

THE CORPORATION OF THE CITY OF SAULT STE. MARIE

BY-LAW 2020-70

ROAD CUTS: (S4.7) – A By-law to regulate Municipal Consent, Road Occupancy, Road Closure and Road Cuts within the City of Sault Ste. Marie

WHEREAS the *Municipal Act, 2001*, S.O. 2001, Chapter 25 (“Municipal Act”), Section 8, confers broad authority on municipalities to enable them to govern their affairs as they consider appropriate;

AND WHEREAS the *Municipal Act*, Section 11, provides that a municipality may pass By-laws respecting matters related to Highways;

AND WHEREAS the *Municipal Act*, Section 27(1), provides that a municipality may pass By-laws in respect of a highway over which it has jurisdiction;

AND WHEREAS the *Municipal Act*, Section 118, provides a municipality may regulate the excavating, construction and use of trenches; prohibit the activities described unless a permit is obtained from the municipality for those activities and may impose conditions for obtaining, continuing to hold and renewing the permit, including requiring the submission of plans;

AND WHEREAS the *Municipal Act*, Section 129, authorizes a municipality to prohibit and regulate noise, vibration, odour and dust and prohibit the matters described unless a permit is obtained from the municipality for those matters and may impose conditions for obtaining, continuing to hold and renewing the permit, including requiring the submission of plans;

AND WHEREAS the *Municipal Act*, Section 391, authorizes a municipality to impose fees or charges on persons for the use of its property;

AND WHEREAS the *Municipal Act*, Section 444, provides that a municipality 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;

AND WHEREAS the *Municipal Act*, Section 445, provides that a municipality 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 do work to correct the contravention;

AND WHEREAS the *Municipal Act*, Section 446, provides that a municipality has the authority to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense;

AND WHEREAS it is deemed expedient to regulate and permit the temporary closure or occupancy of municipal Highways and/or right of ways in the City of Sault Ste. Marie;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF SAULT STE. MARIE HEREBY ENACTS AS FOLLOWS:

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1. DEFINITIONS

- a. **“Applicant”** means any person, utility company or corporation making an application for a Municipal Consent Permit under this By-law, and any person to whom a Municipal Consent Permit under this By-law is issued is a “Permit Holder” as defined below;
- b. **“By-law Enforcement Officer”** means a Municipal By-law Enforcement Officer appointed by Council for the enforcement of municipal By-laws including this By-law;
- c. **“City”** means the Corporation of the City of Sault Ste. Marie;
- d. **“Council”** means the elected Council for the City of Sault Ste. Marie;
- e. **“Director”** means the Director of Engineering of the City;
- f. **“Director PW”** means the Director of Public Works of the City;
- g. **“Final Completion”** means the day that the finished surface is satisfactorily reinstated on any Road Cut that has been opened unless the Road Cut has to be re-excavated in order to execute repairs, in which case the “Date of Final Completion” means the day the repairs are satisfactorily completed to the satisfaction of the Director;
- h. **“Highway”** means a common and public highway, road, street, avenue, parkway, square, sidewalk, footpath, place, bridge, viaduct or trestle, or other structure forming part of the highway, designed and intended for, or used by the general public for the passage of vehicles and pedestrians and includes the area between the lateral property lines thereof, and shall include unopened highways all within the City of Sault Ste. Marie;
- i. **“Road Closure”** means a temporary closure of all lanes of a Highway to vehicular traffic;
- j. **“Road Closure Approval”** means an authorization granted in writing by the Director pursuant to this By-law to temporarily close all lanes of a particular Highway to vehicular traffic in accordance with the Road Closure Approval so granted;
- k. **“Road Cut”** means a surface or subsurface cut in any part of a Highway made by any means, including any excavation, reconstruction, cutting, saw cutting, overlaying, crack sealing, breaking, boring, jacking or tunneling operations;
- l. **“Road Cut Approval”** means an authorization granted in writing by the Director pursuant to this By-law to complete Road Cut works in accordance with the Road Cut Approval so granted;
- m. **“Road Occupancy”** means the temporary occupancy of a Highway within the City or any part thereof for work or an activity other than a purpose for which the Highway was intended,

- n. **“Road Occupancy Approval”** means an authorization granted in writing by the Director pursuant to this by-law to temporarily occupy a Highway within the City or any part thereof in accordance with the Road Occupancy Approval so granted;
- o. **“Traffic Management Plan”** means a standard document submitted by or on behalf of an Applicant as part of an Application for a Road Occupancy Permit or Road Closure Permit where a Road Occupancy or Road Closure shall interfere with or close traffic flow;
- p. **“Municipal Consent Permit”** means a permit granted in writing by the Director pursuant to Section 4 of this By-law for a particular work and/or project on a City Highway, and further includes any Road Occupancy Approval(s), Road Closure Approval(s) and/or a Road Cut Approval(s) as applicable and if so granted by the Director;
- q. **“Permit Holder”** means a person to whom a Municipal Consent Permit in accordance with this By-law was issued and includes persons doing work on behalf of the Permit Holder; and
- r. **“Person”** means an individual, utility company or corporation.

2. REQUIREMENT FOR A MUNICIPAL CONSENT PERMIT

a. Application

- (1) This By-law applies to all municipal Highways under the jurisdiction of the City.
- (2) This By-law does not apply to a Road Closure or Road Occupancy as a result of a “special event”, which shall proceed pursuant to the City’s “Community Events Hosted on Closed Streets Application” process.

b. Prohibitions

- (1) Except as expressly provided to the contrary in this By-law, no person shall engage in or cause a Road Occupancy without first obtaining a Municipal Consent Permit, along with Road Occupancy Approval in accordance with this By-law.
- (2) Except as expressly provided to the contrary in this By-law, no person shall engage in or cause a Road Closure for matters relevant to a Municipal Consent Permit as set out in this By-law, without first obtaining a Municipal Consent Permit along with Road Closure Approval in accordance with this By-law.
- (3) Except as expressly provided to the contrary in this By-law, no person shall complete a Road Cut without first obtaining a Municipal Consent Permit, along with Road Cut Approval in accordance with this By-law.
- (4) No person shall remove, move or deface any barricade, device, detour sign or notice placed by lawful authority.

c. No Permit Required

- (1) Despite Subsections 2a. and 2b., a Municipal Consent Permit shall not be required where the work and/or project to be completed on a Highway is undertaken by the City or by a contractor carrying out work on behalf of the City.
- (2) Despite Subsection 2a. and 2b., a Municipal Consent Permit shall not be required where the Director authorizes the altering, opening or otherwise using any Highway or portion thereof for any City purpose.
- (3) Despite Subsections 2a. and 2b., a Municipal Consent Permit shall not be required where the work and/or project to be completed on a Highway is undertaken by the Sault Ste. Marie Public Utilities Commission ("PUC") or Union Gas to repair water main or gas main emergency breaks. In such an event, the PUC or Union Gas shall follow the provisions of Section 8 of this By-Law.

3. APPLICATION FOR A MUNICIPAL CONSENT PERMIT

a. Municipal Consent Permit Applications

- (1) Every Applicant for a Municipal Consent Permit shall:
 - (a) file with the Director a complete Application in the form established by the Director from time to time, which includes providing:
 - (i) the name, signature and position of the contact individual for the Applicant, and the Applicant's name, street address, telephone number, facsimile number and email address;
 - (ii) the name, telephone number, facsimile number and email of the most senior field personnel of the Applicant or of the Applicant's agent, servant, employee, subcontractor or licensee who is assigned to oversee the work;
 - (iii) telephone number or other acceptable emergency contact information;
 - (iv) a drawing showing the proposed work and/or project area;
 - (v) a description of the work and/or project zone, including the name(s) and number(s) of the Highway(s) where the proposed work and/or project is to be completed;
 - (vi) a description of the proposed work and/or project to be completed and the purpose for same along with any associated construction design drawings;
 - (vii) the scheduled starting date of the work and length of time estimated to complete the work;
 - (viii) any proposed Highway closures;
 - (ix) a statement as to whether the proposed work and/or project involves a Road Cut or the use of trenchless technology;
 - (x) a signed indemnity from the Applicant and any other person relevant to the work and/or project as determined necessary

- by the City's Risk Manager, the form of which shall be established by the City, which shall indemnify and save harmless the City from all costs and expenses caused to or incurred by the City and from all claims and demands, awards, losses, costs, damages, actions, suits or other proceedings, by whomsoever made, brought or prosecuted in any manner based upon, arising out of or connected with any work being done by the Applicant and/or the Applicant's agents on the Highway covered under any Permit issued under this By-law;
- (xi) a Certificate of Insurance on the C.S.I.O. form from the Applicant and any other person relevant to the work and/or project as determined necessary by the City's Risk Manager, confirming a minimum of Five Million (\$5,000,000.00) Dollars comprehensive general liability insurance coverage in respect of bodily injury, death, loss or damage of or to any person or property of third parties, with insurers licenced to conduct business in Ontario or such other amount or type of coverage that the City's Risk Manager deems necessary given the nature of the work and/or project being completed. The City shall be added as an Additional Insured to the required liability insurance policy or policies and no such policy shall be cancelled or allowed to lapse without at least thirty (30) days written notice having been given to the City;
 - (xii) pay the non-refundable Permit fee as set out in the City's User Fee and Service Charges By-law, a pavement degradation fee, if applicable, and any other applicable fees, as set out herein;
 - (xiii) where applicable, provide evidence satisfactory to the Director that the person submitting the Application on behalf of the Applicant is a duly authorized representative of the Applicant;
 - (xiv) the signature of the Applicant or a person who has authority to bind the Applicant, certifying the accuracy of the information provided; and
 - (xv) other information as requested by the Director; and
 - (xvi) any other information as set out in Sections 3a.(1)(b), (c) and/or (d) below if applicable.
- (b) in the event that the proposed work and/or project involves a Road Occupancy, the Applicant shall seek Road Occupancy Approval and provide the following information in addition to the information required in Section 3a.(1)(a)(i)-(xvi) above:
- (i) the particulars of the proposed Road Occupancy;
 - (ii) the scheduled starting date of the Road Occupancy and length of time estimate for the Road Occupancy;
 - (iii) a Traffic Management Plan unless the Director determines it is not necessary in the circumstances; and
 - (iv) the requirement for any proposed removal or bagging of a parking meter, prohibition of curb parking, relocation of a bus stop, and changes to pavement markings or changes to traffic

control devices, including a temporary adjustment to traffic control signal timing or interference with a traffic signal loop;

- (c) in the event that the proposed work and/or project involves a Road Closure, the Applicant shall seek Road Closure Approval and provide the following information in addition to the information required in Section 3a.(1)(a)(i)-(xvi) above:
- (i) the particulars of the proposed Road Closure;
 - (ii) the scheduled starting date of the Road Closure and length of time estimate for the Road Closure;
 - (iii) a Traffic Management Plan unless the Director determines it is not necessary in the circumstances; and
 - (iv) the requirement for any proposed removal or bagging of a parking meter, prohibition of curb parking, relocation of a bus stop, and changes to pavement markings or changes to traffic control device, including a temporary adjustment to traffic control signal timing or interference with a traffic signal loop;
- (d) in the event that the proposed work and/or project involve a Road Cut, the Applicant shall seek Road Cut Approval and provide the following information in addition to the information required in Section 3a.(1)(a)(i)-(xvi) above:
- (i) the location of the proposed Road Cut shown on a design drawing;
 - (ii) the relevant date(s) the Road Cut will be completed;
 - (iii) a Traffic Management Plan unless the Director determines it is not necessary in the circumstances;
 - (iv) in addition to the Application Fee referenced in Section 3a.(1)(a)(xii) above, pay a non-refundable pavement degradation fee determined in accordance with the City's User Fee and Service Charges By-law then in effect unless the Director, in his/her sole discretion, determines the Application is for:
 - 1) a Road Cut which does not affect the Highway pavement;
 - 2) municipal works as approved by the City;
 - 3) the provision of a new pavement structure to subgrade level which is at least one full traffic lane wide, the new joints of which coincide with traffic lane markings, is thirty (30) metres long, and which meets current road pavement design standards as determined by the Director;
 - 4) works on Highways listed in the City's five (5) year forecast for reconstruction and resurfacing programs if carried out prior to the municipal reconstruction or resurfacing;
 - 5) trenchless works which do not affect the Highway pavement the determination of which shall be made

solely by the Director in his/her sole discretion and which trenchless works have been approved by the Director;

- 6) the relocation of public utilities or equipment to accommodate the City's use of the Highway; or
 - 7) Road Cut repair work done pursuant to the warranty requirements of this By-law.
- (2) Upon receipt of the completed Application for a Municipal Consent Permit, the Director shall review, approve and/or refuse the Municipal Consent Permit and further provide written authorization setting out any Approvals granted thereunder, specifically if any Road Occupancy Approval(s), Road Closure Approval(s) and/or Road Cut Approval(s) have been authorized in accordance with Section 4 of this By-law.
 - (3) The issuance of a Municipal Consent Permit does not relieve any person from the necessity of acquiring any other license or permit or complying with any other applicable laws, By-laws, regulations and requirements of the City and any other relevant ministry, government agency, regulatory body or other authorities having jurisdiction. These obligations remain the responsibility of the Permit Holder.
 - (4) The Director may at his/her sole discretion, require an Applicant to provide a refundable deposit and/or security for possible damage to City property or equipment, possible damage to adjacent private property, cleanup costs and all other obligations of the Permit Holder under this By-law and as a condition of any Municipal Consent Permit issued pursuant to this By-law.

b. Municipal Consent Permit Applications - Multiple Road Occupancies

- (1) Where an Applicant for a Municipal Consent Permit is proposing multiple Road Occupancies on a single Highway, the Applicant may apply for a single Municipal Consent Permit and pay the applicable fee for a single Application.
- (2) The Director, may, in his/her sole discretion, authorize an application for a single Municipal Consent Permit and payment of the applicable fee for a single Application, where the Applicant for a Municipal Consent Permit is proposing:
 - (a) five (5) or fewer road occupancies per Highway on five (5) or fewer Highways all as part of a utility pole installation;
 - (b) multiple infrastructure projects within close proximity; or
 - (c) multiple road occupancies on a single Highway as part of a project other than a utility pole installation.

The Director's decision as to whether or not a single Municipal Consent Permit can be made as set out in this Section of the By-law is final.

- (3) Where two (2) or more Road Occupancies are authorized by a Municipal Consent Permit, the Director may specify in the Municipal Consent Permit the order in which the Road Cuts are to be performed.

c. Application – Processing Time – Fully Complete

- (1) Every Applicant for a Municipal Consent Permit shall provide a complete submission to the Director at least ten (10) working days before the Applicant proposes to start the work and/or project that forms the subject matter of the Municipal Consent Permit. The Application is complete once all required information, documentation and fees have been submitted to the satisfaction of the Director.
- (2) The Director shall not be required to review or process any Application for a Municipal Consent Permit which is not complete at least ten (10) working days before the proposed start date for the work and/or the project that forms the subject matter of the Municipal Consent Permit.
- (3) The approved Municipal Consent Permit shall consist of:
 - (a) a copy of the drawing submitted with a stamp of approval signed by the Director or his/her designate’;
 - (b) and any other terms, conditions and requirements as set out by the Director in his/her sole discretion;
 - (c) all Approval requests sought by the Applicant, including Road Occupancy Approval(s), Road Closure Approval(s) and Road Cut Approval(s) and their respective terms, conditions and requirements, if any,

and shall collectively be known as the “Municipal Consent Permit” in this By-law.
- (4) Road closures exceeding five (5) business days requires a by-law approved by City Council. The Applicant shall ensure adequate time for Staff to prepare a report and the road closure by-law

4. DIRECTOR’S REVIEW OF APPLICATION FOR MUNICIPAL CONSENT PERMIT

a. General Delegation of Authority of Director

- (1) The Director is authorized to receive and consider all Applications for Municipal Consent Permits and further to conduct all investigations he/she deems is necessary to determine whether a Municipal Consent Permit pursuant to this By-law should be issued.
- (2) The Director shall have the authority to:
 - (a) establish such terms, conditions and requirements for the issuance of a Municipal Consent Permit as the Director determines to be necessary in the circumstances;
 - (b) make all decisions or determinations required of the Director under this By-law; and

- (c) issue, refuse to issue, suspend or revoke a Municipal Consent Permit as provided in this By-law
- (3) The Director PW shall have authority to permit the temporary closing of a Highway in relation to a Municipal Consent Permit that contains a Road Closure Approval approved by the Director.
- (4) Without limiting the generality of Subsection 4a.(2)(a) above, the Director may as a condition of issuing a Municipal Consent Permit that also contains a Road Cut Approval, thereby authorizing a Road Cut, impose requirements for geotechnical certification of work, minimum restoration requirements, limits of excavations and any more requirements at the Director's sole discretion where appropriate in the circumstances.
- (5) The Director shall have the authority to determine and from time to time amend the Application for a Municipal Consent Permit Form, information and special conditions required in the administration of this By-law.
- (6) Prior to making a decision on any Application for a Municipal Consent Permit, the Director shall consult with such other persons or agencies as he/she considers necessary.
- (7) When reviewing an Application for a Municipal Consent Permit, the Director shall consider:
 - (a) any potential adverse effect on public health and safety;
 - (b) any potential inconvenience to the public;
 - (c) any potential traffic impacts, including the adequacy of detour routes;
 - (d) any concerns for the security of persons or property; and
 - (e) the past or present conduct of the Applicant as it affords reasonable grounds to believe the construction, maintenance or other works may or may not be adequately managed in accordance with this By-law.
- (8) The Director may at his/her sole discretion, require the Applicant to provide additional signs, barricades, traffic control, personnel or other equipment, additional insurance or notification to additional agencies that are necessary for the proposed Municipal Consent Permit generally, and specific to any Road Occupancy, Road Closure and/or Road Cut(s) as applicable.
- (9) The Director may delegate the performance of any one or more of his/her functions under this By-law to one or more persons from time to time as occasion requires and may impose conditions upon such delegation and may revoke any such delegation.
- (10) A Municipal Consent Permit is not transferable without the written consent of the Director.

b. Refusal

- (1) The Director shall refuse to issue a Municipal Consent Permit in the following circumstances:

- (a) if the Application for a Municipal Consent Permit is incomplete;
- (b) if the Applicant has not provided the fees, securities and/or insurance required;
- (c) if, for any reason the issuance of the Municipal Consent Permit is inconsistent with this By-law;
- (d) if the Applicant owes any fine, administrative penalty or fee to the City;
- (e) if the Applicant has submitted false, mistaken, incorrect or misleading information in support of the Application for a Municipal Consent Permit;
- (f) if the Applicant has had repeated issues with previous Road Cuts, Road Closures and/or Road Occupancies within the two (2) years preceding the current Application for a Municipal Consent Permit, the sole determination of which shall be made by the Director in his/her sole discretion;
- (g) if the work and/or project set out in the Application for a Municipal Consent Permit poses an unacceptable level of risk to the factors set out in Section 4a.(6);
- (h) in the case of an Application for a Municipal Consent Permit where a request for Road Cut Approval is sought in a location where roadway construction, reconstruction or resurfacing has occurred in that location within the past three (3) calendar years preceding the date of the proposed Road Cut unless:
 - (i) the Director is satisfied that the emergency provisions of Section 8 herein are applied;
 - (ii) the Application for a Municipal Consent Permit is a result of a development proposal for work that is deemed necessary in the sole discretion of the Director;
 - (iii) the work proposed is the maintenance, rehabilitation, construction or reconstruction of a City Highway, or the carrying out of other municipal works, the primary purpose of which is pavement provisions or preservation;
 - (iv) the work and/or project involves the repair of fluid or gas leaks by a public utility; or
 - (v) the work is deemed necessary in the sole discretion of the Director because of a major interruption to any existing public works.

c. Issuance of Municipal Consent Permit

- (1) In issuing a Municipal Consent Permit, the Director may set out the following:
 - (a) The Road Occupancy, Road Closure and/or Road Cut requests made thereunder that have been approved and any conditions of same, if applicable;
 - (b) the location of the permitted Road Occupancy, Road Closure and/or Road Cuts, if applicable;
 - (c) the particulars of the Road Occupancy Approval(s), Road Closure Approval(s) and/or Road Cut Approval(s), if applicable;
 - (d) the dates and times for the approved Road Occupancy, Road Closure and/or Road Cuts as the case may be;

- (e) the expiry date of the Municipal Consent Permit; and
 - (f) such conditions, terms and requirements for the permitted Road Occupancy, Road Cut or Road Closure as may be determined by the Director to be appropriate in the circumstances.
- (2) The Municipal Consent Permit is issued when it has been dated and signed by the Director or his/her designate. The issued Municipal Consent Permit sets out any Approvals granted thereunder by the Director or his/her designate in accordance with this By-law, including any Road Occupancy Approval(s), Road Closure Approval(s) and/or Road Cut Approval(s).
- (3) Whether or not it is specified on the face of the Municipal Consent Permit, every Municipal Consent Permit or extension thereof is issued subject to the condition that the Permit Holder shall:
- (a) indemnify and save harmless, and defend the City, its elected and non-elected officials, agents, servants and workmen from all causes of action, claims, demands, expenses, losses, costs, damages, suits or other proceedings by whomsoever made, brought or prosecuted in any manner based upon, arising out of or connected with any work and/or project being done by the Permit Holder or his/her agents, officers, servant or workmen on the Highway covered under the Municipal Consent Permit issued under this By-law;
 - (b) place and maintain in good standing during the effective period of the Municipal Consent Permit, a policy of comprehensive general liability insurance with an insurer licensed in Ontario;
 - (i) with limits of not less than Five Million (\$5,000,000) Dollars per occurrence for bodily injury, death and damage to property including loss of use thereof;
 - (ii) which names the Corporation of the City of Sault Ste. Marie as an "Additional Insured" or as its interest appears; and
 - (iii) contains an endorsement to provide the City with thirty (30) days' prior written notice of cancellation of the policy;
 - (c) follow all Provincial legislation and perform work herein as the "Constructor" in accordance with the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1 ("OHSA") and the regulations made thereunder as amended, and shall ensure measures and procedures prescribed by the OHSA and the regulations made thereunder are carried out while the health and safety of workers and the public are protected; and
 - (d) allow an Officer 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, direction or order in association with the Municipal Consent Permit are being complied with.

d. Limitations – Effective Date of Permit

- (1) Where a Municipal Consent Permit contains a Road Closure Approval, the Permit Holder shall provide notice to the public of the closure in a manner as required by the Director.

- (2) The Municipal Consent Permit shall expire November 30th of the year of issuance unless an extension is approved by Director.

e. Permit

- (1) The Applicant shall ensure that the City has a 24-hour emergency contact number that can be reached at all times during the work and/or project so approved by the Municipal Consent Permit.
- (2) A copy of the Municipal Consent Permit shall be on site at all times during the work and/or project and available for review upon request. The Applicant shall produce evidence that he/she has received a Municipal Consent Permit when asked by authorities of the City. Failure to have the Municipal Consent Permit on site or failure to produce same upon request may result in an Order and shall be considered an Offence under this By-law.
- (3) Every Permit Holder shall comply and cause compliance with the Municipal Consent Permit and this By-law. Failure to comply with the Municipal Consent Permit and/or any provision of this By-law shall be considered an Offence under this By-law.

f. Revoke Permit

- (1) The Director may revoke a Municipal Consent Permit at any time and without prior notice to the Permit Holder if:
- (a) it was issued in error;
 - (b) it was issued as a result of false, mistaken, incorrect or misleading information in the Application for a Municipal Consent Permit;
 - (c) there are reasonable grounds to believe that the Road Occupancy or Road Closure poses a risk to the factors outlined in 4.a(6); or
 - (d) the Permit Holder is not in compliance with any terms, conditions and/or requirements of any portion of the Municipal Consent Permit or any Approvals granted thereunder, including any Road Occupancy Approval(s), Road Closure Approval(s) and/or Road Cut Approval(s) Permit(s).
- (2) Any Permit Holder who has had his/her Municipal Consent Permit revoked or who objects to conditions imposed may appeal to Council and the decision of Council shall be considered final and binding on the Permit Holder.

g. Extension and Renewal

- (1) Any person who wishes to renew and/or extend a Municipal Consent Permit previously granted under this By-law shall contact the Director requesting renewal or extension at a minimum five (5) business days prior to the expiry of the Municipal Consent Permit and provide any requested modified documentation as required by this By-law or as deemed necessary by the Director. The Director reserves the right to approve or deny requests for

renewals or extensions of the Municipal Consent Permit and his/her decision is final.

5. MUNICIPAL CONSENT PERMIT – GENERAL CONDITIONS

a. Notice Requirements

- (1) Except as may be provided to the contrary in the Municipal Consent Permit, every Permit Holder shall provide notice at least two (2) business days in advance of the commencement of the authorized work and/or project permitted under the Municipal Consent Permit to those residents and operators of businesses occupying property beside, near and along the Highway where the work will occur. In the event that the Director determines the authorized work and/or project permitted under the Municipal Consent Permit is a more significant project, the Director may require the Permit Holder to comply with further notice requirements as the Director in his/her sole discretion deems is necessary as part of the conditions granted in the Municipal Consent Permit, and in such event the Permit Holder shall comply with such additional notice requirements.
- (2) The notice required pursuant to Subsection 5a.(1) shall be in writing and include particulars of:
 - (a) the work and/or project authorized under the Municipal Consent Permit and rationale for same;
 - (b) the approximate start date;
 - (c) the expected duration of the work and/or project;
 - (d) access restrictions and service interruptions
 - (e) contact information for the Permit Holder,
 - (f) any other requirements as may be set out by the Director in his/her sole discretion.
- (3) Where the Municipal Consent Permit permits work and/or a project that may cause interruptions to Traffic on a City Bus Route, the Permit Holder shall provide a minimum of ten (10) days' notice to the City's Transit Division, City Fire Services, City Police Services, any Contractors providing Recycling and Garbage Collection, Emergency Management Services and any and all School Bus Transportation providers in the City of Sault Ste. Marie in advance of the commencement of the authorized work and/or project.

b. Locates

- (1) The Permit Holder shall request all appropriate utility companies to mark and provide other location information to determine the location of their respective utilities and to provide safeguards for all utilities. Should the Permit Holder in carrying out the work authorized under the Municipal Consent 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. The Permit Holder shall comply with all requirements as set out in the *Ontario Underground Infrastructure Notification System Act, 2012* S.O. 2012, c.4 as amended and any other applicable legislation.

- (2) The Permit Holder shall comply with all legislation that requires locates and the requirements of Ontario One Call.
- (3) The Permit Holder shall obtain any necessary permits and comply with any other applicable laws, By-laws, regulations and requirements of any relevant ministry, government agency, regulatory body or other authorities having jurisdiction in regards to locates. These obligations remain the responsibility of the Permit Holder.

c. Work Conditions

- (1) Every Permit Holder of a Municipal Consent Permit shall:
 - (a) when occupying the Highway proceed expeditiously with the work and/or project or cause the work and/or project to proceed expeditiously;
 - (b) occupy the Highway and authorize and permit the Highway to be occupied only at such time or times that the work and/or project authorized by the Municipal Consent Permit is actively in progress;
 - (c) keep or cause the work site on the Highway to be kept clean and safe;
 - (d) control or cause sources of dust at the work site to be controlled at all times;
 - (e) when occupying the Highway, comply with or cause compliance with the provisions of the *OHS*A as amended or replaced from time to time and the regulations made thereunder;
 - (f) not place any material, supplies, equipment or vehicles or cause or permit any material, supplies, equipment or vehicles to be placed on any part of a Highway at any time or in a location where it will create a traffic or safety hazard; and
 - (g) remove or cause to be removed, any material, supplies, equipment or vehicles on any part of a Highway when directed to do so by the Director.
- (2) Where the Permit Holder's work and/or project impedes snow removal, winter maintenance and any provision of municipal services (ie. Police, Emergency Management Services, Fire, School Bus Transportation) on areas where vehicular and pedestrian traffic are being maintained as reasonably determined at the sole discretion of the Director, the Permit Holder shall be responsible for providing ice and snow removal services within the limits of the work and/or project site and make alternate arrangements for the provision of municipal services. Such areas shall be cleared of ice and snow by the Permit Holder to the satisfaction of the Director.
- (3) Where the Permit Holder's work and/or project impedes Garbage and/or Recycling Collection as reasonably determined at the sole discretion of the Director, the Permit Holder shall be responsible for making arrangements with the City's Landfill to the satisfaction of the Director.
- (4) Should the Permit Holder fail to complete the required snow removal services and de-icing, or provide alternate arrangements for the provision of municipal services within the set deadlines, the Director without any notice to the Permit

Holder may arrange for the work to be done. All costs incurred by such removal shall be charged to the Permit Holder.

- (5) The Permit Holder shall immediately notify the Director of any alteration, breaking, or disturbance of existing Highway conditions or if the work and/or project undertaken deviates from that set out in the approved Municipal Consent Permit. The Permit Holder shall undertake a temporary repair and comply with the Director's requirements for same, and the Permit shall be responsible for all costs associated with the work as set out herein.
- (6) The Permit Holder shall ensure that all equipment is in good working order and does not leak fluids or produce unnecessary noise. The idling of service equipment shall be restricted to the minimum amount necessary for the completion of the authorized work and/or project.
- (7) The Permit Holder shall keep the work and/or project site in a tidy condition as practical and to the satisfaction of the City. The Permit Holder shall not deposit any material on any portion of Highway or other City property without the permission of the Director and shall remove the same without delay when and as directed by the Director. 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.
- (8) Should the Permit Holder fail to comply with any requirement as set out in this By-law or further fail to maintain the Highway or other City property in a satisfactory condition, the Director without further notice may issue an Order as set out in this By-law, revoke the Municipal Consent Permit and/or arrange for the work the Director deems necessary in his/her sole discretion and or the work and/or project site to be cleaned immediately by others. All costs incurred by the City with respect to any matters set out herein shall be charged to the Permit Holder.

d. Cleanup

- (1) Upon completion of the work and/or project authorized by the Municipal Consent Permit, the Permit Holder shall:
 - (a) remove or cause to be removed, all excess material from the Highway and other City property; and
 - (b) leave or cause the work and/or project area to be left in a safe, hazard free and clean condition, similar to the conditions of the Highway beside, near and along to the work area and/or project area.

e. Peak Hour Restrictions

- (1) During any Peak Hour period identified in a Municipal Consent Permit, no Permit Holder of a Municipal Consent Permit shall authorize or permit:
 - (a) any trucks, vehicles, or equipment to be parked or placed or continued to be parked or placed on a Highway; or

- (b) any excavating or reinstatement of a Highway to take place.
 - (2) During any Peak Hour period identified in a Municipal Consent Permit, a Permit Holder of a Municipal Consent Permit may be required to reinstate a Road Cut in accordance with this By-law to accommodate peak hour traffic and pedestrian volumes.
- f. Warning Devices, Barricades and Traffic Signs
- (1) Every Permit Holder shall supply, erect and maintain or cause to be supplied, erected and maintained on site of a work and/or project authorized by a Municipal Consent Permit, such warning devices, barricades and traffic signs and in such numbers and in such location or locations as may be required in accordance with the OHSA as amended or replaced from time to time and the regulations made thereunder, including but not limited to the Ministry of Transportation Ontario Traffic Manual Book 7 Temporary Conditions; and
 - (2) Every Permit Holder shall be responsible to ensure that:
 - (a) all warning devices, barricades and traffic signs at the work site are maintained in a good state of repair;
 - (b) all warning devices, barricades and traffic signs at the work site conform to the Ministry of Transportation Ontario Traffic Manual Book 7 Temporary Conditions as amended or replaced from time to time; and
 - (c) any warning devices, barricades or traffic which remain in place overnight:
 - (i) have lights and/or reflectors as may applicable, which are clean, visible and in good working order; and
 - (ii) are lit from sunset to sunrise.

6. ADDITIONAL CONDITIONS FOR ROAD CUTS AND TRENCHLESS

a. Road Cut

- (1) Every Permit Holder of a Municipal Consent Permit, which contains a Road Cut Approval, thereby authorizing a Road Cut shall:
 - (a) open or cause a Road Cut to be opened so as to do the least possible damage to the Highway and to any public utility or municipal service;
 - (b) ensure a Road Cut does not remain open for more than twenty-four (24) hours unless the work is actively in progress unless approved otherwise by the Director;
 - (c) ensure the surface is cut with a concrete saw in a manner to produce:
 - (i) an opening with edges which are vertically straight and oriented in a shape approved by the Director; and

- (ii) a cut, which is large enough to accommodate the proposed works without undermining the adjacent surface;
- (d) in the case of a Road Cut of a concrete surface, cause all the concrete to be broken out and removed:
 - (i) to the nearest expansion joint, or dummy expansion joint, using a concrete saw if necessary to provide on all sides of the Road Cut, a clean vertical surface; or
 - (ii) as specified by the Director, remove or cause to be removed, all excess material from the Highway; and
- (e) in the case of a sub-surface Road Cut, ensure that:
 - (i) the method of boring, jacking or tunneling used for the sub-surface Road Cut has first been approved by the Director; and
 - (ii) the surface of any area where a cave-in, settlement or heaving results from boring, jacking or tunneling by the Permit Holder is reinstated to the satisfaction of the Director; and
- (f) before opening a lane to traffic while work is ongoing under the Municipal Consent Permit, ensure that the surface has been reinstated with a hard surface and not gravel, and that approved ramping is in place at either end of the Road Cut.

b. Trenchless

- (1) Every Permit Holder of a Municipal Consent Permit to install trenchless services shall, at the sole discretion of the Director provide CCTV Camera Inspection of adjacent underground services to ensure the drilling operation did not drill through or otherwise compromise a pipe and/or underground infrastructure.
- (2) In the event that the drilling operations damaged City underground infrastructure, the Permit Holder shall forthwith be required to restore the underground infrastructure to the satisfaction of the Director. If the Permit Holder fails to forthwith restore the underground infrastructure to the satisfaction of the Director the City may complete such works the City deems in its sole discretion is necessary to restore the underground infrastructure and the Permit Holder shall be responsible for all costs and liabilities related to same.

c. Reinstatement – General Requirements

- (1) Every Permit Holder of a Municipal Consent Permit which contains a Road Cut Approval shall take such steps or cause such steps to be taken to ensure that any temporary or final reinstatement of the Highway is completed:
 - (a) by a contractor approved in advance by the Director;
 - (b) to current O.P.S.S. standards;
 - (c) to current City standards; and

- (d) to the satisfaction of the Director.
- (2) Every Permit Holder of a Municipal Consent Permit which contains a Road Cut Approval shall take such steps or cause such steps to be taken to ensure that any temporary or final reinstatement of the Highway is effected:
- (a) with the same type of material, except for deleterious material, as the adjoining construction when originally constructed or as approved or directed by the Director;
 - (b) to the same thickness as the adjoining construction when originally constructed or with material of a thickness that has been approved or directed by the Director;
 - (c) to the same level as the adjacent surface; and
 - (d) to the satisfaction of the Director.

d. Backfilling

- (1) Every Permit Holder of a Municipal Consent Permit which contains a Road Cut Approval shall take such steps or cause such steps to be taken to ensure that the backfilling of the sub-base of the Road Cut is affected with native on-site material, unless the native on-site material is not of a quality or condition acceptable to the Director.
- (2) Every Permit Holder of a Municipal Consent Permit which contains a Road Cut Approval shall take such steps or cause such steps to be taken to ensure the placement of Granular "B" between the top of the sub-grade and one hundred and fifty (150 mm) millimeters below the Highway surface where the native onsite material is not of a quality or condition acceptable to the Director and shall excavate within limits sufficient to provide adequate frost tapers to the satisfaction of the Director;
- (3) Every Permit Holder of a Municipal Consent Permit which contains a Road Cut Approval shall take such steps or cause such steps to be taken to ensure that any compaction of fill by mechanical means:
- (a) achieves a degree of compaction of not less than ninety-five (95%) percent of maximum dry density in the case of native on-site material; and
 - (b) achieves a degree of compaction of not less than one hundred (100%) percent of maximum dry density where Granular "A", Granular "B" and Granular "C" materials are used; and
 - (c) does not rely on water as the sole means of obtaining compaction.

e. Road Cut – Final Reinstatement

- (1) Every Permit Holder of a Municipal Consent Permit which contains a Road Cut Approval shall complete or shall cause to be completed the final reinstatement of the Road Cut and the Highway within thirty (30) days of backfilling and no later than October 31st in the year in which the work was authorized. The Permit Holder shall ensure that Final Reinstatement shall match existing conditions or better.

f. Road Cut – Final Reinstatement Exception

- (1) Despite Subsection 6e.(1), the Director may authorize in writing, a temporary reinstatement of the Highway, in circumstances where:
 - (a) final reinstatement cannot be achieved within the required time lines for reasons of supply, weather or other conditions beyond the control of the Permit Holder;
 - (b) the Highway is not in a condition to be permanently reinstated prior to October 31st in any year; or
 - (c) for other reasons, the Director, in his or her discretion determines it is not feasible to effect a permanent reinstatement within the required timeframe or by the required date.

g. Temporary Reinstatement - Conditions

- (1) Any approval by the Director for a temporary reinstatement of the Highway under Subsection 6f.(1) shall be subject to the following conditions:
 - (a) the base and sub-base shall be completed to the satisfaction of the Director before the temporary reinstatement is effected;
 - (b) the temporary road reinstatement shall be completed no later than October 31st of the year in which the Municipal Consent Permit which contains a Road Cut Approval is issued, or such other date as may be specified by the Director;
 - (c) the temporary reinstatement over the base shall consist of not less than seventy-five (75 mm) millimeters of asphalt, unless otherwise directed by the Director;
 - (d) the temporary reinstatement shall be maintained by the Permit Holder at the Permit Holder's cost and to the satisfaction of the Director until the final reinstatement occurs;
 - (e) repairs to the temporary reinstatement shall be affected by the Permit Holder within 24 hours of notification by the Director of any deficiency;
 - (f) final reinstatement of the Highway shall be completed to the satisfaction of the Director no later than June 30th of the year following the year in which the work began, or such other date as may be specified by the Director; and
 - (g) where temporary reinstatement includes cold mix or granular surfaces, the Permit Holder shall be required to fix potholes to the sole satisfaction of the Director until Final Reinstatement is complete.

h. Warranty

- (1) The Permit Holder is responsible for all repairs necessary to correct any settlement or deterioration of surface for a warranty period of two (2) years starting from the date of final reinstatement, or the date of the last repair.

i. Unsatisfactory Reinstatement

(1) *Notice of Unsatisfactory Reinstatement*

Where the backfilling or the temporary or final reinstatement or repairs to a temporary reinstatement completed by or on behalf of a Permit Holder does not comply with the provisions by this By-law, or where the backfilling or temporary or final reinstatement settles or subsides, the Director may give oral or written notice to the Permit Holder, specifying the work required to be completed by the Permit Holder to achieve compliance and the date by which such work is to be completed.

(2) *Written Notice*

Any oral notice referred to in Subsection 6i.(1) shall be confirmed in writing and served on the Permit Holder by regular, prepaid first class mail to the address for the Permit Holder as set out in the Application for a Municipal Consent Permit or by using such other notification means and contact information as may be provided for in the Application for a Municipal Consent Permit.

(3) *Remediation*

In the event that the work identified in the notice referred to in Subsection 6i(1) or (2) is not completed by the date specified in the notice or is not completed to the satisfaction of the Director, the Director may authorize the necessary work to be completed and invoice the cost to the Permit Holder. The cost shall be a debt of the Permit Holder and if unpaid, recoverable by the City by action or other means available at law. Any such step shall be in addition to any other remedy available under this By-law or at law.

(4) *Emergency Repairs to Reinstatement*

Despite Subsection 6i(2), if the Director is of the opinion that a temporary or final reinstatement of a Road Cut has created an emergency situation which may cause damage to vehicles or endanger the public, the Director may take such steps as the Director determines to be necessary to protect the area and may advise the Permit Holder orally, of the repair work which must be completed. The Director may give such notice by speaking to the person who answers at the phone number provided in the application for the Permit for emergency contact purposes or if there is no answer, by leaving a voice mail message if possible.

If there is no answer from the Permit Holder's telephone or the telephone is out of order or the Permit Holder does not carry out the required repairs to the satisfaction of the Director within four (4) hours of placing the telephone call, the Director may order the work to be done by or on behalf of the City and the Director shall confirm in writing to the Permit Holder the remedial action which has been completed and invoice the cost to the Permit Holder. The cost shall be a debt of the Permit Holder and if

unpaid, recoverable by the City by action, or other means available at law.

7. RESPONSIBILITY FOR CLAIMS

- (1) A Permit Holder shall be responsible for all losses and damages arising from or related to the work and/or project done by or for the Permit Holder or required to be done by the Permit Holder pursuant to the Municipal Consent Permit and this By-law.
- (2) A Permit Holder shall be responsible for all losses or damages arising directly or indirectly from settlement of the surface of a Highway within a period of two (2) years following the date of the final reinstatement of the Highway.
- (3) Where a Highway or public utility on the Highway has been damaged by a Permit Holder, the City or the Public utility as the case may be, has the sole responsibility for deciding who shall carry out the repairs. The Permit Holder shall be responsible for all costs, liabilities and expenses related to carrying out of such repairs. The cost shall be a debt of the Permit Holder and if unpaid, recoverable by the City by action, or other means available at law.

8. EMERGENCY CIRCUMSTANCES

- (1) Despite Paragraph 2a. and 2b., where public safety or health are at risk or other emergency circumstances exist, a person or public utility may engage in a Road Occupancy, Road Closure and/or Road Cut without a Municipal Consent Permit provided the person:
 - (a) All emergency procedures as outlined in the City's Streets By-law 2008-131 as amended shall apply.
 - (b) After emergency notification, contacts the City's Engineering Department by telephone at (705)759-5378 and provides information as to:
 - (i) the name of the public utility or contractor engaging in or authorizing the Road Occupancy, Road Closure and/or Road Cut;
 - (ii) the location of the Road Occupancy, Road Closure and/or Road Cut;
 - (iii) the nature of the emergency circumstances;
 - (iv) the particulars of the proposed Road Occupancy or Road Closure, including whether a Road Cut is required; and
 - (v) the estimated duration of the Road Occupancy or Road Closure.
 - (c) applies for a Permit on the same day the Road Occupancy, Road Closure and/or Road Cut is commenced, or if the City is not open for the issuance of Permits, on the morning of the next day on which the City offices are open for the issuance of Municipal Consent Permits.

- (i) The Director may require any person or public utility who undertook a Road Occupancy, Road Closure and/or Road Cut on an emergency basis pursuant to Subsection 2c.(3) to submit in writing, a written description of the emergency and the reasons why the Municipal Consent Permit could not be obtained in advance of the Road Occupancy, Road Closure and/or Road Cut and any other such information as the Director may require to assess whether the circumstances justified proceeding on an emergency basis.
- (ii) In the event that the Director is not satisfied, in his or her sole discretion, that the circumstances justified the Road Occupancy, Road Closure and/or Road Cut on an emergency basis pursuant to Subsection 2c.(3) the person or public utility who undertook or authorized the Road Occupancy, Road Closure and/or Road Cut shall for the purposes of this By-law, be treated as having engaged in a Road Occupancy, Road Closure and/or Road Cut ,as applicable without a Permit.

9. ENFORCEMENT

a. Enforcement – No Obstruction Etc.

- (1) This By-law may be enforced by any By-law Enforcement Officer.
- (2) No person shall hinder or obstruct, or attempt to hinder or obstruct, any person exercising a power or performing a duty under this By-law.
- (3) For the purposes of Subsection 9a.(1) and (2), a By-law Enforcement Officer or person or persons authorized by the Director may enter onto land at any reasonable time to exercise a power, inspect or perform a duty under this By-law.

10. OFFENCES AND PENALTIES

- (1) Every person who hinders or obstructs or attempts to hinder or obstruct the Director or any By-law Enforcement Officer exercising a power or performing a duty pursuant to this By-law is guilty of an offence as provided in Section 426 of the *Municipal Act*.
- (2) Every person who contravenes any of the provisions of this By-law and any Director or Officer of a corporation who concurs in such contravention is guilty of an offence and upon conviction is liable to a fine as provided for in the *Provincial Offences Act*, R.S.O. 1990, c.P.33.
- (3) For the purposes of Subsection 10(1) and (2) herein, each day on which a person contravenes any of the provisions of this By-law shall be deemed to constitute a separate offence under this By-law.

- (4) The levying and payment of any fine as provided for under *the Provincial Offences Act* shall not relieve a person from the necessity of paying any costs or charges for which such person is liable under this By-law.
- (5) The making of a false or intentionally misleading recital of fact, statement or representation in any application provided required by this By-law shall be deemed to be a violation of the provisions of this By-law.
- (6) An offence and subsequent conviction under this By-law pursuant to the *Provincial Offences Act*, R.S.O. 1990, c.P.33 or the *Municipal Act*, shall not be deemed in any way to preclude the City from issuing a separate legal proceeding to recover charges, costs and expenses incurred by the City and which may be recovered in a Court of competent jurisdiction.
- (7) The City may recover all costs of doing a matter or thing from the Permit Holder by action or by adding to the tax roll for the Permit Holder's property and collecting the costs in the same manner as property taxes. The costs include interest calculated at the rate of fifteen (15%) percent calculated for the period commencing on the day the City incurs the costs and ending on the day the costs, including the interest are paid in full.

11. PROHIBITION ORDER

- (1) When a person has been convicted of an offence under this By-law, the Ontario Court (Provincial Division), or any court of competent jurisdiction thereafter may, in addition to any other penalty imposed on the person convicted, issue an order prohibiting the continuation of the offence or doing of any act or thing by the person convicted directed towards the continuation of the offence.

12. REMEDIATION

- (1) Where the Director determines that a person is not in compliance with this By-law the Director may make an Order. The order shall set out:
 - (a) reasonable particulars of the contravention adequate to identify the contravention(s);
 - (b) the location where the contravention(s) occurred;
 - (c) the work required to be done by the Permit Holder;
 - (d) the date by which the work must be done to correct the contravention(s); and
 - (e) advise that in default of the work being done by the specified date, the City may correct the contravention at the person's expense.
- (2) An Order may, pursuant to s. 445(3) of the *Municipal Act*, require work to be done even though the facts which constitute the contravention of this By-law were present before this By-law making them a contravention came into force.

13. SECTION 8 OF CITY STREETS BY-LAW 2008-131

- (1) Section 8 of the City By-law 2008-131 is deleted in its entirety.

14. ENACTMENT

- (1) This By-law shall come into force and take effect on March 9, 2020.

PASSED in open Council this 9th day of March, 2020.

MAYOR – CHRISTIAN PROVENZANO

CITY CLERK – RACHEL TYCZINSKI