

THE CORPORATION OF THE TOWN OF WHITBY

BY-LAW 6291-10

ROAD OCCUPANCY AND MUNICIPAL ACCESS

WHEREAS pursuant to the *Municipal Act, 2001, S.O. 2001, c.25*, Section 27 as amended, a municipality may enact by-laws regarding highways it has jurisdiction over;

AND WHEREAS pursuant to the *Municipal Act, 2001, S.O. 2001, c.25*, Section 11 and 8, as amended, as part of the power to regulate or prohibit a matter, a municipality may, among other things, require persons to do things respecting the matter and provide for a system of permits;

AND WHEREAS pursuant to the *Municipal Act, 2001, S.O. 2001, c.25*, Section 444, 445 and 446, as amended, a municipality possesses certain enforcement powers including the authority to undertake remedial action and recover the costs for such action from the person responsible;

NOW THEREFORE the Council of the Corporation of the Town of Whitby ENACTS as follows:

DEFINITIONS:

1. In this By-law:

- a. "Town" means The Corporation of the Town of Whitby.
- b. "Director" means the Director of Public Works for the Town or his/her designate;
- c. "Construction" shall include, but not restricted to, the installations of retaining walls or installations of swimming pools;
- d. "Highway" includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage or vehicles and includes the area between the lateral property lines thereof, and utilities therein, under the jurisdiction of and assumed by the Town of Whitby;
- e. "Order" means an order issued by the Director of Public Works, pursuant to section 444 and 445 of the Ontario Municipal Act, 2001, c. 25, as amended;
- f. "Permit" includes permits, approvals and deposits identified in Schedule A of this By-law;
- g. "Person" includes a corporation.

By-Law No. 6291-10 (continued)

GENERAL PROHIBITIONS

2. No person shall obstruct or damage, or cause or permit the obstruction or damage of any Highway, unless under the authority of a Permit issued pursuant to this By-law.
3. No person shall deposit, throw, spill or track or cause or permit the deposit, throwing, spilling or tracking of any material, waste or soil onto any Highway.

PERMITS

4. Every person who undertakes Construction on land abutting a Highway shall obtain the relevant Permits as required pursuant to "Schedule A" of this By-law prior to commencing the Construction.
5. Every person who undertakes Construction or repair or installations of facilities and utilities on a Highway shall obtain the relevant Permits as required pursuant to "Schedule A" of this By-law, prior to commencing the Construction.
6. An application for a Permit pursuant to this By-law shall include:
 - a. A completed application on the prescribed forms;
 - b. Payment of the appropriate fees as provided in the Public Works Fees for Services By-law 6150-09 as amended; and
 - c. Any documentation, deposit or security, or insurance certificates, as required for the issuance of the Permit.
7. Receipt of the application and/or the Permit fee by the Town shall not represent approval of the application for the issuance of a Permit nor shall it obligate the Town to issue such Permit.
8. The issuance of a Permit under this By-law does not relieve any person from the necessity of acquiring any other license or permit or complying with any other applicable laws, bylaws, regulations and requirements of the Town or other authorities have jurisdiction.
9. The Director shall issue a Permit
 - a. upon satisfaction that all requirements of the at permit application have been met, and
 - b. if all outstanding fines and amounts owing by the applicant, pursuant to this by-law have been paid.

By-Law No. 6291-10 (continued)

10. A Permit may be suspended or revoked by written notice, if
- a. Any of the conditions of the Permit have not been complied with;
 - b. The carrying on of the activity for which a Permit is required, by the applicant or Permit holder, has or will result in a breach of this By-law or any other applicable law; or
 - c. The carrying on by the applicant or Permit holder of the activity for which a Permit is required would infringe the rights, or endanger the health or safety of the members of the public; or
 - d. The applicant or Permit holder has provided fraudulent information in the Permit application; and
- in the case of suspension, the Permit shall not be reinstated until the Director is able to confirm that the conditions leading to the suspension have been remedied.

PERMIT HOLDERS

11. A Permit holder shall ensure that the Permit is available for inspection at all times.
12. A Permit holder shall comply and/or cause compliance with all provisions and conditions of the Permit and this By-law.
13. Failure to comply with any provision or condition of a Permit or this By-law may result in the revocation of the Permit by the Director, in addition to any other enforcement proceedings against the Permit holder as permitted by law.
14. The holder of a revoked Permit shall immediately cease or cause the immediate cessation of all the activities for which a Permit has been issued upon notification from the Director that the Permit has been revoked or suspended.

ENFORCEMENT

15. Every Permit holder and every person named in a notice or Order pursuant to this by-law, shall forthwith rectify damaged conditions on a Highway, to the satisfaction of the Director.
16. Notwithstanding any other provision of this By-law, the Director may issue an Order to any person, to rectify conditions of non-compliance with this By-law or conditions of the Permit.

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17. The Order shall set out

- a. Reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and
- b. The work to be done and the date by which the work must be done.

18. Failure to comply with an Order may result in the Town carrying out the work required by the Order and the person(s) named in the Order shall be responsible for the costs of doing so, including administrative costs.

19. The cost of repairing or restoring any part of a Highway which has been damaged as a result of work for which a Permit was issued, including damages caused by the crossing of vehicles or equipment and including administrative charges, may be deducted by the Town at any time from the deposit, or drawn from the securities, provided by a Permit holder pursuant to this By-law.

20. Where the cost of repairing or restoring any part of a Highway or other municipal service, exceeds the amount held on deposit or posted as security, the excess amount of the costs, including administrative costs, shall be a debt owing to the Town.

21. In addition to any other remedies available to it, the Town may

- a. Recover the costs incurred from
 - i. action taken in default of an Order;
 - ii. restoring any part of a Highway incurred as a result of exceeding the amount held on deposit or posted as security, or
 - iii. in default of complying with conditions of a Permit, by adding the amount of the costs to the tax roll of the Permit holder's lands, or the person named in the Order; and collecting them in the same manner as taxes; and
- b. Register a notice of lien in the proper land registry office for unpaid amounts.

22. The Director or has the right to enter on land at any reasonable time for the purpose of carrying out an inspection to determine

- a. Compliance with this By-law;
- b. Compliance with conditions of a Permit;

23. For the purposes of an inspection pursuant to this By-law, the Director may

- a. Require the production for inspection of documents or things relevant to the inspection;

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- b. Inspect and remove document or things relevant to the inspection for the purpose of making copies or extracts;
- c. Require information from any person concerning a matter related to the inspection;
- d. Alone or in conjunction with a person possessing special or expert knowledge, make examination or take tests, sample or photographs necessary for the purposes of the inspection.

OFFENCES

- 24. It is an offence for an applicant to provide false or fraudulent information on an application for a Permit.
- 25. It is an offence of the by-law for any person to
 - a. Obstruct an inspection conducted by the Director; or
 - b. Fail to produce information or documents required by the Director.
- 26. No person shall violate any provision or condition of a Permit issued pursuant to this By-law.
- 27. Failure to comply with an Order or a notice issued by the Director is an offence.
- 28. Every person who contravenes a provision of this By-law is guilty of an offence and is liable on conviction to a fine as provided for in the *Provincial Offences Act, R.S.O. 1990, c.P.33*, as amended.

ADMINISTRATION AND INTERPRETATION

- 29. Notices and Orders issued pursuant to this By-law shall be deemed to be served if
 - a. Hand delivered to the person to whom it is addressed;
 - b. Hand delivered to an employee representing the business/company to which it is addressed;
 - c. Hand delivered a person 16 years of age or older, at the address on the notice or Order; or
 - d. Sent by registered mail to the address on the notice or Order.
- 30. The Director shall be responsible for the administration of this By-law including, without limiting the generality of the foregoing, determining, instructing, and directing the institution of enforcement.

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31. Unless the context otherwise requires, words importing the singular number shall include the plural, and words importing the masculine gender shall include the feminine.
32. The headings inserted in this By-law are for convenience only.
33. If a Court of competent jurisdiction declares any section or part of a section of this By-law to be invalid, it is the intention of Council that the remainder of the By-law shall continue in force.
34. Nothing in this By-law shall be intended to supersede, replace, fetter or relieve any person from complying with any requirements under the *Building Code Act, 1992, S.O. 1992, c. 23* as amended, and regulations thereto.
35. Where provisions of this By-law conflict with provisions in any other by-laws, the stricter provision shall prevail.
36. This By-law shall come into force and effect on the date of passing by Council.

REAPEAL OF EXISTING BY-LAWS

37. By-law No. 96-74 as amended, is hereby repealed.

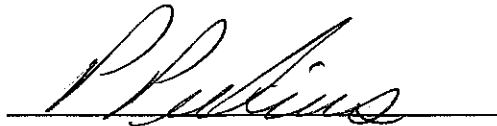
SHORT TITLE

38. This By-law may be referred to as the Road Occupancy and Municipal Access By-law.

BY-LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED
THIS 8TH DAY OF FEBRUARY, A.D., 2010.



Debi A. Wilcox, Town Clerk



Patricia Perkins, Mayor

SCHEDULE "A"
To By-law 6291-10

Curb Cutting Fee	Required for any individual property owner wishing to create or widen a driveway entrance on a Highway which has a curb and/or gutter – Town cuts curb according to application
Road Occupancy Permit	Required prior to any work proceeding within the road allowance - Highway
Driveway Entrance Culverts Permits	Required by property owner wishing to create a new driveway entrance, widen an existing driveway entrance or install a temporary driveway entrance
Municipal Access Deposit	Required by property owners prior to accessing Town of Whitby's boulevard for Construction purposes, pursuant to a building permit, pool enclosure permit, fill permit, or for landscaping private property. Deposits are required to cross the boulevard, curb, sidewalk, gutter and remove Town owned fencing for access to private property.
Newspaper Box Permits	Required by owners of newspaper boxes for the installation and maintenance of newspaper boxes placed on the boulevard of Town of Whitby right of way.
Municipal Consent Permit	Required by utilities companies and other contractors installing facilities within a Highway, right-of-way, or easements, prior to commencing any work.