

THE CORPORATION OF THE TOWNSHIP OF WILMOT

BY-LAW NO. 2022-XX

BEING A BY-LAW TO REGULATE WORK ON HIGHWAYS WITHIN THE TOWNSHIP OF WILMOT

**WHEREAS** section 11(3)1 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the “Act”), authorizes a municipality to pass by-laws respecting highways;

**AND WHEREAS** section 27(1) of the Act states that a municipality may pass by-laws in respect of a highway only if it has jurisdiction over the highway;

**AND WHEREAS** section 35 of the Act states that a municipality may pass by-laws removing or restricting the common law right of passage by the public over a highway and the common law right of access to the highway by an owner of land abutting a highway;

**AND WHEREAS** section 128 of the Act provides that a local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become public nuisances;

**AND WHEREAS** section 425 of the Act provides that a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality is guilty of an offence;

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF WILMOT HEREBY ENACTS AS FOLLOWS:**

**Part I – Short Title**

1. This by-law may be cited as the “Right-of-Way By-law”.

**Part II – Definitions**

2. For purposes of this by-law:
  - (a) “**boulevard**” means that part of a highway from the edge of the roadway to the nearest lateral property line, but does not include a shoulder, sidewalk or multi-use trail;
  - (b) “**Council**” means the Council of The Corporation of the Township of Wilmot;
  - (c) “**Director**” means the Director of Public Works and Engineering of the Township, or his or her designate;
  - (d) “**driveway**” means that part of a highway that provides vehicular access to and from the roadway to an adjacent property;
  - (e) “**Emergency Work**” means unforeseen work that is necessary immediately because of imminent danger to life, health or property including, but not limited to:
    - (i) a washout or cave-in;
    - (ii) drainage impediment or ponding;

- (iii) soft spot;
  - (iv) settlement of the highway surface greater than 50mm;
  - (v) damaged or leaking water or gas pipe;
  - (vi) damaged, plugged or leaving sanitary or storm sewer pipe;
  - (vii) damaged underground electrical or communications facility;
  - (viii) damaged or downed aboveground or overhead utility structure including, but not limited to, a poll, anchor, guy wire, support strand, cable, splice enclosure, pedestal or cabinet; or,
  - (ix) unscheduled interruption of utility service;
- (f) **“highway”** means a ‘highway’ as defined in section 1(1) of the Act over which the Township has jurisdiction and, for greater certainty, the term ‘highway’ includes what is listed under section 26 of the Act as well as any boulevards and sidewalks on such highways;
- (g) **“infrastructure”** includes, but is not limited to, any public or private Utility Structure, copper or coaxial wire, fibre optic cable, pipe, conduit, pedestal, cabinet, antenna, vault, support structure, bus stop facility, culvert, noise barrier, fence, guiderail, barricade, traffic island, traffic control device, sign, light, rail facility, pavement, subgrade, manhole, catch basin, hand well, valve chamber, valve box, curb, gutter, sidewalk, driveway, mailbox, hydrant, sod, berm, ditch or watercourse;
- (h) **“lane”** means that part of a highway that accommodates a single line of moving or parked vehicles;
- (i) **“Municipal Law Enforcement Officer”** means a person appointed in accordance with section 15 of the *Police Services Act*, R.S.O. 1990, c. P.15, as amended;
- (j) **“person”** includes, but is not limited to, an individual, sole proprietorship, partnership, association or corporation;
- (k) **“Police Officer”** means a ‘police officer’ as defined under the *Police Services Act*, R.S.O. 1990, c. P.15, as amended;
- (l) **“Region”** means the Regional Municipality of Waterloo;
- (m) **“sidewalk”** means that part of a highway with a surface improved with asphalt, concrete or gravel for the use of pedestrians
- (n) **“Township”** means The Corporation of the Township of Wilmot;

- (o) **“Township Costs”** means labour, material, equipment and administrative costs incurred by the Township as a result of the work, including but not limited to, costs for temporary or permanent traffic control devices, costs where the person or persons to whom the permit was issued has failed to comply with any of the requirements of this by-law, and costs for restoration of infrastructure in, on, over, under, across or along a highway damaged by the work, as deemed necessary by the Director;
- (p) **“Utility Structure”** includes, but is not limited to, storm sewer, sanitary sewer, watermain, gas, oil, hydro, telecommunications and traffic control signal equipment, plant, facilities, and structures, whether in, on, over, under, across or along a highway;
- (q) **“vehicle”** includes, but is not limited to, 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;
- (r) **“Warranty Period”** means a period of two (2) years after the restoration of infrastructure in, on, over, under, across or along a highway damaged by the work, or longer as required by the Director, within which time the person or persons to whom the Work Permit was issued must ensure that the restoration, together with all materials used in completing the restoration, complies with this by-law;
- (s) **“work”** means any excavation, cut or trench or other project to install, construct, place, move, remove, relocate, adjust, alter, clean, maintain, test, repair, replace, improve, or restore infrastructure in, on, over, under, across or along a highway, including any work that extends from a highway to private property, or any occupation of a highway for work adjacent to a highway;
- (t) **“Work Permit”** means a Work Permit issued under this by-law; and,
- (u) **“Work Zone”** means the portion or section of a highway in which the work will be undertaken.

### **Part III – General Prohibitions**

3. No person shall, or permit another person to, at any time, undertake any work on, over, under, across or along a highway, including Emergency Work, without first having obtained a Work Permit in accordance with the provisions of this by-law.
4. Without limiting the generality of section 3 of this by-law, no person shall, or permit another person to, at any time, create, alter or expand a driveway from a highway to a property over a boulevard without first having obtained a Work Permit in accordance with the provisions of this by-law.
5. No person who has been issued a Work Permit shall, or permit another person to, at any time, fail to comply with a condition of a Work Permit.

6. No person shall, or permit another person to, at any time, leave or allow anything to remain on a highway that could reasonably pose a danger to the health, safety and well-being of persons or property including, but not limited to, something that affects the normal flow of vehicular or pedestrian traffic on a highway or something that negatively impacts visibility on a highway.
7. No person shall, or permit another person to, at any time, place any sports equipment on a highway including, but not limited to, basketball nets, hockey nets or skateboarding equipment.

#### **Part IV – Exemptions**

8. The provisions of this by-Law do not apply to any of the following:
  - (a) the Township;
  - (b) the Region; or,
  - (c) a person who has entered into an agreement with the Township which permits them to undertake work on a highway.

#### **Part V – Applying for a Work Permit**

9. Every person shall apply for and obtain a Work Permit prior to undertaking any work on, over, under, across or along a highway, including Emergency Work.
10. An application for a Work Permit shall be submitted at least seven (7) business days prior to any work being undertaken on a highway, unless the Work Permit pertains to Emergency Work.
11. An application for a Work Permit shall be in the name of the person or persons performing the work.
12. A person must apply for a Work Permit by filling out the form prescribed by the Director and shall provide to the Director, at a minimum:
  - (a) their name, title (if applicable), company/organization name (if applicable), street address, telephone number and email address;
  - (b) a description of the Work Zone, including the names of all highways intersecting or otherwise impacted by the Work Zone;
  - (c) a description of the type and purpose of work being proposed, including whether the work is in, on, over, under, across or along any highways over which the Region has jurisdiction;
  - (d) any construction drawings associated with the work;
  - (e) the proposed depth, width and length of any excavation, cut or trench;
  - (f) the scheduled start date of the work and the length of time estimated to complete the work;
  - (g) an indication as to whether any of the following are being proposed:

- (i) any closure of, or restrictions of access on, to or from, all or part of a highway;
  - (ii) the removal or bagging of one or more parking meters;
  - (iii) any parking prohibitions;
  - (iv) the relocation of a bus stop;
  - (v) any change to pavement markings; or,
  - (vi) any change to a traffic control device, including a temporary adjustment to traffic control signal timing or interference with a traffic signal loop;
- (h) an indication as to whether the work for which the Work Permit being sought is Emergency Work and, if so, the nature of the emergency;
  - (i) a signed indemnity, satisfactory to the Director, indemnifying and saving harmless the Township from any and all claims, demands, suits, actions, judgments made, brought or recovered against the Township and from all loss, costs, damages, charges or expenses that may be incurred, sustained or paid by the Township by reason of the granting of the Work Permit;
  - (j) a certificate of insurance for the proposed work, naming the Township as an additional insured, in a form and for an amount satisfactory to the Director;
  - (k) any fees and charges imposed by the Township's *Fees and Charges By-law*; and,
  - (l) any additional information or documentation in relation to the proposed work, as required by the Director.
13. No person applying for a Work Permit shall knowingly provide false information to the Director or otherwise to the Township.

**Part VI – Work Permits**

14. The Director may issue, refuse to issue, or issue with conditions, a Work Permit for any proposed work on a highway.
15. The Director may impose any conditions on a Work Permit that the Director feels is reasonably necessary in order to ensure minimal disruption or interference and to ensure the health, safety and well-being of persons and property.
16. In considering whether to issue, refuse to issue, or issue with conditions a Work Permit, the Director shall have regard to, at a minimum:

- (a) whether the work is necessary;
  - (b) whether the work proposed to be undertaken is Emergency Work;
  - (c) whether the proposed design, location, or timing of the work is appropriate;
  - (d) whether the work is likely to be carried out in compliance with the Work Permit and this by-law;
  - (e) any relevant past conduct of the person or persons applying for a Work Permit as it relates to performing work on a highway; or,
  - (f) a conflict with a previously scheduled activity for which the Township has granted a permit.
17. Once issued, all Work Permits shall expire, and be of no force or effect, on the date and at the time outlined on the Work Permit or, if not otherwise outlined on the Work Permit, within ninety (90) days of its issuance by the Director.
18. At any time after the Director has granted a Work Permit, the Director may:
- (a) impose, add or change the conditions of an issued Work Permit, upon giving notice to the person or persons for whom the Work Permit was issued; and,
  - (b) extend the date and time on which the Work Permit will expire and be of no force or effect.
19. At any time after the Director has issued a Work Permit, the Director may suspend or revoke a Work Permit:
- (a) for a contravention of any of the provisions of this by-law, any other by-law, or any federal or provincial law;
  - (b) if the Director was provided with false or misleading information on the Work Permit application;
  - (c) if a condition imposed on a Work Permit has been contravened; or,
  - (d) to ensure the health, safety and well-being of persons or property.
20. If a Work Permit is suspended or revoked by the Director, the Director shall immediately notify the person or persons to whom the Work Permit was issued, in writing, that the Work Permit has been suspended or revoked and, if suspended, the length of any such suspension.
21. A Work Permit is not transferable to any other person or persons.
22. A Work Permit shall only be valid for the Work Zone for which it is issued.
23. Only the work for which a Work Permit is issued shall be conducted under a Work Permit.

## **Part VII - Emergency Work**

24. Any person undertaking Emergency Work shall, to the fullest extent possible, comply with the provisions of this by-law unless such compliance would result in an increased danger to the health, safety and well-being of persons or property.

## **Part VIII – General Permit Conditions**

25. The person or persons to whom the Work Permit is issued shall notify the Township, in writing, at least five (5) business days in advance of any work being undertaken on a highway.
26. In addition to any conditions imposed on a Work Permit, every person undertaking work on a highway pursuant to a Work Permit shall:
- (a) produce the Work Permit to the Director, a Municipal Law Enforcement Officer or a Police Officer immediately upon demand;
  - (b) comply with all municipal by-laws (including this by-law) as well as provincial and federal laws including, but not limited to, those pertaining to safety, noise, trees, water resources, oversize loads, traffic control devices, railway crossings and the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended;
  - (c) comply with the Ministry of Transportation of Ontario's *Ontario Traffic Manual Book 7 Temporary Conditions*, as amended or replaced;
  - (d) notify the Director, at least five (5) business days in advance, when the work:
    - (i) requires a change to an existing traffic control signal;
    - (ii) requires that the Township prohibit parking on a highway; or,
    - (iii) may interfere with a traffic signal loop.
  - (e) notify the Director, at least five (5) business days in advance, when the work requires the closure of all or part of a highway;
  - (f) undertake the work in accordance with any applicable Township specifications for highway construction;
  - (g) apply and remove temporary pavement markings within a Work Zone using temporary pavement marking materials;
  - (h) conduct all work expeditiously;
  - (i) work in a manner so as to avoid interference with or damage to any existing infrastructure;

- (j) work in a manner so as to maintain access to all properties with access affected by the work, consulting with adjacent property owners for this purpose and making known to them the schedule of the work;
- (k) work in a manner so as to avoid damage to property adjacent to the Work Zone;
- (l) work in a manner so as to avoid injuring or damaging any tree;
- (m) not place material on any highway where it creates a hazard to pedestrians or vehicles;
- (n) maintain, at all times, safe and convenient passage for vehicles and pedestrians through or around the Work Zone;
- (o) not allow material to obstruct the free passage of water through any drain, gutter, ditch or watercourse;
- (p) inform themselves as to the existence and location of all underground and above-ground utilities in or adjacent to the Work Zone;
- (q) prior to commencing the work, satisfy themselves as to the existence or non-existence of any environmental contamination at or adjacent to the Work Zone;
- (r) not allow, and immediately take action to control, unnecessary dust or any other unnecessary or unreasonable nuisance to the public;
- (s) ensure that construction materials and equipment are properly secured within the Work Zone;
- (t) obtain any other permits or approvals required for the work and provide proof of such permits or approvals to the Director, a Municipal Law Enforcement Officer or a Police Officer immediately upon demand;
- (u) if required by the Director, provide the Director with as-built drawings of the work, within ninety (90) days of the completion of the work;
- (v) if required by the Director, provide the Director with the necessary financial securities, such as a letter of credit, in the amount required by the Director, to ensure that the work outlined in the Work Permit will be performed and performed to the Township's satisfaction; and,
- (w) provide to the Township any additional information or documentation relating to the work as required by the Director.

27. No work on any highway pursuant to a Work Permit shall occur outside of Monday to Friday, 8:00 a.m. to 5:00 p.m., unless otherwise permitted by the Director.

28. Any work required to create, alter or expand a driveway, from a highway to a property over a boulevard, shall be carried out at the relevant property owner's sole expense.

**Part IX – Restoration**

29. When work on a highway being performed pursuant to a Work Permit ceases each day, the person or persons to whom the Work Permit is issued shall:
- (a) bring all excavations, cuts or trenches in the highway to grade in accordance with any applicable Township specifications for highway construction, unless otherwise permitted by the Director;
  - (b) bring all driveways to grade so that the driveways provide safe and convenient passage unless the person or persons to whom the permit is issued has made reasonable alternative arrangements in consultation with the owner of the property serviced by the driveway; and,
  - (c) leave the Work Zone in a safe and clean condition.
30. After the work is completed pursuant to a Work Permit, the person or persons to whom the Work Permit is issued shall:
- (a) restore all infrastructure in, on, over, under, across or along the highway in accordance with any applicable Township specifications for highway construction, unless otherwise permitted by the Director; and,
  - (b) remove all debris, refuse and excess excavated material from the Work Zone, leaving it in a neat, clean and safe condition, free from nuisance and similar to, or better than, the condition of the Work Zone prior to the work being undertaken.
31. When required to do so by the Director, the person or persons to whom the Work Permit is issued shall retain a qualified materials testing company to undertake specified compaction and compliance testing and report the results to the Director.

**Part X – Maintenance and Warranty**

32. The person or persons to whom the Work Permit is issued shall:
- (a) maintain any infrastructure that has been disturbed by the work and restore it in accordance with any applicable Township specifications for highway construction for the duration of the Warranty Period; and,
  - (b) maintain the Utility Structure in, on, over, under, across or along a highway in a safe and clean condition, including, but not limited to, maintaining any appurtenances thereto in accordance with any applicable Township specifications for highway construction.

33. The person or persons to whom a Work Permit is issued shall pay all Township Costs, in accordance with any invoice delivered to them by the Director, following the Warranty Period.
34. If the person or persons to whom a Work Permit is issued does not perform the work outlined in the Work Permit, or does not perform the work in compliance with this by-law or otherwise to the Township's satisfaction, acting reasonably, the Township may draw upon any financial securities provided, such as a letter of credit, in order for the Township to recover its costs to perform the work or to remedy the work so that it is in compliance with this by-law or otherwise meets with the Township's satisfaction, acting reasonably.

#### **Part XI – Administration and Enforcement**

35. The Director is responsible for the administration of this by-law on behalf of the Township, including the review of all applications for Work Permits, the issuance of a Work Permit, the refusal to issue a Work Permit and the issuance of a Work Permit with conditions.
36. This by-law may be enforced by the Director, a Municipal Law Enforcement Officer or a Police Officer.
37. The Director may prescribe any administrative forms required pursuant to this by-law at any time.
38. The Director, a Municipal Law Enforcement Officer or a Police Officer, or an individual under their direction, may inspect a Work Zone at any reasonable time.
39. No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this by-law.

#### **Part XII – Offence and Penalty**

40. Every person, excluding a corporation, who contravenes any of the provisions of this by-law is guilty of an offence and, upon conviction, is liable to a maximum fine of twenty-five thousand dollars (\$25,000.00) for a first offence, and a maximum fine of fifty thousand dollars (\$50,000.00) for a subsequent offence.
41. Every corporation who contravenes any of the provisions of this by-law is guilty of an offence and, upon conviction, is liable to a maximum fine of fifty thousand dollars (\$50,000.00) for a first offence, and a maximum fine of one hundred thousand dollars (\$100,000.00) for a subsequent offence.
42. All contraventions of this by-law are designated as continuing offences pursuant to section 429 of the Act.
43. In addition to the fine amounts otherwise provided in this by-law, for each day or part of a day that an offence continues, the maximum fine shall be ten thousand dollars (\$10,000.00). The total of all of the daily fines for an offence is not limited to one hundred thousand dollars (\$100,000.00).

44. Pursuant to section 431 of the Act, if this by-law is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by this by-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the offence by the person convicted.

### **Part XIII – Order to Discontinue Activity**

45. If the Director is satisfied that a contravention of this By-law has occurred, the Director may make an order requiring the person who contravened this by-law, or who permitted or caused the contravention, or the owner or occupier of the land on which the contravention occurred, to discontinue the contravening activity.
46. An order under section 45 of this by-law 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.
47. Any person who contravenes an order under section 45 of this by-law is guilty of an offence.

### **Part XIV – Work Order**

48. If the Director is satisfied that a contravention of this by-law has occurred, the Director may make an order requiring the person who contravened this by-law, or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to do work to correct the contravention.
49. An order under section 48 of this by-law 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.
50. An order under section 48 of this by-law may require work to be done even though the facts which constitute the contravention of this by-law, were present before this by-law came into force.
51. Any person who contravenes an order under section 48 of this by-law is guilty of an offence.

### **Part XV – Remedial Action**

52. If a person is directed or required to do a matter or thing pursuant to this by-law and that person fails to do that matter or thing, in default of it being done by the person directed or required to do it, the matter or thing may be done by the Township at the person's expense.
53. For the purpose of section 52 of this by-law, the Township may enter upon land at any reasonable time.

- 54. The Township may recover the costs of doing a matter or thing pursuant to section 52 of this by-law from the person directed or required to do it by action or by adding the costs to the tax roll of that person and collecting them in the same manner as property taxes.
- 55. The costs outlined in section 52 of this by-law shall include interest calculated at a rate of fifteen percent (15%) per annum, calculated for the period commencing on the first day the Township incurs the costs and ending on the day the costs, including the interest, are paid in full. The amount of the costs, including interest, constitutes a lien on the land upon the registration in the proper land registry office of a notice of lien.

**Part XVI – Severability**

- 56. If any provision of this by-law is found by any court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be deemed to be severable and all other provisions of this by-law shall be deemed to be separate and independent and shall continue in full force and effect.

**Part XVII – Repeal**

- 57. By-law 86-57 is hereby repealed.
- 58. Where the provisions of any other by-law is inconsistent with the provisions of this by-law, the provisions of this by-law shall prevail.

**Part XVIII – Coming Into Force**

- 59. This by-law shall come into full force and effect upon its passage by Council.

Enacted by Council this ...day of ..... 2022.

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MAYOR – Les Armstrong

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CLERK –