

Municipality of Cumberland By-Law 07-09

Cumberland Streets and Sidewalks By-Law

Title

1. This By-Law is entitled the "Cumberland Streets and Sidewalks By-Law" and is enacted pursuant to the powers conferred in Part XII of the Municipal Government Act.
2. This By-Law applies only to streets, sidewalks and other property owned by the Municipality of the County of Cumberland and to activities or conditions affecting such Municipal streets, sidewalks and property.

Definitions

3. In this By-Law:
 - 1) "**abutter**" means the owner, lessee or occupier of any premises or lot in the Municipality which abuts a Municipal street, and where the premises or lot has to be registered as a condominium under the *Condominium Property Act*, includes the condominium corporation which manages the premises or lot;
 - 2) "**CAO**" means the Chief Administrative Officer of the Municipality;
 - 3) "**crosswalk**" means that portion of a Municipal roadway ordinarily included within the prolongation or connection of curb lines or the edge of a roadway and property lines at intersections or any portion of a roadway clearly indicated for pedestrian crossings by lines or other markings on the road surface;
 - 4) "**Engineer**" means the Municipal Engineer and includes a person acting under the supervision and direction of the Engineer;
 - 5) "**Municipal**" and "**Municipality**" mean the Municipality of the County of Cumberland;
 - 6) "**Municipal Infrastructure**" includes infrastructure that supports the provision of Municipal services as well as water services, and without restricting the generality of the foregoing includes public trees, street lighting, traffic lights, traffic signs and other Municipal signs;
 - 7) "**Municipal street**" means a street owned by the Municipality;
 - 8) "**roadway**" means that portion of a Municipal street between the curb lines or the traveled portion of a street designed for vehicular traffic and, except where the context indicates otherwise, includes a crosswalk;
 - 9) "**sewer or water system**" means a sewer or water system owned and operated by the Municipality or by a water utility owned by the Municipality;
 - 10) "**sidewalk**" means that portion of a Municipal street between the curb line and adjacent property line or any part of the street especially set aside for pedestrian travel and separated from the roadway;
 - 11) "**street**" means a Municipal street, highway, road, lane, sidewalk thoroughfare, bridge, square and the curbs, gutters, culverts and retaining walls in connection therewith and, without restricting the generality of the foregoing, includes the full right-of-way width;
 - 12) "**utility**" includes any person or corporation that provides water, electric power, telecommunications service, natural gas or other gas intended for use a fuel to the public, except a water utility owned by the Municipality;

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- 13) “**utility facilities**” includes any pole, pole lines (including braces and anchors), aerial cables, manholes conduits, underground cables, pipes for the carriage of gas or liquids, and associated apparatus for the provision of utility services including amplifiers, connection panels, transformers, valves and other fittings or equipment.

Encroaching Vegetation

4. Abutters shall trim the branches of trees, hedges, bushes or other shrubbery, which encroaches from the abutting property over a street so as to prevent such trees, hedge, bush or shrubbery:
1. from interfering with vehicle traffic traveling on a roadway, up to a height of 4.2 metres,
 2. from interfering with pedestrian traffic on a sidewalk
 3. from interfering with or affecting the sight lines required by a person on a bicycle or in a motor vehicle traveling on the roadway up to a minimum height of 3 meters; or
 4. from interfering with any structure on or in a street.”

Nuisance

5. No abutter shall place, permit to be placed, or permit to escape from the abutter’s property or driveway, dirt, dust, or other nuisance onto the street.

Damage

6. No person shall
- 1) move any heavy load over or deposit any heavy load on any sidewalk unless the sidewalk has first been protected by a covering of boards of adequate thickness to prevent any visible damage or disturbance to the surface of the sidewalk, or
 - 2) otherwise cause or permit any visible damage or disturbance to the surface of the sidewalk, except as authorized by a Street Disturbance Permit.
7. No person shall
- 1) move any heavy vehicle or load over, or leave any heavy vehicle or load on any roadway and by doing so thereby causes or permit any visible damage to the surface of the roadway;
 - 2) cause or permit any load or part of a load to drag on any roadway in such a manner as to cause any visible damage or disturbance to the surface of the roadway, or
 - 3) otherwise cause or permit any visible damage or disturbance to the surface of a roadway, except as authorized by a Street Disturbance Permit.
8. No person shall drive over a curb with a heavy load or otherwise cause any visible damage or disturbance to the surface of the curb, except as authorized by a Street Disturbance Permit.

Gates

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9. No person shall construct or permit to be used any gate or barriers that open into or encroach upon any portion of the street or that may in any way impede pedestrian or vehicular traffic.

Street Disturbance Permit

10. No person shall:
- 1) make any excavation in a street;
 - 2) cause or permit the breaking of the surface of a street or other physical damage to a street by construction activities in or near a street; or
 - 3) otherwise engage in construction activity or any other activity that is likely to obstruct pedestrian or vehicle traffic in a street or cause physical damage to the street without first obtaining a Street Disturbance Permit from the Engineer.
11. Every application for a street Disturbance Permit shall include:
- 1) a non-refundable fee of \$10.00 when the Permit is required solely because of an obstruction of one month or less to the pedestrian or vehicular traffic in a street, without breaking or damaging the surface or subsurface of a street or to Municipal infrastructure or property in, on or under a street;
 - 2) a non-refundable fee in the amount of \$100.00 in all other cases; and
 - 3) where an excavation or other activity is involved that may, in the opinion of the Engineer, cause damage to a street, a security deposit in an amount the Engineer may reasonably determine is required to guarantee the repair of the street.
12. The security deposit required under subsection (3) of section (12) shall be retained as security that the applicant will properly perform and complete the work for which the permit is granted, and restore and keep the surface of the street and other Municipal property when such work is done, to a good condition to the satisfaction of the Engineer for a period of one year after the completion of the work.
13. If the Engineer is of the opinion that the surface of the street or other Municipal property is not restored and kept in good condition for the one year period, he may, upon advance notice to the Permit holder, perform such work in respect of the street as he considers necessary and the cost shall be deducted from the deposit, and the balance, if any, returned upon expiry of the one year period. If the cost of such work exceeds the deposit, the Municipality may recover the balance, together with costs and pre-judgment interest, as a first lien on the property for whose benefit the work was undertaken.
14. The Engineer may grant an Annual Street Disturbance Permit to a utility for the purpose of installation of Utility facilities, including pavement patching related thereto which require excavations in municipal streets, subject to such conditions as the Engineer may determine, and, without restricting the generality of the foregoing any such permit shall require that the Engineer be informed of the location and time of each instance of street disturbance prior to its commencement.
15. An application for an Annual Street Disturbance Permit shall include:
- 1) a non-refundable fee of \$500.00; and
 - 2) a security deposit in the amount of \$10,000.00 to be maintained in place for the duration of the permit.

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16. The provisions of sections (13 and 14) shall apply, with any necessary changes for context, to the security deposit pursuant to subsection (2) of section 16 and the balance of the security deposit shall be returnable upon expiration of the permit.
17. Every permit holder shall file in the office of the Engineer a notice of completion of work for all facilities constructed or repaired within one week of the completion of work.
18. Every excavation in a street shall, after notice, either written or verbal, given by the Engineer to the Permit holder, be closed and filled as required by the notice, and if it is not so closed and filled within 24 hours after such notice, then it may be closed and filled by the Municipality at the expense of the Permit holder.
19. In the event of an emergency arising at the location of the excavation, the Engineer may immediately fill or direct the filling of the excavation at the expense of the Permit holder.
20. Every person obtaining a Street Disturbance Permit to make any excavation or opening in any street shall ensure the work complies with any standards relating to excavation in the *Occupational Health and Safety Act* or *Regulations* or any other applicable statutes or regulations as well as the current version of the Nova Scotia Temporary Workplace Traffic Control Manual.
21. In addition to any other conditions imposed by the Engineer for the granting of a Street Disturbance Permit, all permits shall be subject to the following:
 - 1) the Engineer may stipulate the hours of work;
 - 2) the Permit holder shall keep the work site at all times safe with respect to vehicular and pedestrian traffic, including direction of traffic, barricades, lights, signs, and supply of properly equipped and trained traffic control personnel for protection of traffic, in accordance with the Temporary Workplace and Traffic Control Manual or other standards in force pursuant to the *Occupational Health and Safety Act*;
 - 3) the Engineer may order additional precautions, work stoppages and restorations of the street should circumstances warrant and upon the failure of the Permit Holder to comply within 24 hours with such order, or immediately in the event of an emergency, the Municipality may undertake any necessary action at the expense of the Permit holder;
 - 4) the Permit holder shall ensure that the street is kept free from nuisance, dirt and dust;
 - 5) the Permit holder shall dispose, store, or haul away any clean material suitable for use as structural fill excavated from a street in accordance with the directions of the Engineer and the material may, at the Engineer's discretion, remain Municipal property;
 - 6) the Permit holder shall ensure that all excavations are backfilled and restored in such a manner and with such material as is approved by the Engineer and that advance notice of a minimum of 24 hours of the backfilling operation shall be provided to the Engineer so that it may be properly inspected;
 - 7) the Permit holder shall comply and ensure compliance by any agents, contractors or employees, with any Policies or Standards of the Municipality from time to time, regarding design or construction standards applicable to Municipal infrastructure or property in, on, under or near a street;
 - 8) the provision of an indemnity in favour of, and in form satisfactory to, the Municipality for the defense and indemnification of any claims arising out of or in relation to the proposed street disturbance activities;

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- 9) the permit shall be valid for a period of 6 months from date of issuance, but here work has commenced the permit shall expire 12 months after the date of issuance; and
 - 10) any other condition in respect of safety or preservation of Municipal property interests that the Engineer may impose.
22. In the event of an emergency requiring the immediate excavation of the street, the Engineer may give verbal permission for such excavation on the condition that a Street Disturbance Permit is applied for and obtained on the first working day subsequent to the granting of such permission.
23. The Engineer may refuse to issue, renew or amend, or may revoke or suspend a Street Disturbance Permit, upon reasonable notice to an applicant or Permit holder, when
- 1) the Engineer is not satisfied that the steps taken, or proposed steps to be taken, by the applicant or Permit holder had adequately protected or will adequately protect the Municipality's property;
 - 2) the Engineer is not satisfied that the steps taken, or proposed steps to be taken, by the applicant or Permit holder has minimized or will minimize the obstruction to pedestrian or vehicular traffic in the street;
 - 3) the Engineer is not satisfied that the steps taken, or proposed steps to be taken, by the applicant or Permit holder has achieved or will achieve compliance with any applicable Policies or Standards of the Municipality;
 - 4) this By-Law or the terms or conditions of a Permit have been contravened; or
 - 5) for any other reason in the public interest.
24. A person aggrieved by a decision of the Engineer pursuant to section (24) may appeal that decision to the CAO within 15 days of the decision by written notice of appeal to the CAO.
25. After the hearing of an appeal, the CAO may confirm, rescind or vary the decision of the Engineer.

Access

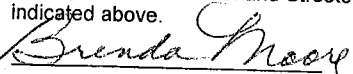
26. No person shall create or construct, and no abutter shall permit or cause the creation or construction of a new access to a street without first having obtained an Access Permit.
27. 1) A person wishing to obtain an Access Permit may apply by supplying the following information, in writing, to the Municipality:
- a) the name, current address and telephone number of the owner;
 - b) the property identification number (PID) for the property;
 - c) the civic address, if assigned;
 - d) the current and proposed use of the property;
 - e) a sketch showing the location and width of the proposed access relative to the nearest sideline of the lot; and
 - f) a description of the materials to be used to create the access.
- 2) The applicant shall also place stakes at the edge of their property to identify the proposed location of the access.

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28. The Engineer shall review an application received for an Access Permit by evaluating the proposed access in terms of the adequacy of the materials to be used, the stopping site distances, speed limit and road layout in the vicinity, and may make reference to standards and policies employed by the Province of Nova Scotia in so doing, and shall either grant or deny the application. The decision of the Engineer shall be final in this regard.
29. Installation of an access, including all associated costs, is the responsibility of the abutter and must be done in accordance with the permit.
30. All property and structures within the street are the property of the Municipality.
31. Notwithstanding section 31, maintenance of the surface of every access to a street, between the edge of the roadway and the property line of the abutter, is the responsibility of the abutter.
32. Although the intent of sections 27 to 29 inclusive is to maintain the safety of Municipal Streets and Sidewalks, ultimate responsibility for an access shall remain with the relevant abutter, and nothing in this By-Law shall be interpreted as relieving the abutter from that responsibility. The Municipality and its officers, employees and agents, including the Engineer shall not be liable for any injury or damage arising from the installation of any access, with or without a permit.

Penalty

33. Any person who contravenes any provision of the By-Law is punishable on summary conviction by a fine of not less than \$200.00 and not more than \$2,000.00 and to imprisonment of not more than 30 days in default of payment thereof.
34. Where a person contravenes this By-Law and is convicted of an offence for so doing, the court may, in addition to any penalty imposed pursuant to section 30 herein, impose a charge equal to or less than the amount of any clean-up, repair, remediation, or other such costs incurred by the Municipality with regard to the contravention.
35. Any person who contravenes this By-Law and who is given notice of the contravention may pay the Municipality, at the place specified in the notice, the sum of \$100.00 within 14 days of the date of the notice and shall thereby avoid prosecution for that contravention.

Clerk's Annotation for Official By-Law Book	
Date of the first reading:	<u>October 24, 2007</u>
Date of advertisement of Notice of Intent to Consider:	<u>November 7, 2007</u>
Date of final reading:	<u>November 21, 2007</u>
Date of advertisement of Passage of By-Law*:	<u>November 23, 2007</u>
Date of mailing to Minister a certified copy of By-Law:	<u>November 28, 2007</u>
I certify that this Cumberland Streets and Sidewalks By-Law was adopted by Council and published as indicated above.	
	<u>January 21, 2008</u>
Clerk	Date
* Effective Date of the By-Law unless otherwise specified in the text of the By-Law.	