

TOWN OF TILLSONBURG

BY-LAW _____

A By-law to regulate the use of the *Municipal Right-of-Way* in the Town of Tillsonburg.

MUNICIPAL RIGHT-OF-WAY BY-LAW

WHEREAS The *Municipal Act, 2001*, S.O. 2001, c.25, (hereinafter the "Municipal Act, 2001") as amended, provides that a lower-tier Municipality may pass by-laws within the spheres of jurisdiction listed in section 11(3).

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

AND WHEREAS section 9 of the *Municipal Act, 2001*, 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 this or any other Act;

AND WHEREAS Section 27(1) of the *Municipal Act, 2001*, as amended, states that a Municipality may pass by-laws in respect of a highway only if it has jurisdiction over the highway;

AND WHEREAS Section 35 of the *Municipal Act, 2001*, as amended, states that a Municipality may pass by-laws removing or restricting the common law rite 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 128 of the *Municipal Act, 2001*, as amended, provides that a local Municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council are or could become public nuisances;

AND WHEREAS Section 391(1)(c) of the *Municipal Act, 2001* provides that without limiting sections 9, 10 and 11, those sections authorize a Municipality to impose fees or charges on Persons for the use of its property including property under its control;

AND WHEREAS Section 425 of the *Municipal Act, 2001*, as amended, provides that a Municipality may pass by-laws providing that a Person who contravenes a by-law of the Municipality is guilty of an offence;

AND WHEREAS Section 426(1) of the *Municipal Act, 2001*, as amended, states that 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 Act or under a by-law passed under this Act.

AND WHEREAS the Municipality may enact by-law provisions that (without limitation) impose fines, authorize orders to achieve compliance or discontinue contraventions, authorize inspections, authorize remedial work and provide for the collection of remediation costs, pursuant to Part XIV of the Municipal Act, 2001, including Sections 429, 435-438, 441.1 and 444-446;

AND WHEREAS the *Ontario Police Services Act*, R.S.O. 1990, C. P15, as amended, provides that Council may appoint Municipal By-Law Enforcement Officers to enforce all municipal by-laws; and

AND WHEREAS the *Provincial Offences Act*, R.S.O. 1990, c. P.33, s.61, as amended (the Provincial Offences Act), every Person who is convicted of an offence is liable to a fine of not more than \$5,000.

NOW THEREFORE BE IT RESOLVED THAT the Council of the Corporation of the Town of Tillsonburg **HEREBY ENACTS AS FOLLOWS:**

1. DEFINITIONS

"Boulevard" means all parts of a *Municipal Right-of-Way* except the *Roadway*, shoulder and/or *Sidewalk*.

"Cleared" means the removal of weeds or grass more than 8 inches in height.

"Council" means the Municipal Council of the Corporation of the Town of Tillsonburg.

"County" means County of Oxford.

"Driveway" means an access within a *Municipal Right-of-Way* facilitating or supporting vehicular travel (continuous, intermittent or temporary) between the *Roadway* and a private property.

"Director" means the Director of Operations and Development, authorized representative or *Officer*.

"Encroachment Permit" means a permit issued for an encroachment under the Encroachment By-law.

"Encroachment Agreement" means an agreement under the Encroachment By-law, prepared by the *Town* for execution by the *Town* and an *Owner* granting authorization to erect, place, or maintain an Encroachment.

“Expenses” means all *Expenses* incurred by the *Municipality* with regard to removing or otherwise rectifying an issue, storing any seized thing and shall include, without limitation, all charges, costs, engineer reviews, professional examinations, administrative fees, taxes, legal fees, Harmonized Sales Tax (H.S.T.), and any incurred interest on such outstanding *Expenses*.

“License” means an *Encroachment Agreement* or *Encroachment Permit* granting permission to do work approved by the *Town* of Tillsonburg, or expressed written permission from the *County* of Oxford, Ontario Ministry of Transportation, or the jurisdiction with authority to grant approval.

“Mobility Device” means a device, including a manual wheelchair, an electric wheelchair, a scooter, and any other device used to facilitate the transportation of a *Person* with a physical disability, but does not include a *Vehicle*.

“Municipality” has the same meaning of “*Town*” as defined in this By-law.

“Municipal Parking Lot” means any parking lot owned, maintained, by the *Town* or any parking a lot in that has an agreement with the *Town*.

“Municipal Right-of-Way” means land owned by The Corporation of the *Town* of Tillsonburg as opened or unopened road allowances for the purposes of operating a public highway under the Municipal Act, 2001, a *Sidewalk*, a *Municipal Parking Lot*, municipal services or public utilities, but excludes Municipal lands owned or operated as parkland, creeks and watercourse, and related public trail systems.

“Newspaper” shall include any publication containing news, current events, feature articles or advertising.

“Obstruct” means an individual or group of individuals attempt to hinder an “*Officer*”, “*Director*”, an employee of the *Town*, or contactor from completing an inspection by way of avoidance, providing false information or refusing entry to the property.

“Officer” means a Police *Officer*, By-law Enforcement *Officer*, Building Inspector or Chief Building Official as appointed by the *Council* of the *Town*.

“Owner” means any *Person* who is the registered *Owner* of real property as described in the records of the Land Registry Office, or *Owner* under agreement of real property, and includes any *Person* in actual or apparent possession of real property under a lease, *License* or agreement with another *Owner*.

“Permitted Feature” means a building, structure, sign, tree, pole or any other item that was granted permission by the *Town* to be located on the *Municipal Right-of-Way*.

“**Person**” means any individual, partnership, association, school board, firm or corporation, business entity or club, incorporated group or organization.

"**Roadway**" means that part of the *Municipal Right-of-Way* that is improved, designed or ordinarily used for vehicular traffic and includes a highway.

"**Sidewalk**" means that part of a *Municipal Right-of-Way*, outside of the *Roadway*, set aside by the *Town* for the use by pedestrians.

"**Town**" means The Corporation of the *Town* of Tillsonburg or the geographic area as the context requires.

"**Vehicle**" includes a motor *Vehicle*, trailer, traction engine, farm tractor, road-building machine, snowmobiles, off road *Vehicle*, and any *Vehicle* drawn, propelled or driven by means other than muscular power, but does not include a streetcar or *Mobility Device*.

2. GENERAL PROVISIONS

- a) Prior to doing any work within a *Municipal Right-of-Way*, every *Person* shall obtain a *License*, upon submitting an application in a form provided by the *Director*, and shall pay the applicable fees under the Fees & Charges By-law and will comply with the terms and conditions;
- b) Prior to construction of a new entrance or modification of an existing entrance, every *Person* shall obtain a *License*, upon submitting an application in a form provided by the *Director*, and shall pay the applicable fees under the Rates & Fees By-law and will comply with the terms and conditions;
- c) *Driveway* entrances shall comply with specifications outlined in the *Town's* Development Guidelines and Design Criteria and Figures, as updated from time to time;
- d) Every *Owner* shall keep the land *Cleared* on the *Municipal Right-of-Way* adjacent to their property;
- e) No *Person* shall construct a *Driveway* which exceeds the grade/elevation of the asphalt at the edge of the *Roadway*;
- f) No *Person* shall hinder or otherwise *Obstruct*, nor attempt to hinder or *Obstruct*, either directly or indirectly, an *Officer*, employee and/or agent of the *Town* in the lawful exercise of a power or duty under this By-law;

- g) Any improvements within the *Municipal Right-of-Way* are made at the risk of the abutting property *Owner* or occupant. The *Town* shall not be obliged to restore any improvements made to a *Boulevard* or property located on or within the *Boulevard* if it is damaged by salt or de-icing materials or by any snow removal equipment; damaged by any road maintenance activity; vandalized; or damaged by any *Person* without approval of the *Town*;
- h) If a *Boulevard* or property located on or within the *Municipal Right-of-Way* is damaged during a road reconstruction or otherwise damaged by any *Person*, contractor, or agent of the *Town*, the *Town* shall only be responsible for ensuring the placement of sod or grass seed and shall not be obliged to restore any improvements made to the *Boulevard* by the *Owner*; and
- i) If a non-asphalt surface (e.g., concrete, interlock) is installed on the *Municipal Right-of-Way* with a *License* and later removed due to *Town* work, the area will be restored with asphalt. If the *Owner* wants the original surface reinstated, they may receive a credit for the asphalt cost or pay the difference, subject to *Town* approval.

3. GENERAL PROHIBITIONS

No *Person* unless authorized by by-law, *License* or written permission provided by the *Director* shall:

- a) Place equipment or materials of any kind upon or within a *Municipal Right-of-Way*;
- b) Close a *Municipal Right-of-Way* in whole or in part;
- c) Undertake any activity that negatively impacts the use & function of a *Municipal Right-of-Way*;
- d) Deface or allow graffiti on any *Permitted Feature* within a *Municipal Right-of-Way*;
- e) Permit or cause oils, chemicals or substances to be deposited or spilled on a *Municipal Right-of-Way* including spillage of any substances from a *Vehicle*;
- f) Encumber or damage a *Municipal Right-of-Way* by any means;
- g) Permit or cause any materials to be transferred from private property onto or across a *Municipal Right-of-Way* within 75 metres of an intersection;
- h) *Obstruct* a drain, gutter, water course or culvert along or upon a *Municipal Right-of-Way*;

- i) Deposit material onto a *Municipal Right-of-Way*;
- j) Display or exhibit merchandise or articles of any nature kind within a *Municipal Right-of-Way*;
- k) Solicit or sell any real or personal property or merchandise within a *Municipal Right-of-Way*;
- l) Remove or alter any material, equipment or device placed within a *Municipal Right-of-Way* by the *Town*;
- m) Permit any building or structure, clothing storage bins on a *Municipal Right-of-Way*;
- n) Permit any box for the dispensing of *Newspapers* or other consumer products on the *Municipal Right-of-Way*;
- o) Install or construct a culvert within any *Municipal Right-of-Way*;
- p) Construct, widen, remove or alter any *Driveway* or curb cut within a *Municipal Right-of-Way*;
- q) Permit any part of a tree, shrub, sapling, hedge or any other plant to extend over or upon any *Municipal Right-of-Way*, so as to interfere with, impede or endanger *Persons* using the *Municipal Right-of-Way*;
- r) Construct, plant or maintain any form of garden or plant material within a *Municipal Right-of-Way*;
- s) Discharge water from downspout or sump pump directly onto a *Municipal Right-of-Way*;
- t) Discharge pool water directly onto a *Roadway* or *Sidewalk*;
- u) Congregate, sit or stand so as to *Obstruct* the free passage of either pedestrian or vehicular traffic on any *Sidewalk* or *Roadway* regulated by this By-law;
- v) Pull down, destroy, deface or in any way interfere with, any municipal infrastructure, including but not limited to, any post, surveyor's mark, benchmark, traffic sign, *Roadway* name sign, sign board, regulatory sign, traffic signal, traffic cone, or any other traffic control device, affixed or placed on a *Municipal Right-of-Way*;
- w) Permit any flood light to directly or indirectly illuminate a *Municipal Right-of-Way* that may cause a safety concern or nuisance;
- x) Operate a *Vehicle* with wheels depositing mud, clay, lime, and similar material, fertilizer, manure, or similar material onto a *Municipal Right-of-Way*;
- y) Load a *Vehicle* as to permit or cause the contents thereof to fall, spill or be deposited upon or cause damage to a *Municipal Right-of-Way*;

- z) Plant, grow, cultivate or maintain any crop on the *Municipal Right-of-Way*;
- aa) Permit any animal to defecate on the *Municipal Right-of-Way* without picking it up;
- bb) Permit an obstruction or fence as to interfere with a *Municipal Right-of-Way*;
- cc) Attach any sign, handbill, poster, or item to any tree, hydro pole, traffic light or object located on the *Municipal Right-of-Way*;
- dd) Cause or permit a fire on the *Municipal Right-of-Way*;
- ee) Permit any vegetation (such as plants, trees, hedges, shrubs, tall grass), fences, or pile rocks, snow or any material within two (2) metres of any fire hydrant;
- ff) Fail to keep land *Cleared* on municipal rights-of-way adjacent to property;
- gg) Remove or trim trees planted and designated as a *Town* tree, in a way that may damage the tree, on the *Municipal Right-of-Way*;
- hh) Load or unload a farm tractor, trailer or other commercial *Vehicles* on the *Municipal Right-of-Way* for the purpose of farm or commercial operations within 75 metres of an intersection;
- ii) Access properties at locations other than designated *Driveways*;
- jj) Build a paving stone *Driveway* closer than 1.5 metres to the edge of an adjacent asphalt road if that road does not have a curb;
- kk) Permit or cause water shutoff valve(s) to be turned off;
- ll) **Deposit snow or ice onto *Roadway* or *Sidewalk*;**
- mm) Fail to remove accumulation of snow or ice from buildings or structures within 3 metres of *Municipal Right-of-Way*;
- nn) Fail to remove snow or ice from *Sidewalk* adjacent to any property zoned Central Commercial (CC);
- oo) Fail to remove basketball net or hockey net from *Municipal Right-of-Way*;
- pp) **Operate *Vehicle* on *Sidewalk***
- qq) Operate a *Mobility Device* on a *Roadway* with posted speeds exceeding 50 km;
- rr) Damage, construct, cut, or re-construct a *Sidewalk* or curb without a *License*;
- ss) Place, permit to be placed, or permit to remain electrical wiring or any other electrical system within the *Municipal Right-of-Way*;
- tt) Place, permit to be placed, or permit to remain a sprinkler system, plumbing pipe, or other plumbing system within the *Municipal Right-of-Way*;

- uu) Place, permit to be placed, or permit to remain anything that is likely to overflow on to the *Sidewalk* or *Roadway*;
- vv) Place, permit to be placed, or permit to remain anything that voids a warranty on grass or sod installation following a road reconstruction; and
- ww) Display or exhibit signage within the *Municipal Right-of-Way* without a *License*.

4. EXEMPTIONS

- a) Notwithstanding Section 3 (p) of this By-law, *Driveways* within unassumed plans of subdivision may be constructed in accordance with the approved plans for that subdivision;
- b) Notwithstanding Sections 3 (p) of this By-law, an *Owner* of a *Driveway* is required and permitted to perform routine maintenance on the portion of their *Driveway* within the *Municipal Right-of-Way* to ensure it's in good working order and safe condition;
- c) The prohibitions contained in this By-law do not apply to an employee or an agent of the *Town* when engaged in the delivery of a municipal service;
- d) The prohibitions contained in this By-law do not apply to employees or agents of Emergency Medical Services, Ontario Provincial Police, Fire Department, Tillsonburg Hydro and employees of the *Town* who are acting within the scope of their duties; and

5. TERMS AND CONDITIONS OF LICENSES

- a) Every *Person* shall comply with the terms and conditions of a *License* issued by the *Town* in accordance with the use of *Municipal Right-of-Way*; and
- b) Where the cost of repairing and restoring the *Municipal Right-of-Way* exceeds any amount held on deposit or posted as security, the excess amount of the costs shall be a debt owing to the *Town*, and in addition to any other remedy available to it, the *Town* may recover the *Expenses* by action or by adding the excess amount of the costs to the tax roll of the *License* holder's lands and collecting them in the same manner as taxes.

6. ORDER TO DISCONTINUE

- (a) If the *Town* is satisfied that a contravention of this By-law has occurred, the *Town* may make an order requiring the *Person* who contravened the By-law or who caused or permitted the contravention or the *Owner* or occupier of the land on which the contravention occurred to discontinue the contravening activity;

- (b) An order under this section shall set out:
 - (i) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and
 - (ii) the date by which there must be compliance with the order.
- (c) An order under this section shall be delivered in accordance with the notice provisions in section 11 of this By-law; and
- (d) Every *Person* shall comply with an order to discontinue.

7. WORK ORDER

- (a) Without limiting the orders that an *Officer* may make pursuant to this By-Law, if an *Officer* is satisfied that a contravention of this By-law has occurred, the *Officer* may make an order requiring the *Person* who contravened the By-law or who caused or permitted the contravention or who is the *Owner* of the land on which the contravention occurred to do work to correct the contravention;
- (b) An order under this section shall set out:
 - (i) reasonable particulars adequate to identify the contravention to be discontinued and the location of the land on which the contravention occurred;
 - (ii) the deadline for compliance; and
 - (iii) the work to be done, which may include obtaining all permits and inspections required by law;
- (c) An order under this section shall be delivered in accordance with the notice provisions in section 11 of this By-law; and
- (d) Every *Person* shall comply with a work order.

8. FAIL TO COMPLY AND COST RECOVERY

- (a) Where a *Person* defaults in complying with a direction, requirement or order under this By-law to do a matter or thing, a *Director* on behalf of the *Town* may, with such assistance from others as may be required, enter the land on which the contravention occurred at any reasonable time, and carry out such direction, requirement or order and all *Expenses* will be the responsibility of the *Person*;

- (b) In accordance with section 446 of the Municipal Act, 2001, the *Town* may recover the costs from the *Person* directed, required or ordered to do a matter or thing under this By-law, by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes, and such *Expenses* shall include interest at a monthly rate of 1.25 percent and or annual rate of 15 percent;
- (c) For the purposes of subsection 8(b), interest shall be calculated for the period commencing the day the *Town* incurs the *Expenses* and ending on the day the *Expenses*, including the interest, are paid in full;
- (d) The amount of the *Expenses*, including interest, constitutes a lien on the land upon the registration in the proper Land Registry Office of a notice of lien;
- (e) Upon receiving payment of all *Expenses* payable, plus interest accrued to the date of payment, the *Town* shall register a discharge of the lien in the proper Land Registry Office;
- (f) The *Person* will be responsible to pay fees under the Rates & Fees By-law for the registration and discharge of the order from the Land Registry Office; and
- (g) The *Person* will be responsible to pay rates calculated under the Rates & Fees By-law for each staff member, equipment time, materials, accumulated as well as any other administrative or other fees deemed to be appropriate under the Fees & Charges By-law.

9. REPAIRS DUE TO EMERGENCY & PUBLIC SAFETY ISSUES

- a) In any case where the action of a *Person* contravenes this By-law and that action poses a danger to the public, an order is not required and the *Director*, the *Director's* designate or any *Person* authorized to enforce this By-law may immediately take the following action:
 - i) remove and dispose of any item, structure or material placed or deposited on a *Municipal Right-of-Way* contrary to this By-law and take any necessary steps to repair or reinstate the *Municipal Right-of-Way*; and
 - ii) send a letter to the *Owner* or *Person* responsible for the item, structure or material that the object has been removed at the *Owner* or *Person's* expense;
- b) The *Town* may recover *Expenses* resulting from actions taken in accordance with this Section by legal action, or it may collect them in the same manner as taxes.

10. ADMINISTRATION, ENFORCEMENT, OFFENCES, PENALTY & FINE RECOVERY

- a) Every *Person* who contravenes any of the provisions of this By-law is guilty of an offence and upon conviction is liable to a penalty pursuant to s. 61 of the Provincial Offences Act;
- b) Every *Person* who contravenes any provision of this By-law is guilty of an offence under the provisions of the *Provincial Offences Act*, R.S.O 1990, c P.33, as amended, and is liable on conviction to a penalty not exceeding \$5,000, exclusive of costs, subject to the provisions of the Act;
- c) Every *Person* who contravenes any of the provisions of this By-law is guilty of an offence and, pursuant to Section 429 of the Municipal Act, 2001, c. 25, as amended all contraventions of this By-law are designated as continuing offences;
- d) Pursuant to section 441 of the Municipal Act, 2001, if any part of a fine for a contravention of this By-law remains unpaid after the fine becomes due and payable under section 66 of the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended, including any extension of time for payment ordered under that section, the *Town* may give the *Person* against whom the fine was imposed a written notice specifying the amount of the fine payable and the final date on which it is payable, which shall be not less than twenty one (21) days after the date of the notice;
- e) If the fine remains unpaid after the final date specified in the notice, the fine shall be deemed to be unpaid taxes for the purposes of section 351 of the Municipal Act, 2001;
- f) In accordance with sections 441.1 of the Municipal Act, 2001, any part of a fine or cost owing pursuant to this By-law or a related provincial offence may be added to the tax roll for any property in the *Town* or which all of the *Owners* are responsible for paying the fine or cost, and collect such fine or cost in the same manner as municipal taxes.

11. NOTICE – WAYS TO CONTACT

Any notice pursuant to this By-law may be given in writing in any of the following ways and is effective:

- (a) on the date on which a copy is delivered to the *Person* to whom it is addressed;
- (b) posted on site/property;

- (c) on the fifth day after a copy is sent by registered mail to the *Person's* last known address;
- (d) upon the conclusion of the transmission of a copy by facsimile to the *Person's* last known facsimile number; or
- (e) upon the sending of a copy by email transmission to the *Person's* last known email address.

12. FEES AND CHARGES

- a) All *Expenses* will be recovered with interest in relation to the administration and Enforcement of this By-law under The Municipal Act 2001, S.O. 2001, c. 25, as amended Section 446 (3) & (5).
- b) Where action is required on behalf of the *Town* the *Person* responsible will pay rates calculated under the Rates & Fees By-law for each staff member's time, equipment time, accumulated as well as any other material costs, administrative or other fees deemed to be appropriate under the Rates & Fees By-law.

13. SEVERABILITY

In the event that any provision or part of this By-Law is found to be invalid or unenforceable for any reason whatsoever, then the particular provision or part thereof shall be deemed to be severed from the remainder of the By-Law and all other provisions or parts thereof shall remain in full force and shall be valid and enforceable to the fullest extent permitted by law.

14. SHORT TITLE

This By-law may be cited as the "Right-Of-Way By-Law."

15. REPEALED BY-LAWS & FORCE IN EFFECT

That By-law No. _____, passed by the Council of the Town of Tillsonburg on the ____th day of _____, 2025

Passed and enacted this _____ day of _____, 2025.

By-law No. _____

_____, Mayor

_____, Acting Clerk