to the issuance of a Permit under this By-law.
44. Where any Person or organization fails to comply with a notice issued pursuant to a requirement of this By-law, the County, in addition to other remedies:
- a. Shall have the right to carry out the work as required in the notice;
 - b. Shall have the right to recover the expense of carrying out the work as required by the notice, and;
 - c. Shall not be liable to compensate the applicant by reason of anything done by or on behalf of the County under the provisions of this By-law.

Validity

45. If a court of competent jurisdiction declares any provision, or any part of a provision, 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 each and every other provision of this By-law authorized by law, be applied and enforced in accordance with its terms to the fullest extent possible according to law.
46. This By-law shall come into force and effect on the date of final passing.

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47. This By-law shall be commonly called the “Road Cut/Occupancy Permit/ Municipal Consent/Special Events on County Roads Permit” By-law”.

Read a first, second and third time and passed in Open Council this 21st day of May, 2014.

J. Murray Jones

Warden

c/s

Sally Saunders

Clerk