

Authority: Item
Report
CM:
Ward: City Wide

Bill No.

CITY OF HAMILTON

BY-LAW NO. 24-XXX

To Amend By-law 15-091, being the Roads – Equipment Installation By-law

WHEREAS Council deems it necessary to amend By-law 15-091 to support the City's ability to enforce permits issued for work within the public right-of-way;

NOW THEREFORE Council of the City of Hamilton enacts as follows:

1. That the amendments to this By-law include any necessary grammatical, numbering, and lettering changes;
2. That the following terms in Section 1.1 of By-law 15-091 be amended by substituting them with the following definitions:

"Director" means the Director of Engineering Services, the Director of Transportation, and the General Manager of the Public Works Department for the City and their designate or successor;

"Officer" means a Municipal Law Enforcement Officer or a person appointed by Council, by the Director, or under this By law, to administer or enforce this By-law and includes a person employed by the City whose duties are to enforce this By-law;

"permit" means written authorization granted by the Director under the provisions of this by-law, and includes a municipal consent permit, excavation permit, and road occupancy permit;

"person" includes an individual, association, firm, partnership, corporation, company, trust, organization, trustee, agent or legal representative of an individual;

"Permit Application Office" means an office as set out in the Right-of-Way Utility Installation & Permit Manual, as amended;

"road" means a highway or road allowance under the jurisdiction of the City as defined by the *Municipal Act, 2001*, SO 2001, c 25, and includes a common and public highway, street, sidewalk, multi-use trail, walkway, alleyway, avenue,

parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for passage of vehicles and pedestrians and includes the area between the lateral property lines thereof;

“work” means work on equipment that affects any road and includes any excavation, or installation, repair, replacement or extension of equipment on, in or under or a road;

3. That the definition of “Roads – Equipment Installation Manual” in Section 1.1 of By-law 15-091 be amended by replacing it with the following:

“Right-of-Way Utility Installation & Permit Manual” means the Right-of-Way Utility Installation & Permit Manual, as amended; and

4. That By-law 15-091 be amended by replacing all references to the “Roads – Equipment Installation Manual” with reference to the “Right-of-Way Utility Installation & Permit Manual”, unless those references have been explicitly repealed and not replaced as per this amending by-law;
5. That section 2.3 of By-law 15-091 be amended by replacing the words “he or she is” with “they are”, such that section 2.3 will read: “The Director may waive the application of all or part of this By-law if they are satisfied that the work is adequately regulated by an agreement with the City or another form of approval given by the City.”;
6. That subsection 3.1(1) of By-law 15-091 be amended by removing the words “and the Roads - Equipment Installation Manual”, such that subsection 3.1(1) will read: “No person shall undertake any work without first obtaining a permit in accordance with this By-law.”;
7. That section 3.2 of By-law 15-091 be amended by removing the words “, the Roads - Equipment Installation Manual”, such that section 3.2 will read: “No permit holder shall carry out or permit the carrying of work that is not in compliance with this By-law and all conditions of any permit issued under this By-law.”;
8. That section 3.4 of By-law 15-091 be repealed and replaced with the following:

“Every person undertaking work shall comply with all applicable statutes, regulations, standards, codes, and by-laws.”
9. That section 3.5 of By-law 15-091 be amended by removing the words “or the Roads - Equipment Installation Manual”, such that section 3.5 will read: “No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this By-law.”;

10. That section 3.6 of By-law 15-091 be amended by removing the words “or the Roads - Equipment Installation Manual”, such that section 3.6 will read: “No person shall provide false or inaccurate information in an application for a permit issued under this By-law or in any document or thing required to be submitted by this By-law.”;
11. That By-law 15-091 be amended by repealing Part 4, titled “Moratorium – Equipment Accessed by the Public”;
12. That section 5.1 of By-law 15-091 be repealed and replaced with the following:

“A person applying for a permit shall submit a completed application to the Director that is in accordance with the Right-of-Way Utility Installation & Permit Manual and includes, without limitation:”
13. That section 5.2 of By-law 15-091 be repealed and replaced with the following:

“The Director may issue a permit after receipt of a completed application, including any revised or additional information required by the Director, and the prescribed application fees. In making a decision to issue or refuse a permit, the Director shall have regard to the By-law and the Right-of-Way Utility Installation & Permit Manual, including, but not limited to, the requirements in the Right-of-Way Utility Installation & Permit Manual for alignments, services, horizontal and vertical services, depth of cover, structures with surface access, and common trenching.”
14. That subsection 5.5(2) of By-law 15-091, including subsections (a) through (e), be repealed, and replaced with the following:

“(2) The Director may approve an application for an extension having regard for:

 - (a) the work to be completed during the extension;
 - (b) the progress of the work up until the date of the application;
 - (c) the performance of the permit holder up until the date of the application;
 - (d) any potential conflict that may result from the extension with other planned or ongoing work;
 - (e) the safety and convenience of the public; and
 - (f) any other factor the Director deems to be applicable and appropriate.”
 15. That subsection 5.5(3) of By-law 15-091 be amended by replacing the word “fresh” with “new”, such that subsection 5.5(3) will read: “A permit holder cannot apply for more than one extension and shall make a new application [...]”;
 16. That subsection 6.2(1) of By-law 15-091 be amended by replacing the word “inform” with “notify”, such that subsection 6.2(1) will read: “A permit holder shall immediately notify the Director of any change to:”;

17. That subsection 6.2(2) of By-law 15-091 be amended by replacing the word "fresh" with "new", such that section 6.2(2) will read: "The Director may require any one or more of revised or additional information, additional prescribed fees, or a new application [...]";
18. That section 6.2 be amended by adding subsection 6.2(3) immediately following subsection 6.2(2), with subsection 6.2(3) reading as follows:
 - (3) For the purposes of subsection (1), a permit holder shall notify the Director by contacting the Permit Application Office verbally or via e-mail in accordance with the contact information for the Permit Application Office as provided for in the Right-of-Way Utility Installation & Permit Manual.
19. That subsection 6.3(1) of By-law 15-091 be amended by replacing the words "he or she" with "the Director", such that subsection 6.3(1) will read: "The Director may impose conditions as a requirement for obtaining or continuing to hold a permit issued under this By-law that the Director considers appropriate [...]";
20. That subsection 6.3(1)(a) of By-law 15-091 be amended by adding the word "working" before the words "days in advance", such that subsection 6.3(1)(a) will read: "giving the Director notice of the date the work will commence at least five working days in advance [...]";
21. That subsection 6.3(1)(d) of By-law 15-091 be repealed and replaced with the following:

"producing a copy of the permit at the location of the work upon demand and/or posting one or more copies of the permit in one or more conspicuous locations at the location of the work;"
22. That subsection 6.3(1)(e) of By-law 15-091 be repealed and replaced with the following:

"carrying out the work diligently and in a manner consistent with industry best practices, including:"
23. That section 6.4 of By-law 15-091 be amended by replacing the words "his or her" with "their", such that section 6.4 will read: "The Director may, on their own initiative:";
24. That section 6.5 of By-law 15-091 be repealed and replaced with the following:

"Where the Director is satisfied that a suspension or revocation is necessary in an emergency situation involving an immediate threat or danger to a road, any property abutting a road, or to any person, the Director may immediately suspend or revoke a permit issued under this By-law by providing notice to the permit holder,

orally or in writing, in accordance with the contact information provided on the permit application."

25. That subsection 6.6(a) of By-law 15-091 be amended by replacing the words "his or her" with "the Director's", such that subsection 6.6(a) will read: "in the Director's opinion the permit holder:";
26. That subsection 6.6(a)(i) of By-law 15-091 be repealed and replaced with the following:

"has failed to comply with this By-law or with a condition of a permit;"
27. That subsection 6.6(a)(iii) of By-law 15-091 be amended by removing the word "seriously", such that section 6.6(a)(iii) will read: "fails, within 30 days after the issuance of the permit, to commence the work;"
28. That subsection 6.6(b) of By-law 15-091 be repealed and replaced with the following:

"any person doing work on behalf of the permit holder has failed to comply with any applicable statutes, regulations, standards, codes, or by-laws."
29. That subsection 6.7(1) of By-law 15-091 be repealed and replaced with the following:

6.7 "The Director may give notice of the suspension or revocation of a permit to a permit holder by notifying the permit holder orally or in writing, in accordance with the contact information provided on the permit application."
30. That subsection 6.7(2) of By-law 15-091 be repealed.
31. That subsection 7.2(a)(i) of By-law 15-091 be repealed and replaced with the following:

"the assistance or work of City staff, City agents, Municipal Law Enforcement Officers, and/or the assistance of police officers;"
32. That subsection 7.2(b) of By-law 15-091 be amended by removing the words "including the Roads – Equipment Installation Manual", such that subsection 7.2(b) will read: "prescribing the format and content of any forms or other documents required under this By-law;"
33. That subsection 7.3(b) of By-law 15-091 be amended by removing the words "and the Roads – Equipment Installation Manual", such that subsection 7.3(b) will read: "make orders or other requirements as authorized under this By-law;"

34. That section 7.4 of By-law 15-091 be repealed and replaced with the following:

“The Director, the City's Manager of Geomatics and Corridor Management, Municipal Law Enforcement Officers, and all City employees in the Geomatics and Corridor Management Section of the Engineering Services Division of the Public Works Department of the City of Hamilton are appointed as Officers for the purposes of the administration and enforcement of this By-law and the applicable sections of the *Municipal Act, 2001*.”

35. That section 7.7 of By-law 15-091 be amended by adding the words “as amended” after the words “Charges By-law,”, such that subsection 7.7 will read: “All fees referred to in this By-law, including fees for services provided, shall be as set out in the City's User Fees and Charges By-law, as amended, or as otherwise [...]”
36. That section 7.10 of By-law 15-091 be amended by replacing the words “he or she” with “the Officer”, such that subsection 7.10 will read: “[...] , in accordance with the conditions set out in that section, where the Officer has been prevented or [...]”;
37. That section 7.11 of By-law 15-091 be amended by replacing the words “he or she” with “the Officer”, such that subsection 7.11 will read: “if an Officer is satisfied that a contravention of this By-law has occurred, the Officer may make [...]”;
38. That section 7.13 of By-law 15-091 be amended by replacing the words “he or she” with “the Officer”, such that subsection 7.13 will read: “If an Officer is satisfied that a contravention of this By-law has occurred, the Officer may make [...]”;
39. That By-law 15-091 be amended by renaming the Parts as follows, and that all references to the respective Parts be amended accordingly:

“PART 5 – PERMIT APPLICATION” is to be renamed as “PART 4 – PERMIT APPLICATION”;

“PART 6 – PERMITS – GENERAL” is to be renamed as “PART 5 – PERMITS – GENERAL”;

“PART 7 – ADMINISTRATION AND ENFORCEMENT” is to be renamed as “PART 6 – ADMINISTRATION AND ENFORCEMENT”;

“PART 8 – PENALTIES” is to be renamed as “PART 7 – PENALTIES”;

“PART 9 – GENERAL PROVISIONS” is to be renamed “PART 8 – GENERAL PROVISIONS”; and

“PART 10 – DELETIONS, TRANSITION AND ENACTMENT” is to be renamed “PART 9 – DELETIONS, TRANSITION AND ENACTMENT”;

- 40. That in all other respects, By-law 15-091 is confirmed; and,
- 41. That the provisions of this By-law shall become effective on the date that it is passed by City Council.

PASSED this _____ day of _____, 20_____.

A. Horwath
Mayor

M. Trennum
City Clerk