



REPORT

REPORT TO: Chair and Members of the Planning, Public Works and Transportation Committee

REPORT FROM: Matt Roj, Traffic Coordinator

DATE: January 21, 2019

REPORT NO.: TPW-2019-0001

RE: Draft By-Law to Regulate the Obstruction, Encumbering, Injuring or Fouling of Highways and Set Fines Approval

RECOMMENDATION:

THAT Report No. TPW-2019-0001, dated January 21, 2019, regarding the Draft By-Law to Regulate the Obstruction, Encumbering, Injuring, or Fouling of Highways and Set Fines Approval, be received;

AND FURTHER THAT the Draft By-Law to Regulate the Obstruction, Encumbering, Injuring, or Fouling of Highways be adopted by Council, as outlined in the attached Appendix A, and to repeal By-Law 90-68;

AND FURTHER THAT Council endorses the proposed set fines, as recommended in Report No. TPW-2019-0001 and direct staff to submit the necessary Set Fine application to the Ministry of the Attorney General for approval;

AND FURTHER THAT the Rates and Fees By-Law bl-CL-2018-0076 be amended to include the Road Occupancy Permit Fees in the amount of \$120.00 for Disposal Containers and Construction Supplies;

AND FURTHER THAT the Rates and Fees By-Law bl-CL-2018-0076 be amended to include an additional fee in the amount of \$240.00 for any Road Occupancy Permits issued in response to non-compliant and illegal placement of Disposal Containers and Construction Supplies.

BACKGROUND:

The Town has an existing By-Law No. 90-68 which is to Prohibit the Obstruction Encumbering or Fouling of Highways and was enacted on May 28, 1990. The purpose of the by-law is to better regulate and control unauthorized use of municipal right-of-ways. The current by-law does not allow any exemptions and did not have a set fine schedule for violations to the by-law.

In 2014, Council approved Report No. INF-2014-0007, which provided guidance and processes of bin placements on the Town's road allowance. It also recommended that a new by-law be prepared to replace the existing By-Law 90-68 to allow the exemption of bin placements and other equipment on the Town's road with a permit issued by staff to address this issue.

COMMENTS:

In 2018, staff engaged the Town's Prosecutor to assist with replacing the existing By-Law 90-68 with a new by-law that will also establish proposed Set Fine Rates. The draft By-Law is attached as Appendix A.

Since the approval of Report No. INF- 2014-0007, staff has refined the guidelines and conditions for disposal containers or construction supplies as follows:

- If disposal containers or construction supplies can be placed on a residential or commercial driveway, residents or contractors will receive a temporary exemption from the Uniform Traffic Control By-Law 84-1 to temporarily park their vehicles on the public road allowance. However, residents or contractors are strongly encouraged to evaluate all available options to keep disposal containers or construction supplies off the road allowance.
- If it is demonstrated by a resident or a contractor that all available options have been exhausted, they may seek a Road Occupancy Permit from the Town. Among other requirements, this permit will require that the resident or contractor provide a Certificate of Insurance in the minimum amount of \$5,000,000.00, with the Town named as an additional insured. Further, to ensure public safety, residents or contractors will be required to install cones with white colour retro-reflective tapes or any other traffic control devices mandated by the Ontario Traffic Manual – Temporary Conditions Book 7.
- Road Occupancy Permits will not be issued by the Town during the overnight winter parking prohibition in effect from mid-November to mid-April. However, the Commissioner of Transportation and Public Works Department or his designate may allow disposal container or construction supplies placement under special circumstances, such as in mild winter conditions.

The proposed cost of the Road Occupancy Permit is \$120.00. Should staff identify illegally placed disposal containers or construction supplies on the road allowance without a permit, the resident or contractor will be provided with an opportunity to purchase the permit for double the original cost in the amount of \$240.00. The added cost is to encourage initial compliance with the permit system and to recover costs associated with having to involve the By-law Enforcement staff.

The draft By-Law will enable staff to effectively deal with illegal placement of disposal containers and construction supplies through the implementation of a new Road

Occupancy Permit. The new application process will streamline public inquiries and expedite the application process for both residents and contractors.

By-law Enforcement

Staff is seeking to enforce this by-law through Part I of the *Provincial Offences Act*. Part I of the POA allows the Town to issue tickets for by-law infractions. These tickets will indicate a set fine.

The amount of the set fines must be first approved by Council and then “set” by the Chief Justice of the Ontario Court. This process requires that a Set Fine Application Package be submitted to the Ministry of Attorney General’s office with all the required documentation. If the set fine amounts are approved, an Order of a Justice will be returned, stating that the fines have been “set”.

The proposed set fine amounts for Council’s consideration and approval are provided below based on the various sections set out in the draft by-law.

	Offence	Section	Set Fine
1	No <i>person</i> , without lawful authority, shall cause, permit, or allow [(a) to (j)]	Section 2	\$300.00
2	No <i>person</i> shall cause, permit, or allow the placing, locating, or maintaining of a <i>disposal container</i> on a <i>highway</i> without first obtaining a permit	Section 4	\$400.00
3	No <i>person</i> shall cause, permit, or allow the placing, locating, or maintaining of <i>construction supplies</i> on a <i>highway</i> without first obtaining a permit	Section 4	\$300.00

Once the necessary documentation has been received by the Ministry of Attorney General’s office, By-Law Enforcement staff will be in a position to issue tickets for infractions. This task will be incorporated in their regular roles and responsibilities and will be monitored to determine if additional resources are required.

RELATIONSHIP TO STRATEGIC PLAN:

There is no relationship to the strategic plan.

FINANCIAL IMPACT:

All proposed revenue generated from the Road Occupancy permits will be incorporated in the operating budget. The 2018 Rates and Fees By-Law bl-CL-2018-0076 will need to be amended to include this new fee. Additional costs will be required for the Town's Prosecutor to submit the necessary Set Fine Application to the Attorney General's Office for approval.

CONSULTATION:

Corporate Services, Public Works and Development Engineering staff were consulted throughout the development of this report and draft By-Law.

PUBLIC ENGAGEMENT:

Staff will inform the public by promoting the By-law and Road Occupancy Permit via Town's website, social networks, and local newspapers prior to undertaking By-law Enforcement. Over the past decade, staff has been engaging the public, including residents, disposal container companies, and contractors in an effort to reduce illegal disposal container and construction supply placement. The draft By-law and Road Occupancy Permit will enable staff to improve road safety by reducing the illegal activities and solidifying the existing process.

SUSTAINABILITY IMPLICATIONS:

The Town is committed to implementing our Community Sustainability Strategy, Imagine Halton Hills. Doing so will lead to a higher quality of life.

The recommendation outlined in this report advances the Strategy's implementation.

This report supports the Social Well-Being pillar of Sustainability and in summary the alignment of this report with the Community Sustainability Strategy is good.

COMMUNICATIONS:

Notification to the residents and contractors will be undertaken via Council meeting agenda, Town's website, social media, and local newspapers.

CONCLUSION:

The draft By-law which implements the Road Occupancy Permit, along with the proposed set fines, will improve road safety by reducing the number of illegally placed disposal containers and construction supplies on the road allowance and allow by-law enforcement to issue tickets for infractions. The new application process will streamline public inquiries and expedite the approval of disposal containers or construction supplies for both residents and contractors.

Reviewed and Approved by,



Maureen Van Ravens, Manager of Transportation



Chris Mills, Commissioner of Transportation and Public Works



Brent Marshall, CAO



BY-LAW NO. 2019-XXXX

A By-law to regulate the obstruction, encumbering, injuring, or fouling of highways, and to repeal By-law No. 90-68.

WHEREAS Section 27(1) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that a municipality may pass by-laws in respect of a highway only if it has jurisdiction over the highway;

AND WHEREAS there is a network of highways within the Town of Halton Hills for which The Corporation of the Town of Halton Hills has jurisdiction;

AND WHEREAS Council deems it necessary and advisable to regulate the obstructing, encumbering, injuring, or fouling of highways and to repeal By-law No. 90-68;

NOW THEREFORE, BE IT RESOLVED THAT THE COUNCIL OF THE CORPORATION OF THE TOWN OF HALTON HILLS ENACTS AS FOLLOWS:

DEFINITIONS

1. In this By-law,
 - (a) **“Commissioner”** means the Commissioner, Transportation and Public Works of the *Town*, or their designate;
 - (b) **“construction supplies”** includes, but is not limited to, fill, granular material, bricks, and paving stones;
 - (c) **“disposal container”** means any container used for the collection of waste and refuse and includes, but is not limited to, roll-off containers, dumpsters, and construction bins or bags;
 - (d) **“highway”** means a common and public highway and includes, but is not limited to, any street, avenue, parkway, road allowance, boulevard, lane, driveway, square, place, bridge, viaduct, right-of-way, or trestle for which the *Town* has jurisdiction;
 - (e) **“material”** includes, but is not limited to, earth, gravel, sand, snow, ice, refuse, signs, fences, hedges, trees, bushes, and any other materials;
 - (f) **“permit”** means a permit issued by the *Town* pursuant to this By-law;
 - (g) **“person”** includes, but is not limited to, an individual, a corporation, a partnership, or any other legal entity; and
 - (h) **“Town”** means The Corporation of the Town of Halton Hills.

GENERAL PROHIBITIONS

2. No *person*, without lawful authority, shall cause, permit, or allow:
 - (a) the placing, depositing, planting, constructing, or maintaining of any *material* or structure on or under any *highway*;

- (b) the excavating or damaging of any *highway* except in accordance with By-law No. 92-199 and any other *Town* approval or permit process;
 - (c) the throwing, placing, pushing, depositing, or relocating of any *material* on a *highway*;
 - (d) the placing or depositing of sporting or recreational equipment on a *highway*, including but not limited to, basketball nets, hockey nets, soccer nets, skateboard ramps, and bicycle ramps;
 - (e) the placing or depositing of any kind of furniture or fencing on a *highway*;
 - (f) the planting, constructing, erecting, or maintaining of any *material* which may obstruct traffic control devices or may impair visibility of *persons* operating a motor vehicle;
 - (g) a public nuisance on a *highway* by any means whatsoever, including, but not limited to, fire, water, vapour, or noise;
 - (h) the constructing or maintaining of a gate or door which opens or swings open onto or over a *highway*;
 - (i) an activity which interferes with public travel or use of a *highway*; or
 - (j) the posting of a notice, handbill, sticker, placard, or advertisement on a *highway* or appurtenance within the highway.
3. No *person* owning, employing, or using motor vehicles of any kind, including, but not limited to, trucks, graders, loaders, or other motor vehicles in any operation which involves the passage of such vehicles on a *highway*, shall cause, permit, or allow any *material* to fall from such vehicles onto a *highway*. Any *material* which may fall from such vehicles shall be removed forthwith from the *highway* or from any other public property where the same may be placed or deposited by such person owning, employing, or using such motor vehicles.

DISPOSAL CONTAINERS AND CONSTRUCTION SUPPLIES

- 4. No *person* shall cause, permit, or allow the placing, locating, or maintaining of a *disposal container* or *construction supplies* on a *highway* without first obtaining a *permit*.
- 5. No *person* shall cause, permit, or allow the placing, locating, or maintaining of a *disposal container* or *construction supplies* on a *highway* except in accordance with the terms and conditions of the *permit*.
- 6. Any *disposal container* or *construction supplies* placed, located, or maintained on a *highway* without a *permit* or not in accordance with the terms or conditions of the issuance of a *permit*, may be removed by the *Commissioner* without notice and at the expense of the *person* violating this By-law.
- 7. To obtain a *permit*, the applicant shall submit to the *Commissioner*:
 - (a) a completed application form as set out in Schedule "A" to this By-law;
 - (b) a plan showing the proposed location of the *disposal container* or *construction supplies* in relation to the surrounding buildings, lots, and *highways*;
 - (c) the appropriate fee as set out in Schedule "B" to this By-law; and
 - (d) all other information as may be deemed necessary by the *Commissioner*.

8. When deciding whether to issue a *permit*, the *Town* may consider whether all reasonable alternatives to placing, locating, or maintaining a *disposal container* or *construction supplies* on a *highway* have been exhausted.
9. No *permit* shall be issued by the *Town* except in accordance with the provisions of this By-law and any other applicable law.
10. The *Town* may revoke a *permit* without notice, under any of the following circumstances:
 - (a) where the *permit* has been issued in error by the *Town* or on the basis of false, mistaken, or misleading information or undertakings provided to the *Town*;
 - (b) where the placement, location, or maintenance of a *disposal container* or *construction supplies* do not conform to the terms or conditions of a *permit*; or
 - (c) where the *Commissioner* deems it necessary.
11. A *permit* issued by the *Town* under this By-law shall expire pursuant to the terms or conditions of the *permit*. If no date is specified, the *permit* shall expire 7 days following the date of issuance.
12. A *person* placing, locating, or maintaining a *disposal container* or *construction supplies* on a *highway* shall be responsible for any damage caused to the *highway*.
13. Any *person* placing, locating, or maintaining a *disposal container* or *construction supplies* on a *highway* in accordance with this By-law shall agree to indemnify and save harmless the *Town* from and against all manner of claims for damages, loss, expense, or otherwise arising from the issuance of a *permit* for the placing, locating, or maintaining of such *disposal container* or *construction supplies* on a *highway*.
14. Permits for construction/excavation on public highways and for the alteration of driveways and curbs may be applied for under Town of Halton Hills By-law No. 92-199 and Town of Halton Hills By-law No. 2018-0028.

REMEDY

15. Where it is deemed that a violation of this By-law occurred, the *Commissioner* may serve notice upon the *person* violating the By-law, directing that the violation be remedied within a specified period of time. In the event the notice is not complied with, the *Commissioner* may cause the violation to be remedied at the expense of the *person* violating this By-law.
16. Where the *Commissioner* deems a violation of this By-law to constitute a hazard, the *Commissioner* may, without notice, require the hazard to be remedied by any *person* causing, permitting, or allowing the placing, locating, or maintaining of a *disposal container* or *construction supplies* or the *Commissioner* may undertake the necessary works to remedy the violation at the expense of the *person* violating the By-law.
17. The *Town* shall not be responsible for any damage that may be caused to a property as a result of its remedial action pursuant to Section 15 and Section 16.
18. Any notice given under this By-law may be given by regular mail or personal delivery. Delivery by regular mail is deemed to be effective three (3) days after mailing.

19. The *Town* may recover its cost of remedying a violation of this By-law by invoicing the *person* violating the By-law, by instituting court proceedings, or by adding the cost to the tax roll and collecting it in the same manner as property taxes. The exercise of any remedy shall not preclude the exercise of any other available remedy.
20. Every *person* who fails to comply with a notice made under Section 15 is guilty of an offence.

PENALTY

21. Every *person* who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine as provided for by the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended. Each day a violation continues constitutes a separate offence and may be punishable as such.

CONFLICT

22. Where a conflict arises between the requirements of this By-law and any other By-law of the *Town*, the more stringent provisions shall apply.

SEVERABILITY

23. In the event any provision or part thereof of this By-law is found by a court of competent jurisdiction to be void, voidable, unenforceable, or *ultra vires*, such provision or part thereof shall be deemed to be severed and the remaining portion of such provision and all other provisions of this By-law shall remain in full force and effect.

REPEAL

24. By-law No. 90-68 and all of its amendments are hereby repealed effective on the date this By-law comes into force.

SHORT TITLE

25. This By-law may be cited as the *Highway Encumbrance By-law*.

EFFECTIVE DATE

26. This By-law comes into force and takes effect on the day it is passed.

BY-LAW read and passed by The Corporation of the Town of Halton Hills this _____ day of _____, 2018.

MAYOR – Rick Bonnette

TOWN CLERK – Suzanne Jones

SCHEDULE "A"

Date: _____ **Permit Number:** _____

Applicant

Contact Name: _____ Address: _____
Phone: _____ Email: _____

Disposal Container / Construction Supplies

Supplier: _____ Contact: _____
Address: _____ Phone: _____
Description: _____ Email: _____
Overall Height: _____ (m) Overall Width: _____ (m)
Overall Length: _____ (m) Overall Weight: _____ (m)

Proposed Location

Address: _____
Start Date: _____ End Date: _____
Description: _____

Permit Requirements

Permit Fee: \$120.00	Cash	Cheque	Debit/Visa
Permit Fee: \$240.00	Cash	Cheque	Debit/Visa
Damage Deposit: \$500	Cash	Cheque	Debit/Visa

Submit a Certificate of Insurance indicating Liability Insurance (Minimum \$5,000,000) with this application. Policy Number: _____

Declaration: The applicant agrees to all conditions as shown herein and on this permit. The preceding information correctly describes the proposed occupancy being applied for. Any changes **must** be submitted and approved by the Public Works department a minimum of five (5) days prior to the road occupancy.

Signature of Applicant

Staff Approval Signature

Date of Approval

Road Occupancy Permit for Disposal Container and Construction Supplies (Page 2)

This Permit is applicable only for highways under the jurisdiction of the Town of Halton Hills. The Applicant agrees to the following conditions:

- 1) Prior to the start of disposal container or construction supplies placement, the Applicant agrees to comply with the requirements of the Ontario Traffic Manual Book 7, Temporary Conditions to the satisfaction of the Public Works and Traffic Division of the Transportation and Public Works Department.
- 2) The Applicant agrees to indemnify and save harmless the Corporation of the Town of Halton Hills from any and all liability resulting from the disposal container or construction supplies placement.
- 3) The Applicant agrees that it is liable for any damage to private property or to the Public Road Allowance.
- 4) The Applicant agrees to provide, with this permit application, a Certificate of Liability Insurance in the minimum amount of \$5,000,000 (five million dollars) **with the Town named as an additional insured.**
- 5) The Applicant agrees to provide a **deposit of \$500.00** payable to the Corporation of the Town of Halton Hills to cover the cost of any possible damages to the road allowance or any services, utilities, landscape and Halton Hills Hydro infrastructure. The Town will retain the deposit until the road allowance is inspected by staff. Should there be any damage to the road allowance, the Town may draw the funds from the Deposit.
- 6) The Applicant agrees to produce a copy of this permit on demand from a Halton Regional Police Officer, an officer appointed for carrying out the provisions of the Ontario Highway Traffic Act, Municipal Law Enforcement Officer or Town official.
- 7) The Applicant agrees to install traffic cones with white colour retro-reflective tapes or any other traffic control devices, as required by the Ontario Traffic Manual Temporary Conditions, Book 7, around the disposal container or construction supplies.
- 8) The Applicant agrees that the Permit will be valid up to a maximum time of 14 days, subject to the Traffic Division approval.

SCHEDULE "B"

Fees

Service	Fee
Road Occupancy Permit – Disposal Container and Construction Supplies	\$120.00 to \$240.00