

THE CORPORATION OF THE TOWNSHIP OF MALAHIDE

BY-LAW NO. 19-87

Being a By-law to regulate the use and care of Municipal Right-of-Ways.

WHEREAS section 9 of the *Municipal Act, 2001* provides a municipality with the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority;

AND WHEREAS subsection 11(3) of the *Municipal Act, 2001* authorizes a municipality to pass By-laws respecting highways;

AND WHEREAS sections 9, 11, 23.1 and 23.2 of the *Municipal Act, 2001* authorize a municipality to delegate its powers and duties;

AND WHEREAS sections 27 and 35 of the *Municipal Act, 2001* authorize a municipality to create a policy and/or pass a By-law to prohibit or regulate the construction, alternation, or change in use of any entranceway, gate, or other structure, or facility that permits access to a roadway in respect of a highway in its jurisdiction or under joint jurisdiction;

AND WHEREAS section 60 of the *Municipal Act, 2001* authorizes a municipality to enter upon land lying along a highway for the proposes of erecting and maintaining a snow fence;

AND WHEREAS section 61 of the *Municipal Act, 2001* authorizes a municipality to enter upon land lying along a highway for the propose of naming the highway;

AND WHEREAS section 62 of the *Municipal Act, 2001* authorizes a municipality to enter upon land lying along a highway for the proposes of tree inspection and trimming;

AND WHEREAS section 391 of the *Municipal Act, 2001* authorizes a municipality to impose fees or charges on any Person;

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

NOW THEREFORE the Council of The Corporation of the Township of Malahide **HEREBY ENACTS AS FOLLOWS:**

Definitions

1. In this By-law:
 - (a) "Access" means any private road, entranceway, structure or facility constructed or used as a means of access, and may also be referred to as an "Entrance";
 - (b) "Council" means council of the Township;
 - (c) "Director" means the Director of Physical Services of the Township, or authorized representative or designate;
 - (d) "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;
 - (e) "Municipal Right-of-Way" means land owned by the Township as opened or unopened road allowances for the purposes of operating a public highway under the *Municipal Act, 2001*, a public walkway, or public utilities, but excludes Township lands owned or operated as parkland, creeks and watercourses, and related public trail systems;
 - (f) "Roadway" means that part of a Municipal Right-of-Way that is improved, designed, or ordinarily used for vehicular traffic;
 - (g) "Township" means The Corporation of the Township of Malahide or the geographic area, as the context requires;
 - (h) "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, a motorized snow vehicle and/or a motorized all terrain vehicle.

General Prohibitions

2. No person 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 and function of a Municipal Right-of-Way;
 - (d) deface or place graffiti on any permitted features with a Municipal Right-of-Way;
 - (e) permit 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) obstruct a drain, gutter, water course or culvert along or upon a Municipal Right-of-Way;
 - (h) throw, pile, store, or cause any material, including snow and ice, to be thrown, piled or placed across or on a Municipal Right-of-Way;
 - (i) display or exhibit merchandise or articles of any nature kind within a Municipal Right-of-Way;
 - (j) solicit or sell any real or personal property or merchandise with a Municipal Right-of-Way;

- (k) excavate, drill, conduct seismic investigation, or conduct soil investigations within a Municipal Right-of-Way;
- (l) remove or alter any material, equipment or device placed within a Municipal Right-of-Way by the Township or other government authority;
- (m) move or cause any building or structure to be moved into, along, or across a Municipal Right-of-Way;
- (n) place or maintain any box for the dispensing of newspapers on any portion of a Municipal Right-of-Way;
- (o) install or construct a culvert or any conduit within any Municipal Right-of-Way;
- (p) construct, widen, remove or alter any driveway or curb cut within a Municipal Right-of-Way, save and except for routine maintenance required to maintain good and safe condition;
- (q) allow 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) injure or destroy, or cause to be injured or destroyed, a tree growing on any Municipal Right-of-Way;
- (s) remove or cause to be removed a tree growing on any Municipal Right-of-Way;
- (t) deface, tack, paste or otherwise attach a bill or note or any other thing or object to a tree growing on any Municipal Right-of-Way;
- (u) construct, plant or maintain any form of garden or plant material within a Municipal Right-of-Way;
- (v) discharge water directly onto a Municipal Right-of-Way in a manner that is deemed hazardous;
- (w) congregate, sit or stand so as to obstruct the free passage of either pedestrian or vehicular traffic on any walkway or Roadway regulated by this By-law;
- (x) pull down, destroy, deface or in any way interfere with, any Township infrastructure, including but not limited to, any post, surveyor's mark, bench mark, 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;
- (y) bring a vehicle upon a Municipal Right-of-Way unless there has been removed from the wheels thereof as completely as is reasonably practicable, all mud, clay, lime, and similar material, or any fertilizer or manure which is likely, if not removed, to cause an obstruction or dangerous condition or nuisance in a Municipal Right-of-Way or cause damage to the surface of the Roadway;
- (z) load a vehicle or drive the same so as to permit or cause the contents thereof to fall, spill or be deposited upon or cause damage to a Municipal Right-of-Way
- (aa) remove a barricade or notice or enter upon or use a Municipal Right-of-Way temporarily closed under the provisions of this or any other Township By-law; or
- (bb) remove or move a barricade, sign or light placed around any excavation in a Municipal Right-of-Way.

Exemptions

3. The provisions of section 2 of this By-law shall not apply to:
 - (a) an employee or an agent of the Township when engaged in the proper delivery of a municipal service; and/or
 - (b) a Peace Officer engaged in the exercise of his or her duties.
4. The provisions of section 2 of this By-law shall not apply to a person who:
 - (a) has permission to undertake a prohibited activity, such permission being in the form of a Council By-law, Council resolution, plan approved by Council, agreement approved by Council, or permit issued by Council or by the Director pursuant to a policy approved by Council; and
 - (b) complies with all conditions of the permission.
5. No person shall fail to comply with the terms and conditions of a permit issued by the Council or by the Director pursuant to a policy approved by Council or of an agreement approved by Council.
6. Where the cost of repairing and restoring the Municipal Right-of-Way exceeds any amount held on deposit or posted as security pursuant to a condition to a permit or agreement approved by Council, the excess amount of the costs shall be a debt owing to the Township, and in addition to any other remedy available to it, the Township may recover the excess amount of the costs by action or by adding the excess amount of the costs to the tax roll of the permit holder's lands and collecting them in the same manner as taxes.

Temporary Closing of Highways

7. The Director may temporarily close any Municipal Right-of-Way or portion thereof as deemed appropriate by the Director:
 - (a) for any period during the construction, repairing, improvement or maintenance of such Municipal Right-of-Way or portion thereof or any works under, over, along, across or upon such Municipal Right-of-Way or portion thereof;
 - (b) for social, recreational, community, athletic or cinematographic purposes, or combination of such purposes, subject to any direction of Council;
 - (c) for any period due to emergency situations including emergency situations arising from inclement weather, motor vehicle accidents, or fire.
8. The Director may cause to be erected or kept thereon any barricade or notice warning the public that the Municipal Right-of-Way is closed to traffic and no person shall enter upon or use a Municipal Right-of-Way so temporarily closed.
9. The Director may require that a person who requests the temporary closure of a Municipal Right-of-Way or part thereof for social, recreational, community, athletic or cinematographic purposes, or combination of such purposes, as a condition of the temporary closure, to:
 - (a) enter into an agreement with the Township to indemnify the Township;

- (b) provide a certificate of public liability insurance coverage, with a minimum liability amount of three million dollars (\$3,000,000.00) per occurrence, naming the Township as an additional insured, and endorsed to provide 30 day notification to the Township of any alternation, revocation, cancellation, or reduction in coverage; and/or
- (c) satisfy the conditions determined by Council.

Access and Entrance Control

- 10. No person shall, without a permit issued by the Director in accordance with the Township's Entrance Control Policy,:
 - (a) construct a new Entrance;
 - (b) change the design of an existing Entrance;
 - (c) change the use of an existing Entrance;
 - (d) alter an existing Entrance, including resurfacing; and/or
 - (e) construct a temporary Entrance onto a Municipal Right-of-Way.

Road Occupancy

- 11. No person shall occupy any portion of a Municipal Right-of-Way without a permit issued by the Director in accordance with the Township's Municipal Right-of-Way Occupancy Policy.

Entry onto Adjoining Land

- 12. The Director or an employee or an agent of the Township may enter upon any land adjoining a Municipal Right-of-Way for the purpose of:
 - (a) erecting and maintaining a snow fence;
 - (b) installing and maintaining a sign setting out the name of the Municipal Right-of-Way;
 - (c) inspecting trees and conducting tests on trees; and/or
 - (d) removing decayed, damaged or dangerous trees or branches of trees if, in the opinion of the Director, the trees or branches pose a danger to the health or safety of any person using the highway.
- 13. Tree trimming, tree removal, tree stump removal, and tree replacement shall be done in accordance with the Township's Tree Trimming, Removal, and Replacement Policy.

Enforcement

- 14. The Director may:
 - (a) remove any item, structure or material placed or deposited on a Municipal Right-of-Way contrary to this By-law;

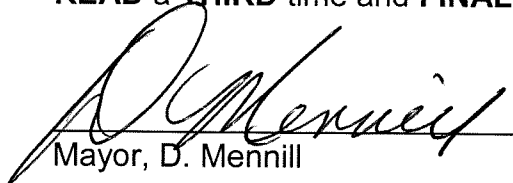
- (b) take any necessary steps to repair or reinstate the Municipal Right-of-Way;
and
 - (c) send notice to the owner or person responsible for the item, structure or material that that object has been removed at the owner's expense.
15. The notice in section 14 may be given by personal service upon the person being served, or by prepaid registered mail sent to the last address of the person being served on the records of the Township.
16. The Township may recover expenses resulting from actions taken in accordance with section 14 by action, or it may collect them in the same manner as municipal taxes.
17. Any person who contravenes any provision of this By-law is, upon conviction, guilty of an offence and is liable to any penalty as provided in the *Provincial Offences Act*.
18. The court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted, and such order shall be in addition to any other penalty imposed on the person convicted.
19. 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.

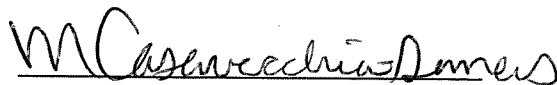
Repeals

20. THAT By-law No. 99-75 is hereby repealed in its entirety.
21. THAT this By-law comes into force and effect on the passing thereof and may be cited as "Municipal Right-of-Way By-law"

READ a FIRST and SECOND time this 17th day of *OCT.*, 2019.

READ a THIRD time and **FINALLY PASSED** this 17th day of *OCT.*, 2019.


Mayor, D. Mennill


Clerk, M. Casavecchia-Somers