

CITY OF HAMILTON

BY-LAW NO. 15-091

To Regulate the Installation of Equipment on Roads and to Delete portions of The Corporation of the City of Hamilton By-law No. 86-77 and The Regional Municipality of Hamilton-Wentworth By-law No. R77-109.

WHEREAS sections 8, 9 and 10 of the *Municipal Act, 2001* authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes, and in particular, paragraphs 4, 5, 6, 8 and 10 of subsection 10(2) authorize by-laws respecting public assets of the municipality, the economic, social and environmental well-being of City, the safety and well-being of persons, the protection of persons and property and structures;

AND WHEREAS the City of Hamilton is responsible for ensuring that:

- persons are protected from injury;
- property is protected from damage; and
- disruption is minimized for those using the road as well as for abutting properties,

when work is carried out and equipment is installed on, in or under its roads;

AND WHEREAS the *Municipal Act, 2001* authorizes the City of Hamilton, amongst other things, to delegate its authority, to impose fees or charges on persons for services or activities provided or done by or on behalf of it, to provide for inspections and inspection orders, and to make orders to discontinue activity or to do work;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

PART 1 - DEFINITIONS

1.1 In this By-law:

"**City**" means the municipality of the City of Hamilton or the geographic area of the City of Hamilton as the context requires;

"**Director**" means the Director of Engineering Services of the Public Works Department for the City and his or her designate or successor;

“emergency work” means work on existing equipment required to reduce or eliminate a situation or an impending situation that constitutes a danger that could result in serious harm to persons or substantial damage to property, including the loss of an essential service or damage to other infrastructure/equipment;

“equipment” includes underground conduits and pipes, cabinets, poles, towers, anchors, guy wires, brackets, cross arms, insulators, foundations, overhead and underground conductors, wires, lines, cables and transformers, access nodes, ancillary appliances and fittings and reasonably required associated protective installations;

“Officer” means a person appointed by Council, by the Director, or under this By-law, to administer or enforce this By-law and includes a person employed by the City whose duties are to enforce this By-law;

“permit” means a permit issued under Part 4 of this By-law to do work as set out in Appendix M of the Roads – Equipment Installation Manual;

“Permit Application Office” means an office set out in Appendix A of the Roads – Equipment Installation Manual;

“permit holder” means a person to whom a permit has been issued and includes persons doing work on behalf of the permit holder;

“person” includes any individual, firm, association, partnership, corporation, company or organization of any kind;

“road” means a road under the jurisdiction of the City and 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 of vehicles and includes the area between the lateral property lines thereof;

“Roads – Equipment Installation Manual” means the Roads – Equipment Installation Manual as approved by the Director from time to time; and

“work” means work on equipment that affects any road and includes any excavation, or installation, repair, replacement or extension of equipment on, in or under or a road;

PART 2 - APPLICATION OF BY-LAW

- 2.1 This By-law applies to all roads.
- 2.2 This By-law does not apply to any work which is carried out by the City, its employees, agents or contractors.
- 2.3 The Director may waive the application of all or part of this By-law if he or she is satisfied that the work is adequately regulated by an agreement with the City or another form of approval given by the City.
- 2.4 Nothing in this By-law is to be construed as permitting anything which is prohibited under federal or provincial legislation, and where there is a conflict in this respect between federal or provincial legislation and this By-law, the federal or provincial legislation prevails.

PART 3 - GENERAL PROHIBITIONS

- 3.1(1) No person shall undertake any work without first obtaining a permit in accordance with this By-law and the Roads – Equipment Installation Manual.
 - (2) Despite subsection 3.1(1), emergency work may be undertaken without first obtaining a permit if the Permit Application Office is notified no later than 48 hours after the emergency work is commenced and a permit is applied for as soon as possible after the Permit Application Office is notified.
- 3.2 No permit holder shall carry out or permit the carrying of work that is not in compliance with this By-law, the Roads – Equipment Installation Manual and all conditions of any permit issued under this By-law.
- 3.3 When undertaking work, the permit holder shall produce a copy of the permit to the Director or an Officer upon request.
- 3.4 Every person undertaking work shall comply with all applicable statutes, regulations, standards, codes, by-laws, rules and similar requirements.
- 3.5 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 or the Roads – Equipment Installation Manual.
- 3.6 No person shall provide false or inaccurate information in an application for a permit issued under this By-law or in any document or thing required to be submitted by this By-law or the Roads – Equipment Installation Manual.

PART 4 - MORATORIUM - EQUIPMENT ACCESSED BY THE PUBLIC

- 4.1 The purpose of Part 4 is to temporarily stop work with respect to the installation of equipment accessed by the public (community mailboxes and any similar equipment) while the Director develops appropriate standards to be added to the Roads – Equipment Installation Manual and takes all other necessary steps for the processing of these permits.

Temporarily stopping this work will ensure that the installation of large numbers of community mailboxes by Canada Post Corporation in established neighbourhoods is regulated in accordance with appropriate standards.

- 4.2 From the date this By-law comes into force until 120 days after the day on which Canada Post Corporation pays for the first 500 permits for community mailboxes:
- (a) no person shall undertake any work to install community mailboxes;
 - (b) the Director shall not consider an application or issue a permit with respect to the installation of community mailboxes.
- 4.3 Paragraph 4.2(b) applies even if an application with respect to the installation of community mailboxes was made before this By-law came into force.

PART 5 - PERMIT APPLICATION

- 5.1 A person applying for a permit shall submit a completed application to the Director that is in accordance with Chapter 4 of the Roads – Equipment Installation Manual and includes:
- (a) the name, municipal address, telephone number and email address of the person responsible for the work and:
 - (i) the name, position, telephone number and email address of an individual contact, available at all times while the permit is in effect, for that person;
 - (ii) the name(s), telephone number(s) and email address(es) of the most senior field personnel of that person or of their agent, servant, employee, subcontractor or licensee assigned to oversee the work;
 - (b) a description of the type, purpose and location of the work including the name(s) of the road(s) and the nearest municipal address(es);
 - (c) the scheduled starting date of the work and length of time estimated to complete the work;
 - (d) any proposed lane closure, road closure or sidewalk closure;

- (e) the requirement for any proposed removal or bagging of a parking meter, prohibition of curb parking, relocation of a bus stop, change to pavement markings or change to a traffic control device, including a temporary adjustment to traffic control signal timing or interference with a traffic signal loop;
 - (f) whether the work is emergency work and the nature of the emergency;
 - (g) a signed indemnity satisfactory to the Director;
 - (h) evidence of insurance coverage satisfactory to the Director;
 - (i) security as required by the Director;
 - (j) an agreement with the City with respect to work as required by the Director;
 - (k) revised or additional information to determine if the permit should be issued as required by the Director; and
 - (l) payment of the prescribed application fees in a manner as required by the Director.
- 5.2 The Director may issue a permit after receipt of a completed application, including any revised or additional information required by him or her, and the prescribed application fees. In making his or her decision to issue or refuse a permit, the Director shall have regard for the Roads – Equipment Installation Manual, including, but not limited to:
- (a) the moratorium on newly improved roads; and
 - (b) the requirements for alignments, services, horizontal and vertical services, depth of cover, structures with surface access and common trenching.
- 5.3(1) The Director may refuse a permit if the person responsible for the work:
- (a) is not in compliance with this By-law or the Roads – Equipment Installation Manual;
 - (b) is not in compliance with this By-law or the Roads – Equipment Installation Manual with respect to another permit; or
 - (c) has not paid any penalty or court awarded costs resulting from a legal proceeding relating to the By-law or the Roads – Equipment Installation Manual.
- 5.4 A permit expires:
- (a) on the date the work is completed or as set out in the permit, whichever comes first; or
 - (b) on notice of revocation by the Director.

- 5.5(1) If the work will not be completed before the permit expires under paragraph 5.4(a), the permit holder may apply for an extension not less than seven days prior to the expiry date.
- (2) The Director may approve an application for an extension having regard for:
- (a) the work to be completed during the extension;
 - (b) the progress of the work up until the date of the application;
 - (c) the performance of the permit holder up until the date of the application;
 - (d) any potential conflict that may result from the extension with other planned or ongoing work; and
 - (e) the safety and convenience of the public.
- (3) A permit holder cannot apply for more than one extension and shall make a fresh application under section 5.1 for any other continuation or resumption of work commenced under an expired permit.

PART 6 - PERMITS - GENERAL

- 6.1 A permit issued under this By-law is the property of the City and is not transferable.
- 6.2(1) A permit holder shall immediately inform the Director of any change to:
- (a) the information contained in an application for a permit;
 - (b) the information contained in a permit that has been issued;
 - (c) the characteristics of the work for which the permit has been issued; or
 - (d) cancellation of the work.
- (2) The Director may require any one or more of revised or additional information, additional prescribed fees, or a fresh application with respect to a change under subsection 6.2(1).
- 6.3(1) The Director may impose conditions as a requirement for obtaining or continuing to hold a permit issued under this By-law that he or she considers appropriate for the protection of a road, any property abutting a road or of any person. Such conditions may include but are not limited to:
- (a) giving the Director notice of the date the work will commence at least five days in advance and identifying who will be carrying out the work;
 - (b) giving the Director notice of any change to the commencement or completion dates immediately;
 - (c) giving the Director notice of the date the work has been completed no more than five days after completion;

- (d) producing a copy of the permit at the location of the work upon demand;
 - (e) carrying out the work diligently and in a good and workmanlike manner including:
 - (i) taking proper precautions to protect individuals from injury and property from harm;
 - (ii) damaging the road and all existing equipment as little as possible; and
 - (iii) restoring the road at least to the condition it was in before the work commenced; and
 - (f) paying all prescribed fees.
- 6.4 The Director may, on his or her own initiative:
- (a) alter or revoke the terms and conditions of a permit after it has been issued; or
 - (b) impose new terms and conditions in a permit.
- 6.5 The Director may immediately suspend or revoke a permit issued under this By-law, in writing, where the Director is satisfied that a suspension or revocation is necessary in an emergency situation of immediate threat or danger to a road, any property abutting a road or to any person.
- 6.6 The Director may revoke a permit if:
- (a) in his or her opinion the permit holder:
 - (i) fails to comply with the conditions of a permit, this By-law or the Roads – Equipment Installation Manual;
 - (ii) fails to notify the Director immediately of any of the changes referred to in subsection 6.2(1);
 - (iii) fails, within 30 days after the issuance of the permit, to seriously commence the work;
 - (iv) substantially discontinues the work for a period of more than 30 days;
 - (v) provides false or inaccurate information in the application for the permit; or
 - (b) any person doing work on behalf of the permit holder has failed to comply with any applicable statutes, regulations, standards, codes, by-laws, rules or similar requirements.
- 6.7(1) The Director may give notice of the suspension or revocation of a permit by contacting a permit holder in writing, by telephone or by email in accordance with the contact information provided on the permit application.

- (2) A permit holder shall give notice to the Director in writing by registered mail or by email in accordance with the contact information provided in the Roads – Equipment Installation Manual.

PART 7 - ADMINISTRATION AND ENFORCEMENT

General

- 7.1 The Director is authorized to negotiate and enter into agreements with respect to work as required to ensure compliance with this By-law and the Roads – Equipment Installation Manual and to generally protect the City's interests.
- 7.2 The Director is authorized to administer and enforce this By-law including but not limited to:
- (a) arranging for:
 - (i) the assistance or work of City staff, City agents or the assistance of police officers;
 - (ii) the making of orders or other requirements and the imposition of conditions as authorized under this By-law;
 - (iii) the obtaining of court orders or warrants as may be required;
 - (iv) the commencement of such actions on behalf of the City to recover costs or restrain contravention of this By-law as deemed necessary; and
 - (b) prescribing the format and content of any forms or other documents including the Roads – Equipment Installation Manual required under this By-law.
- 7.3 The Director may assign Officers to enforce this By-law and Officers so assigned or appointed by Council to enforce this By-law shall have the authority to:
- (a) carry out inspections;
 - (b) make orders or other requirements as authorized under this By-law and the Roads – Equipment Installation Manual; and
 - (c) give immediate effect to any orders or other requirements made under this By-law.
- 7.4 The Director, the City's Manager of Geomatics/Corridor Management, and all City employees in the Geomatics and Corridor Management Section of the Engineering Services Division of the Public Works Department of the City of Hamilton are appointed as Officers for the purposes of the administration and

enforcement of this By-law and the applicable sections of the *Municipal Act, 2001*.

- 7.5 The Director may assign duties or delegate tasks under this By-law to be carried out in the Director's absence or otherwise.
- 7.6 All information submitted under this By-law, including all information submitted for any permit issued under this By-law, may be made available to any member of the public subject to the *Municipal Freedom of Information and Protection of Privacy Act*, if requested.

Fees

- 7.7 All fees referred to in this By-law, including fees for services provided, shall be as set out in the City's User Fees and Charges By-law, or as otherwise set and approved by Council from time to time.

Entry and Inspections

- 7.8 An Officer may enter on land at any reasonable time and in accordance with the conditions set out in sections 435 and 437 of the *Municipal Act, 2001* for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
- (a) an order or other requirement made under this By-law;
 - (b) a condition of a permit issued under this By-law; or
 - (c) an order made under section 431 of the *Municipal Act, 2001*.
- 7.9 An Officer, for the purposes of the inspection under section 7.8 and in accordance with the conditions set out in section 436 of the *Municipal Act, 2001*, may:
- (a) require the production for inspection of documents or things relevant to the inspection;
 - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - (c) require information in writing or otherwise as required by an Officer from any person concerning a matter related to the inspection;
 - (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
- 7.10 An Officer may undertake an inspection pursuant to an order issued by a provincial judge or justice of the peace under section 438 of the *Municipal Act, 2001*, in accordance with the conditions set out in that section, where he or she

has been prevented or is likely to be prevented from carrying out an inspection under section 7.8.

Orders and Other Documents Including Delivery

- 7.11 If an Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred to discontinue the contravening activity.
- 7.12 An order under section 7.11 shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the premises on which the contravention occurred; and
 - (b) the date or dates by which there must be compliance with the order, which may be of immediate effect should the Officer determine that the circumstances warrant.
- 7.13 If an Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who has contravened this By-law or who caused or permitted the contravention or the owner or occupier of a premises on which the contravention occurred to do work to correct the contravention.
- 7.14 An order under section 7.13 shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the premises on which the contravention occurred;
 - (b) the work to be completed which may include but is not limited to requiring that prior to performing any work, all necessary permits or other approvals be applied for and obtained;
 - (c) the date or dates by which the work must be completed; and
 - (d) notice that if the order is not complied with, then the work may be done at the expense of the person ordered to do the work.
- 7.15 An order under section 7.11 or 7.13 may be given by contacting a permit holder in writing or by email in accordance with the information provided on the permit application or, if there is no permit application, by contacting the person the Director determines to be responsible for the work personally or by registered mail at their last known address.

- 7.16 Where a time frame is set out in an order or other document for carrying out any action, an Officer may extend the time for compliance beyond the established time frame provided such extension is required and is acceptable to the Officer.

City Carrying Out Work

- 7.17 Where a person does not comply with a direction or a requirement, including an order or a condition of a permit under this By-law to do a matter or thing, the Director, with such assistance by others as may be required, may carry out such direction, requirement or order at the person's expense.
- 7.18 Where the costs of doing a matter or thing under section 7.17 are estimated to be:
- (a) up to but not including \$100,000, the Director may proceed without further approval and in accordance with the City's Procurement Policy; or
 - (b) \$100,000 or greater, the Director may proceed with approval of an authorized person or of Council and in accordance with the City's Procurement Policy.
- 7.19 The City may recover the costs of doing a matter or thing under section 7.17 by means of any one or more of:
- (a) bringing an action;
 - (b) adding the costs to the tax roll and collecting them in the same manner as property taxes and such costs shall include an annual interest rate of 15 per cent commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full;
 - (c) realizing on security provided for this purpose; or
 - (d) charging a fee as set out in the City's User Fees and Charges By-law or as otherwise set and approved by Council from time to time.
- 7.20 The amount of the City's costs, including interest to the date payment is made in full, constitutes a lien upon the land, upon the registration of a notice of lien upon the land.

PART 8 – PENALTIES

- 8.1 Every person other than a corporation who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$10,000 for a first offence and not more than \$25,000 for a subsequent offence.
- 8.2 Every corporation that contravenes any provision of this By-law is guilty of an offence and upon conviction is liable for every day or part thereof upon which

such offence occurs or continues, to a fine of not more than \$50,000 for a first offence and not more than \$100,000 for a subsequent offence.

- 8.3 Any person who contravenes an order made under this By-law, or an officer or director of a corporation who knowingly concurs in such a contravention by the corporation, is guilty of a continuing offence and upon conviction is liable to a daily fine or penalty of a maximum of \$10,000 for each day or part of a day that the offence continues, and despite section 8.1 and section 8.2, the total of all the daily fines imposed for an offence is not limited by the fine amounts listed in those sections.
- 8.4 Every person who is convicted of an offence under this By-law may be liable, in addition to the fines established under sections 8.1, 8.2 and 8.3, to a special fine, which may exceed \$100,000, designed to eliminate or reduce any economic advantage or gain from contravening this By-law or failing to comply with an order made under this By-law.
- 8.5 Where a person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, make an order prohibiting the continuation or repetition of the offence by the person convicted.
- 8.6 Where any person contravenes any provision of this By-law, such person shall be responsible for all costs incurred by the City related to the contravention.

PART 9 - GENERAL PROVISIONS

- 9.1 This By-law may be referred to as the Hamilton Roads - Equipment Installation By-law or the Roads - Equipment Installation By-law.
- 9.2 If a court of competent jurisdiction declares any provision or part of a provision of this By-law invalid, the provision or part of a provision is deemed severable from this By-law and it is the intention of Council that the remainder of this By-law shall continue to be in force.

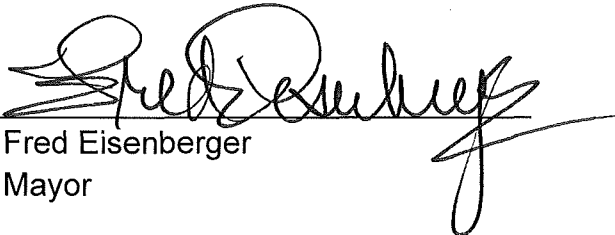
PART 10 - DELETIONS, TRANSITION AND ENACTMENT


- 10.1 Sections 6, 10, 12, 13 and 14 of The Corporation of The City of Hamilton By-law No. 86-77, section 6, 10, 12, 13 and 14 of The Regional Municipality of Hamilton-Wentworth By-law No. R77-109 are repealed.

10.2 All approvals with respect to work as defined in this By-law, that are in effect at the time this By-law comes into force, are continued and are subject to this By-law with all necessary modifications.

10.3 This By-law comes into force on the date of its passing.

PASSED this 15th day of April, 2015.


Fred Eisenberger
Mayor


Janet Pilon
Acting City Clerk