

THE CORPORATION OF THE TOWNSHIP OF SCUGOG

BY-LAW NUMBER 31-19

BEING A BY-LAW TO REGULATE THE TEMPORARY CLOSURE OR
OCCUPANCY ON HIGHWAYS UNDER THE JURISDICTION OF AND WITHIN THE
TOWNSHIP OF SCUGOG (ROAD OCCUPANCY BY-LAW)

WHEREAS pursuant to the *Municipal Act* S.O. 2001, Chapter 25, Section 27 as amended, a municipality may pass by-laws with respect to highways with the municipality's jurisdiction over; including the temporary or permanent opening or closing;

AND WHEREAS it is necessary from time to time to temporarily close all or part of a highway in order to facilitate construction, maintenance, events, filming activities or other purposes;

NOW THEREFORE the Council of The Corporation of the Township of Scugog hereby enacts as follows:

1. **SHORT TITLE**

1.1 This by-law may be cited as the "Road Occupancy By-law"

2. **DEFINITIONS**

- a) "Applicant" means the person applying for a Permit.
- b) "Application" means the Township of Scugog Application for Road Occupancy Permit, as amended from time to time.
- c) "Boulevard" means that portion of a highway between the travelled portion of the Highway and the limit of the Highway property line.
- d) "Community Event Permit" means a Permit issued for the closure of a Highway for the purpose of but not limited to: parades, community walks, concerts, festivals, events and street parties.
- e) "Council" means the Council for The Corporation of the Township of Scugog.
- f) "Director" means the Director of Public Works, Parks and Recreation for the Township of Scugog or designate.
- g) "Expense" means any and all expenses for work to be done including any work required to be done by the Township resulting from anything done by any person and shall include pre-inspection or post inspections conducted in relation to any Road Occupancy Permit.
- h) "Highway" means a highway as described by the Ontario Highway Traffic Act S.O. 1990 as amended and includes unopened and unassumed road allowances

under the jurisdiction of the Township.

- i) "Inspection" means any inspection conducted by the Township in respect of any permit issued or to be issued whether or not a fee for any such inspection is paid by the applicant.
- j) "Officer" means the Municipal Law Enforcement Officer appointed by the Township of Scugog.
- k) "Oversize or Overweight" means any load that exceeds the size or weight requirements as established by the Ontario Highway Traffic Act S.O. 1990 as amended
- l) "Person" means an individual or individuals, corporation, partnership or agency.
- m) "Region" means the Regional Municipality of Durham.
- n) "right-of-way" means the municipal property designated as Highways, sidewalks, pathways, walkways and includes features therein such as curbs, shoulders, boulevards and drainage ditches.
- o) "Road Closure" means the partial occupancy or full occupancy of any Highway or portion thereof, and shall include any bridge, sidewalk, footpath or boulevard.
- p) "Road Occupancy" means the partial occupancy or full occupancy of any Highway or portion thereof, including any bridge, sidewalk, footpath or boulevard and shall include the occupancy of a Highway for the purpose of transporting any load requiring a permit under the provisions of this By-law.
- q) "Road Occupancy Permit" means a document issued and authorized by the Township pursuant to this by-law, for the occupancy or closure of any Highway for any purpose and shall be interchangeable with the term "Permit".
- r) "Seasonal Patio" means a temporary outdoor patio located within the municipal right-of-way within a sidewalk, boulevard or on-street parking space in front of a business.
- s) "Security" means a letter of credit or cash deposit held by the Township to be used for work that may be required by the Township to correct any work done.
- t) "Service Company" means a person providing services of water, sewage, fuel, energy, electricity, heating and cooling, telephone, cable and telecommunications and includes the Region, Hydro One, Veridian, Bell Canada, Enbridge Gas or their agents, etc.
- u) "Site Plan" means drawings or plans showing the area of Highway to be closed, occupied or excavated.
- v) "Township" means The Corporation of the Township of Scugog.
- w) "Vehicle" means a motor vehicle, trailer, traction engine, farm tractor, road building machine, bicycle and any vehicle drawn, propelled or driven by any kind of power, including muscular power.

- x) "Work" means the work described in the Application for a Permit or in the Permit.

3. AUTHORITY FOR APPROVING REQUESTS

- 3.1 The authority for approving requests to temporarily close all or part of a Highway shall be provided to the Director of Public Works, Parks and Recreation, as approved in the Delegation of Powers and Duties By-law.

4. GENERAL PROVISIONS

- 4.1 No person shall temporarily close, obstruct, encumber, injure, foul or in any way occupy any Highway, or any part thereof by:

- a) Construction, repair or improvement of the highway or a portion thereof or any works under, over, along or upon the highway;
- b) Excavation or any disturbance of the surface or the soil or material thereon;
- c) Storage of materials, storage bins, moving pods or any equipment;
- d) Hosting parades, community walks, events, concerts, street parties, displays, sales or other similar activities;
- e) Placing a tent, fence, boarding, structure or any other chattel thereon;
- f) Any filming activities;
- g) Moving any Oversize or Overweight vehicle, object or load;

without first applying for and receiving a Road Occupancy Permit.

- 4.2 No person shall alter, disturb, injure or landscape in any way or permit to be altered, disturbed, injured, or landscaped in any way, any grass portion of any boulevard abutting private property including but not limited to planting of trees, shrubs, flowers, the building of fences, the building of retaining or decorative walls, tree rings, the installation of an irrigation system, the installation of electrical wiring in or above the boulevard, etc.

5. ROAD OCCUPANCY PERMIT APPLICATION

- 5.1 Every Applicant for a Road Occupancy Permit shall:

- a) Submit a completed Application at least 15 days prior to the intended date of the Road Occupancy or closure;
- b) Submit a completed Application at least 30 days prior to the intended move of an Oversized or Overweight vehicle, object or load;
- c) Attach any documents required by the Township such as a Site Plan, Traffic Control Plan, etc.;

- d) Provide details of any work that will alter, break or disturb in any way an existing pavement, curb, boulevard, sidewalk, or other surface within the right-of-way, and how the Applicant will restore the right-of way;
 - e) Pay the application fee as set out in the Fees and Charges By-law;
 - f) Pay securities, as may be required by the Township;
 - g) Provide proof of insurance for a minimum amount of \$5,000,000, naming the Township as an additional insured and an endorsement to provide the Township with 30 days notification of cancellation; and
 - h) Provide details for an emergency contact.
- 5.2 The Director may approve or deny any Application for a Permit or may approve an Application subject to any terms or conditions that the Director deems necessary or appropriate.
- 5.3 All subsurface road crossings are to be completed using trenchless technology techniques wherever possible. Open cut excavations across right-of-ways shall only be permitted when specifically approved by the Director.
- 5.4 For applications requesting multiple road cuts, the Township reserves the right to issue a single Road Occupancy Permit or request multiple Road Occupancy Permits for the works.
- 5.5 The Road Occupancy Permit shall become void if the work authorized by the Permit is not commenced with sixty (60) days of the date of issue.

6. ROAD OCCUPANCY PERMIT CONDITIONS

- 6.1 The Applicant shall take all reasonable measures to protect persons and property from injury or damage, and shall be responsible for all losses and damage which may arise as a result of the work. Further, the Applicant shall indemnify and hold harmless the Township and its employees from and against all claims, demands, actions, suits or proceedings which may be brought against or made by third parties, directly or indirectly arising or alleged to arise out of the performance of or the failure to perform the work.
- 6.2 Upon receipt of a Road Occupancy Permit for the closure or partial closure of any highway, the applicant shall:
- a) Notify, in writing all persons and agencies that may be affected by the closure, including:
 - i. Durham Regional Police Services (North Division),
 - ii. Scugog Fire Department,
 - iii. Durham Regional Emergency Management Services,
 - iv. Durham Region's waste collection and recycling,
 - v. Durham Region Transit,
 - vi. Durham Region Works Department (Scugog Depot and/or Orono Depot),
 - vii. Durham District School Board,

- viii. Durham Catholic District School Board,
 - ix. Durham Student Transportation Services,
 - x. Individual residents, organizations and businesses affected by the closure,
 - xi. Any utility or public service company that may be affected by the closure, and
 - xii. Any other person or agency that may be affected by the closure;
- b) For all road closures longer than one week in duration, provide or cause to be provided signs along all approaches with the details of the closure including road name, dates of closure and contact information of Applicant. Signs must be in place a minimum of seven (7) days prior to the intended commencement of the road closure and in a location approved by the Director;
- c) Provide or cause to be provided, all signs, barricades, flag persons, traffic control devices and the use or operation of other persons and equipment as required for the proper and safe movement and control of pedestrians and traffic in the area, prior to the commencement of and at the location of the closure or occupancy. The safety of pedestrians and motorists will be the sole responsibility of the Applicant until all work is finalized and any and all repairs have been completed to the satisfaction of the Township;
- d) Ensure that access for emergency vehicles, to all public and private properties, is available at all times;
- e) Maintain full access by vehicles and pedestrians, including pedestrians with special needs, at all times to public and private properties and shall keep such access free and clear of all mud, debris and other materials. In the event that access cannot be maintained to any private lands, the Applicant shall have written authorization of that property owner and such authorization shall be made available for inspection by the Director or Officer;
- f) Not place or store or permit the placement or storage of any material or storage bin on a Highway where it creates a real or potential hazard for pedestrians or vehicles;
- g) Not place, store or permit the placement of storage bins, moving pods, material or any equipment to occupy the travelled portion of a Highway or any portion of the grass boulevard area abutting private property between November 1st and March 30th each year;
- h) Not place, store or permit the placement of storage bins, moving pods, material or any equipment to occupy the travelled portion of a Highway if the area is designated as a no stopping or no parking zone;
- i) Follow all requirements of Federal, Provincial and Municipal Health and Safety Regulations, Acts and By-laws;
- j) Post a copy of the Road Occupancy Permit at the work site in a visible location and shall, produce the Permit at the request of an Officer or other Township staff;
- k) Identify the existence and location of all underground and above ground utilities

at or adjacent to the work site and protect those utilities from damage during the work;

- l) Ensure all open excavations are suitably barricaded and marked to ensure the safety of pedestrians and vehicles;
- m) Expeditiously carry out completion of all work;
- n) Permanently repair all damaged areas of the right-of-way no later than 7 days after completion of the work to the satisfaction of the Township. In the event that the Applicant disturbs any portion of the right-of-way between December 15th and April 30th, a temporary repair of the damaged area may be made provided that a permanent repair is completed no later than May 31st to the satisfaction of the Township. The Applicant shall maintain the temporary repair until the permanent repair is made;
- o) Assume all liability for repairs of any nature to all disturbed areas for a period of two (2) years from the date of completion of the permanent repairs to the satisfaction of the Township;
- p) In the event that the work cannot be carried out within the time set out in the Permit, notify the Township in writing of the additional time required and the reason thereof, and shall obtain an extension of the Permit, at no charge, if approved by the Director.

6.3 The Township may revoke a Permit under the following circumstances:

- a) The Permit has been issued in error by the Township;
- b) The Permit does not conform with this By-law or any other applicable regulation or legislation;
- c) The Permit has been issued as a result of false, mistaken, incorrect, or misleading statements, information or undertaking on the Application; or
- d) The Permit holder, or any person employed by the Permit holder to do any Work for the Permit holder, fails or refuses to comply with any or all conditions placed on the Permit or complying with any of the information contained in the Application.

6.4 Where a breach of any provision of this By-law causes a Permit to be revoked or withdrawn, no portion of the cost of such Permit will be refundable.

7. EMERGENCY WORK

7.1 Where a Service Company occupies or closes a Highway as a result of an emergency, a telephone or email notice to the Director shall be made as soon as practical to do so and a formal Application for a Permit shall be made on the next business day unless the Director agrees that such an Application is not necessary.

7.2 Where any Police Service or Scugog Fire Department closes or occupies any Highway or portion thereof due to an emergency situation they shall notify the

Director as soon as practicable to do so and no Permit shall be required.

8. SEASONAL PATIOS

- 8.1 Any person or persons intending to occupy a portion of the municipal right-of-way, including a portion of the sidewalk, boulevard, or on-street parking for a Seasonal Patio must first apply for and receive a Road Occupancy Permit from the Township.
- 8.2 Applications for a Road Occupancy Permit for a Seasonal Patio must be submitted as per the requirements of Section 5.1 including the Road Occupancy Fee - Major. All Site Plans for the Seasonal Patios must be in accordance with the Township's Seasonal Patio Standards.
- 8.3 In addition to the application fee, owners of Seasonal Patios shall pay an annual rental fee for each parking space occupied as per the Fees and Charges By-law.
- 8.4 A maximum of two (2) on-street parking spaces adjacent to the Applicant's business may be used for a Seasonal Patio or sidewalk patio extension.
- 8.5 Seasonal Patios must be installed no earlier than one week before the Victoria Day holiday and must be removed no later than one week after Thanksgiving Day holiday.
- 8.6 Permission to install a patio for the season does not entitle a business to any right or expectation to be able to install a patio in subsequent seasons. A new Application must be submitted each year.
- 8.7 The Applicant shall be responsible for notifying all immediately adjacent owners and tenants of their intent to install a Seasonal Patio in the immediate vicinity of their property/ business/ residence.
- 8.8 Any required sidewalk patio extensions must be completed before obstruction of a sidewalk for construction or operation of a patio.
- 8.9 The Applicant agrees to provide the Township with a letter from a qualified person, after construction of the sidewalk extension and before beginning operations, confirming that construction completed is in general conformance with the approved design.
- 8.10 The Applicant assumes all maintenance and liability for the patio structure and sidewalk extension and may be required to undertake, alter, or repair as required by the Township to maintain safety and accessibility.
- 8.11 The Township retains the right to access the patio or sidewalk extension if needed for maintenance or emergency access to Township property. The Township has the right to remove or alter the patio to gain access to infrastructure.
- 8.12 Township staff retain the right to access any planters, baskets, light posts, or other Township improvements or infrastructure for watering, maintenance, or other matters. The Township may elect not to install planters at the location of

the patios. The Township will not be responsible for watering planters installed by the Owner.

- 8.13 Permission to access the municipal right-of-way becomes null and void if the Applicant should fail to meet the requirements set out in Permit and other applicable documents, in which case, the Township shall be at liberty to reinstate the site to its original condition for public protection at the expense of the Applicant.
- 8.14 The Applicant shall maintain access to all public and private properties for the duration of the construction and occupation of the right-of-way.
- 8.15 All municipal property, including the sidewalk, roadway, lighting, or other features will be returned to their initial condition or repaired of any damages. Damages not repaired by the applicant will be repaired or replaced by the Township at the Applicant's cost.
- 8.16 No business shall be eligible to operate a patio unless the business is in compliance with all Township requirements.
- 8.17 The Applicant shall be deemed the "Constructor" and the "Owner" for all purposes under the Occupational Health and Safety Act. The Applicant shall further be deemed the "Occupier" for all purposes under the Occupiers Liability Act.
- 8.18 The applicant agrees that upon removal of the patio, it is the applicant's responsibility to clean the area that the patio occupied and fill any holes in the road or sidewalk with material acceptable to Township Staff.
- 8.19 The operations of the business and patio must be in compliance with the Township's Noise By-Law. Operations of the patio must cease between the hours of 11:00 PM and 8:00 AM. No person is permitted to be in or remain on the patio during the above excluded hours.
- 8.20 The Applicant shall keep their Seasonal Patio, sidewalk extensions and area around the Seasonal Patio clean at all times and shall be responsible for the collection of litter, waste, cigarette butts, and refuse.
- 8.21 No person shall permit consumption of alcoholic beverages within any patio unless such area is licensed under the provisions of the Liquor License Act to permit the consumption of alcoholic beverages and unless such patio is operated in conjunction with a business holding a valid Liquor License. A copy of the Liquor License must be provided to the Township at the time of application.

9. EXEMPTIONS

- 9.1 Road Occupancy Permits are not required for:
 - a) Work undertaken by the Township, Region, Veridian or Hydro One;
 - b) The following types of work by a Service Company, providing the work does not block the travelled portion of the Highway or prevent the use of a sidewalk:

- i. Routine maintenance and testing of at-grade electrical and telecommunications vaults, pedestals, cabinets, transformers and other equipment;
 - ii. Routine maintenance and testing of aerial electrical and telecommunication cables, transformers, amplifiers, poles and other equipment;
 - iii. Routine maintenance and testing of natural gas valves and regulators;
 - iv. Work in manholes, valve chambers and transformer vaults; and
 - v. Non-destructive locating of underground plant;
- c) Minor work of very short duration as defined in Book 7 of the Ontario Traffic Manual, as amended, which does not cause any disruption to traffic flows, does not break ground and does not alter any existing utilities; and
- d) Work conducted as part of an approved subdivision, site plan, land division or draft plan application prior to the subdivision being approved by the Township;

10. PENALTIES

- 10.1 Any person who contravenes any provisions of this By-law is guilty of an offence and on conviction is liable to a fine \$100,000.00, and in the case of a continuing offence, for each day or part of a day that the offence continues, an additional maximum fine of \$10,000.00 pursuant to the Municipal Act, 2001, S.O. 2001, c. 25, as amended.
- 10.2 Where any person has contravened any provision of this By-law, the Township may without notice affect compliance and the Expense of doing so may be recovered by adding the Expenses to the tax roll for such property and collect them in the same manner as taxes.
- 10.3 Where any person fails to comply with a notice issued pursuant to a requirement of this By-law, the Township, in addition to other remedies shall have the right to recover the Expense of carrying out the work as required by the notice in the same manner as taxes.
- 10.4 The Township shall not be liable to compensate any person by reason of anything done or done on behalf of the Township under the provisions of this By-law.
- 10.5 A person is guilty of an offence if the person:
- a) Hinders or obstructs, or attempts to hinder or obstruct, an Officer, or any person in the exercise of a power or the performance of a duty under this By-law;
 - b) Makes a false or intentionally misleading recital or fact, statement or representation or produces falsified or fictitious agreement or document; or
 - c) Fails to perform a duty imposed within this By-law or who performs an act prohibited herein.

11. VALIDITY

- 11.1 If a court of competent jurisdiction should declare any section of this By-law, or part thereof, to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of this By-law as being invalid and is hereby declared that the remainder of the By-law shall be valid and shall remain in force.

12. REPEAL OF BY-LAW

- 12.1 That By-law Number 36-05 is hereby repealed.

13. EFFECTIVE DATE

- 13.1 THAT this By-Law shall come into full force on the day of its passing.

Read a First, Second and Third time and finally passed this 25th day of March, 2019.

MAYOR, Roberta A. Drew

CLERK, John Paul Newman