

The Corporation of The Town Of The Blue Mountains

By-Law Number 2014-65

Being A By-Law To Regulate the Installation of Works on Town Land and Establish a Process to Issue Land Use Permit

WHEREAS Subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, C.25 (the "Act") as amended, states a municipal power, including a municipality's capacity, rights, powers and privileges of a natural person, shall be exercised by by-law unless the municipality is specifically authorized to do otherwise;

AND WHEREAS Sections 11 and 27 of the Act enables the council of a municipality to pass by-laws regarding highways under its jurisdiction;

AND WHEREAS Section 11 of the Act enables the Council of a municipality to pass by-laws regarding culture, parks, recreation and heritage;

AND WHEREAS Subsection 110(3) of the *Highway Traffic Act*, R.S.O. 1990, C. H.8 (the "HTA"), states council of a municipality may enact a by-law providing that a permit for use of a highway under the jurisdiction of the municipality by a vehicle in excess of the dimensional or weight limits set out in the HTA may be issued by an officer of the corporation named therein;

AND WHEREAS it is deemed expedient by Council to pass a by-law so as to regulate the installation of works on town land where such works might interfere with operations, maintenance and construction activities of the Town and to ensure any damage to town land and town infrastructure is repaired.

NOW THEREFORE Council of the Corporation of the Town of The Blue Mountains does hereby enact as follows:

1. Definitions

application: shall mean the application form prescribed by the Director to apply for a land use permit.

damage deposit: shall mean a sum of money paid by the owner to the Town as a condition of the issuance of a land use permit which may be used by the Town to repair any damage caused to town land during the installation off the works for which a land use permit is issued for or during the construction of any buildings or structures on the owner's land.

Director: shall mean the person holding the title of Director of Engineering and Public Works or the Director of Community Services for the Town or his or her designate, depending on the location of the buildings or structures or the proposed works on town land.

highway: shall mean a common and public highway under the jurisdiction of the Town the types of which are more particularly described in section 26 of the Act and includes a highway which has not been assumed by by-law for public use.

install: shall also mean erect, construct, reinstall, reconstruct, undertake, perform, place or store.

land occupation agreement: shall mean an agreement between the owner and the Town permitting the installation of works on town land and the encroachment on or occupation of town land by buildings, structures, or works.

land use permit: shall mean a permit issued by the Director in accordance with this by-law for the installation of works on town land and the encroachment on or occupation of town land by buildings, structures or works.

license fee: shall mean an annual fee set out in the Town's fees and charges by-law to be paid to the Town for the right for buildings, structures and works to encroach on and occupy town

land in accordance with a land use permit or land occupation agreement.

order: means an order made under section 445 of the Act.

owner: shall mean the person who, as the context of this by-law requires, is the owner of the works or the encroaching buildings, structures or works or the vehicle for which the land use permit is issued.

permit fee: shall mean a non-refundable fee set out in the Town's fees and charges by-law to be paid to the Town for a land use permit.

person: includes a corporation and the successors, assigns, heirs, executors, administrators and other legal representatives of a person.

staging: shall mean the placement, deposit, temporary storage, loading or unloading of equipment and materials of any kind on town land, but does not include the lawful parking of vehicles.

Town: shall mean The Corporation of the Town of The Blue Mountains.

town land: shall mean any land, owned, managed or leased by the Town and shall include, but not be limited to, parkland, public open space, public waterfront access points, highways and easements in the Town's favour and any Town owned infrastructure installed on Town land.

Treasurer: shall be the person who has been appointed by by-law as the Town's treasurer.

works: shall mean any works, including but not limited to, filling, grading, drainage, culverts, driveways, berms, fencing, trees, shrubs, hedges, landscaping of any kind, property entrances, utilities, private plumbing, scaffolding, patios, planters, signage, rural mailboxes or any other object or thing.

2. No person shall install or cause to be installed, either temporarily or permanently, any works on, over or under any portion of town land, without the owner having first obtained a land use permit from the Director in accordance with this by-law.

3. No person shall encroach on or occupy town land with any buildings, structures or any works without the owner having first obtained a land use permit from the Director in accordance with this by-law.

4. No person shall undertake any staging work on town land, or deposit any snow, ice or debris of any sort from private property onto town land without having first obtained a land use permit from the Director in accordance with this by-law.

5. No person shall operate:

- a. steel tracked vehicles on or over any town land, or
- b. motor vehicles and construction equipment of any kind, excluding steel tracked vehicles, on or over town land, except the travelled part of a highway, driveways and parking areas

without the owner having first obtained a land user permit from the Director in accordance with this by-law.

6. The Director may refuse to issue or renew a land use permit if the Director decides, acting reasonably, that the installation of works on town land or the continuing encroachment on or occupation of town land with any buildings, structure or any works will interfere with current or future use, operations, maintenance and construction activities of the Town on the town land. An owner may appeal a decision made by the Director under this section to the Town Council whose decision on the appeal shall be final.

7. In the event that the Director and the Town Council refuse to issue or renew a land use

permit, or the owner fails to pay the license fee when due in accordance with the land use permit or land occupancy agreement, the owner, at its own expense, shall remove the encroaching buildings, structures or works from the town land and restore the town land to a condition satisfactory to the Director. Failing which, the Director may make an order under section 445 of the Act requiring the owner to do this work.

8. In the event the owner has not removed encroaching buildings, structures or works from the town land and restored the town land to a condition satisfactory to the Director in accordance with an order, the Town may, at the owner's expense, remove the encroaching buildings, structures or works from the town land and restore the town land to a satisfactory condition and may recover the cost of this work, together with an administrative fee of twenty-five (25) percent of the cost of the Town's work from the owner in accordance with section 446 of the Act.

9. In the event that any damage is caused to town land by the owner or its agents, contractors and employees in the installation of the works described in a land use permit or in the construction of any building or structures on the owner's land, the owner, at its own expense, shall repair any such damage and the Director may make an order under section 445 of the Act requiring the owner to do the work to repair the damage.

10. In the event the owner has not repaired damage in accordance with an order, the Town may, repair the damage at the owner's expense and may recover the cost of the repairs, together with an administrative fee of twenty-five (25) percent of the Town's cost of the repairs ("the total repair costs"), from the owner in accordance with section 446 of the Act.

11. The Treasurer is authorized to use the damage deposit to recover the whole or any part of the total repair costs owing to the Town. The Treasurer shall return to the owner any remaining balance of the damage deposit after the Town has recovered the total repair costs. Alternatively the Director may, at his or her sole discretion, direct the whole or any part of the damage deposit be transferred into a reserve designated by the Treasurer to be utilized at a date determined by the Director to repair the damage.

12. The Application for a land use permit shall be in the form prescribed by the Director and be accompanied by the permit fee and, if applicable, the first year's license fee and the damage deposit as set out in the application form.

13. The Director may, as a condition of issuing a land use permit, require the owner to enter into a land occupation agreement with the Town which will require among other things the the owner pay a license fee to the Town.

14. A land use permit shall expire two (2) years from the date of issuance and any associated damage deposit shall be returned less any monies that are determined to be retained to make corrective repairs in the sole opinion of the Director acting reasonably.

15. Every person who is issued a land use permit shall provide, a certificate of insurance coverage naming the Town as an additional insured party, confirmation of locating services, and records of the installed works and any other documentation that may be reasonably prescribed by the Director, and that any damage deposit associated with the land use permit shall be held until the described documentation is provided in a form satisfactory to the Director.

16. Every person who owns works installed on town land before the enactment of this by-law must obtain a land use permit for such works if required by the Director regardless of the date of installation and circumstances of the works and whether or not such works are temporary or permanent.

17. This by-law shall be administered and enforced by the Director.

18. The Director shall have the authority to prescribe:

- a. The classes of land use permits to be issued, including the classes which require land occupation agreements and license fees;

- b. The terms and conditions for land occupation agreements and for each class of land use permit, including the expiry dates, insurance requirements and damage deposits required;
- c. The form of the applications for the classes of land use permits; and,
- d. The form and terms and conditions of the permit referred to in subsection 110(1) of the HTA.

19. The Director shall have the authority to execute on behalf of the Town all land use agreements required by this by-law in a form approved by the Town's solicitor.

20. The Director shall have authority to issue permits referred to in subsection 110(1) of the HTA.

21. This by-law is not applicable to any works which have been installed on or occupy town land in accordance with an existing agreement with the Town, or installed by a person under the authority of the laws of Ontario or Canada.

22. Every person who contravenes any provision of this By-law is guilty of an offence and shall, upon conviction, be liable to a fine as provided under the Provincial Offences Act.

23. The short form wording for the title of this By-law shall be "Land Use Permit" By-law.

24. Township of Collingwood By-law No. 95-29, being a By-law to prohibit or regulate the obstructing, encumbering and damaging of highways within the territorial limits of the municipality is hereby rescinded.

25. By-law No. 99-53, being a By-law to regulate the placing, construction and maintenance of material and objects in, on, under or over highways under Town jurisdiction is hereby rescinded.

26. By-law No. 2004-125, being a By-law to prohibit the deposit of ice or snow on municipal highways is hereby rescinded.

Enacted and passed on this 22nd day of September, 2014

Ellen Anderson, Mayor

Corrina Giles, Clerk