

The Corporation of the Town of Prescott

By-law #05-2010

Being a by-law to regulate the entry upon and reinstatement of sidewalks and highways in the Town of Prescott

WHEREAS Sections 8(1), 11 and 27 of the *Municipal Act, 2001*, S.O. 2001, c.25, authorize a municipality to pass by-laws regulating activity on municipal highways;

AND WHEREAS the Council of the Town of Prescott deems it expedient and desirable that terms and conditions be established to govern the installation of objects on, under or over sidewalks and highways under the jurisdiction of the Town of Prescott;

NOW THEREFORE, the Council of the Corporation of the Town of Prescott hereby enacts as follows:

DEFINITIONS

1. In this by-law:

“date of final reinstatement” means the day that the finished surface is satisfactorily reinstated on any road cut that has been opened unless the road cut has to be re-excavated in order to execute repairs, in which case the “date of final reinstatement” means the day the repairs are satisfactorily completed;

“deleterious material” means subsurface soils of an undesirable nature such as, but not limited to, highly organic silts, sensitive or ultra sensitive clays, peat or other highly compressible soils, and soils containing noxious or hazardous chemical or waste products;

“Director” means the Town of Prescott Director of Public Works or designate;

“heave” means any rise in the surface of a road cut in relation to the grade of the adjacent undisturbed highway;

“highway” means a common and public highway and includes any bridge, trestle, viaduct or other structure forming part of the highway, and except as otherwise provided, includes a portion of a highway and includes the area between the lateral property lines thereof;

“O.P.S.S.” means Ontario Provincial Standard Specifications, as amended;

“pathway” means the parts of a highway set aside by the Town for the use of pedestrians and cyclists;

“public works” means works supplying the general public with necessities or conveniences and includes, but is not limited to, works for the production, supply and transmission of gas, oil, sewer, water and electric power or energy, and all telephone, cable television and other telecommunications lines;

“public utility” means a board, commission, or corporation that provides a public work under the authority of any statute, charter, by-law or franchise;

“road activity” includes the temporary occupancy of the highway for work of any nature by the Town or any public utility or person but does not include a road cut;

“road cut” means a surface or subsurface cut in any part of a highway made by any means, including any excavation, reconstruction, cutting, saw cutting, overlaying, crack sealing, breaking, boring, jacking or tunneling operations;

“roadway” means the part of a highway that is improved, designed or ordinarily used for

vehicular traffic, but does not include the shoulder, and, where a highway includes two or more separated roadways, the term "roadway" refers to any one roadway separately and not to all of the roadways collectively;

"security" means,

- (a) cash or certified cheque payable to the Town;
- (b) bearer bonds of the Government of Canada, with the exception of savings bonds, provincial bonds or provincial guaranteed bonds, or other municipal bonds, provided that,
 - 1. the interest coupons are attached to all bonds, and
 - 2. the bonds are acceptable to the Town;
- (c) an irrevocable letter of credit issued by a chartered bank, credit union; or
- (d) road cut permit bonds from institutions acceptable to the Town, which guarantees that the applicant will carry out and maintain the work authorized by any permit issued under this by-law in conformity with the provisions of this by-law;

"settlement" or "settled" means any sinking of the surface of a road cut in relation to the grade of the adjacent undisturbed highway;

"shoulder" means that part of a highway immediately adjacent to the roadway and having a surface, which has been improved for the use of vehicles with asphalt, concrete or gravel;

"sidewalk" means all parts of a highway set aside by the Town for the use of pedestrians;

"Standards for Utility Cut Reinstatement" means the Town's design and construction standards for the rehabilitation of road surfaces depending on construction methods;

"traffic management plan" means a document outlining the particulars of proposed work on any highway that is submitted by or on behalf of the contractor to the Town for approval. The traffic management plan may be required at the Director's sole discretion, and where required, shall contain the information respecting how the applicant intends to comply with this by-law including but not limited to the following:

- (a) start and completion times of work;
- (b) specific location of work;
- (c) requirement to work during peak hours, if any;
- (d) lane use requirements;
- (e) requirements for road closure;
- (f) public notification undertaken;
- (g) parking meters affected by work;
- (h) requirement for temporary no stopping signs;
- (i) identification of any bus route(s) and bus stops affected by work activity; and
- (j) traffic routing and detour requirements where required.

"vehicle" includes 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, but does not include a motorized snow vehicle or a street car; and

"warranty" means a guarantee by the permit holder that the work for which a permit has been issued has been carried out in accordance with the Town's requirements

ROAD CUT PERMIT

2. No person shall break, excavate, bore under, tunnel, dig up or remove any part of a road unless he or she possesses a valid road cut permit to do so. Save and except in accordance with the Emergency Work provisions of this by-law, or pursuant to the written approval of the Town of Prescott municipal Council, no road cut shall be permitted, and no road cut permit shall be issued over that portion of a highway which has been paved or resurfaced in the previous sixty (60) months without written approval from the Municipal Council of the Corporation of the Town of Prescott.
3. Every person requiring a road cut permit shall apply in writing on a form provided by the Town. When applying for a road cut permit, the applicant shall:
 - a) complete the prescribed application form;
 - b) furnish to the Director such information as the Director may require, including but not limited to a traffic management plan; and
 - c) file the completed application.
4. A road cut permit shall not be issued until:
 - a) proof of insurance has been filed as required by this By-law;
 - b) security has been provided as required by this By-law;
 - c) the permit fee or fees as required by this By-law have been paid;
 - d) proof has been provided to show that the person applying for the permit is a duly authorized representative of the applicant;
 - e) the applicant has certified that:
 - i) all public utilities have been informed of the proposed road cut; and
 - ii) work shall not commence until each public utility has given the applicant the position of its underground works.
5. A road cut permit is not transferable.
6. A road cut permit shall become void if the work authorized by the permit is not commenced within thirty (30) calendar days of the date of its issue. An administrative fee for the renewal will be charged and is not refundable in whole or in part.
7. No permit holder shall work at a job site without the road cut permit on-site and available for inspection.
8. Where two (2) or more cuts are proposed, the Director may state the order in which the work is to be performed.
9. The applicant shall be responsible for ensuring that all provisions of this and any other applicable by-law are met.
10. The permit holder shall display at the job site an easily read sign showing the names of the permit holder, the person making the road cut, and the name of the entity for which the road cut is made.

NOTICE REQUIREMENTS

11. No permit holder shall commence work on a road cut until at least two (2) working days after the permit for the road cut has been issued.
12. Every permit holder shall, at least two (2) working days prior to commencing a road cut, notify the Director of the exact time it intends to start the work, and no work shall be started within that two (2) working days notice period unless otherwise authorized by the Director.
13. Subject to section 14, where a road cut or road activity will affect private property or its access or egress, the permit holder or the person responsible for the road activity shall, at least two (2) working days prior to commencing a road cut or road activity, notify the resident of the affected property of: the plan of the work, the approximate start date, and the duration of the work.
14. Where the work is of a major nature or duration and will cause general inconvenience to all the residents and businesses located beside or near the highway where the work will occur, every permit holder or person responsible for the road activity shall, at least two (2) working days prior to commencing the work, notify every resident and business located beside or near the highway where the work will occur of: the plan of work, the approximate start date, and the duration of the work.
15. The Director may determine, for reasons of public safety or the effective operation of the public transportation system, when a road cut, road activity or reinstatement of a road cut shall occur.

SECURITY AND FEES

16. Every application for a road cut permit shall be made to the Town's Director and shall be accompanied by a security deposit as set out below:
 - i. Ditch cut, including drilling under a road from a ditch \$500.00
 - ii. Gravel road cut \$500.00
 - iii. Asphalt road cut, residential or commercial, for 50% or less of the travelled portion of the road from a ditch \$800.00
 - iv. Asphalt road cut for the full portion of the roadway width \$1500.00
 - v. Boring or tunneling under roadway \$1000.00
17. The Town shall hold the security referred to in this section for a period of twelve (12) months following the date of final reinstatement, as a guarantee that the highway is left in a proper state of repair
18. All permits issued under the requirements of this by-law shall be subject to a non-refundable fee of \$100.00 and no permit shall be issued until the required security has been deposited and the fee has been paid.

INSURANCE

19. Every applicant for a road cut permit shall provide and maintain Comprehensive/Commercial General Liability insurance acceptable to the Town and subject to limits of not less than two million dollars (\$2,000,000) inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof. Such Comprehensive/Commercial General Liability insurance policy shall be in the name of the applicant and shall name the Town as an additional insured thereunder.
20. The insurance coverage shall be maintained for one (1) year following the date of final reinstatement of the highway.

21. The insurance policy shall contain an endorsement to provide the Town with thirty (30) days written notice of cancellation.
22. Evidence of the insurance shall be provided to the Town prior to issuance of a road cut permit and in subsequent years, including the one year period referred to in section 20 hereof. Such evidence of insurance shall be satisfactory to the Town and if requested by the Town, the applicant shall provide certified copies of the Comprehensive/Commercial General Liability policy.

TELEPHONE

23. The permit holder shall maintain and answer a telephone at all times (24 hours, seven days-a-week) during the period for which the permit holder is responsible for the road cut, including the guarantee period, so that the Town can advise the permit holder of any necessary repairs to the road cut.

GENERAL ROAD CUT REQUIREMENTS

24. The permit holder shall open a road cut in such a manner as to do the least possible damage to the highway and to any public utility or municipal service.
25. The work shall proceed expeditiously and no permit holder shall allow a road cut to remain open for more than twenty-four (24) hours unless the work is actively in progress.
26. The site shall be kept clean and safe, and sources of dust controlled at all times until the final reinstatement has been completed.
27. The permit holder and contractor shall comply with and be bound by the provisions of the *Occupational Health and Safety Act*, R.S.O. 1990, chap. O.1, as amended.

EXCAVATED MATERIAL AND ROAD CUT METHODS

28. No permit holder shall place material on any roadway or sidewalk at any time or in a location where, in the opinion of the Director, it will create a traffic or safety hazard.
29. Where a road cut is made in any concrete surface, the permit holder shall break out and remove all concrete,
 - a) to the nearest expansion joint, or dummy expansion joint, using a concrete saw if necessary, to provide on all sides of the road cut, a clean vertical surface; or
 - b) as specified by the Director.
30. Where a road cut is made in asphalt pavement, the asphalt shall be cut with a concrete saw to produce,
 - a) a rectangular opening with edges which are vertically straight; and
 - b) a cut, which is large enough to accommodate the proposed works without undermining the adjacent asphalt pavement.
31. Where boring, jacking or tunneling is used for any subsurface road cut,
 - a) the method used shall be approved by the Director; and
 - b) if a cave-in, settlement or heaving results, the surface in the affected area shall be removed and reinstated by the permit holder in accordance with this by-law to the satisfaction of the Director.

REINSTATEMENT AND BACKFILL REQUIREMENTS

32. The permit holder is responsible for,
- a) the temporary and permanent reinstatement of a road cut subject to the provisions of this by-law;
 - b) the maintenance of temporary reinstatements, as provided for in this by-law, on every road cut which prior to November 14 in any year is not in a condition to be permanently reinstated, and is carried over for permanent reinstatement prior to June 30 of the following year; and
 - c) the employment of a contractor who meets the approval of the Director.
33. All reinstatements shall be done to current O.P.S.S. standards and the Standards for Utility Cut Reinstatement. A highway shall be reinstated with,
- a) the same type of material, except for deleterious material, and to the same thickness as the adjoining construction when originally constructed; or
 - b) material of a thickness that has been approved by the Director, and all reinstatements shall be to the satisfaction of the Director.
34. Temporary surfacing of a roadway with asphalt, concrete, or surface treated surface shall meet the following requirements:
- a) the road cut shall be temporarily reinstated immediately after backfilling is completed;
 - b) the reinstatement shall be to the same level as the adjacent surface; and
 - c) prior to the highway being opened to traffic, the top seventy-five (75 mm) millimetres of the road cut shall be surfaced with hot mix asphalt, concrete, or, if hot mix asphalt is unavailable, with emulsified cold mix asphaltic material, all hand-tamped or rolled to a smooth, flat condition using commonly accepted practices and standard tamping or rolling equipment except as provided for in the Standards for Utility Cut Reinstatement.

ASPHALT AND SURFACE TREATED

35. Final reinstatement of asphalt and surface treated roadways shall meet the following requirements:
- a) final reinstatement shall be undertaken within thirty (30) days of backfilling, and unless otherwise specified by the Director, resurfacing shall be in accordance with the Standards for Utility Cut Reinstatement;
 - b) despite the provisions of paragraph (a) hereof, the Director may allow the permit holder to resurface at a later date because of supply, weather or other conditions beyond the control of the contractor or permit holder;
 - c) the asphalt shall be laid in accordance with all applicable O.P.S.S. standards and the Standards for Utility Cut Reinstatement;
 - d) the road cut shall be reinstated to the same level as the adjacent surface and the riding surface shall be to the satisfaction of the Director; and
 - e) the permit holder may be required to place a forty (40 mm) millimeter lift of hot mix HL3 asphalt over the roadway in addition to the road cut reinstatement. This shall be undertaken to the limits directed by, and to the satisfaction of the Director.

CONCRETE SURFACE

36. Final reinstatement of roadways with a concrete surface shall meet the following requirements:
- a) final reinstatement shall be undertaken within thirty (30) days of backfilling by resurfacing with portland cement concrete with nominal minimum design strength in conformity with O.P.S.S. standards and the Standards for Utility Cut Reinstatement unless otherwise specified by the Director;
 - b) despite paragraph (a), the Director may allow the permit holder to resurface at a later date because of supply, weather or other conditions beyond the control of the permit holder;
 - c) the concrete shall be placed in accordance with all applicable O.P.S.S. standards and the Standards for Utility Cut Reinstatement; and
 - d) the road cut shall be reinstated to the same level as the adjacent surface and the riding surface shall be to the satisfaction of the Director.

COMPOSITE PAVEMENT

37. Final reinstatement of roadways with composite pavement shall meet the following requirements:
- a) final reinstatement shall be undertaken within thirty (30) days of backfilling by placement of portland cement concrete base course according to the Standards for Utility Cut Reinstatement unless otherwise specified by the Director;
 - b) despite paragraph (a), the Director may allow the permit holder to resurface at a later date because of supply, weather or other conditions beyond the control of the permit holder; and
 - c) the road cut shall be reinstated to the same level as the adjacent surface and the riding surface shall be to the satisfaction of the Director.

GRAVEL SURFACE

38. Final reinstatement of roadways with a gravel surface shall meet the following requirements:
- a) the top one hundred and fifty (150 mm) millimeters of the road cut shall be Granular "A" material, compacted in accordance with the Standards for Utility Cut Reinstatement;
 - b) a dust palliative shall be applied whenever requested by, and to the satisfaction of, the Director; and
 - c) the road cut shall be reinstated to the same level as the adjacent surface and the riding surface shall be to the satisfaction of the Director.

GRASSED SURFACES

39. Grassed areas shall be reinstated as follows:
- a) a minimum base of one hundred and fifty (150 mm) millimeters of top soil shall be placed over the road cut after backfilling and the sod shall be replaced; or
 - b) if conditions warrant, the Director may allow all or part of the area to be seeded; and

- c) the permit holder shall maintain the seeded or sodded area until the grass is properly established, to the satisfaction of the Director.

SIDEWALKS

- 40. Sidewalks and pathways shall be reinstated as follows:
 - a) a concrete sidewalk or pathway shall be reinstated to the proper grade by pouring a slab of concrete, which shall be in accordance with the current Town standards; and
 - b) an asphalt sidewalk or pathway shall be reinstated to the proper grade with hot mix HL3A asphalt, which shall have a minimum thickness of fifty (50 mm) millimeters.

COMPLETION OF WORK

- 41. Upon completion of the temporary surfacing or permanent reinstatement of the road cut all excess material shall be removed from the area of the road cut and the area shall be left in a safe, neat and clean condition, similar to the condition of the highway area adjacent to the road cut, all to the satisfaction of the Director.

TESTING

- 42. The Director may at any time require a permit holder to provide at the permit holder's expense,
 - a) test reports, from a testing laboratory satisfactory to the Director, showing the degree of compaction that has been achieved; or
 - b) a certificate from an engineer, or from a testing laboratory satisfactory to the Director, certifying that the backfilling procedures have been performed in accordance with this by-law.

WARNING DEVICES, BARRICADES AND TRAFFIC SIGNS

- 43. The permit holder shall erect and maintain warning devices, barricades and traffic signs where applicable, in accordance with the Occupational Health and Safety Act, R.S.O. 1990, chap. O.1, as amended, and any applicable provincial traffic regulations.
- 44. If the permit holder fails to comply with subsection (1) hereof, the Director may order the erection and maintenance of any warning devices, barricades and signs considered necessary at the permit holder's expense, and the cost thereof shall be paid by the permit holder forthwith on demand, or deducted from the security.

CLOSURE TO TRAFFIC

- 45. No permit holder shall make a road cut which completely closes a highway to traffic or one direction of traffic on a divided highway unless:
 - a) the written consent of the Director to the closing is obtained; and
 - b) a written notice of the closing is given to the following or authorized representative and a copy of such notice is provided to the Director,
 - i) the Ontario Provincial Police – Prescott Detachment;
 - ii) the Town Fire Chief;
 - iii) the Town Clerk's Office
 - iv) the Town's Emergency Services Department;

- v) any school board affected by the closing.
- c) A legible copy of the written consent of the Director to the closing shall be displayed at the road cut site.

EXPLOSIVES

46. No permit holder shall use any explosives in connection with the work for which the permit has been issued unless:
- a) the work is conducted under applicable all applicable standards including Ontario Provincial Standard Specifications, as amended; and
 - b) notification is provided to the Director a minimum of 48 hours prior to conducting any blasting operations.

CUT FAILURE AND WARRANTY REQUIREMENTS

47. For temporary reinstatement of the highway, a permit holder is responsible for,
- a) the repairs necessary to correct any road cut considered by the Director to be unsatisfactory by excavation or reinstatement when any settlement or grade differences occur until the road cut has been permanently reinstated; and
 - b) the repair of grade differences in excess of twenty-five (25 mm) millimeters regardless of cause.
48. Following permanent reinstatement of the highway a permit holder is responsible for,
- a) subject to the provisions of section 49 hereof, the repairs necessary to correct any settlement or surface deterioration for a warranty period of thirty-six (36) months following the date of final reinstatement of the highway, being the last time the permit holder repaired the road cut; and
 - b) the costs incurred by the Town for any temporary and permanent surface repairs resulting from improper backfilling or compaction of the highway.
49. A difference of twelve and one-half (12.5 mm) millimeters, or greater, between the reinstated surface and the undisturbed adjacent surface is deemed to be an unacceptable amount of settlement.
50. Where the backfilling or reinstatement does not comply with the provisions of this by-law, or the backfilling or reinstatement settles, the Director shall give verbal notice to the permit holder, specifying the remedial work, which the permit holder must carry out.
51. The verbal notice referred to above shall be confirmed in writing and served on the permit holder,
- a) by registered mail to the permit holder's address as stated in the application form; or
 - b) personally.
52. If the permit holder has not done the work referred to in section 50 hereof within seventy-two (72) hours of delivery of the written notification, the Director may order the work to be done at the permit holder's expense. All costs incurred by the Town shall be paid by the permit holder forthwith on demand, failing which the costs shall be deducted from the security.

EMERGENCY REPAIRS

53. If the Director is of the opinion that a road cut reinstatement has created an emergency situation which can cause damage to vehicles or endanger the public, the Director may protect the area and,
- a) make immediate repairs; or
 - b) telephone the permit holder using the telephone service provided by the permit holder as required by this By-law, advising the permit holder as to the repair work which must be carried out.
54. If there is no answer from the permit holder's telephone or the telephone is out of order or the permit holder does not carry out the required repairs to the satisfaction of the Director within four (4) hours of placing the telephone call, the Director may order the work to be done by the Town and the Director shall confirm in writing to the permit holder the remedial action which has been taken.
55. All work done by the Town pursuant to section 53 hereof shall be at the expense of the permit holder and the costs of the Town shall be paid by the permit holder forthwith on demand failing which the costs shall be deducted from the security. The permit holder shall be responsible for any costs which exceed the amount of the security held by the Town.

EMERGENCY WORK

56. Subject to sections 57 and 58 hereof, where public safety or health, or a major business interruption in public works is concerned, a road cut or road activity may be carried out without regard to the prior notification provisions of this by-law.
57. Where an emergency road cut or road activity has been undertaken, the person undertaking the road cut or road activity shall, on the same day the work is commenced, or if the Town offices are closed, no later than the start of the next working day, notify by telephone the Town's permit issuance unit of the following:
- a) the name of the public utility or contractor undertaking the road cut or road activity;
 - b) the nature of the work;
 - c) the location of the proposed road cut or proposed road activity;
 - d) the estimated duration of the work; and
 - e) the reason for proceeding without obtaining a permit or without providing the required notice.
58. The Director may require any or all information to confirm the validity of an emergency road cut or road activity. Should insufficient proof of an emergency be submitted the applicant would be notified in writing that they are subject to the same restrictions and penalties as no permit.
59. Where work has proceeded under this section, a road cut permit shall be applied for or notice provided of a road activity on the same day the work is commenced, or if the office of the Director is not open for the issuance of permits, on the morning of the next day on which the office is open.

RESPONSIBILITY FOR CLAIMS

60. Except as limited by section 61 hereof, a permit holder shall be responsible for all loss or damages arising from the work done by or for the permit holder.
61. A permit holder shall be responsible for all loss or damage arising directly or indirectly from settlement of the surface of a highway within a period of three (3) years following the date of final reinstatement of the highway.
62. Where a highway or public utility on the highway has been damaged by a permit holder, the Town or the public utility respectively has the sole responsibility for deciding who shall carry out the repairs.

INDEMNIFICATION

63. A road cut permit is issued subject to the condition that the permit holder shall indemnify the Town and each of its officers, agents, servants and workmen from all causes of action, loss, costs or damages arising from the execution, non execution or imperfect execution of any work authorized by this by-law whether with or without negligence on the part of the permit holder or the officers, agents, servants or workmen of the permit holder.

OFFENCE

64. Every person who contravenes any of the provisions of this by-law is guilty of an offence and on conviction is liable to a fine not to exceed the limits of the Provincial Offences Act.
65. When a person has been convicted of an offence under this by law, the Ontario Court of Justice or any court of competent jurisdiction thereafter may, in addition to any other penalty imposed on the person convicted, issue an order prohibiting the continuation or repetition of the offence or the doing of any act or thing by the person convicted directed toward the continuation or repetition of the offence.

SCHEDULES

66. This By-law includes Schedules "A" (permit application form) and "B" (security declaration) annexed hereto and the Schedules are hereby declared to for a part of this by-law.

SEVERABILITY

67. If any section, subsection or part or parts thereof be declared by any Court of Law to be bad, illegal or ultra virus, such section, subsection or part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such.

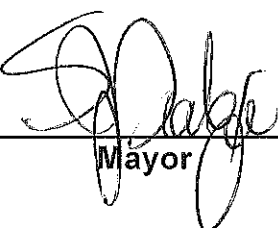
SHORT TITLE

68. This By-law may be cited as the "Road Activity By-law".

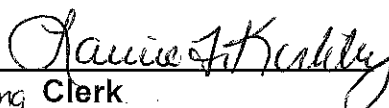
REPEAL PREVIOUS BY-LAW

69. By-Law #32-92 is hereby repealed in its entirety.

Read a first and second time this 19th day of April, 2010

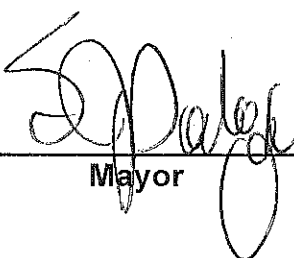


Mayor




Acting Clerk

Read a third and final time and passed this 19th day of April, 2010.



Mayor



Acting Clerk