



BY-LAW NUMBER 2012-

A By-law of The Corporation of the City of Barrie to regulate activity on municipal right-of-ways and public lands and to repeal By-laws 90-265, 95-61 and 2005-256.

WHEREAS Section 8, of the *Municipal Act*, 2001, S.O. 2001, c. 25 ("the *Municipal Act*, 2001"), provides that the powers of a municipality shall be interpreted broadly so as to confer broad authority on municipalities to (a) enable municipalities to govern their affairs as they consider appropriate and, (b) enhance their ability to respond to municipal issues;

AND WHEREAS Section 9, of the *Municipal Act*, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Act;

AND WHEREAS Section 10, of the *Municipal Act*, 2001, provides that a single-tier municipality may pass by-laws respecting matters within the spheres of jurisdiction set out therein including, *inter alia*, assets of the municipality, public health, safety and well being of the inhabitants of the municipality;

AND WHEREAS Section 118, of the *Municipal Act*, 2001, provides that a municipality may, *inter alia*, regulate the excavating, construction and use of trenches and may by by-law prohibit same unless a permit is obtained from the municipality which may also impose conditions with respect to the permit, including requiring the submission of plans;

AND WHEREAS Section 126, of the *Municipal Act*, 2001, provides that a local municipality may regulate cultural, recreational and educational events including public fairs and may by by-law prohibit same unless a permit is obtained from the municipality which may also impose conditions including requiring submission of plans;

AND WHEREAS by motion 12-G-228, the Council of The Corporation of the City of Barrie deems it expedient to pass such a by-law and repeal by-laws 90-265, 95-61, and 2005-256 any amendments thereto;

NOW THEREFORE the Council of the Corporation of the City of Barrie enacts as follows:

1.0 **DEFINITIONS**

For the purpose of this by-law:

1.1 **ACTIVITY** - includes the temporary occupancy of a right-of-way for any purpose for a defined period of time outside its normal intended use by the City, Utility Company, or person(s);

APPLICANT - means any person, Utility Company or corporation making application for a Right-Of-Way Permit;

BOULEVARD - means the municipally owned area of the road allowance between the back edge of the curb or the back slope of the ditch line and the private property line;

CITY or **CITY OF BARRIE**- means The Corporation of the City of Barrie or the geographic area as the context requires;

CITY OF BARRIE STANDARDS - means The City of Barrie Standards, as amended from time to time, and are intended as guidelines for land development and City projects to aid in providing uniform designs throughout the Municipality and are to be used in conjunction with Ontario Provincial Standard Drawings (O.P.S.D.) and Ontario Provincial Standard Specifications (O.P.S.S.);

CONTRACTOR – means a person who makes an agreement with another to do a piece of work, retaining in himself control of the means, method and manner of producing the result to be accomplished.

DELETERIOUS MATERIAL - means subsurface soils of an undesirable nature such as, but not limited to organic materials, 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 director of the Department of Roads, Parks and Fleet or authorized representative;

HEAVE - means any rise in the surface of a road cut in relation to the grade of the adjacent undisturbed highway;

HERBACEOUS – means (of plants or plant parts) not woody, having the texture, color, etc., of an ordinary foliage leaf.

HIGHWAY - means a common and public highway and includes any bridge, trestle, viaduct, pathway, 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;

INSPECTOR – means a Municipal Law Enforcement Officer, Provincial Offences Officer, Police Officer, Engineering Inspector or other duly appointed individual

IN-FILL LOTS – shall be considered to be lot creation occurring between two existing residential lots occurring on the same side of the road. The distance between the existing lot lines shall be approximately 150m or less;

ISSUER OF PERMITS – means an employee of the City of Barrie with the authority to grant permits under this By-Law

M.T.O. - means Ministry of Transportation of Ontario;

MUNICIPAL LAW ENFORCEMENT OFFICER - means a person appointed under the authority of the Police Services Act for the purpose of enforcing City by-laws.

MUNICIPAL CONSENT - means the written consent of the Engineering Department, with or without conditions, for access to and use of the Municipality's Rights-of-Way, subject to the obtaining of a Right of Way Activity Permit as applicable;

NOXIOUS WEED - means a plant that is deemed to be a noxious weed by the Ontario Weed Control Act;

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

PARKS – means all lands owned or operated by or belonging to the City or other public body such as school boards, Allandale Community Development Corporation or conservation authority which may be designated as Open Space or Environmental Protection Area and used by the public for active or passive recreational use including sporting activities and games, or as gathering places such as urban squares, or which may be left in their natural state for environmental reasons;

PATHWAY - means the parts of a highway set aside by the City for the use of pedestrians and cyclists;

RIGHT OF WAY ACTIVITY PERMIT - means an authorization granted in writing by a designated officer of the City pursuant to this by-law, to occupy a Right of Way;

PERMANENT LANDSCAPE FEATURES – means any landscape feature that is not easily removed. These features include but are not limited to curbs, structures, boulders, etc.

PUBLIC LANDS - means any properties under the care and control of the City of Barrie;

RIGHT OF WAY - means Highways including the Roadway, Curbs, Shoulders and Boulevards, Pathways and Parks;

ROWA – means a Right of Way Activity;

ROAD CUT - means a surface or subsurface cut in any part of a highway made by any means, including but not limited to any excavation, reconstruction, cutting, saw cutting, overlaying, crack sealing, breaking, boring, directional drilling, 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 curb, shoulder or boulevard;

SECURITY - means all forms of security including cash, or letters of credit and insurance to be provided by the Applicant pursuant to the requirements 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 City for the use of pedestrians;

SPECIAL EVENTS – means a one time, annual or reoccurring event on City of Barrie property that is reserved for exclusive use and which is open to the community at large, celebrates a specific theme, and has a predetermined opening and closing time;

TRAFFIC MANAGEMENT PLAN - means a standard document outlining the particulars of proposed work on any highway within the City of Barrie that is submitted by or on behalf of the contractor to the City for review. The traffic management plan shall contain the information respecting how the Permit Holder 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.

UTILITY/UTILITIES - means any structures above or below ground which exist on a Right of Way and include buried and aerial hydro cable and ducts, bell, cable, television and internet communication cables, trees, water, including underground pipes, hydrants and valves, sanitary and storm sewer pipes, gas and steam pipes, meters, and valves.

UTILITY COMPANY – means any company with the authority to construct within a Right of Way pursuant to provincial or federal legislation, by-law, franchise agreements or municipal access agreement;

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;

VERY SHORT DURATION – is defined in the Ontario Traffic Manual Temporary Conditions Book 7 as; any maintenance activity which occupies a fixed location for up to 30 minutes duration, including set-up and take down of the traffic control provisions. The work may be moved along the road and make frequent stops.

WARRANTY - means a guarantee by the Permit Holder that the work for which a Right of Way Activity Permit has been issued has been carried out in accordance with the City's requirements; and

WORKS - means something that one is doing, making, or performing, especially as an occupation or undertaking; a duty, task or installation.

2.0 **GENERAL PROVISIONS**

2.1 **REQUIREMENT TO OBTAIN A RIGHT OF WAY ACTIVITY PERMIT FOR OCCUPANCY**

Except as provided in Sections 2.2 and 2.3, no person shall undertake any activity within a right of way within the City of Barrie without a permit to do so.

- (1) An application for a right-of-way activity permit shall be filed with the Issuer of Permits not less than five (5) working days in advance of such right-of-way activity. When applying for a right-of-way activity permit, the Applicant shall,
 - (a) complete the prescribed application form;

- (b) furnish to the City such information as the Issuer of Permits may require including but not limited to a traffic management plan; and
 - (c) submit the completed application.
- (2) When filing the completed application, the Applicant shall pay a non-refundable permit fee as set out in the City of Barrie's Fees By-law, as amended from time to time;
 - (3) When the Applicant is requesting multiple road cuts the City reserves the right to issue a single permit or multiple permits for the works.
 - (4) A Right of Way Activity Permit shall not be issued until:
 - (a) proof of insurance has been filed as required by Section 2.10;
 - (b) security has been provided as required by Section 2.21;
 - (c) the permit fee or fees required hereof has or have been paid;
 - (d) an emergency contact telephone number for the service required by Section 2.15 has been provided;
 - (e) proof of a City of Barrie business licence has been provided, if applicable; and
 - (f) approval for Municipal Consent has been issued and any conditions have been complied with, if applicable.
 - (5) The provisions of paragraphs 2.1 (4) (a) and (b) do not apply to the City, but the provisions contained within paragraphs 2.1 (4) (a) and (b) do apply to a person or firm doing work for the City as a contractor.
 - (6) Where two (2) or more cuts are proposed, the Issuer of Permits may state the order in which the work is to be performed.
 - (7) Where applicable, where work is to be carried out on a right of way, the Right of Way Activity Permit shall become void if the work authorized by the permit is not commenced within sixty (60) calendar days of the date of its issue. An administrative fee for the renewal as set out in the City of Barrie's Fees By-law will be charged.

2.2 **WORK NOT REQUIRING PERMIT**

- (1) If it is the intent of the Applicant to complete work within a right of way that is minor (at the discretion of the Issuer of Permits) and of very short duration, (i.e. does not cause any disruption to traffic flows, does not break ground and does not create a potential for damages to existing utilities) then a Right of Way Activity Permit may not be required.
- (2) While engaged in work within the right of way that is minor in nature as determined by the Issuer of Permits; No persons shall disturb, damage or alter public lands whether or not a Right of Way Activity Permit is required.

2.3 **EMERGENCY WORK**

- (1) Subject to subsection 2.3 (2) hereof, where public safety or health, or a major business interruption in works is concerned, a road activity may be carried out without regard to the prior notification requirements of this by-law, all other requirements still apply.
- (2) Where an emergency road activity has been undertaken, the person or utility undertaking the road activity 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 Issuer of Permits of the following:
 - (a) the name of the utility or contractor undertaking the road activity;
 - (b) the nature of the work;
 - (c) the location of the road activity;
 - (d) the estimated duration of the work;
 - (e) the reason for proceeding without obtaining a Right of Way Activity Permit and without providing the required notice; and

- (f) retroactively comply with all requirements of this by-law including obtaining a Right of Way Activity Permit;
- (3) The Issuer of Permits may require any or all information to confirm the validity of an emergency right-of-way activity. Should insufficient proof of an emergency be submitted the Applicant may be notified in writing that they are subject to the same restrictions and penalties as performing an activity without a Right of Way Activity Permit.

2.4 **APPLICATION FOR RENEWAL AND/OR EXTENSION OF PERMIT**

- (1) Any person required to renew and or extend a Right of Way Activity Permit previously granted under this by-law, shall submit to the Issuer of Permits, an application form for renewal or extension of the Right of Way Activity Permit as provided by the Issuer of Permits. Every Permit Holder shall obtain any and all inspections, approvals and documentation as required by this by-law or as deemed necessary by the Issuer of Permits.
- (2) The Issuer of Permits may refuse to accept an renewal or extension application for a Right of Way Activity Permit that is not accompanied by all necessary documentation or which does not reflect all required sign offs and approvals, and shall not issue a Right of Way Activity Permit until all required approvals and inspections have been obtained by the Permit Holder, required documentation has been provided and business Right of Way Activity Permit fees have been paid in full.
- (3) Where the Issuer of Permits receives an application for renewal of a Right of Way Activity Permit or extension of a Right of Way Activity Permit previously granted under this by-law and the appropriate fees have been paid, he shall, prior to the issuance of any such Right of Way Activity Permit:
 - a) ensure that all inspections, approvals and documents as may be required have been obtained;
 - b) make inquiries into all relevant matters in order to ascertain if the Permit Holder is entitled to obtain a renewed Right of Way Activity Permit under the provisions of this by-law;
 - c) inquire into any and all relevant changes in circumstances since the previous Right of Way Activity Permit was issued to the Permit Holder;
 - d) make any inquiries to any municipal official or employee who has carried out inspections or investigations relative to the business under application; and
 - e) receive reports from such municipal officials and employees as may be deemed necessary.
- (4) Where the Issuer of Permits is satisfied that the Applicant is entitled to obtain a Right of Way Activity Permit under the provisions of this by-law, the Issuer of Permits shall prepare and issue a Right of Way Activity Permit to the Applicant.

2.5 **NOTICE REQUIREMENTS FOR RIGHT OF WAY AND ROAD ACTIVITY**

- (1) 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 Right of Way where the work will occur, every Permit Holder or person responsible for the road activity shall, at least ten (10) working days prior to commencing the work, provide in writing to every resident and business located beside or near the Right of Way where the work will occur for the following information:
 - (a) description and rationale for the work;
 - (b) the approximate start date;
 - (c) the duration of the work;
 - (d) access restrictions and service interruptions; and
 - (e) contact information for the Permit Holder.
- (2) It shall be at the sole discretion of the Issuer of Permits to determine for reasons of public safety or the effective operation of the public transportation system, when a right of way activity may occur.

2.6 **LOCATES**

- (1) It shall be the sole responsibility of the Permit Holder to request, from the appropriate Utility Company, marking or other location information to determine the location and to provide safeguards for all utilities. Should the Permit Holder, in carrying out the work allowed under the Right of Way Activity Permit, cause damage to any such utilities, the entire cost and responsibility of restoring any such utilities shall be at the sole expense of the Permit Holder.

2.7 **WARNING DEVICES, BARRICADES AND TRAFFIC SIGNS**

- (1) The Permit Holder shall supply, 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, including but not limited to the Ministry of Transportation's Ontario Traffic Manual, Book #7 (Temporary Conditions).
- (2) If the Permit Holder fails to comply with subsection 2.5 (1) hereof, the Issuer of Permits 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.

2.8 **CLOSURE TO TRAFFIC**

- (1) No person shall close or obstruct a highway or portion of a highway to traffic unless authorized to do so by the Issuer of Permits
- (2) No Permit Holder shall close a highway to traffic or one direction of traffic on a highway unless:
- (a) the written consent of the Issuer of Permits to the closing is obtained; and
 - (b) On behalf of the Permit Holder the Issuer of Permits shall notify Barrie Police Service, Barrie Fire and Emergency Service, Ambulance Service, Barrie Transit, and any other person, department or agent requiring notice, from time to time affected by the occupancy, or the commencement and termination of the activity.
- (3) A Permit Holder shall supply, locate, relocate, erect, operate and maintain all traffic control, detour and information signs in accordance with the Traffic Control Plan and Ontario Traffic Manual Temporary Conditions Book 7 (current edition);

2.9 **FORM OF PERMIT**

- (1) Every Right of Way Activity Permit shall show therein:
- a) the operating name of the business or person to whom the Right of Way Activity Permit is issued;
 - b) the operating address of the premise or location for which the Right of Way Activity Permit is issued;
 - c) the type of activity planned;
 - d) the date of issue;
 - e) the effective date of the Right of Way Activity Permit;
 - f) the date of expiration;
 - g) any other conditions if applicable;
 - h) such requirements as needed given the nature of the work being undertaken on a Right of Way; and
 - i) the signature of the Issuer of Permits.

2.10 **ADMINISTRATION FEE**

- (1) An administration fee as specified in the City of Barrie Fees By-Law will apply to the following:
- a) Issuance of a Right of Way Activity Permit;

- b) Change of occupancy dates and extensions;
- c) Change to the traffic control plan;
- d) Change of the location of the activity; and
- e) Other changes deemed by the Issuer of Permits to create an administrative demand;

2.11 **INSPECTION**

- (1) An Inspector may at all reasonable times enter on any land, for the purpose of carrying out an inspection to determine whether or not the provisions of this by-law, a direction or order, a condition of a Right of Way Activity Permit or an Order of the Court are being complied with.
- (2) For the purposes of an inspection, a Municipal Law Enforcement Officer, Police Officer, Inspector or other duly appointed individual may:
 - i) require the production for inspection of documents or things relevant to the inspection;
 - ii) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - iii) require information from any person concerning a matter related to the inspection; and
 - iv) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of the inspection.
- (3) Where a sample is taken, the sample shall be divided into two parts, and one part shall be delivered to the person from whom the sample is taken, if the person so requests at the time the sample is taken and provides the necessary facilities. If a sample has been taken and the sample has not been divided into two parts, a copy of any report on the sample shall be given to the person from whom the sample was taken.
- (4) A receipt shall be provided for any document or thing removed and the document or thing shall be promptly returned after the copies or extracts are made.

2.12 **STOP WORK ORDER**

- (1) An Inspector may at his or her discretion issue a stop work order.
- (2) Stop work orders are issued where an Inspector or Issuer of Permits finds an activity occurring that is not in accordance with the conditions of an issued Right of Way Activity Permit or where an activity is taking place without a Right of Way Activity Permit.
- (3) A stop work order may only be applied to the activity that constitutes the contravention. For instance, in cases of contravening a condition of a Right of Way Activity Permit, much of the work can be continued while only the violating activity can be ordered to cease.
- (4) The Inspector shall take appropriate action against any person(s) who disobeys a stop work order. Failure to comply with a stop work order leaves the recipient liable to a fine.
- (5) A stop work order shall be lifted once the issuer of the stop work order or the Issuer of Permits determines that all contraventions of this by-law have been rectified.

2.13 **NON-COMPLIANT INSTALLATIONS**

- (1) Should any activity begin that is not in strict compliance with the conditions of the Right of Way Activity Permit and this by-law, the Permit Holder may be issued a stop-work order and may be required to perform temporary restoration and move all equipment and materials off-site until these requirements are met in-full and the Right of Way Activity Permit may be cancelled, at the sole discretion of the Engineering Department.

- (2) Depending on the severity of the infraction, the issuance of new Right of Way Activity Permits to the same Permit Holder may be withheld or delayed, at the sole discretion of the Engineering Department, until the infraction has been addressed by Permit Holder to the satisfaction of the Engineering Department.
- (3) Where utilities are found to be installed without a valid Right of Way Activity Permit and/or in a location other than that approved by the Engineering Department, the Permit Holder may be required to remove the utilities immediately, at its own expense. Restoration shall be performed in accordance with the procedures outlined in the Right of Way Activity Permit.

2.14 **POSTING OF PERMIT**

- (1) No Permit Holder shall work at a job site without the Right of Way Activity Permit on-site and available for inspection.
- (2) The Permit Holder shall, if requested, display at the job site an easily read sign showing the names of:
 - (a) the Permit Holder;
 - (b) the person(s) or contractor undertaking the work; and
 - (c) the name of the entity for which the work is being done

2.15 **TELEPHONE**

- (1) 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 activity, including the guarantee period, so that the City can advise the Permit Holder of any necessary repairs to the road cut or other infrastructure that may have been damaged as a result of the activity.

2.16 **REFUSAL TO GRANT A PERMIT**

- (1) The Issuer of Permits may refuse to grant a Right of Way Activity Permit to any Applicant for any of the following reasons:
 - (a) persistent and/or serious violations of any condition of a Right of Way Activity Permit previously issued to the Applicant, or of any provisions of this by-law applicable to a Right of Way Activity Permit previously issued hereunder;
 - (b) nonpayment or late payment of monies due to the City as a result of inspection, or of any necessary work undertaken by the City, in the course of administering any provision of this by-law;
 - (c) where roadway construction, reconstruction or resurfacing has occurred within the previous three years of the proposed road cut; or
 - (d) such other reason as the Issuer of Permits may deem proper which reason shall be delivered in writing to the Applicant if so requested.

2.17 **SUSPENSION/REVOCAION**

- (1) Any Right of Way Activity Permit issued pursuant to this by-law may be suspended or revoked by the Issuer of Permits upon giving written notice to the Applicant for the following reasons:
 - a) a violation of any condition of the Right of Way Activity Permit or of any provision of this by-law;
 - b) a violation of any provision of any other law relating to the work;
 - c) the existence of any condition or the doing of any act constituting or creating a nuisance or endangering the lives or properties of others;
 - d) where the Right of Way Activity Permit has been issued on mistaken, false or misleading information; or
 - e) where the work is not carried out in a diligent and workmanlike manner.
- (2) The Issuer of Permits may, in his sole and unfettered discretion, grant a period of not more than seven days to correct the violation or condition.

- (3) Upon notice of such Right of Way Activity Permit being revoked, the Permit Holder must immediately cease and desist from carrying out any additional activities allowed under the Right of Way Activity Permit and immediately restore the highway or portion thereof to Barrie Standard as set out in this by-law. Such restoration shall be carried out at the Permit Holder's sole expense, and if the Permit Holder should fail to carry out such restoration, such highway shall be restored to Barrie Standard by the City as necessary, and the entire cost of so doing shall be paid by the Permit Holder. When such restoration is completed, the Permit Holder may reapply for a new Right of Way Activity Permit.

2.18 **INSURANCE**

- (1) Every Applicant for a Right of Way Activity Permit shall provide and maintain Comprehensive/Commercial General Liability insurance acceptable to the City 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 City of Barrie as an additional insured. The insurance policy shall remain in place until all warranty requirements are fulfilled.
- (2) The insurance policy referred to in subsection (1) hereof shall contain an endorsement to provide the City with thirty (30) days written notice of cancellation.

2.19 **INDEMNIFICATION**

- (1) A Right of Way Activity Permit is issued subject to the condition that the Permit Holder shall indemnify the City and each of its officers, agents, servants and workers 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 workers of the Permit Holder.

2.20 **SNOW REMOVAL AND DE-ICING**

- (1) Where the Permit Holder's work impedes snow removal and de-icing by the City on areas where vehicular and pedestrian traffic are being maintained, as reasonably determined at the sole discretion of the Roads Parks and Fleet Department, the Permit Holder shall be responsible for providing ice and snow removal services within the limits of the work site. Such areas shall be cleared of ice and snow to the satisfaction of the Roads Parks and Fleet Department.
- (2) Should the Permit Holder fail to complete the required snow removal services and de-icing within the set deadlines, the City, without any notice to the Permit Holder, may arrange for the snow and ice to be removed by others. All costs incurred by such removal shall be charged to the Permit Holder.

2.21 **FEES AND SECURITY**

- (1) The fees for the Right of Way Activity Permit, and for any inspections required under it, shall be such amount as determined in the City of Barrie Fees By-law and shall be due and payable to the City of Barrie at the time of application. No Right of Way Activity Permit shall be issued, or inspection carried out until such fees have been paid and there shall be no refund of any fees for any cause.
- (2) The Permit Holder shall maintain or repair the work completed under the terms of the Right of Way Activity Permit as set out in Section 2 General Provisions, until accepted as satisfactory by the Issuer of Permits and shall restore the Right of Way to City of Barrie Standards. To guarantee the restoration, the Permit Holder shall deposit with the City of Barrie Security in a form acceptable to the City of Barrie, to cover the faithful performance of the terms of the Right of Way Activity Permit including maintenance, repair and restoration carried out by the Permit Holder and every other obligation arising under and imposed upon the Permit Holder by this by law or any Right of Way Activity Permit, as determined by the Issuer of Permits. Such Security shall be provided forthwith prior to the issuance of any Right of Way Activity Permit and in such amount as determined by the Issuer of Permits.

2.22 **EQUIPMENT REQUIREMENTS**

- (1) Equipment shall be maintained in a good working condition that does not leak fluids and prevents unnecessary noise, including but not limited to proper muffler systems, properly secured components and the lubrication of all moving parts.

- (2) Idling of service equipment shall be restricted to the minimum necessary for the proper performance of the specified work.

2.23 **TIMES OF WORK**

- (1) Work may only take place during the times specified on the Right of Way Activity Permit or as otherwise specified by the Issuer of Permits. Restrictions may vary for different directions of travel on the same street and work may be prohibited at specific times and dates in order to co-ordinate with or avoid other work or events in the area.
- (2) At most locations, typical working hours will be between the hours of 7 a.m.–7 p.m. from Monday to Friday and from 9 a.m.–7 p.m. on Saturday. No work will be permitted on Sunday or statutory holidays. Specific exceptions to the above noted typical times may be granted if required, at the sole discretion of the Issuer of Permits, depending on the circumstances of the individual work.
- (3) The work site shall be adequately protected and secured at all times.

2.24 **SITE CONDITIONS**

- (1) The Permit Holder is responsible for maintaining the work site and surrounding area free of dust and mud. The Permit Holder shall clean the road and sidewalks as required to the satisfaction of the Engineering Department.
- (2) Prior to the start of any construction activity, filter cloth shall be placed between the frames and covers of all catch basins within the immediate area to prevent the entry of construction dirt and debris.
- (3) The Permit Holder shall keep the site and work in as tidy a condition as practicable and to the satisfaction of the City. The Permit Holder shall not deposit any material on any portion of street, sidewalk, boulevard, grass plot, or other City property, without the permission of the City, and shall remove same without delay when and as directed by the City. Upon completion of the work, the Permit Holder shall remove all surplus materials as well as any rubbish accumulated on account of the work, make good any defects or damage and shall leave the site in a condition satisfactory to the City.
- (4) Should the Permit Holder fail to comply with this requirement and maintain the street in a satisfactory condition, the Engineering Department, acting reasonably, without further notice, may issue a stop work order, cancel the Right of Way Activity Permit, charge the Permit Holder under applicable bylaws and/or arrange for the site to be cleaned immediately by others. All costs incurred in cleaning the dust and mud resulting from the Permit Holder's work shall be charged to the Permit Holder.

2.25 **WATERMANS**

- (1) The Permit Holder shall not operate watermain valves, service water valves and/or hydrants. If operation of any water supply valves is required, the Permit Holder must contact the City of Barrie Water Operations Branch by phone 705-792-7920.
- (2) No person shall operate valves, hydrants or interfere with a potable water system in any manner that will cause the water to become non-potable.

2.26 **TRANSFERABILITY**

- (1) A Right of Way Activity Permit is not transferable without the written consent of the Issuer of Permits.

2.27 **WORKING AROUND MASS TRANSIT**

- (1) The Permit Holder shall coordinate with the Issuer of Permits all staging with any transit company, school or tour group known to the Permit Holder that may have a bus stop or travel, within the work area. Special attention shall be given to loading and unloading areas for disabled persons and school buses.
- (2) The Permit Holder shall maintain access to all existing bus stops within the work area. Where it is not practical to maintain access, the Permit Holder will be responsible for relocation and reinstatement of the bus stops, under the direction of the transit authority or the Recreation, Facilities and Transit Department, unless other arrangements have been made.

- (3) When the proposed works involve the removal or the replacement of a utility pole that is being used for City of Barrie signage including but not limited to Bus Stop Signs, Parking Signs, and Public Information Signs, the Permit Holder shall coordinate with the Roads, Parks and Fleet Department for removal and replacement of City owned signage.

3.0 **ROAD WORK PROVISIONS**

3.1 **GENERAL PERMIT 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 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 and mud controlled at all times until the final reinstatement has been completed. All dust and mud nuisance that is tracked from the site shall be promptly cleaned.
- (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. 0.1, as amended.
- (5) All persons employing or using trucks or other vehicles entering or leaving construction sites for any purpose whatsoever, shall immediately remove from the highway any rubbish, earth, or other material which has fallen from such vehicles.
- (6) The Permit Holder and contractor shall comply with and be bound by the provisions of the Ministry of Transportation's Ontario Traffic Manual, Book 7 (Temporary Conditions).

3.2 **EXCAVATED MATERIAL AND ROAD CUT METHODS**

- (1) No Permit Holder shall place, cause the placement or allow the placement of material or equipment on any roadway or sidewalk at any time or in a location where, it will cause damage to the infrastructure it is placed on and/or create a traffic or safety hazard unless authorized to do so by the Issuer of Permits in writing to do so.
- (2) Except as permitted by the City, where multiple road cuts are required with a separation distance of equal to or less than thirty (30) metres it shall be required that the permit holder reinstate the road cuts and resurface the right of way for the entire distance between the outer edges of each road cut.
- (3) 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 contraction 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 Issuer of Permits.
- (4) Where a road cut is made in asphalt pavement, the asphalt shall be cut with a mechanical cut device 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.
- (5) Where boring, directional drilling, jacking or tunneling is used for any subsurface road cut:
- (a) the method used shall be approved by the Issuer of Permits; and
- (b) if a cave-in, settlement or heaving results there from, 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 Issuer of Permits.
- (6) Where two (2) or more connections for sewer or water are to be made, the Issuer of Permits may state the order in which these connections are made. The lowest utility should be generally built first.

- (7) All works shall be completed to City of Barrie Standards and Ontario Provincial Standards. City of Barrie Standards shall take precedence over Ontario Provincial Standards.

3.3 **REINSTATEMENT AND BACKFILL REQUIREMENTS**

- (1) The Permit Holder shall be 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 on or after November 15th in any year is not in a condition to be permanently reinstated, and is carried over for permanent reinstatement prior to May 1st of the following year;
 - (c) the employment of a contractor shall meet the approval of the Issuer of Permits; and
 - (d) payment to the City for its inspection charges as set out in the City's Fees By-law.
- (2) All reinstatements shall be done to current City of Barrie Standards and O.P.S.S. standards. City of Barrie Standards shall take precedence over Ontario Provincial Standards
- (3) 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 City of Barrie.
 - (c) all reinstatements shall be to the satisfaction of the City of Barrie
 - (d) on all arterial and collector roads only non-compressible backfill shall be used at any time; and
 - (e) After Nov 15th of each year until May 1st of the following year only non-compressible backfill shall be used unless otherwise approved by the Issuer of Permits.
- (4) 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.

3.4 **CONTAMINATED MATERIALS**

- (1) If contaminated material is found when excavating, the Permit Holder shall immediately notify the Issuer of Permits and the Ontario Ministry of the Environment and comply with all applicable health and safety requirements. Contaminated material must not be used as backfill and must be disposed of in accordance with all legislative requirements.

3.5 **PAVEMENT DEGRADATION FEES**

- (1) Every Permit Holder that performs a road cut shall be subject to pay the pavement degradation fees as set out in the City of Barrie's Fee's By-Law.
- (2) Any person or corporation who completes a road cut without Right of Way Activity Permit or fails to identify the road cut through the permit application process shall be liable for fees as assessed by the Inspector on site.
- (3) Outstanding or unpaid fees shall be paid to the City prior to any further Right of Way Activity Permits being granted by the Issuer of Permits.

3.6 **TESTING**

- (1) The Issuer of Permits 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 Issuer of Permits, showing the degree of compaction that has been achieved; or
 - (b) a certificate from an engineer, or from a testing laboratory satisfactory to the Issuer of Permits, certifying that the backfilling procedures have been performed in accordance with this by-law.
- (2) All testing required shall be completed in accordance with OPSS.

3.7 **REPORTING DAMAGE/IMPACT TO EXISTING UTILITIES**

- (1) Any impact on existing utilities including, but not limited to, the protective coating, support, cathodic protection or the housing of the utilities, shall be reported to the Engineering Department and applicable Utility Company immediately.
- (4) The utilities shall remain exposed, with the excavation properly supported, until the utilities owner has assessed the damage and made a repair or authorized the Permit Holder to proceed.

3.8 **COMPLETION OF WORK**

- (1) 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 Issuer of Permits.

4.0 **TRENCHLESS INSTALLATIONS**

- (1) Where the work being undertaken uses trenchless installation methods, preservation and protection of existing facilities shall be according to OPSS 491.
- (2) Minimum horizontal and vertical clearances to existing facilities as specified in OPSS shall be maintained. Clearances shall be measured from the nearest edge of the largest backreamer required to the nearest edge of the facility being paralleled or crossed.
- (3) Existing underground facilities shall be exposed to verify its horizontal and vertical locations when the bore path comes within 1.0 metre horizontally or vertically of the existing facility. Existing facilities shall be exposed by non-destructive methods. The number of pilot holes required to monitor work progress and the proposed location of such pilot holes must be clearly depicted on the application drawing. All pilot holes and any other damage to the street infrastructure shall be restored as per the requirements of this By-Law.

5.0 **PROTECTION OF TREES**

- 5.1 Any construction activity in the vicinity of trees shall be carried out in strict compliance with the Tree Protection By-Law (Public Tree By-law), (Tree Preservation By-law) and the Tree Protection Manual.

6.0 **UTILITY COMPANIES**

6.1 **SERVICE DROPS (INCLUDING TEMPORARY)**

- (1) Temporary service drops shall be permitted as a temporary means to supply servicing to a resident with the permanent service being installed at a future date. Installation of cables shall be performed in a manner that ensures the safety of residents, pedestrians, and vehicles and placed with due regard for aesthetics. When within the boulevard, a cable shall be shallow depth buried such that it does not constitute a tripping hazard. Cables shall not cross sidewalks, driveways or walking paths along the surface. When crossing a road, sidewalk, driveway or walking path, the height of the cable shall be no less than 4.5 metres. Cables shall not lie unprotected on the ground at any location. Cables shall not be strung using trees.

- (2) Cables shall enter and leave a utility pedestal at a 90 degree angle. A cable shall not cross over a property not being fed by this cable without consent of the affected property owner.
- Notification must be given to all residents of all properties affected by the temporary service connection including an estimated date of permanent service installation and removal of the temporary cable.
 - All infrastructure including, but not limited to, utility pedestals, cables, supports and access points shall remain in a closed and safe condition at all times.
- (3) The Permit Holder shall make its best effort to install the permanent service as soon as possible. In the winter or early spring, frost conditions may delay the permanent installation; however, in general, temporary service drops shall be removed within 45 days.
- (4) Immediately upon installation of the permanent service, regardless of whether or not restoration has been completed, all materials and equipment associated with the temporary service drop shall be removed from the site.

6.2 **STANDING SECURITY DEPOSIT**

- (1) A standing security deposit shall be provided to the City prior to the start of each calendar year in the amount of twenty five thousand dollars (\$25,000.00) by Utility Companies. The City reserves the right to draw against the aforementioned letter of credit in order to cover pavement for degradation fees, restoration costs and other associated deficiencies. If the security reaches a level less than \$5000.00 in a calendar year than the Utility Company shall provide a supplemental deposit to return the balance of their account to \$25,000.00.

7.0 **CUT FAILURE AND WARRANTIES**

7.1 **WARRANTY**

- (1) For temporary reinstatement of the highway, a Permit Holder is responsible for,
- (a) the repairs necessary to correct any road cut considered under the Ontario Minimum Maintenance Standards for Municipal Highway, OPSS and City of Barrie Standards as applicable.
- (2) Following permanent reinstatement of the highway a Permit Holder is responsible for,
- (a) the repairs necessary to correct any settlement or surface deterioration for a warranty period of twenty four (24) months following the date of acceptance by the City of final reinstatement of the highway, being the last time the Permit Holder repaired the road cut; and
 - (b) any costs incurred by the City for any temporary and permanent surface repairs resulting from improper backfilling or compaction of the highway or deficient materials.
- (3) If the Permit Holder has not done the work referred to in section 7.1 subsection (2) hereof within twenty four (24) hours notification, the Issuer of Permits 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 to do so all costs shall be deducted from the security.

7.2 **EMERGENCY REPAIRS**

- (1) If the Issuer of Permits is of the opinion that a road cut reinstatement or lack of reinstatement, has created an emergency situation which can cause damage to vehicles or endanger the public, the Issuer of Permits 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) All work done by the City pursuant to section 7.2 subsection (1) 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.

7.3 **RESPONSIBILITY FOR CLAIMS AND MAINTENANCE**

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

8.0 **SPECIAL EVENTS**

- (1) All Special Events including filming on public lands and charitable events, that require the closure of: (i) a highway or any portion thereof; or (ii) a parking lot operated by the City must:
 - a) Comply with this by-law; and
 - b) Be issued with a special event permit.

9.0 **BOULEVARD GARDENS**

9.1 **REQUIREMENT**

- (1) Except as permitted by the City, no persons shall alter, cause to be altered or permit to be altered by any means a boulevard within the City of Barrie without complying with the Boulevard Garden Policy and this By-Law.

10.0 **IN-FILL LOTS**

10.1 **REQUIREMENT**

- (1) Every person constructing property on an in-fill lot shall adhere to the conditions of this by-law.

11.0 **DEMOLITION OF PROPERTY**

11.1 **REQUIREMENT**

- (1) Every person demolishing a structure on a property shall adhere to the conditions of this by-law.

12.0 **SUMP PUMPS AND PRIVATE DRAINS**

- (1) No person shall install a sump pump or private drain outlet on City property without direct written consent by the Issuer of Permits.
- (2) A person(s) may install a private drain if the design has been approved through site plan control.

13.0 **ENFORCEMENT**

- (1) A Municipal Law Enforcement Officer, Provincial Offences Officer, Police Officer, or other duly appointed individual shall enforce the provisions of this by-law.
- (2) No person shall obstruct, hinder, or otherwise interfere with an Inspector or other duly appointed individual in the lawful carrying out of their duties and responsibilities under the provisions of this by-law.

14.0 **PENALTIES**

- (1) Every person who contravenes any provision of this by-law is guilty of an offence and liable on conviction to a penalty not exceeding \$5,000, exclusive of costs and the provisions of *the Provincial Offences Act, R.S.O 1990, c P.33*, as amended, shall apply to said fine.
- (2) Every person who contravenes the provisions of any section of this By-law and every Director or Officer of a Corporation, who knowingly concurs in the contravention by the Corporation, is guilty of an offence under the provisions of the *Municipal Act, 2001, S.O. 2001, c.25*.
- (3) Every person who contravenes the provisions of any section of this by-law and every Director or Officer of a Corporation, who knowingly concurs in the contraventions by the Corporation, is guilty of an offence and liable on conviction to a penalty where the minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$100,000 exclusive of costs under the provisions of the *Municipal Act 2001, 2001, S.O. 2001, c. 25* as amended;

- (4) For the purpose of continuous offences, every person who contravenes any provision of this by-law and every Director or Officer of a Corporation who knowingly concurs in the contravention of a by-law of the Corporation is guilty of an offence and liable on conviction to a penalty not exceeding \$10,000, exclusive of costs under the provisions of the *Municipal Act, 2001, S.O. 2001, c. 25* as amended.
- (5) Notwithstanding the provisions of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended the total of all daily fines for the offence is not limited to \$100,000.
- (6) For the purpose of multiple offences, every person who contravenes any provision of this by-law and every Director or Officer of a Corporation who knowingly concurs in the contravention of a by-law of the Corporation is guilty of an offence and liable on conviction to a penalty not exceeding \$10,000, exclusive of costs under the provisions of the *Municipal Act, 2001 S.O. 2001, c. 25* as amended.

15.0 **EXEMPTIONS**

- (1) The Clerk of The Corporation of the City of Barrie may grant an exemption to any person from any provision of this by-law and impose conditions for such exemption as may be considered reasonable and necessary, provided such exemption does not interfere with the general integrity of this by-law.

16.0 **SEVERABILITY**

- (1) Should any section of this by-law be declared by a Court of competent jurisdiction to be *ultra vires* or illegal for any reason, the remaining parts shall nevertheless remain valid and binding, and shall be read as if the offending section or part had been struck out.

17.0 **TRANSITION**

Every Right of Way Activity Permit issued pursuant to By-law No. 2005-256 as amended continues in force and shall be deemed to be issued under this by-law for regulatory and enforcement purposes.

18.0 **SHORT TITLE**

This by-law may be cited as the "RIGHT OF WAY ACTIVITY By-law".

19.0 **REPEAL**

By-laws No. 90-265, 95-61 and 2005-256 as amended are repealed.

20.0 **SCOPE AND AUTHORITY**

Where a matter is subject to provincial regulation, any provision of this by-law is without effect to the extent that it prohibits or regulates the matter in substantially the same way as or in a more restrictive way than the provincial regulation.

21.0 **FORCE AND EFFECT**

This By-law shall come into force and have effect immediately upon the final passing thereof.

READ a first and second time the 1st day of October 2012.

READ a third time and finally passed this 1st day of October 2012.

THE CORPORATION OF THE CITY OF BARRIE

MAYOR – J.R. LEHMAN

CITY CLERK – DAWN A. MCALPINE