

By-law Number 26-2018

of The Regional Municipality of Durham

Being a by-law to delegate authority for the temporary closure or occupancy of highways under the jurisdiction of the Regional Municipality of Durham for CONSTRUCTION or MAINTENANCE PURPOSES, including establishing a licensing system, and for the movement of heavy or oversize vehicles and loads.

Whereas Section 8 of the Municipal Act, 2001 confers broad authority on municipalities to govern their affairs and enhance their ability to respond to municipal issues;

And whereas pursuant to Section 11 of the Municipal Act, 2001, the municipality may pass by-laws respecting the provision of services and things as authorized under the Municipal Act, 2001;

And whereas pursuant to Section 27 of the Municipal Act, 2001, the municipality may pass by-laws in respect of a highway under its jurisdiction;

And whereas Subsection 9 (7) of Section 122 of the HIGHWAY TRAFFIC ACT provides that the municipal corporation or other authority having jurisdiction over a HIGHWAY may, by by-law, designate the date on which a REDUCED LOAD PERIOD shall start and end on the HIGHWAY or portion thereof under its jurisdiction to which the designation applies;

Now therefore, the Council of The Regional Municipality of Durham hereby enacts it as a by-law as follows:

1. Interpretation

- (a) Short Title: This by-law may be cited as the “Road Occupancy and Weight Restriction By-law”.
- (b) Severability: If any provision or part of a provision of this by-law is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, the balance of the by-law shall not be affected and shall continue to be in full force and effect.
- (c) Plurals/Gender: Unless the contrary intention is indicated, words used in the singular shall include the plural and words used in the male gender shall include the female gender and vice versa.
- (d) Legislation: Unless otherwise indicated, all references to provincial legislation in this by-law are references to the Revised Statutes of Ontario, 1990, as amended from time to time, including successor legislation. Similarly, all references to Regional by-laws are references to those by-laws, as amended from time to time, including successor by-laws.
- (e) Headings: Section and paragraph headings are inserted solely for ease of reference.

2. Definitions

- 2.1 Capitalization of defined terms: Where the words listed in this section appear in this by-law printed in upper case letters, they are used as defined in the lettered

paragraphs of this sub-section. Words printed in regular case should be read in the context of their ordinary, everyday meanings.

- (a) "COMMISSIONER" means the Commissioner of Works of the REGION, or a designate;
- (b) "CONSTRUCTION OR MAINTENANCE PURPOSES" means any construction, repair or improvement to the HIGHWAY or a portion thereof, or any works under, over, along, across or upon the HIGHWAY, and also includes building construction, repair or maintenance operations by the owner or occupant of land adjoining the HIGHWAY, including the storage of materials used for such building or the erection of hoardings, which require HIGHWAY occupancy or closure;
- (c) "HIGHWAY" has the meaning ascribed thereto in Subsection 1(1) of the HIGHWAY TRAFFIC ACT, and includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof; and includes unopened and unassumed road allowances;
- (d) "HIGHWAY TRAFFIC ACT" means the Highway Traffic Act, R.S.O. 1990 c.H. 8 as amended from time to time;
- (e) "LICENSEE" means the PERSON who has been issued a Road Occupancy Permit or a Moving Permit pursuant to this By-law;
- (f) "MOTOR VEHICLE/VEHICLE" has the meaning ascribed thereto in the HIGHWAY TRAFFIC ACT;
- (g) "OFFICIAL SIGN" means a load restriction sign erected in accordance with the regulations under the HIGHWAY TRAFFIC ACT;
- (h) "OPERATING CORPORATION" has the meaning defined in Public Service Works on Highways Act, R.S.O. 1990, Chapter P. 49;
- (i) "PERSON" means an individual, association, firm, partnership, corporation, trust, organization, trustee or agent, and the heirs, executors or legal representatives of the Person to whom the context can apply;
- (j) "REDUCED LOAD PERIOD" means the period from the first day of January to the thirty-first day of December inclusive in each and every year;
- (k) "REGION" means the Regional Municipality of Durham acting as a body corporate; and
- (l) "WORKING DAYS" shall exclude Saturdays, Sundays, statutory holidays, Family Day, Easter Monday, the August Civic Holiday and Remembrance Day.

3. Approvals

- 3.1 For the purpose of this By-law, the COMMISSIONER shall have authority to grant Road Occupancy Permits and Moving Permits under this By-law, and to impose conditions thereon.

- 3.2 The COMMISSIONER shall have the authority to order the stoppage of work on the HIGHWAY where a Road Occupancy Permit has not been issued or where the conditions of a Road Occupancy Permit, or provisions of this By-law, have not been complied with, and to revoke a Road Occupancy Permit if the LICENSEE does not meet the requirements of the permit or of this by-law.
- 3.3 The COMMISSIONER is authorized to approve and administer permits for any HIGHWAY under the jurisdiction of the REGION for the movement of heavy vehicles, loads, objects or structures which are in excess of the dimensional limits set out in Section 109 of the HIGHWAY TRAFFIC ACT, or the weight limits set out in Part VIII of the HIGHWAY TRAFFIC ACT.
- 3.4 Notwithstanding the delegation of authority under this By-law to the COMMISSIONER, the Council of the REGION shall retain the capacity to exercise all of the powers delegated to the COMMISSIONER under this By-law.
- 3.5 The powers delegated to the COMMISSIONER under this By-law are, in the opinion of Council having regard to the number of people, the size of geographic area and the time period affected by an exercise of the powers, of a minor nature.

4. Approvals

- 4.1 Road Occupancy Permits required: Subject to sub-sections 6.1, 6.2 and 6.4 hereof, no PERSON shall, for CONSTRUCTION OR MAINTENANCE PURPOSES, close, occupy, obstruct, encumber, injure or foul any HIGHWAY or bridge or any part thereof by any means whatsoever without first obtaining an approved Road Occupancy Permit from the REGION.
- 4.2 Conditions on Road Occupancy Permit: No LICENSEE shall fail to comply with any of the conditions set out in a Road Occupancy Permit.
- 4.3 Moving Permits: No person shall move any oversize or overweight vehicle or load on any HIGHWAY under the jurisdiction of the REGION, without first obtaining a Moving Permit.
- 4.4 Conditions on Moving Permit: No LICENSEE shall fail to comply with any of the conditions set out in a Moving Permit.
- 4.5 Production of Permit: No LICENSEE shall fail to produce a Road Occupancy Permit or Moving Permit if requested to do so by the COMMISSIONER or by any other person who is authorized to enforce the by-laws of the REGION.

5. Permit Fees

- 5.1 Fees: The fee for obtaining a Road Occupancy Permit or Moving Permit shall be as set out in the Region's Fees and Charges By-law from time to time.

6. Road Occupancy for Construction or Maintenance Purposes

- 6.1 Regional Works: A Road Occupancy Permit is required by a PERSON undertaking any works for or on behalf of the REGION.
- 6.2 Exemptions: An OPERATING CORPORATION does not require a Road Occupancy Permit to undertake the following types of work, providing the work does not block the travelled portion of the roadway or prevent the use of a sidewalk:

- (a) Routine maintenance and testing of at-grade electrical and telecommunications vaults, pedestals, cabinets, transformers and other equipment;
- (b) Routine maintenance and testing of aerial electrical and telecommunications cables, transformers, amplifiers, poles and other equipment;
- (c) Routine maintenance and testing of natural gas valves and regulators;
- (d) Work in manholes, valve chambers and transformer vaults; and
- (e) Non-destructive locating of underground plant

The OPERATING CORPORATION shall nonetheless comply with Ontario Traffic Manual Book 7, the Occupational Health and Safety Act and any other applicable legislation.

- 6.3 Extensions of time: No LICENSEE shall fail to notify the REGION in the event that additional time is required to complete the work than contemplated on the permit, and the reason therefor.
- 6.4 Emergency works: Subject to subsection 6.2, when an OPERATING CORPORATION closes or occupies a HIGHWAY as a result of an emergency, telephone notice shall be given immediately to the REGION and on the next WORKING DAY application for a permit as required by this by-law shall be made.
- 6.5 Deviation from permit: No LICENSEE shall fail to notify the REGION of the extent of any alteration, breaking or disturbance of an existing right-of-way, immediately upon completion of the works, if the works undertaken deviate from those set out on the permit.
- 6.6 Repairs: Where the LICENSEE alters, breaks or otherwise disturbs any portion of an existing right-of-way, the LICENSEE shall within seventy-two (72) hours of the completion of its work effect a permanent repair to the satisfaction of the REGION.
- 6.7 Temporary Repairs: Notwithstanding subsection 6.6 where the LICENSEE alters, breaks or otherwise disturbs any portion of an existing right-of-way between December 15th and April 30th, the LICENSEE may effect a temporary repair of the altered, broken or otherwise disturbed area provided that the LICENSEE effects a permanent repair of the area to the satisfaction of the REGION no later than May 31st. The LICENSEE shall maintain the temporary repair until it can affect the permanent repair. Any proposal for temporary repair during this period shall be communicated to the REGION in writing.
- 6.8 Warranty: The LICENSEE shall maintain and warranty the permanent repair for a period of two (2) years from the date of completion of the permanent repair. Any and all costs associated with the maintenance and warranty of the permanent repair shall be at the expense of the LICENSEE. The LICENSEE shall attend to the maintenance and warranty of the permanent repair at any time during the two year period at the request of the REGION acting reasonably.

- 6.9 Sodded Areas: No LICENSEE shall fail to permanently restore all sodded areas with topsoil and sod to the satisfaction of the REGION within seven (7) working days unless alternative arrangements are made with the REGION. The LICENSEE shall be responsible for adequately grading the area and maintaining the sod until it has re-established and maintained a functioning root system, to the satisfaction of the REGION, for one (1) year from the date of installation or re-installation.
- 6.10 Failure to affect Repairs: Where the LICENSEE fails to affect a permanent repair in accordance with subsection 6.6, a temporary repair in accordance with subsection 6.7, or permanent restoration of sodded areas as provided in subsection 6.9, the REGION may undertake the repair or restoration at the expense of the LICENSEE.
- 6.11 Traffic control required: No LICENSEE shall fail to provide all signs, barricades, traffic control devices, flagmen, and other persons and equipment as required by the COMMISSIONER or to comply with Ontario Traffic Manual Book 7, the Occupational Health and Safety Act and any other applicable legislation, prior to the commencement of the HIGHWAY closure or occupancy.
- 6.12 LICENSEE assumes all costs: The LICENSEE shall be responsible for all costs incurred by the REGION as a result of the road closure or occupancy.
- 6.13 Access to public/private properties: No PERSON shall fail to maintain access to all public and private properties during the course of the HIGHWAY closure or occupancy.
- 6.14 Delegation of Authority: The COMMISSIONER or their designate is authorized to close temporarily a HIGHWAY for the purpose of this by-law.
- 6.15 Notwithstanding the delegation of authority set out in subsection 6.14, the Council of the REGION shall retain the capacity to exercise the authority delegated in Section 6.14 herein.
- 6.16 The authority delegated in subsection 6.14 herein is, in the opinion of the Council, having regard to the number of people, the size of the geographic area and the time period affected by an exercise of the power of a minor nature.

7. Weight Restriction Provisions

- 7.1 Subject to Section 110 of the HIGHWAY TRAFFIC ACT, during a REDUCED LOAD PERIOD no commercial motor vehicle or trailer, other than a public vehicle, or a vehicle referred to in section 7.2 of this by-law, shall be operated or drawn upon any road or portion thereof that is part of the Regional road system where the weight upon an axle exceeds 5,000 kilograms, unless in possession of a Moving Permit granted by the REGION.

7.2 Subject to Section 110 of the HIGHWAY TRAFFIC ACT, during a REDUCED LOAD PERIOD:

- (a) No two axle tank-truck, while used exclusively for the transportation of liquid or gaseous heating fuel;
- (b) No two axle truck, while used exclusively for the transportation of livestock feed; and
- (c) No vehicle transporting live poultry;

Shall be operated under any road or portion thereof that is part of the Regional road system where the weight upon an axle exceeds 7,500 kilograms, unless in possession of a Moving Permit granted by the REGION.

7.3 Subject to Section 110 of the HIGHWAY TRAFFIC ACT, during a REDUCED LOAD PERIOD, no vehicle having a carrying capacity in excess of 1,000 kilograms, other than a motor vehicle or trailer, shall be operated upon any road or portion thereof that is part of the Regional road system where the weight upon any millimetre in the width of a tire exceeds 5 kilograms, unless in possession of a Moving Permit granted by the REGION.

7.4 Weight restriction provisions will only be in effect when OFFICIAL SIGNS are on display.

8. General Requirements

8.1 Insurance: As outlined in the Road Occupancy Permit, the LICENSEE shall provide Commercial General Liability (CGL) Insurance written on an occurrence basis with a liability limit in an amount and form satisfactory to the REGION and such insurance shall name the REGION as an additional insured. The Licensee shall also provide evidence of automobile liability insurance including all vehicles and commercial trailers owned or leased by the Licensee, for a limit as specified in the Road Occupancy Permit, on forms meeting statutory requirements covering all vehicles and commercial trailers used in any manner in connection with the performance of their work.

8.2 Compliance with other Statutes: LICENSEES shall comply with the requirements of the Public Transportation and Highway Improvement Act and any other relevant provincial statute.

8.3 Conflict: If there is a conflict between a provision of this By-law and a provision of any other Regional By-law, the provision that establishes the higher standard to protect the health and safety of the public and to maintain the safe and the functional condition of the Regional right-of-way shall prevail.

9. Penalties

9.1 Every PERSON, other than a corporation pursuant to the Corporations Act, who contravenes any provision of this by-law shall be guilty of an offence and upon conviction is liable for every day or part thereof upon which such offence occurs or continues to occur, to a fine of not less than \$200 for the first offence and not more than \$5,000 for any subsequent offence.

- 9.2 Every corporation pursuant to the Corporations Act, who contravenes any provisions of this by-law shall be guilty of an offence and upon conviction is liable for every day or part thereof upon which such offence occurs or continues to occur, to a fine of not less than \$1,000 for the first offence and not more than \$10,000 for any subsequent offence.
- 9.3 In this by-law, subsequent offence means a conviction for an offence, which occurs after the date of conviction for an earlier offence under this by-law.
- 9.4 Every PERSON who contravenes Section 7 of this by-law is guilty of an offence and upon conviction, liable to a fine set out in the HIGHWAY TRAFFIC ACT.
- 9.5 Part 1 Provincial Offences Act offences and fines may apply to specific contraventions of the by-law as indicated in Appendix 1 to the By-law.

10. Miscellaneous Provisions

- 10.1 This by-law shall take effect on the date of its passage.
- 10.2 By-law Number 38-99 of The Regional Municipality of Durham is hereby repealed.

This By-law Read and Passed on the 13th day of June, 2018.

G. L. O'Connor, Regional Chair and CEO

R. Walton, Regional Clerk