

THE CORPORATION OF THE CITY OF ELLIOT LAKE

*B*Y-LAW NO. 14-39

Being a by-law to regulate road work, road cuts, and work impacting the buried infrastructure located on City of Elliot Lake owned road allowances and other properties under the jurisdiction of the City.

WHEREAS Section 8 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, (the “Municipal Act, 2001”) provides that a municipality has the capacity, rights, powers and privileges of a natural person;

AND WHEREAS Section 11(2) permits a municipality to pass by-laws respecting matters dealing with Highways;

AND WHEREAS pursuant to Section 44(1) of the Municipal Act, 2001, the municipality that has jurisdiction over a highway or bridge shall keep it in a state of repair that is reasonable in the circumstances, including the character and location of the highway or bridge;

NOW THEREFORE the Council of The Corporation of the City of Elliot Lake hereby **ENACTS AS FOLLOWS:**

DEFINITIONS

“**City**” means the municipal Corporation of the City of Elliot Lake;

“**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 of Operations**” means the Director of Operations of the City of Elliot Lake or authorized representative;

“**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 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;

“**road activity**” includes the temporary occupancy of the highway for work of any nature by the City 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 tunnelling operations;

1.0 SCHEDULES

The following are the schedules attached hereto and incorporated in this agreement by reference and are deemed to be part hereof:

Schedule "A" – The Corporation of the City of Elliot Lake Road Work Permit;

Schedule "B" – A schedule of permit fees and damage deposit rates.

2.0 ROAD ALLOWANCE CUTS

Except as provided in Section 3, no person shall undertake any road cut without obtaining a road work permit.

3.0 EMERGENCY WORK

- (1) Subject to subsections (2) and (3) 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.
- (2) Where an emergency road cut or road activity has been undertaken, the person undertaking the road cut or road work shall, on the same day the work is commenced, or if the City offices are closed, no later than the start of the next working day, notify by telephone the City's Building and Bylaw Department 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, in the case of road activity, without providing the required notice.
- (3) The Director of Operations 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.
- (4) Where work has proceeded under this section, a road work permit shall be applied for or notice provided of a road activity on the same day the work is commenced, or if the Building and By-laws office is not open for the issuance of permits, on the morning of the next day on which the office is open.

4.0 ROAD CUT PERMIT

- (1) When applying for a road cut permit, the applicant shall,
 - (a) complete the prescribed application form;
 - (b) furnish to the City such information as the Director of Operations may require including but not limited to a traffic management plan; and
 - (c) file the completed application form.
- (2) When filing the completed application, the applicant shall pay the following fees:
 - (a) a non-refundable permit fee as indicated on Schedule "B" of this by-law; and
 - (b) a damage deposit fee as indicated in Schedule "B" of this by-law.
- (3) The damage deposit fee described in paragraph 4(2)(b) is not payable for:
 - (a) a road cut which does not affect the roadway pavement, boulevard, curb and gutter, or finished sidewalk;

- (b) municipal works, including work done as a condition of City development control, the prime purpose of which is the provision of pavement or its preservation;
 - (c) the provision of a new pavement structure to subgrade level which is at least one full traffic lane wide, the new joints of which coincide with traffic lane markings, is thirty (30) metres long, and which meets current road pavement design standards as determined by the Director of Operations;
 - (d) works on highways listed in the City's current year reconstruction and resurfacing programs if carried out prior to the municipal reconstruction or resurfacing;
 - (e) road cut repair work done pursuant to the warranty requirements of this By-law; and
- (4) When the applicant is requesting multiple road cuts the City reserves the right to issue a single permit or multiple permits for the works.
- (5) A road cut permit shall not be issued until:
- (a) proof of insurance has been filed as required by Section 6;
 - (b) security has been provided as required by Section 7;
 - (c) the permit fee or fees required by subsection 4(2) hereof has or 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) emergency contact numbers for the service required by Section 8 has been provided; and
 - (f) the applicant has certified that,
 - (i) all public utilities have been informed of the proposed road cut; and
 - (ii) work shall not commence until underground infrastructure locates have been received and verified.
- (6) The provisions of paragraphs 4(5)(a) and (b) do not apply to a City Department for work being done by that Department, but do apply to a person doing work for a City Department as a contractor unless otherwise indicated.
- (7) A road cut permit is not transferable.
- (8) 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.
- (9) No permit holder shall work at a job site without the road cut permit on-site and available for inspection.

5.0 NOTICE REQUIREMENTS FOR ROAD CUT AND ROAD ACTIVITY

- (1) Where it is required to reroute buses, or where there is significant disruption to traffic, the City or a public utility, the permit holder or the person responsible for the road activity shall provide five (5) working days notification to the Director of Operations to undertake any road activity or road cut.

6.0 INSURANCE

- (1) Every applicant for a road cut permit shall provide and maintain Comprehensive/ Commercial General Liability insurance acceptable to the City and subject to limits of not less than five million dollars (\$5,000,000) 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 City of Elliot Lake as an additional insured thereunder.

- (2) The insurance coverage referred to in subsection (1) hereof shall be maintained for one (1) years following the date of final reinstatement of the highway.

7.0 SECURITY

- (1) An applicant for a permit shall provide security in the amounts outlined in Schedule "B" of this by-law.
- (2) The City shall hold the security referred to in this section for a period of ninety (90) days following the date of final reinstatement, as a guarantee that the highway is left in a proper state of repair.
- (3) The security deposit will be returned to the permit applicant after final inspection is completed and the condition is deemed by the Director of Operations to be consistent with the requirements outlined in this by-law.

8.0 TELEPHONE

The permit holder shall maintain and answer a telephone at all times during the period for which the permit holder is responsible for the road cut, including the guarantee period, so that the City can advise the permit holder of any necessary repairs to the road cut.

9.0 GENERAL ROAD CUT REQUIREMENTS

- (1) 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.
- (2) 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.
- (3) The site shall be kept clean and safe, and sources of dust controlled at all times until the final reinstatement has been completed.
- (4) 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.

10.0 EXCAVATED MATERIAL AND ROAD CUT METHODS

- (1) 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 of Operations, it will create a traffic or safety hazard.
- (2) Where a road cut is made in asphalt pavement, the asphalt shall be cut with a concrete saw to produce, a rectangular opening with edges which are vertically straight; and a cut, which is large enough to accommodate the proposed works without undermining the adjacent asphalt pavement.

- (3) Where boring, jacking or tunneling is used for any subsurface road cut, the method used shall be approved by the Director of Operations; and if a cave-in, settlement or heaving results therefrom, 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 of Operations.

11.0 REINSTATEMENT AND BACKFILL REQUIREMENTS

- (1) 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 30 in any year is not in a condition to be permanently reinstated, and is carried over for permanent reinstatement prior to May 30 of the following year.
- (2) 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 of Operations, and all reinstatements shall be to the satisfaction of the Director of Operations.
- (3) 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.

12.0 ASPHALT AND SURFACE TREATED

Final reinstatement of asphalt and surface treated roadways shall meet the following requirements:

- (a) final reinstatement shall be undertaken within 48 hours of backfilling, and unless otherwise specified by the Director of Operations, resurfacing shall be in accordance with the Standards for Utility Cut Reinstatement;
- (b) despite the provisions of paragraph (a) hereof, the Director of Operations 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 of Operations.

13.0 SIDEWALKS AND CURBS

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 City 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;
- (c) curb reinstatement shall include preparation of subgrade with granular "A", forming, placing, and finishing of concrete curb where damaged.

14.0 BOULEVARDS AND EASMENTS

Boulevard reinstatement shall include placement of imported topsoil to a minimum thickness of 100mm, the placement of nursery sod, and the maintenance (including watering) of the sodded area until sufficient growth has occurred to require two cuttings.

15.0 PROXIMITY TO BURIED INFRASTRUCTURE

- (1) Excavation, boring or other activities are required to maintain a minimum distance of 2.0 meters from all buried water distribution and wastewater collection infrastructure. A minimum distance of 1.5 meters shall be maintained from storm sewer infrastructure;
- (2) At the discretion of the Director of Operation, the contractor may be required, at their own expense to provide evidence, through video surveillance or other methods acceptable to the Director of Operations, that the underground infrastructure was unaffected by any excavation or boring works undertaken.

16.0 COMPLETION OF WORK

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 of Operations.

17.0 WARNING DEVICES, BARRICADES AND TRAFFIC SIGNS

- (1) 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.
- (2) If the permit holder fails to comply with subsection (1) hereof, the Director of Operations 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.

18.0 CLOSURE TO TRAFFIC

- (1) No permit holder shall make a road cut which completely closes a highway to traffic unless:
 - (a) the written consent of the Director of Operations to the closing is obtained; and
 - (b) a written notice of the closing is given to the following or authorized representative;

- (i) the Ontario Provincial Police, Elliot Lake detachment;
- (ii) the Fire Department;
- (iii) the designated City Transit contractor when the closure is on an established bus route;
- (iv) emergency Medical Transport services.

19.0 EXPLOSIVES

No permit holder shall use any explosives in connection with the work for which the permit has been issued.

20.0 CUT FAILURE AND WARRANTY REQUIREMENTS

- (1) 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 of Operations 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) millimetres regardless of cause.
- (2) Following permanent reinstatement of the highway a permit holder is responsible for;
 - (a) subject to the provisions of subsection (3) hereof, the repairs necessary to correct any settlement or surface deterioration for a warranty period of ninety (90) days 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 City for any temporary and permanent surface repairs resulting from improper backfilling or compaction of the highway.
- (3) A difference of twelve and one-half (12.5 mm) millimetres, or greater, between the reinstated surface and the undisturbed adjacent surface is deemed to be an unacceptable amount of settlement.
- (4) Where the backfilling or reinstatement does not comply with the provisions of this by-law, or the backfilling or reinstatement settles, the Director of Operations shall give verbal notice to the permit holder, specifying the remedial work, which the permit holder must carry out.
- (5) If the permit holder has not done the work referred to in subsection (4) hereof within seventy-two (72) hours of delivery of the written notification, the Director of Operations may order the work to be done at the permit holder's expense. All costs incurred by the City shall be paid by the permit holder forthwith on demand, failing which the costs shall be deducted from the security.

21.0 EMERGENCY REPAIRS

- (1) If the Director of Operations 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 of Operations 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 Section 8, advising the permit holder as to the repair work which must be carried out.

- (2) 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 of Operations within four (4) hours of placing the telephone call, the Director of Operations may order the work to be done by the City and the Director of Operations shall confirm in writing to the permit holder the remedial action which has been taken.
- (3) All work done by the City pursuant to subsections (1) or (2) hereof shall be at the expense of the permit holder and the costs of the City shall be paid by the permit holder forthwith on demand failing which the costs shall be deducted from the security.

22.0 RESPONSIBILITY FOR CLAIMS

- (1) Except as limited by subsection (2) hereof, a permit holder shall be responsible for all loss or damages arising from the work done by or for the permit holder.
- (2) 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.
- (3) Where a highway or public utility on the highway has been damaged by a permit holder, the City or the public utility respectively has the sole responsibility for deciding who shall carry out the repairs.

23.0 INDEMNIFICATION

A road cut permit is issued subject to the condition that the permit holder shall indemnify the City 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.

PASSED this 9th day of June, 2014.

MAYOR

CITY CLERK