

## THE CORPORATION OF THE TOWN OF CALEDON

### BY-LAW NO. 2021-XX

A by-law to amend By-law 2015-058, being a by-law to regulate the use of highways and parking on highways

WHEREAS section 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under that Act or any other Act;

AND WHEREAS Subsection 11(3) of the *Municipal Act, 2001* authorizes a municipality to pass by-laws respecting highways, including parking and traffic on highways;

AND WHEREAS sections 23.1 and 23.2 of the *Municipal Act, 2001* authorizes a municipality to delegate certain powers and duties including the delegation of legislative or quasi-judicial powers to officers, employees or agents of the municipality where Council is of the opinion the power being delegated is minor having regard to, in addition to any other factors it wishes to consider, the number of people, the size of the geographic area and the time period affected by the exercise of power;

AND WHEREAS section 35 of the *Municipal Act, 2001* authorizes a municipality to pass by-laws removing or restricting the common law right of passage by the public over a highway and the common law right of access to the highway by an owner of land abutting a highway;

AND WHEREAS section 8(1) of the *Municipal Act, 2001* provides that the powers of a municipality under the *Municipal Act, 2001* shall be interpreted broadly so as to confer broad authority on a municipality to enable it to govern its affairs as it considers appropriate and to enhance its ability to respond to municipal issues;

AND WHEREAS Part XIV of the *Municipal Act, 2001* authorizes a municipality to enforce its by-laws;

AND WHEREAS it is the opinion of the Council of The Corporation of the Town of Caledon that the powers delegated through these amendments, having regard to the number of people, the size of geographic area and the time period affected by an exercise of the powers, are of a minor nature;

AND WHEREAS the Council of The Corporation of the Town of Caledon enacted By-law 2015-058 on July 7, 2015, being a By-law to regulate the use of highways and parking on highways and to repeal certain by-laws;

AND WHEREAS the Council of The Corporation of the Town of Caledon consider it necessary and desirable to provide for enhanced enforcement powers for the regulation of the use of highways and parking on highways and to clarify and strengthen delegated authority for the administration of permits under By-law 2015-058;

NOW THEREFORE the Council of The Corporation of the Town of Caledon ENACTS AS FOLLOWS:

1. Section 2 of the Traffic By-law 2015-058 is amended by deleting the definition of "Director" and replacing with:

Director means both the Town's Director of Engineering Services and the Director of Operations, acting either individually or together, or such persons as they may designate to carry out their duties and, in the event of organizational changes, includes the successor position(s).

2. Section 80 of the Traffic By-law 2015-058 is deleted in its entirety and replaced with the following:

80. (1) Every application for a permit to perform any actions or works on or under a Town highway under section 79 shall be made to the Director prior to commencement of the actions or works and shall include:

- (a) a complete application form in the form provided by the Director;
- (b) plans, surveys and other information as required by the Director which may include but is not limited to a traffic management plan;
- (c) location and description of the proposed actions or works including the estimated duration of the proposed actions or works;
- (d) payment of application fee in the amount as described in the applicable Town fees and charges by-law;
- (e) cost estimate reasonably estimating the costs of performing the portion of the proposed actions or works which lie entirely on or under the highway;
- (f) security deposit for the proposed actions or works in an amount and form as required by the Director;
- (g) an indemnity agreement in the form provided by the Director signed by the applicant or, where the applicant is a contractor of an owner, signed by the owner, whereby the signatory agrees to indemnify and save harmless The Corporation of the Town of Caledon from any and all claims, demands, causes of action, loss, costs or damages that the Town may suffer, incur or be liable for resulting from actions or works on or under a Town highway, whether with or without negligence on the part of the signatory, its vendors, suppliers, subcontractors or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors in the course of performance of the signatory's obligations under, or otherwise in connection with, the application;
- (h) proof of comprehensive general liability insurance in an amount not less than five million dollars (\$5,000,000.00) per naming The Corporation of the Town of Caledon as an additional insured in the form provided by the Director; and
- (i) such further and other information as the Director may require.

- (2) The Director, after receipt of all application materials required under subsection (1) may issue a permit for the performance of actions or works on or under a

Town highway pursuant to section 79 of this by-law with such conditions as the Director considers appropriate;

- (3) The Director shall refuse to issue a permit for the performance of actions or works on or under a Town highway pursuant to section 79 of this by-law where the Director has reasonable grounds to believe that the proposed actions or works will result in:
- i. a breach of the provisions of this by-law or any applicable statute, regulation or by-law; or
  - ii. the creation of a dangerous or unsafe condition on or under the Town highway.
- (4) In addition to any other conditions imposed by the Director under subsection (2), the following conditions shall apply to a permit issued for actions or works on or under a Town highway:
- i. prior to commencement of the actions or works, the permit holder shall obtain such utility location stake-outs, clearance letters and written consent as may be necessary to ensure that utilities are not damaged by the permit holder in the course of performing the actions and works;
  - ii. the permit holder agrees to indemnify and save harmless The Corporation of the Town of Caledon from any and all claims, demands, causes of action, loss, costs or damages that the Town may suffer, incur or be liable for resulting from actions or works on or under a Town highway, whether with or without negligence on the part of the permit holder, or the permit holder's employees, directors, contractors and agents;
  - iii. the permit holder and individuals performing the actions or works on the permit holder's behalf shall perform the actions or works in accordance with:
    - (1) applicable statutes, regulations and by-laws including Provincial traffic regulations;
    - (2) Ontario Traffic Manual Book 7;
    - (3) applicable Town standards including those standards for the restoration of the municipal services and restoration of the highway;
  - iv. the permit shall be on-site, in possession of the person performing the actions or works and available for inspection whenever the actions or works are being performed.
- (4) Every permit issued for actions or works in accordance with section 79 between the date of coming into force of this by-law and April 27, 2021, so long as the permit is valid, shall be deemed to be issued as though issued by Council and considered as a lawful permit granted hereunder and for greater clarity every such permit shall be subject to the provisions of this by-law.

3. Section 81 of the Traffic By-law 2015-058 is deleted in its entirety and replaced as follows:

81. (1) Where the permit holder fails to perform the actions or works proposed in the

permit application, including restoration works, to the standards required by the Director and it becomes necessary, in the opinion of the Director acting reasonably, to repair or restore that portion of the highway or municipal services affected by the actions or works of the permit holder, the Director may use the security deposit to engage contractors or may direct Town staff to perform the actions or works and invoice the permit holder or, where the permit holder is a contractor of an owner, invoice the owner for the Town's costs to complete the actions or works and may credit the amount of the security deposit against such invoices.

- (2) Where the amount of the invoice exceeds the amount of the security deposit and the invoice remains unpaid after demand for payment has been made, the expense incurred may be added to the tax roll and collected in the same manner as property taxes.
  - (3) The Director shall hold the security deposit for a period of two (2) years following completion of the actions or works, as a guarantee that the highway is left in a proper state of repair and that the actions and works are performed to the standards required by the Director. The Town will not pay interest on any monies held as the security deposit.
4. Subsection 88(2) of the Traffic By-law 2015-058 is deleted and replaced as follows:
  - (2) Sections 3, 6, 7, 13, 14, 15, 16, 17, 20, 57 and Part X may be enforced by municipal law enforcement officers.
5. Section 88 of the Traffic By-law 2015-058 is amended by adding a subsection (3) and subsection (4) in numerical order as follows:
  - (3) Part VII may be enforced by:
    - (a) the Fire Chief;
    - (b) person(s) appointed by Council as Deputy Fire Chief; or,
    - (c) any officer appointed by Council pursuant to section 7.1(4) of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c.4.
  - (4) The Director, any person authorized under this section to enforce this by-law and any agent on behalf of the Town may at any reasonable time enter upon any land for the purpose of carrying out an inspection to determine whether this by-law is being complied with.
6. The phrase "AND PERMIT ADMINISTRATION" shall be added after "ENFORCEMENT" in the heading above section 88 under Part X of the Traffic By-law 2015-058.
7. The following sections are added to the Traffic By-law 2015-058 in numerical order following section 88:
  - 88.1 (1) The Director may impose conditions on the permit upon issuance or may impose conditions as a requirement of reinstating a permit suspended under subsection (2).

- (2) The Director may revoke or suspend, without prior notice to the permit holder or any other person the permit issued pursuant to this by-law:
    - (a) where the activity is contrary to:
      - i. the provisions of this by-law;
      - ii. any conditions upon which the permit was issued; or
      - iii. any other applicable law;
    - (b) if the permit was issued on mistaken, false or incorrect information;
    - (c) if the Director, acting reasonably, is satisfied the permitted activity poses an immediate danger to the health or safety of any persons; or
    - (d) if the permit was issued in error, and
    - (e) without a refund of any fee paid pursuant to this by-law or the applicable fees and charges by-law.
  - (3) Every person who holds a permit upon which a condition is placed shall comply with the condition.
  - (4) A permit issued under this by-law is non-transferrable.
  - (5) The issuance of a permit under this by-law shall not relieve the permit holder from compliance with any other applicable law.
- 88.2
- (1) Where the Director or any person authorized to enforce this by-law under section 88 is satisfied that a contravention of this by-law has occurred, the Director or person may make an order requiring the person who caused or permitted such contravention, or the owner of the land upon which the contravention occurred, to discontinue the activity.
  - (2) Where the Director or any person authorized to enforce this by-law under section 88 is satisfied that a contravention of this by-law has occurred, the Director or person may make an order requiring the person who caused or permitted such contravention, or the owner of the land upon which the contravention occurred, to do work to correct the contravention.
  - (3) An order made pursuant to this by-law may be made orally or in writing.
  - (4) An order made pursuant to this by-law shall set out the following:
    - (a) the location the contravention occurred;
    - (b) reasonable particulars of the contravention;
    - (c) the contravening activity which shall be discontinued or the work to be done to bring the contravention into compliance;
    - (d) the date by which there must be compliance with the order; and
    - (e) where applicable, notice that if compliance is not achieved by the date for compliance set out in the order, the Town may complete the work at the expense of any person to whom the order is issued.
  - (5) An order in writing may be delivered:
    - (a) personally, with service deemed effective on the date the order is given;

- (b) by regular mail, with service deemed effective on the fifth date after mailing;
  - (c) by registered mail, with service deemed effective on the fifth date after mailing; or
  - (d) by posting the order in a conspicuous place at the location where the contravention occurred with service deemed effective the day after posting.
- (6) The Director or any person authorized to enforce this by-law under section 88 may enter upon land for the purpose of delivering an order.
- (7) Every person to whom an order is issued shall comply with the order.
- (8) Wherever an order, issued pursuant to this by-law, directs or requires any matter or thing to be done by any person within a specified time period, in default of it being done by the specified time period, the Director or any person authorized to enforce this by-law under section 88 may initiate remedial action and the Town may recover, from any person directed or required to do the matter or thing, the costs incurred through legal action or by adding the costs to the tax roll and collecting them in the same manner as property taxes.
- (9) For the purposes of taking remedial action under subsection (8), the Town, its staff and its agents may enter, at any reasonable time, upon any lands on which a default occurred to carry out a required matter or thing.
- 88.3 (1) Where an inspection is conducted by a person authorized under section 88 to enforce this by-law, the person may:
- (a) require the production of documents and things for review that may be relevant to the inspection;
  - (b) inspect and remove documents or things which may be relevant to the inspection for the purpose of making copies;
  - (c) require any information from any Person concerning a matter related to the inspection, including but not limited to names, addresses, contact information, and proof of identity or other identification; and
  - (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.
- (2) 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.

8. This by-law shall come into full force and effect on the date of its passing.

**Enacted by the Town of Caledon Council this      day of      , 2021.**

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Allan Thompson, Mayor

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Laura Hall, Town Clerk