

Authority: Item
Report
CM:
Ward: City Wide

Bill No.

CITY OF HAMILTON

BY-LAW NO. 24-XXX

To Amend By-law 86-77, being the Streets By-law

WHEREAS Council deems it necessary to amend By-law 86-77 to support the City's ability to enforce permits issued for activities 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 a word defined in or importing the singular number has the same meaning when used in the plural number, and vice versa; or words in singular shall be deemed to include plural and words in plural shall be deemed to include singular and shall read with all changes in gender or number as the context may require.
3. That a reference to any act, bylaw, rule or regulation or to a provision thereof shall be deemed to include a reference to any act, bylaw, rule or regulation or provision enacted in substitution therefore or amendment thereof.
4. That the headings to each section are inserted for convenience of reference only and do not form part of the By-law;
5. That where an officer of the City is named, or a reference is made to an office of the City, that reference shall be deemed to include a reference to the designate of that person, as appointed in accordance with policies and procedures of the City in force from time to time.
6. That Section 1 of By-law 86-77 be amended to add the following definitions in alphabetical order:

"Officer" means 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, and includes a Municipal Law Enforcement Officer and a Hamilton Police Services Officer.

“**Person**” includes an individual, association, firm, partnership, corporation, company, trust, organization, trustee, agent or legal representative of an individual;

“**Right of Way Occupancy Permit**” means written authorization granted by the Director under the provisions of this by-law, and includes a road occupancy permit;

“**Right of Way Occupancy Permit holder**” means a person to whom a permit has been issued and includes persons engaged in activities on behalf of the permit holder

“**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;

“**Road Closure**” means the temporary or permanent closing of a Highway including a road;

“**Road Occupancy**” means any activity likely to impact on the operational efficiency of the Highway network, in other words, any activity that requires the road to be used in such a way as to affect traffic flow, or an off-road activity that affects or can affect traffic flow and may involve the closure of traffic lanes or appurtenances thereto.

7. That Section 2 of By-Law 86-77 be amended by adding Section 2a, with the heading ‘Application of By-Law’, then by adding words to read “This By-law applies to public properties, owned or leased, and includes property within the City’s Right of Way, within the City of Hamilton”.
8. That the heading of Section 9 of By-Law 86-77 for convenience be amended by adding the words, “Closing, Occupying,” before “Obstructing” such that the heading of section 9 reads as, “Closing, Occupying, Obstructing, Encumbering, Injuring or Fouling Highways Prohibited”.
9. That Section 9. (1) of By-Law 86-77 be amended by adding the words, “close, occupy” so that it reads, “...no person shall close, occupy, obstruct, encumber, injure, or foul any highway, or obstruct any drain, ditch or culvert upon a highway.
10. That Sections 9 (2), 9 (3), 9 (4), 9 (5), 9 (6) and 9 (7) of By-law 86-77 be amended and renumbered to Sections 9 (3), 9 (4), 9 (5), 9(6), 9 (7) and 9 (8),

respectively, prior to changes outlined in Item 11, such that Section 9 (3) reads, "Obstructions and Encumbrances...", Section 9 (4) reads, "Removal of Obstructions...", Section 9 (5) reads, "Fouling of Highways...", Section 9 (6) reads, "Where a highway is fouled...". Section 9(7) reads, "Where the fouling is discovered...", Section 9 (8) reads, "The fouling shall be removed..."

11. That Section 9. (2) of By-Law 86-77 be amended by adding the words, "Closures and Occupations. Without in any way limiting the generality of the foregoing prohibition of closing and occupying a highway, every person who intends to temporarily occupy a highway for the purposes of activities on the right of way shall obtain, where necessary, a Right of Way Occupancy permit from the Director of Public Works or designate.
12. That Section 9. (2) of By-Law 86-77 be amended by adding subsection 9. (2) (a) immediately following section 9. (2), with subsection 9. (2) (a) reading as follows:
(a) No person shall undertake any activity on the City's Right of Way without first obtaining a Right of Way Occupancy Permit in accordance with this By-law.
13. That section 9. (2) of By-Law 86-77 be amended by adding subsection 9. (2) (b), immediately following subsection 9.(2)(a), with subsection 9. (2) (b) reading as follows:
(b) No Right of Way Occupancy Permit holder shall carry out or permit the carrying of work or activities that is not in compliance with this By-law and all conditions of any permit issued under this By-law.
14. That section 9. (2) of By-Law 86-77 be amended by adding subsection 9. (2) (c), immediately following subsection 9.(2)(b), with subsection 9. (2) (c) reading as follows:
(c) Every person undertaking activity within the City's Right of Way shall comply with all applicable statutes, regulations, standards, codes, and by-laws.
15. That section 16 of By-Law 86-77 be amended by adding section 16(14), such that section 16 (14) 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."
16. That section 16 of By-Law 86-77 be amended by adding section 16(15)", such that Section 16(15) 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."
17. That Section 17 of By-Law 86-77 is repealed and replaced with,

(1) Every person who contravenes any provision of this By-law or fails to comply with any order made under this By-law, and every Director or Officer of a corporation who knowingly concurs in the corporation's contravention of the

provision or failure to comply with the order is, upon conviction, guilty of an offence and is liable:

- (a) on a first conviction, to a fine of not more \$10,000 and,
- (b) on any subsequent conviction, to a fine of not more than \$25,000.

(2) Despite subsection (1), where the person convicted is a corporation,

- (a) the maximum fines in Subsection 17(a) are \$50,000; and,
- (b) the maximum fines in Subsection 17(b) are \$100,000.

(3) Every person who is convicted of an offence under this By-law may be liable, in addition to the fines established under Sections 17(1) and 17(2), to a special fine, which may exceed \$100,000, designed to eliminate or reduce any economic advantage or gain from contravening this By-law or failing to comply with an order made under this By-law.

(4) Where a person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, make an order:

- (a) prohibiting the continuation or repetition of the offence by the person convicted;
- (b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

(5) If a court of competent jurisdiction declares any provision or provisions of this By-law invalid, such provision or provisions are deemed to be severable and it is the intention of Council that the remainder of the By-law shall continue to be in force.

(6) Where a provision of this By-law conflicts with the provision of another bylaw, Act or regulation in force within the City, the provision that establishes the higher standard to protect the health and safety of persons prevails.

18. That By-Law 86-77 is amended by adding Section 21, such that Section 21 will read, "All approvals with respect to work as defined in this By-law, that are in effect at the time this By-law comes into force, are continued and are subject to this By-law with all necessary modifications."
19. That in all other respects, By-law 86-77 is confirmed; and,
20. 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