

## THE CORPORATION OF THE TOWN OF MILTON

### BY-LAW NO. 080-2019

A BY-LAW TO REGULATE THE CONSTRUCTION, INSTALLATION, WIDENING OR ALTERING OF ENTRANCES TO AND THE OCCUPATION OF ROAD ALLOWANCES UNDER THE JURISDICTION OF THE TOWN AND TO REPEAL BY-LAW NUMBER 035-2016

**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 Town of Milton hereby enacts as follows:

#### **DEFINITIONS**

1. In this By-law:
  - (a) “Adjacent Property” means a property abutting a Road Allowance;
  - (b) “Applicant” means any person who has applied for a Permit under this By-law ;
  - (c) “Curb Line” means the edge of the traveled portion of the Road Allowance which shall be the outer edge of the curb, or where no curb exists, the edge of asphalt or in the case of a gravel road, .5 m before the start of the foreslope of the ditch;
  - (d) “Commissioner” means the Town’s Commissioner of Engineering Services or Director of Infrastructure or their designates;
  - (e) “Entrance” means any driveway, laneway, ramp, private road, or any other structure or facility, used as a means of access to a Town Road Allowance, including any point at which a curb is interrupted or depressed to provide access from the traveled portion of a Town Road Allowance to an Adjacent Property;
  - (f) “Frontage” means the distance measured along the front lot line between the side lot lines where the side lot lines are parallel. In cases where the side lot lines are not parallel, the distance is measured from a point on each side lot line that is located equal to the required front

- yard from the front lot line or the hypothetical intersection of the front lot line and the side lot line.;
- (g) "Intersection" means the location where two or more Road Allowances converge or the convergence of a Road Allowance with a road allowance not under the jurisdiction of the Town;
  - (h) "Owner" means any person who is the registered or beneficial owner of, an Adjacent Property or who leases, maintains or otherwise controls an Adjacent Property;
  - (i) "Permit" means a permit issued by the Town pursuant to this By-law or under a repealed By-Law of the Town to which this By-Law is a successor. ;
  - (j) "Permit Holder" means the Person to whom a Permit has been issued, or transferred to with the consent of the Commissioner. .
  - (k) "Person" includes a natural person, company, corporation, partnership, firm, association, society, organization, party or other like entity; \*\*\*I grabbed this from another municipalities
  - (l) "Restricted Entrance" means any Entrance that is approved and constructed for directionally controlled traffic;
  - (m) "Road Allowance" includes all road allowances, highways, streets, roads, parkways, avenues, lanes, boulevards, squares, roundabouts, trails, paths, walkways, bridges, viaducts, trestles or other structure forming part of a highway, used by or intended for use by the general public for the passage of persons or vehicles;
  - (n) "Road Occupancy" means:
    - i. the use of the Town Road Allowance for any work and/or construction related activities;
    - ii. the obstruction a Town Road Allowance or hindrance of the passage of persons or vehicles;
    - iii. the installation or construction of utilities or Services carried out within a Town Road Allowance;
    - iv. the dumping or storage of any material, containers (bins or otherwise), vehicles, or any other item, for any length of time within a Town Road Allowance, including any items not covered under the Town's Uniform Parking By-Law, as may be amended from time to time; or
    - v. any other alteration of a Town Road Allowance, including any alteration to grading, landscaping or trees;
  - (o) "Services" means all servicing on any lands and easements owned or held by the Town, including, water, wastewater and storm water facilities, roads, structures, fencing, boulevard grading, sodding, tree planting, landscaping, walkways, driveways, street lights, erosion control work, street signs, traffic control devices;
  - (p) "Town" means The Corporation of the Town of Milton;
  - (q) "Town Road Allowance" means a Road Allowance under the jurisdiction of the Town;
  - (r) "Town Standards" means those standards, requirements and

specifications set out in the Town's Engineering and Parks Standards Manual and Right of Way Construction Standards Manual as may be amended from time to time and all other applicable policies and by-laws of the Town as may be amended from time to time;

- (s) "Treasurer" means the Town's Treasurer, or his/her designate ;
- (t) "Urban Area" means those lands within the Urban Expansion Area Boundary as set out in the in force and effect Town of Milton Official Plan;
- (u) "Rural Area" means those lands outside the Urban Expansion Area Boundary as set out in the in force and effect Town of Milton Official Plan. This area includes hamlets and rural settlement areas such as Moffat, Campbellville etc.

### **PROHIBITIONS**

- 2. No person shall construct, install, widen, or alter any Entrance without a Permit.
- 3. No person shall undertake a Road Occupancy without a Permit.
- 4. Where a Permit has been issued, no person shall construct, install, widen or alter any Entrance or undertake any Road Occupancy except in accordance with the plans, specifications, documents, and any other information submitted to the Town and relied upon by the Town in issuing the Permit and in accordance with any applicable terms or conditions of the Permit.
- 5. An Entrance, if authorized by a Permit, may only be used to provide access to the Adjacent Property for which the Permit was issued and shall not be used, constructed, installed, widened or altered for any other purpose.
- 6. No Entrance may be used for the parking of vehicles or the storage of any other equipment, materials, goods or things.
- 7. A property in Milton's Urban Area with a principle residential use shall not have an Entrance on more than one lot line.

### **EXCEPTIONS**

- 8. Notwithstanding Section 2, within unassumed registered plans of subdivision, no Permit is required for the construction of an Entrance to an unassumed Road Allowance, provided the Entrance is constructed in accordance with the drawings, plans and specifications approved by the Town in connection with the registration of the plan of subdivision.

### **MAINTENANCE, REPAIR AND RELOCATION**

- 9. Every Entrance located on a Town Road Allowance shall be maintained in good condition by the Owner at his or her own expense in accordance with Town Standards and shall be free and clear of all obstructions.
- 10. The Town may alter, construct or remove any Entrance, or Road Occupancy located within a Town Road Allowance without notice to, or permission from, the Permit Holder or Owner and without compensation. This right also extends

to work by third party utility service, provided such work is approved by the Town.

### **APPLICATIONS FOR PERMITS**

11. The following persons may apply to the Commissioner for a Permit:
  - (a) an Owner may apply for a Permit to authorize an Entrance; or
  - (b) a Person may apply for a Permit to authorize a Road Occupancy.
12. Except as provided in Section 13, an application for a Permit shall:
  - (a) be in such form as approved by the Commissioner;
  - (b) contain all such information and documents as may be required by the Commissioner; and
  - (c) include the following non-refundable fees in accordance with the Town's User Fee By-law as amended:
    - i. an application fee;
    - ii. a minimum of one (1) inspection fee; and
    - iii. inspection fees for any additional inspections as may be deemed necessary by the Commissioner.
  - (d) if required by the Commissioner, a detailed estimate of costs for any proposed Entrance or Road Occupancy, including the costs of restoring the Town Road Allowance, which shall be subject to review and approval by the Commissioner; and
  - (e) an executed agreement to indemnify and save harmless the Town from all actions, causes of action, suits, claims, demands and costs whatsoever arising by reason of the Applicant, his/her agents or employees and contractors doing, failing to do, or doing incorrectly or negligently anything the Applicant is required to do under the terms of the Permit or this By-law in such form as approved by the Commissioner.
13. Where a Permit is required for an Entrance, and a complete application has been submitted for Site Plan Approval or Site Alteration in respect of the Adjacent Property, the Applicant is exempt from the Permit application requirements set out in Subsections 12 (b) and (c).

### **PERMIT APPROVAL**

14. Prior to the issuance of a Permit, the Applicant shall:
  - (a) complete all application requirements set out in Section 12;
  - (b) deposit with the Town financial security in the amount of 100% of the combined total of:
    - i. the cost estimate approved under Subsection 12 (d); and
    - ii. the estimated cost of any work to be performed by a Town contractor, including curb cuts and culverts.any financial security deposited with the Town must be in a form acceptable to the Town's Treasurer;
  - (c) provide any additional documents of information requested by the Commissioner;

- (d) obtain and provide the Commissioner with proof of all permits, approvals and authorizations required for the Road Occupancy or Entrance, including any required by the Halton Region Conservation Authority, the Credit Valley Conservation Authority, the Grand River Conservation Authority, the Niagara Escarpment Commission, the Ministry of Transportation, the Ministry of Natural Resources and Forestry and the Ministry of the Environment, Conservation and Parks; and
  - (e) demonstrate compliance with applicable Town Standards.
15. The Town of Milton's Official Plan, as amended from time to time, may dictate that access to certain Town Road Allowances and or Town Road Allowance classifications is not to be permitted and in such instance, notwithstanding any other provision in this By-law, no Permit shall be issued under this By-law.
  16. After considering an application for a Permit, the Commissioner may:
    - (a) issue a Permit, subject to such terms and conditions as the Commissioner deems appropriate, provided that the Commissioner is satisfied that Section 14 of this By-law has been complied with and the issuance of the Permit would not be contrary to Section 15; or
    - (b) decline to issue a Permit.
  17. A Permit expires ninety (90) days after the date of issuance, if the work which is the subject of the Permit, has not commenced within that time. After the expiration of the ninety (90) day period, a new Permit including the applicable fees must be obtained before proceeding with such work.
  18. The work which is the subject of the Permit must be completed by the date set out in the Permit. If no date is set out in the Permit, work must be completed within (30) days of commencement of work.
  19. Notwithstanding any other provisions of this By-Law, the Commissioner may revoke, alter or amend a Permit after issuance if the Commissioner has reason to believe it is in the public interest to do so.
  20. The Town will return any financial security to the Permit Holder, in accordance with the Town's financial policies when, the Entrance or Road Occupancy, which are the subject of the Permit, and all other terms and conditions of the Permit, are completed in conformity with the Town's Standards and to the satisfaction of the Commissioner and any applicable warranties with respect to the work conducted under the Permit have expired.
  21. A Permit Holder may not assign or transfer a Permit without the consent of the Commissioner.

## **PERMIT CONDITIONS**

22. In addition to any terms or conditions imposed by the Commissioner, the following conditions apply to all Permits:
  - (a) the Permit Holder shall be responsible for obtaining location and stakeout information for all utilities and Services prior to the commencement of construction and shall be responsible for any damage to existing utilities and Services within the Town Road Allowance when such damages arise out of the work undertaken by the Permit Holder;

- (b) all costs associated with the constructing, installing, repairing, widening or altering a Town Road Allowance incurred as a consequence of any Permit issued, as determined by the Commissioner, shall be the responsibility of the Permit Holder;
  - (c) all construction, installation, repair or other work performed in connection with a Permit shall meet all applicable Town Standards; and
  - (d) all drains, ditches, culverts and watercourses shall be installed, and maintained in accordance with Town's Standards and the requirements of the following agencies, as applicable: the Halton Region Conservation Authority, the Credit Valley Conservation Authority, the Grand River Conservation Authority, the Niagara Escarpment Commission, the Ministry of Transportation, the Ministry of Natural Resources and the Ministry of the Environment.
23. In addition to any terms or conditions imposed by the Commissioner or under Section 22, the following conditions apply to all Permits for Entrances:
- (a) all entrances shall extend sufficiently onto the Adjacent Property to allow parking on the Adjacent Property and not on the Road Allowance;
  - (b) all Entrances within the urban boundary must have a hard surface (consisting of such material as is approved by the Town, including asphalt, concrete, patterned concrete, interlocking brick, or paving stone);
  - (c) the minimum distance at the Curb Line between Entrances on the same property frontage shall be:
    - i. a minimum of 15 meters for Urban Area lots;
    - ii. a minimum of 30 meters for Rural Area lots; or
    - iii. at the discretion of the Commissioner or delegate for commercial/industrial/institutional lots;
  - (d) any Entrance to a commercial or industrial property shall conform to the Town's Site Plan Approval process;
  - (e) ramping is not permitted in lieu of an Entrance; and
  - (f) all Entrances shall have unobstructed visual sightlines for entry/exit to any part of the Road Allowance including sidewalks and/or bike trails

### **ORDERS AND POWERS OF THE COMMISSIONER**

24. Where the Town has reason to believe that a Person is or will be in contravention of this By-law, or any term or condition of a Permit, the Commissioner or a Municipal Law Enforcement Officer appointed by the Town, may issue a Stop Work Order directing the activities cease immediately, upon service of the Order to any or all of the following:
- (a) the Owner;
  - (b) the Permit Holder; and
  - (c) any other Person the Town has reason to believe is or will be in contravention of this By-law or any term or condition of a Permit.
25. Where the Town has reason to believe that a Person is in contravention of this By-law, or any term or condition of a Permit, the Commissioner or a Municipal

Law Enforcement Officer appointed by the Town, may issue a Work Order directing any or all of the following to take such actions as are necessary to comply with this By-law or the Permit as the case may be, within ten (10) days of the service of the Order:

- (a) the Owner;
  - (b) the Permit Holder; and
  - (c) any other Person the Town has reason to believe is in contravention of this By-law or any term or condition of a Permit.
26. Where the Town has reason to believe that a contravention of this By-law or any term or condition of a Permit, which may result in the issuing of a Work Order, poses a risk to public safety, the Work Order may provide that the actions set out therein be taken immediately.
  27. The Commissioner may at any time and without notice, remove, repair or alter any Entrance or Road Occupancy for which a Permit has not been issued, or remove, repair or alter or take any other corrective action with respect to any Entrance or Road Occupancy which has not been constructed, repaired or altered or undertaken in accordance with a Permit and this By-law.
  28. Upon removal, repair or alteration of any Entrance or Road Occupancy pursuant to Section 27, the Permit Holder and any other Person the Town determines is in contravention of this By-law or any term or condition of a Permit shall be jointly and severally responsible for all costs of the Town incurred in the exercise of the powers thereunder, including administrative costs. Such costs, as determined by the Commissioner, shall constitute a charge under the Municipal Act, 2001, S.O. 2001, c. 25 as amended, and may be added to the tax roll in the manner provided for therein.
  29. Any Person to whom an Order is issued pursuant to this By-law shall comply with the terms of such Order.
  30. Where the Person to whom a Work Order is issued fails to perform the work required by the Order, the Town may perform such work and the Person shall be responsible for all costs of the Town incurred in the performance of the work, including administrative costs. Any costs of the Town incurred in the performance of such work, as determined by the Commissioner, shall constitute a charge under the Municipal Act, 2001, S.O. 2001, c. 25 as amended, and may be added to the tax roll in the manner provided for therein.

## **ENFORCEMENT**

31. Every Person who contravenes any provision of this By-law or an Order issued pursuant to this By-Law is guilty of an offence, and, upon conviction is liable to a fine subject to the provisions of the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended, and every such penalty shall be recoverable under the Provincial Offences Act.
32. Where a contravention of a provision of this By-law or an Order is committed on or continues for more than one day, the Person who commits it is liable to be convicted for a separate offence for each day on which it is committed or continued.

33. Where a contravention of this By-law has occurred, the Owner or Permit Holder may be charged with and convicted of an offence for which any Person subject to this By-law may be charged and, on conviction, the Owner or Permit Holder is liable to pay the penalty prescribed for the offence.
34. An Owner or Permit Holder is not liable under Section 33 where the Owner or Permit Holder establish that:
  - (a) the contravention of this By- law was without the knowledge and consent of the Owner or Permit Holder, as the case may be; and
  - (b) upon becoming aware of the contravention, the Owner or Permit Holder, as the case may be, took all reasonable steps to stop the contravention of this By- law.
35. The Commissioner and Municipal Law Enforcement Officers shall have all powers necessary to carry out the administration and enforcement of this By-law, and may, at any reasonable time, enter and inspect any land to determine whether this By-law, Cease and Desist Order or a Work Order, a condition to a Permit issued pursuant to this By-law, or a Court Order is being complied with.

## **SERVICE**

36. Service required to be given under this By-law is sufficiently given if:
  - a. delivered personally;
  - b. in respect of an Applicant or Permit Holder, emailed to the email address provided in the application for a Permit; or
  - c. sent by registered mail to the last known address of the person to whom the Order is directed.
37. Where service is effected by registered mail, it shall be deemed to be made on the fifth (5) day after the date of mailing.

## **PENALTY**

38. Any Person who contravenes this By-law or an Order issued pursuant to this By-law is guilty of an offence and is liable, on a first conviction, for each day or part of a day on which the offence occurs or continues, to a fine of not more than \$10,000, and on any subsequent conviction, for each day or part of a day on which the offence occurs or continues, to a fine of not more than \$25,000.
39. Despite Section 38 to this By-law, where the Person convicted is a corporation, the maximum fine for a first conviction is \$50,000, for each day or part of a day on which the offence occurs or continues, and for any subsequent conviction is \$100,000, for each day or part of a day on which the offence occurs or continues.
40. Where a conviction is entered for contravention of the By-law, in addition to any other remedy or any penalty provided 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.



**SEVERABILITY**

41. When a court of competent jurisdiction declares any section or part of this By-law invalid, the remainder of this By-law shall continue in force unless the court makes an order to the contrary.

**SHORT TITLE**

42. This By-law may be cited as the Town of Milton Road Occupancy and Entrance Permit By-law.

**REPEAL**

43. By-law No. 035-2016 is repealed upon the coming into effect of this By-law.

**EFFECT**

44. This By-law will take effect on January 1<sup>st</sup>, 2020.

**PASSED IN OPEN COUNCIL ON August 12, 2019.**

\_\_\_\_\_ Mayor  
Gordon A. Krantz

\_\_\_\_\_ Town Clerk  
Troy McHarg