

Request for Decision

Consolidation of Road Fouling, Occupancy and Entrance By-laws

Presented To:	Policy Committee
Presented:	Wednesday, Sep 21, 2011
Report Date	Wednesday, Sep 14, 2011
Type:	Referred & Deferred Matters

Recommendation

That the Road Fouling Bylaw, the Road Occupancy Bylaw and the Private Entrance Bylaw be adopted and that the User Fee Bylaw be amended to incorporate the necessary fees associated with these bylaws;

And that the proposed Pavement Degradation Fees recommended by Policy Committee be referred to the Finance Committee for the 2012 budget process.

Finance Implications

If approved, the recommendation for Payment Degradation Fees will be forwarded to the Finance Committee for consideration in the 2012 budget. Annualized revenue in the amount of approximately \$90,000 should be realized from this new fee.

Background

A request for decision with regards to the Road Fouling, Road Occupancy and Private Entrance Permit bylaws was deferred at the March 23, 2011, Policy Committee meeting in order that Council be given an opportunity to review proposed the bylaws. The bylaws were distributed under separate cover on July 26, 2011, for review and comment. No comments or concerns were received, therefore the bylaws have not been altered since the original submission on March 23, 2011.

The original report presented to the Policy Committee on March 23, 2011, is hereby attached (Exhibit A). The proposed bylaws are attached in Exhibit B, C and D.

Signed By

Report Prepared By

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Digitally Signed Sep 14, 11

Division Review

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Recommended by the Department

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Recommended by the C.A.O.

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The proposed Pavement Degradation Fees for 2012 are proposed as follows:

Pavement Age	2012 Pavement Degradation Fees (per square metre)
≤ 3 Years	\$31.21
> 3 to ≤ 5 Years	\$25.91
> 5 to ≤ 7 Years	\$20.87
> 7 to ≤ 10 Years	\$12.95
> 10 Years +	\$5.20

The Pavement Degradation Fee will have a budget impact on most Utility Companies such as Greater Sudbury Hydro Plus, Hydro One, Bell Canada, Vianet, Union Gas as well as some City Departments, primarily Water/Wastewater Services. Based on a five (5) year average of pavement cuts, it is estimated that Water/Wastewater Services will be required pay an annual average Pavement Degradation Fee of \$80,000. Additional fees of \$10,000 or more are anticipated from Pavement Degradation Fees charged to external Utility Companies. Two separate notices regarding the pending Pavement Degradation Fees have been provided to all the locally operating Utility Companies and City Departments at the 2010 annual Utilities Coordination Meeting and by letter in September of 2010.

Pavement Degradation Fees once again discussed during the 2011 annual Utilities Coordinating Meeting. If adopted, the Utility Companies will be formally notified that the Pavement Degradation Fees will commence on July 1, 2012. The fees will be increased annually as appropriate.

As such, a request for decision is required and Staff is recommending that the Road Fouling, Road Occupancy and Private Entrance Permit bylaws be adopted.

Request for Decision

Consolidation of Road Fouling, Occupancy and Entrance By-laws

Presented To: Policy Committee

Presented: Wednesday, Mar 23, 2011

Report Date Wednesday, Feb 02, 2011

Type: Managers' Reports

Recommendation

That the Road Fouling By-law, the Road Occupancy By-law and the Private Entrance By-law be passed and that the User Fee By-law be amended to incorporate the necessary fees associated with these by-laws all in accordance with the report from the General Manager of Infrastructure Services dated February 2, 2011.

Finance Implications

If approved, the pavement degradation fees will be adjusted in the 2011 operating budget during budget deliberations.

BACKGROUND

A large number of by-laws from the former Sudbury area municipalities

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still exist which address various issues regarding municipal highways. The Road Fouling and Road Occupancy By-Laws typically address such topics as road fouling, use, maintenance and occupation of roads which also includes items such as roadside ditches and culverts under entrance ways. In some cases an area municipality has had a single by-law which addressed a number of topics. In other instances separate by-laws exist to deal with singular items. These by-laws are currently in effect within the boundaries of the former Sudbury area municipalities. Unfortunately, this has created a patchwork of inconsistent guidelines affecting City roads and made enforcement extremely difficult if at all possible.

In the process of developing new by-laws for the City of Greater Sudbury, staff have revisited the various former Sudbury area municipalities' by-laws in addition to reviewing by-laws of several other municipalities (Ottawa, Winnipeg, Toronto, Montreal, Mississauga, Brampton, North Bay, Pickering, London, Timmins, Sault Ste. Marie, etc.). Staff have also added in their understanding of current issues and concerns facing the City, based on the experiences since amalgamation.

It is proposed to deal with road related issues (other than Traffic and Parking matters) by way of three separate by-laws. All three of these by-laws essentially consolidate provisions in existing by-laws and standard operating procedures. The short titles of these by-laws are: Road Fouling By-Law, Road Occupancy By-Law and Private Entrance By-Law. Each of these by-laws is summarized below:

Road Fouling Bylaw	- Governs all aspects of road fouling associated with the entire road right of way
Road Occupancy Bylaw	- Road Closure Permits - Road Occupancy Permits - Sidewalk Café Permits - Non Refundable Pavement Degradation Fee
Private Entrance Bylaw	- Private Entrance Permits - Culvert Policy

Road Fouling By-Law

The full title of this by-law, "A By-Law to Regulate the Fouling, Obstruction, Use and Care of Highways within the City of Greater Sudbury" provides a summary of the issues dealt within the by-law. This by-law consolidates the prohibitions of former area by-laws that currently exist within the former Sudbury area municipalities and has been updated to address current issues, and to be consistent with a view of securing public safety uniformly across the City in the use of municipal highways.

The portion of the by-law dealing with fouling addresses the deposit of snow, waste, debris and such matters on the highway. The provisions of the bylaws in the former City of Sudbury requiring downtown businesses to address snow and ice on City streets and the obstruction of ditches along highways have been carried forward. Various forms of obstruction of the highway have been prohibited, where this interferes with the intended use of the highway. Examples of such obstructions include, but are not limited to, dumping soil / snow on to the roadway, breaking curbs, scarring the pavement with heavy equipment and obstructing sidewalks. Flexibility can be achieved for special circumstances through encroachment agreements where applicable, or by securing appropriate permits under the other roads by-laws. Actions which damage the sidewalks, boulevards or other parts of the highway continue to be prohibited. As is typical of our by-laws, provisions exist which allow the City to remedy defaults if necessary and recover all costs from property owners.

Road Occupancy By-Law

The full title of this by-law is, "A By-Law to Regulate Road Occupancy Including Road Activity, Road Cuts, Temporary Closures and Sidewalk Cafes". This by-law establishes a permit process to be followed where there is a request to occupy any part of a road. This may be necessary when a utility firm or contractor is installing utilities or service connections to private property within the road allowance whether or not a 'road cut' or cut to the pavement is required. Standards for conduct of the work and road reinstatement are carried forward from the existing by-laws. The new by-law does not address work tendered by the municipality, as this is dealt with in the contract process.

Moreover, the permit system will extend to authorizing the operation of a Sidewalk Café. This incorporates what is currently a 'stand alone' by-law governing Sidewalk Cafés. The by-law also addresses the permit

process for road closures for parades or other special purposes. These items are also governed under existing by-laws. While the new by-law sets standards addressing safety and traffic issues, the giving of notice, indemnity requirements, road restoration and the like, the permit system also provides flexibility to allow the municipality to set additional requirements as necessary based on each individual situation.

While much of the content of the by-law draws on and modifies existing by-laws, and reflects current practice there is one main area of change. Although an internal policy has existed for a "three (3) year no-cut policy" on new pavements, it is desirable to formalize this prohibition. Therefore, the new by-law requires Council approval before a permit can be issued to allow a pavement cut to be made to a road where there has been road construction, reconstruction or resurfacing in the past three (3) years.

It is further proposed that a new 'Pavement Degradation Fee' be created. This non refundable Pavement Degradation Fee is being sought for any pavement cuts or excavations that encroach onto the paved area of the road. The fee structure is derived from similar Pavement Degradation Fees utilized in other municipalities in the province. It reflects the fact that once the uniform integrity of the road structure has been disturbed, it reduces the service life of the roadway and therefore will require more maintenance. It is proposed that the Pavement Degradation Fee be accrued in an account that can be utilized to upgrade the road at a later date under an annual 'Shave and Pave' Program. The Pavement Degradation Fee will vary in accordance with the age of the pavement being cut. The older roadways with shorter remaining useful life will have a lower charge than newer roadways with long life expectancies.

The Auditor General recommended a similar approach in his report titled 'Audit for Roads - Miscellaneous Winter Maintenance' prepared in 2010. Following is an outline of the proposed Pavement Degradation Fee structure:

Pavement Age	2011 Pavement Degradation Fees (per square metre)
≤ 3 Years	\$30.60
> 3 to ≤5 Years	\$25.40
> 5 to ≤7 Years	\$20.40
> 7 to ≤ 10 Years	\$12.70
> 10 Years +	\$5.10

The Pavement Degradation Fee will have a budget impact on most Utility Firms such as Greater Sudbury Hydro Plus, Hydro One, Bell Canada, Vianet, Union Gas as well as some City departments, primarily Water/Wastewater Services. Based on a five (5) year average of pavement cuts, it is estimated that Water/Wastewater Services will need to pay an annual average Pavement Degradation Fee of \$80,000. Additional fees of \$10,000 is anticipated from Pavement Degradation Fees charged to external Utility Companies. Two separate notices regarding the pending Pavement Degradation Fees have been provided to all the locally operating Utility Companies and City Departments at the 2010 annual Utilities Coordination Meeting and by letter in September of 2010.

Private Entrance By-law

While the former area municipalities did not have by-laws in place to control the location and requirements for entrances from private property onto municipal roads, they did have unofficial processes in place to regulate this function. Formalization of this process has become an increasingly important issue. The proposed new by-law incorporates the existing Culvert Policy By-law (established in 2003) as well as existing provisions required for either new or altered private entrances.

In many instances, private entrances have been created without consultation with the City. This has led to broken barrier curbs, installation of extremely long culverts, installation of under sized culverts and positioning of entrances at blind spots to name a few. These types of incidents typically have led to poor drainage due to improperly installed and/or sized culverts, reduction in the life of curbs and roadways due to sawcutting and/or breaking of curbs, creation of water ponding due to altered road drainage and ice build-up during the winter months at ponding locations. Such actions have resulted in increased maintenance costs, undue duress to the travelling public and neighbours, as well as to create liability for both the municipality and the perpetrators. It is desirable to have a separate by-law that deals directly with the primary item, private entrances.

Managing the width, type, location, and number of entrances that each property is allowed is crucial to providing safety for the traveling public as well as the property owners. Sight lines, speed and alignment of the road, snow storage requirements and traffic interruptions will be taken into account when assessing an application under this new by-law. The private property owner requesting an entrance will receive a road occupancy permit at the same time that they apply for a private entrance permit. The system is streamlined in this way to make it

simpler for a private developer to acquire the necessary permits to proceed with the creation of new or modified entrances.

Summary

It is recommended that the Road Fouling By-law, the Road Occupancy By-law and the Private Entrance By-law be passed and that the User Fee By-law be amended to incorporate the necessary fees associated with these by-laws all in accordance with the attached report from the General Manager of Infrastructure Services dated February 2, 2011.

EXHIBIT B**BY-LAW 2011-*****A BY-LAW OF THE CITY OF GREATER SUDBURY TO REGULATE THE FOULING, OBSTRUCTION, USE AND CARE OF ROADS**

WHEREAS the City of Greater Sudbury wishes to regulate the fouling, obstruction, use and care of highways within the City of Greater Sudbury;

NOW THEREFORE THE COUNCIL OF THE CITY OF GREATER SUDBURY HEREBY ENACTS AS FOLLOWS:

PART 1 – INTERPRETATION / APPLICATIONDefinitions

1. In this By-law:

“boulevard” means all parts of a highway save and except the roadway, shoulder or sidewalk or that area between the centre curbs of divided highways;

“By-law Enforcement Officer” means a member of any police service with jurisdiction in the City, or any person appointed by the Council for the City of Greater Sudbury for the enforcement of municipal by-laws, including this By-law;

“City” means the municipal corporation of the City of Greater Sudbury or the geographic area within the limits of the City of Greater Sudbury, as the context requires;

“General Manager” means the General Manager of Infrastructure Services and includes his or her authorized representative or representatives;

“highway” means a common and public highway, street, avenue, parkway, laneway, driveway, square, place, and includes any bridge, trestle, viaduct or other structure forming part of the highway, designed and intended for, or used by, the general public for the passage of vehicles and except as otherwise provided, includes a portion of a highway; and includes the area between the lateral property lines thereof;

“owner” includes the person holding registered title to land and the person for the time being managing or receiving the rent or paying the municipal taxes on the land in question, whether on his, her or its own account or as agent or trustee of any other person or who would so receive the rent if such were let, and shall also include a lessee or occupant of the land. Where the person holding registered title to land is a condominium corporation, the owner is the corporation and not its members;

“person” includes any individual, firm, partnership, association, corporation, company or organization of any kind;

“private entrance” means an improved surface within a highway used or intended for use for vehicular access to and from private property adjacent to the highway;

“roadway” means that part of a highway that is improved, designed or intended for vehicular traffic, but does not include the shoulder, and, where a highway includes two or more separated roadways, the term “roadway” refers to any one roadway separately and not to all of the roadways collectively;

“shoulder” means that part of a highway immediately adjacent to the roadway and having a surface which has been improved for the use of vehicles with asphalt, concrete or gravel;

“sidewalk” means all parts of a highway set aside by the City for the use of pedestrians or used by the general public for the passage of pedestrians; and

“vehicle” includes a motor vehicle, trailer, traction engine, farm tractor, road-building machine, bicycle and any vehicle drawn, propelled or driven by any kind of power, including muscular power, but does not include a motorized snow vehicle or a street car.

Interpretation.

2. -(1) Whenever this By-law refers to a person or thing with reference to gender or the gender neutral, the intention is to read the By-law with the gender applicable to the circumstances.

(2) References to items in the plural include the singular, as applicable.

(3) The words “include”, “including” and “includes” are not to be read as limiting the phrases or descriptions that precede them.

(4) Headings are inserted for ease of reference only and are not to be used as interpretation aids.

(5) Specific references to laws in the By-law are printed in italic font and are meant to refer to the current laws applicable with the Province of Ontario as at the time the By-law was enacted, as they are amended from time to time.

(6) Any reference to periods of time, stated in numbers of days, shall be deemed applicable on the first business day after a Sunday or Statutory holiday if the expiration of the time period occurs on a Sunday or Statutory holiday.

(7) The obligations imposed by this By-law are in addition to obligation otherwise imposed by law or by contract.

Severability / Conflict

3.-(1) If any section, subsection, part or parts of this By-law is declared by any court of law to be bad, illegal or ultra vires, such section, subsection, part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such.

(2) Nothing in this By-law relieves any person from complying with any provision of any Federal or Provincial legislation or any other By-law of the City.

(3) Where a provision of this By-law conflicts with the provisions of another By-law in force in the City, the provision that establishes the higher standard to protect the health, safety and welfare of the general public shall prevail.

Application / Limitation / Administration

4.-(1) This By-law shall apply to all highways that are under the jurisdiction or joint jurisdiction of the City and to all persons using those highways.

(2) Despite Subsection 4(1), nothing in this By-law shall prohibit any activity:

- (a) which is expressly permitted under the authority of any other By-law in effect in the City and conducted in accordance with that By-law; or
 - (b) undertaken by City employees, contractors or agents in the course of an authorized City activity; or
 - (c) authorized by agreement with the City, and conducted in accordance with the agreement; or
 - (d) permitted under a form of Road Occupancy Permit, Road Closure Permit or Private Entrance Permit issued by the City and undertaken or conducted in accordance with the Road Occupancy Permit , Road Closure Permit or Private Entrance Permit as the case may be.
- (3) Nothing in this By-law prohibits an owner, at his or her own risk:
- (a) from planting and maintaining a grassed area upon the portion of the highway which abuts his property that is not occupied by roadworks; or
 - (b) from maintaining and caring for the grassy portion of a boulevard contiguous to his property provided the activities on the boulevard do not obstruct or pose a danger to the safety of persons using the boulevard or other parts of the highway or interfere with the activities or adversely affect the condition or operation of the equipment or facilities of the City, its contractors or agents or utility companies.
- (4) This By-law shall be administered by the General Manager who is delegated the authority to make decisions, set conditions, sign agreements on behalf of the City and take such other steps are assigned to the General Manager by this By-law.

PART 2 – FOULING

Earth, Dirt, Gravel, Building Material Etc.

- 5-(1)** No person shall throw, place or deposit on a highway or cause to be thrown, placed or deposited on a highway by any means whatsoever, any earth, dirt, gravel, stone, wood, building material, or other substance, material or object.
- (2) Subsection 5(1) shall not apply to a person putting sand or salt on the icy portions of a sidewalk or roadway to reduce the danger of pedestrians falling, or to enable a vehicle to use a roadway.
- (3) Subsection 5(1) shall not apply to any wood, soil, construction material or other object, thing or material, deposited on a highway provided:
- (a) it is deposited for the purpose of having it immediately delivered to an abutting property; and
 - (b) it is deposited in a location which does not obstruct the roadway or sidewalk; and
 - (c) its is removed from the highway within 24 hours of deposit.
- (4) No owner of property shall fail to have any wood, soil, construction materials or other object, thing or material delivered or deposited on the highway abutting the owner's property pursuant to subsection 5(3) removed onto the owner's property within 24 hours of the deposit onto the highway.

No Litter

6-(1) No person shall throw, place or deposit on a highway or cause to be thrown, placed or deposited on a highway by any means whatsoever any: paper; containers, whether made of cardboard, paper or plastic; rubbish; refuse; or garbage.

(2) Subsection 6(1) shall not apply to a person depositing any rubbish, refuse, garbage, paper or containers in a waste receptacle which was provided for this purpose on a sidewalk or boulevard by or with the authorization of the General Manager.

Fouling- Animal, Vehicle, Etc.

7. No person shall damage, pollute or foul, or cause, authorize or permit the damage, pollution or fouling of a highway by a vehicle, by an animal or by any other means.

Ice or Snow - General

8-(1) No person shall throw, push, plow, dump or otherwise deposit any snow or ice on any highway or part thereof, by any means whatsoever, regardless of whether the snow or ice has been removed from an adjoining property, a private entrance, or a sidewalk.

(2) No person shall authorize or direct the throwing, pushing, plowing, dumping or other depositing of any snow or ice on any highway or part thereof, by any means whatsoever, regardless of whether the snow or ice has been removed from an adjoining property, a private entrance or a sidewalk.

(3) Despite Subsections 8(1) and 8(2), if so authorized in writing by the General Manager, a person may deposit snow or ice in such location and in such manner on a sidewalk, boulevard or shoulder as authorized or directed by the General Manager.

(4) No person shall move snow within the highway or authorize or cause the moving of snow within the highway such that the snow:

- (a) encroaches on the cleared portion of the roadway or the sidewalk; or
- (b) interferes with sight lines of vehicles entering the roadway from a private driveway or at an intersection;
- (c) interferes with the safe movement of vehicular and pedestrian traffic on the highway;
- (d) obstructs a fire hydrant; or
- (e) is moved from one side of the cleared portion of the highway to the other side of the highway.

Downtown Core

9-(1) No owner of private property abutting a portion of a highway listed in Schedule A, shall fail to:

- (a) remove or cause to be removed, snow from that portion of the sidewalk that is contiguous to the owner's property line;
- (b) remove or cause to be removed, ice from that portion of the sidewalk that is contiguous to the owner's property line;
- (c) take such action as is necessary in the circumstances to prevent the sidewalk contiguous to the owner's property from becoming slippery or from remaining in a slippery condition; or

- (d) remove icicles, snow or ice from a building located in whole or in part on the owner's property, from the roof of that building, any sign, awning or other projection from that building, where the icicles, snow or ice may pose an immediate danger to the health or safety of any person using the highway abutting the owner's property, or any part thereof.

(2) Subsection 9(1) shall not apply on any day which is a holiday as defined in the *Retail Business Holidays Act*, R.S.O. 1990, c. R. 30.

(3) Notwithstanding Section 8, where an owner is required under Subsection 9(1) to remove snow or ice from a sidewalk and there is no land within the highway which is not being used for the purposes of sidewalk or roadway, such snow and ice may be deposited upon so much of the sidewalk nearest to the roadway as is reasonably necessary for the purpose, but not in such a way as to obstruct access to any fire hydrant or to obstruct passage to the roadway.

(4) Notwithstanding Subsection 9(1), no owner shall remove snow or ice or direct or cause the removal of snow or ice from a sidewalk in such a manner as to damage the sidewalk.

PART 3 – OBSTRUCTIONS / ENCROACHMENTS / PROJECTIONS

Activity – Interferes with Travel /Use/ Safety

10.-(1) No person shall engage in conduct or an activity or authorize or cause or permit the continuation of conduct or an activity by persons under his control or influence which:

- (a) obstructs or interferes with public travel on a roadway;
- (b) obstructs or interferes with the use of a sidewalk by pedestrians;
- (c) obstructs or interferes with the use of a highway or any part thereof for its intended purpose; or
- (d) poses a danger to the safety of a person or persons using the highway or any part thereof.

(2) No person shall place or erect or cause or authorize to be placed or erected, or permit the continued placement or erection of any object, thing or structure on a highway or any part thereof which:

- (a) obstructs or interferes with or the use of which obstructs or interferes with, public travel on a roadway;
- (b) obstructs or interferes with or the use of which obstructs or interferes with, the use of a highway or any part thereof for its intended purpose; or
- (c) poses a danger or the use of which poses a danger, to the safety of a person or persons using the highway or any part thereof.

Encroachment/ Projections etc.

11-(1) Subject to 11(3), no owner of land abutting a highway shall place, erect or construct or cause or authorize to be placed, erected or constructed, or permit the continuing presence of any fence, wall, retaining wall, light fixture, awning, address or name post, sign, reflector, door, gate, steps, landscaping feature, mail box, shed or other structure or thing in a location which:

- (a) is in whole or in part on a highway or any part thereof;

- (b) encroaches onto or over a highway or any part thereof;
- (c) projects over a highway or any part thereof; or
- (d) swings or opens over a sidewalk or roadway or part thereof.

(2) The owner of land abutting a highway may apply to the General Manager for approval of an existing or future encroachment of the type described in Subsection 11(1), by application in writing in the form required by the General Manager from time to time, which is signed by the applicant and supported by such information and supporting documents as the General Manager may require to investigate the request and make a determination.

(3) Upon receipt of a fully complete application, where the General Manager in his or her discretion determines that the encroachment otherwise prohibited under Subsection 11(1) may occur safely and does not unduly interfere with the use of the highway or part affected, the General Manager is delegated the authority to approve the encroachment on terms and conditions established by the General Manager and may execute on behalf of the City, an agreement with the applicant, setting out the extent of variance from this By-law and the terms on which the variance from Subsection 11(1) of this By-law is authorized by the agreement.

(4) While the agreement entered into pursuant to Subsection 11(3) is in effect and the applicant is in compliance with the terms of the agreement, the applicant shall not be subject to prosecution for non-compliance with this By-law to the extent of the variance authorized in the agreement.

(5) Whether or not set out in the written agreement, all such agreements shall be subject to each of the following conditions:

- (a) that the encroachment not exceed that described in the agreement;
- (b) the applicant remove the structure or other encroachment at his or her own cost, upon written request of the General Manager;
- (c) that if the applicant fails to remove the structure or other encroachment in accordance with the direction of the General Manager, the City's authorized employees, contractors or agents may enter onto the property to remove same, all at the cost of the applicant and without liability to the City, its employees, agents or contractors;
- (d) that the applicant use the highway or part thereof at his own risk;
- (e) that the owner is liable to any person who consequently suffers injury or loss and shall indemnify the City from all such claims and actions;
- (f) that the agreement may be terminated by the General Manager; and
- (g) such other terms and conditions as the General Manager may establish in the circumstances.

(6) No owner of land abutting a highway who has written consent of the General Manager, or entered into an agreement pursuant to Section 11 shall :

- (a) fail to comply with the written consent or agreement; or
- (b) fail to produce the written consent or agreement upon request of the By-law Enforcement Officer.

PART 4 - CARE OF THE HIGHWAY

Grass/Plants

12. No person shall damage, destroy, dig up or remove or cause or authorize the damage, destruction, digging up or removal of any grass, turf, sod, earth, shrub or plan from any part of a highway or from any planter located on or above the highway.

Poles , Highway Signs, Lights, etc

13-(1) No person shall damage, pull down, destroy, remove, deface or in any way interfere with or cause or authorize another to damage, pull down, destroy, remove, deface or in any way interfere with:

- (a) any sign affixed or placed on a highway under the authority of a City By-law or the General Manager including without limitation, any highway name sign, regulatory sign, information sign or traffic sign;
- (b) any traffic control device affixed or placed on a highway, including without limitation, any traffic signal, traffic cone or barricade;
- (c) any evidence of the limit of a highway or any part thereof, including without limitation, any post, surveyor's peg or bench mark;
- (d) any pole, light standard, hydrant or other object lawfully on the highway;
- (e) any retaining wall, fence or other structure lawfully on the highway; or
- (f) any transit shelter or authorized street furniture located on any part of a highway.

(2) No owner of a property abutting a highway shall permit any flood light to directly or indirectly illuminate a highway without the written approval of the General Manager.

(3) Every person who acts contrary to Subsection 13(1) or 13(2) shall, in addition to any other remedy or offence hereunder, be liable for any damage or injury occasioned by or resulting from that person's action.

Sidewalks - Damage

14-(1) No person shall move, drive, run or propel a vehicle or cause or authorize a vehicle to be moved, driven, run or propelled upon, over or across a newly constructed sidewalk or roadway before it has been opened for use by the public.

(2) No person shall walk or run upon, over or across or permit an animal to walk or run upon, over or across a newly constructed sidewalk or roadway before it has been opened for use by the public.

(3) No person shall print, draw or otherwise make any mark or cause or authorize another to print, draw or otherwise make a mark on a sidewalk or roadway unless authorized to do so by the General Manager.

(4) No person shall dig up, damage, destroy or cause or authorize another to dig up, damage or destroy a sidewalk.

(5) No person shall alter or cause another to alter the surface of a sidewalk in any way.

Boulevards, Etc

15-(1) No person shall break, dig up, destroy, damage, remove or cause or authorize to be broken, dug up, destroyed, damaged or removed:

- (a) the asphalt, concrete or other hard surface of a boulevard;
- (b) a fence or a railing erected and maintained for the protection of a boulevard; or
- (c) a curb.

(2) Nothing contained in this By-law shall prevent the General Manager from altering, opening or otherwise using any boulevard for any civic purpose.

Vehicles with Cleats etc

16-(1) No person shall move or cause to be moved a vehicle equipped with cleats, flanges, or tracks on its wheels or rollers, or any of them, on or along the roadway except:

- (a) by means of a float, trailer or other similar device; or
- (b) directly across the highway and over a protective mat laid on the surface of the portion of the highway being crossed; or
- (c) where the vehicle is equipped with protective pads over the cleats, flanges or tracks and the protective pads are of a type designed to prevent damage to the surface of highway.

(2) Despite Subsection 16(1) a person may apply to the General Manager for consent to operate a vehicle contrary to Subsection 16(1) by submitting a written request in the form required by the General Manager and providing such information and supporting documents as the General Manager may require to investigate the request and make a determination.

(3) The General Manager is delegated the authority to:

- (a) refuse the application for consent, where in the opinion of the General Manager, the roadway cannot be adequately protected from damage; or
- (b) issue a written consent to permit an applicant to operate one or more specified vehicles equipped with cleats, flanges, or tracks on its wheels or rollers, on a specified portion of a highway during a specified period of time, and on such conditions as are set out in the written consent of the General Manager.

(4) No person who has written consent of the General Manager to move or cause a vehicle to be moved on a highway contrary to Subsection 16(1), shall fail to:

- (a) move or cause or authorize the vehicle to be moved in accordance with the written consent; or
- (b) produce the written permission upon request of a By-law Enforcement Officer.

(5) A person who has written consent of the General Manager to operate a vehicle contrary to Subsection 16(1) is nevertheless responsible for all damages of whatsoever nature that may be caused by reason of the driving, operating or moving of any such vehicle.

Debris from Trucks

17.-(1) No person employing, using or operating a vehicle to haul earth, sand, stone, snow, ice, rubbish or other substances on a highway shall:

- (a) fail to cover the load or fail to cause the load to be covered in a manner which prevents the escape of any part of the contents from the box of the vehicle onto a highway; or
 - (b) load the vehicle or cause the vehicle to be loaded in a manner which causes or permits the contents or any part thereof to fall, spill or be deposited on a highway; or
 - (c) employ, use or operate the vehicle in a manner which causes or permits the contents or any part thereof to fall, spill or be deposited on a highway.
- (2) No person employing, using or operating a vehicle shall bring the vehicle or cause or authorize the vehicle to be brought upon a highway unless the person has removed or caused or directed to be removed, as completely as reasonably practicable in the circumstances, all mud, clay, lime, oil, sand, gravel, fertilizer, manure or other such material from the wheels of the vehicle.
- (3) No person employing, using or operating a vehicle, shall fail to forthwith remove or cause to be removed from the highway, any contents which may fall from the vehicle or any mud, clay, lime, oil, sand, gravel, fertilizer, manure or other material which falls from the wheels of the vehicle, which may cause or result in:
- (a) an obstruction, dangerous condition or nuisance on the highway; or
 - (b) damage to the surface of the highway.
- (4) Subsection 17(3) shall not relieve the person from any obligation to secure any necessary Road Occupancy Permit or Road Closure Permit which may be required under the City's By-law to Regulate Road Occupancy, Including Road Cuts, Temporary Closure and Sidewalk Cafes then in effect.

No Water, Oil Etc. to Drain on Highway

18-(1) No owner or operator of a parking station, parking lot, used car lot, automobile service station or mechanical car wash shall cause, permit or authorize water used for washing or cleaning a motor vehicle to escape upon, overflow or run across or upon a highway or part thereof.

(2) No owner of property shall cause or permit oil, chemicals or other substances to drain or escape or overflow from the owner's property or from a vehicle on the owner's property onto or upon or across a highway or part thereof.

(3) No person shall fail to maintain his vehicle in such a condition that gas, oil, fluids, chemicals or other substances do not escape from the vehicle onto the highway.

PART 5 – DRAIN

19-(1) For the purposes of this Section 19:

“alter” means any act that has the effect of changing the grade of the land including, but not limited to the placement or removal of fill, topsoil, gravel, crushed stone, pavement, interlock, fencing or a retaining wall;

“drain” means a culvert, drain, open ditch, rain water leader, watercourse, sewer, swale or storm sewer within a highway, designed or intended to carry and/or accept rain, ground, surface or subsurface water or any of them, or parts thereof, and includes appurtenances such as manholes and catchbasins;

“obstruct” means any act or inaction that has the effect of preventing or hindering the proper function of a Drain including, but not limited to the placement, dumping or

removal of fill or topsoil, or altering the grade of the land by any means including but not limited to, landscaping, pavement, interlock, fencing, or retaining wall; and

“obstruction” means any object which prevents or hinders proper functioning of a drain including, but not limited to the placement, dumping or removal of fill or topsoil, or altering the grade of the land by any means including, but not limited to, landscaping, pavement, interlock, fencing or retaining wall.

(2) No owner of property shall cause or allow the continued drainage of water from the owner’s property into a drain within the limits of the highway, unless in accordance with a lot grading agreement entered into with the City and registered on title to the owner’s property, or in accordance with a drainage easement or approved drainage plan.

(3) No owner of property shall, or shall permit or authorize any person to alter, fill, block, interfere with, obstruct or cause or contribute to the obstruction of a drain within the limits of a highway, or to the lot grade such that the flow of storm rain, ground, surface or subsurface water is increased, impaired or deviates from the existing drainage pattern or approved grading and drainage pattern.

(4) No person shall place or cause to be placed, a plank or other material or object in or over any ditch for the purposes of making a crossing except for a period of not more than 24 hours.

(5) No person shall fill in, cover in or cover over any drain or cause any drain to be filled in, covered in or covered over except in accordance with written authorization of the General Manager.

PART 6 – ORDERS AND REMEDIAL ACTION

Order to Discontinue Activity / Work Order / Remediation

20-(1) If the General Manager is satisfied that a contravention of this By-law has occurred, the General Manager may make an order requiring the person who contravened this 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. The order shall set out reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred and the date by which there must be compliance with the order.

(2) If the General Manager is satisfied that a contravention of this By-law has occurred, the General Manager may make an order requiring the person who contravened this 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. The order shall set out reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred and the date by which the work must be done.

(3) Pursuant to subsection 445(3) of the *Municipal Act, 2001*, as amended, an order pursuant to subsection 20(2) may require the work to be done even though the facts which constitute the contravention of the by-law were present before this By-law making them a contravention came into force.

(4) Where a Order has been sent requiring a person to do a matter or thing, and where such Order provided 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 where the requirements of the notice have not been complied with, the General Manager may cause the work to be done at the expense of the person directed or required to do it.

- (5) The City may enter upon the land of an owner in default at any reasonable time for the purposes of Subsection 20(4).
- (6) The City may recover all costs of doing a matter or thing from the person directed or required to do it by action, or by adding to the tax roll for the property and collecting the costs in the same manner as property taxes.
- (7) The costs include interest calculated at a rate of 15% 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.
- (8) Every person who is served with an order under this By-law shall comply with the requirements of the order within the time period specified in the order.
- (9) An Order made under Subsection 20(1) or 20(2) may be delivered in person or in the case of an owner, mailed to the person at the address shown for the owner in the assessment tax roll for the property.

PART 7 – ENFORCEMENT

Enforcement - No Obstruction Etc.

21.-(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.

Offence

22-(1) 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 on conviction is liable to a fine as provided for in the *Provincial Offences Act*.

(2) For the purposes of Subsection 22(1), 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.

(3) 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.

(4) The making of a false or intentionally misleading statement or representation in any agreement or request for permission provided for by this By-law shall be deemed to be a violation of the provisions of this By-law.

(5) 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, 2001*, 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.

Prohibition Order

23. 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.

Confidential Information

24.- (1) All information submitted to and collected by the City, will, except as otherwise provided in this Section, be available for disclosure to the public in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 (MFIPPA).

(2) In the event that any person in submitting information to the City or to the General Manager in any form, as required under this By-law, where such information is confidential or proprietary or otherwise may be exempt from disclosure under the MFIPPA, the person submitting the information shall so identify that information upon its submission to the City or the General Manager and shall provide sufficient details as to the reason for its purported exemption from disclosure.

PART 8 - GENERAL

Short Title

25. This Bylaw may be referred to as the "Road Fouling By-law".

Schedule

26. Schedule A attached hereto is incorporated into and forms a part of this By-law.

Repeals

27.-(1) Each of the following By-laws and all amendments thereto are hereby repealed:

- (a) By-law 86-20 of the former Town of Capreol;
- (b) By-laws 624, 59-7, 62-12, 82-16, 98-26 of the former Town of Nickel Centre;
- (c) By-law 396 of the former Township of McKim;
- (d) By-laws 1123, 73-76, 80-32, and 97-187 of the former the City of Sudbury;
- (e) By-laws 461, 46, 68-67, 72-287, 66-48, 59-20, 97-03, of the former the Town of Valley East;
- (f) By-laws 97-01, 81-34, 94-2, and 97-39 of the former Town of Rayside-Balfour;
- (g) By-laws 6-65 and 96-495 of the former Town of Walden; and
- (h) By-laws 73-204, 74-19, 75-249, 76-117 and 97-54A of the former Regional Municipality of Sudbury.

(2) Where a by-law is repealed by this By-law, the repeal does not:

- (a) affect the previous operation of any by-law so repealed;
- (b) affect any right, privilege, obligation or liability acquired, accrued, accruing, or incurred under the by-law so repealed;

- (c) affect any offence committed against any by-law so repealed or any penalty or forfeiture or punishment incurred in respect thereof; or
- (d) affect any investigation, legal proceeding or remedy in respect of such privilege, obligation, liability, penalty, forfeiture or punishment.

28.-(1)Where a By-law of a former local municipality of the Regional Municipality of Sudbury is repealed by this By-law, the repeal does not revive any By-law not in force or existing at the time of which the repeal takes effect

(2) The repeal of a By-law under Section 27 hereof shall not be deemed to involve a declaration that the by-law repealed was considered by Council of the City of Greater Sudbury to have been previously in force.

Enactment

29. This By-law shall come into force and take effect immediately upon the final passing thereof.

READ AND PASSED IN OPEN COUNCIL this ** day of April, 2011

_____ Mayor

_____ Clerk

DRAFT

SCHEDULE A

The provisions of Section 9 apply to the highways identified in Column A on the sides identified on Column B, from the point identified in Column C to the point identified in Column D

Column A Street	Column B Side	Column C From	Column D To
Elm Street East and West	North	Lansdowne Street	Notre Dame Avenue
Elm Street East and West	South	Extension of Lansdowne Street	Notre Dame Avenue
Durham Street North and South	Both	Beech Street	Elgin Street
Larch street	Both	Elgin Street	Notre Dame Avenue
Cedar Street	Both	Elgin Street	Notre Dame Avenue
Lisgar Street	Both	Elm Street	Larch Street
Elgin Street North and South	Both	St. Anne Road	Minto Street
Elgin Street North and South	West	Beech Street	Cedar Street

EXHIBIT C**BY-LAW 2009-****

**A BY-LAW OF THE CITY OF GREATER SUDBURY TO
REGULATE ROAD OCCUPANCY INCLUDING ROAD CUTS, TEMPORARY
CLOSURES AND SIDEWALK CAFES**

WHEREAS the City of Greater Sudbury wishes to regulate road occupancy including road cuts on highways in Sudbury;

**NOW THEREFORE THE COUNCIL OF THE CITY OF GREATER SUDBURY
HEREBY ENACTS AS FOLLOWS:**

PART 1 - TERMINOLOGY

Definitions:

1. In this By-law:

“box occupancy” means the continuing occupancy of part of the highway by a movable structure such as a box for collecting mail to be sent, mail storage box, newspaper dispensing box, advertising dispensing box or such similar storage or dispensing device, but does not include a community mailbox structure;

“box occupancy permit” means a permit issued under this By-law to permit a box occupancy on an undeveloped portion of a highway;

“By-law Enforcement Officer” means a member of any police service with jurisdiction in the City or any person appointed by Council for the enforcement of municipal by-laws including this By-law;

“City” means the municipal corporation of the City of Greater Sudbury or the geographic area of the City of Greater Sudbury as the context requires;

“Council” means the Council for the City of Greater Sudbury;

“date of final reinstatement” 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 reinstatement” means the day the repairs are satisfactorily completed;

“deleterious material” means subsurface soils of an undesirable nature such as, but not limited to , highly organic silts, sensitive or ultra sensitive clays, peat or other highly compressible soils, and soils containing noxious or hazardous chemical or waste products;

“General Manager” means the General Manager of Infrastructure Services for the City and includes his or her authorized representative;

“heave” means any rise in the surface of a road cut in relation to the grade of the adjacent undisturbed highway;

“Hearing Committee” means the Hearing Committee appointed by Council of the City from time to time to hear matters referred to the Hearing Committee by By-law;

“highway” means a common and public highway and includes any bridge, trestle, viaduct or other structure forming part of the highway, and except as otherwise provided, includes a portion of a highway and includes the area between the lateral property lines thereof;

“O.P.S.S.” means the Ontario Provincial Standard Specifications as amended from time to time and as supplemented by the City’s Supplemental Conditions;

“Permit” means a permit issued pursuant to this By-law and includes a Road Occupancy Permit, a Road Closure Permit and a Box Occupancy Permit;

“Permit Holder” means a person to whom a Permit has issued and includes persons doing work on behalf of the Permit Holder;

“person” includes any individual, firm, partnership, association, corporation, company or organization of any kind;

“public works” means works supplying the general public with necessities or conveniences and includes, but is not limited to, works for the production, supply and transmission of gas, oil, sewer, water and electric power or energy, and all telephone, cable television and other telecommunications lines;

“public utility” means a board, commission or corporation, including a municipal corporation that owns or operates a public work under the authority of any statute, charter, by-law or franchise;

“road closure” means a temporary closure of all lanes of the roadway to vehicular traffic and may also include the temporary closure of other parts of the highway for their usual or intended purpose and “close a road” has a similar meaning;

“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;

“road occupancy” means the temporary occupancy of the highway or any part thereof for work or an activity other than a purpose for which the highway was intended, and includes a road cut and a sidewalk café, but does not include a road closure and “occupy a road” has a similar meaning;

“roadway” means that part of a highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the shoulder, and, where a highway includes two or more separated roadways, the term “roadway” refers to any one roadway separately and not to all of the roadways collectively;

“settlement” or “settled” means any sinking of the surface of a road cut in relation to the grade of the adjacent undisturbed highway;

“shoulder” means that part of a highway immediately adjacent to the roadway and having a surface which has been improved for the use of vehicles with asphalt, concrete or gravel;

“sidewalk” means all parts of a highway set aside by the City for the use of pedestrians;

“sidewalk café” means a café operated on a sidewalk adjacent to an existing restaurant or food service business by the owner or operator of such business;

“Standards for Utility Cut Reinstatement” means the City’s design and construction standards for the rehabilitation of road surfaces depending on construction methods;

“traffic management plan” means a document submitted by or on behalf of an applicant as part of an application for a Permit outlining particulars of proposed compliance with this By-law including but not limited to the following:

- (a) start and completion times of the proposed work;
- (b) specific location of the proposed work;
- (c) particular of any requirement to work during peak hours;
- (d) particulars of any lane use requirements;
- (e) particulars of any requirements for a temporary road closure;
- (f) particulars of any public notification undertaken or proposed;
- (g) particulars of parking meters which will be affected by the proposed work;
- (h) particulars of any requirement for temporary no stopping signs;
- (i) identification of any bus route(s) and bus stops which will be affected by the proposed work activity; and
- (j) particulars of any proposed traffic routing and detour requirements;

“vehicle” includes a motor vehicle, trailer, traction engine, farm tractor, road-building machine, bicycle and any vehicle drawn, propelled or driven by any kind of power, including muscular power, but does not include a motorized snow vehicle or a street car; and

“warranty” means a guarantee by a Permit Holder that the work for which a permit has been issued has been carried out in accordance with the City’s requirements.

PART 2 – REQUIREMENT FOR PERMIT

Application

2. This By-law applies to all highways under the jurisdiction of the City.

Prohibitions

3.-(1) Except as expressly provided to the contrary in this By-law no person or public utility shall engage in a road occupancy, cause or authorize a road occupancy, or a continuing road occupancy, without first obtaining a Road Occupancy Permit pursuant to this By-law.

(2) Except as expressly provided to the contrary in this By-law no person or public utility shall close a road, cause or authorize a road closure, or a continuing road closure without first obtaining a Road Closure Permit pursuant to this By-law.

(3) Except as expressly provided to the contrary in this By-law no person shall cause or direct a box occupancy without first obtaining a Box Occupancy Permit and no person having caused or directed a box occupancy shall permit same to continue without holding a Box Occupancy Permit.

(4) No Permit Holder of a Road Occupancy Permit shall occupy a road, cause or authorize a road occupancy or continuing road occupancy except in accordance with the provisions of the Road Occupancy Permit and this By-law.

(5) No Permit Holder of a Road Closure Permit shall close a road, cause or authorize a road closure or continuing road closure except in accordance with the provisions of the Road Closure Permit and this By-law.

(6) No Permit Holder of a Box Occupancy Permit shall permit a box occupancy to continue except in accordance with the provisions of the Box Occupancy Permit and this By-law.

No Permit Required - City

4.-(1) Despite Subsections 3(1) and 3(2) a Permit shall not be required where the road occupancy or road closure is undertaken by the City or by a contractor carrying out work on behalf of the City.

(2) Despite Subsection 3(1), a Permit shall not be required where the General Manager authorizes the altering, opening or otherwise using any boulevard for any civic purpose.

Delayed Permit - Emergency

5.-(1) Despite Paragraph 3(1), where public safety or health are at risk or other emergency circumstances exist, a person or public utility may engage in or authorize a road occupancy without a Road Occupancy Permit provided the person:

- (a) prior to the road occupancy notifies the City's Infrastructure Services by telephone at 3-1-1 as to:
 - (i) the name of the public utility or contractor engaging in or authorizing the road occupancy;
 - (ii) the location of the road occupancy;
 - (iii) the nature of the emergency circumstances;
 - (iv) the particulars of the proposed road occupancy, including whether a road cut is required; and
 - (vi) the estimated duration of the road occupancy; and
- (b) applies for a Permit on the same day the road occupancy 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 Permits.

(2) The General Manager may require any person who undertook or any public utility which undertook a road occupancy on an emergency basis pursuant to subsection 5(1) to submit in writing, a written description of the emergency and the reasons why the Permit could not be obtained in advance of the road occupancy and such other information as the General Manager may require to assess whether the circumstances justified proceeding on an emergency basis.

(3) In the event that the General Manager is not satisfied, in his or her sole discretion, that the circumstances justified the road occupancy on an emergency basis pursuant to subsection 5(1) the person or public utility who undertook or authorized the road occupancy shall for the purposes of this By-law, be treated as having occupied a road without a Permit.

PART 3 - APPLICATION FOR PERMIT

Permit Applications

6.-(1) Every applicant for a Permit shall:

- (a) file with the General Manager an application in the form established by the General Manager from time to time, which includes:

- (i) a statement as to whether the application is for a Road Occupancy Permit, a Road Closure Permit, or both or for a Box Occupancy Permit;
 - (ii) in the case of an application for a Road Occupancy Permit, a statement as to whether a consent for a road cut or side café is required;
 - (iii) the particulars of the proposed road occupancy or road closure or box occupancy;
 - (iv) the location of the proposed road occupancy or road closure or box occupancy;
 - (v) a telephone number or other acceptable emergency contact information;
 - (vi) such other information as requested by the General Manager; and
 - (vii) the signature of a person who has authority to bind the applicant, certifying the accuracy of the information provided;
- (b) file a traffic management plan unless the General Manager determines it is not necessary in the circumstances;
- (c) file with the General Manager, a certified copy of an insurance policy or other proof of insurance evidencing compliance with Section 11(6), except where the application is filed by or on behalf of a public utility;
- (d) where applicable, provide evidence satisfactory to the General Manager that the person submitting the application on behalf of the applicant is a duly authorized representative of the applicant;
- (e) pay to the City a non-refundable Permit application fee determined in accordance with the City's Miscellaneous User Fee By-law then in effect;
- (f) in the case of an application for a Road Closure Permit also:
- (i) file consent of to the issuance of the Permit of each of the following persons or their authorized representative:
 - (A) the Chief of the Greater Sudbury Police Services;
 - (B) the City's Fire Chief;
 - (C) the City's Chief, Emergency Services; and
 - (D) where the temporary closure is on an established bus route, the City's Manager of Transit Services; and
 - (ii) in addition to the application fee, pay a fee to cover costs to advertise the temporary road closure determined in accordance with the City's Miscellaneous User Fee By-law then in effect;
- (g) in the case of an application for a Road Occupancy Permit which includes a request for a road cut also:
- (i) file evidence of the consent of Council obtained in accordance with Section 10, where roadway construction, reconstruction or resurfacing has occurred in that location within the year of or within

the three (3) calendar years preceding the proposed road cut and the application is not otherwise compliant with Paragraph 9(e)(ii) – (iv); and

- (ii) pay a non-refundable pavement degradation fee determined in accordance with the City's Miscellaneous User Fee By-law then in effect unless the General Manager determines the application is for:
 - (A) a road cut which does not affect the roadway pavement;
 - (B) municipal works, including work done as a condition of City development control, the prime purpose of which is the provision of pavement or its preservation;
 - (C) 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 General Manager;
 - (D) works on highways listed in the City's current year reconstruction and resurfacing programs if carried out prior to the municipal reconstruction or resurfacing;
 - (E) trenchless works which do not affect the road way pavement and which are approved by the General Manager;
 - (F) the relocation of equipment to accommodate the City's use of the highway; or
 - (G) road cut repair work done pursuant to the warranty requirements of this By-law.
- (h) in the case of an application for a Road Occupancy Permit to authorize a sidewalk café also:
 - (i) file evidence satisfactory to the General Manager that such person operates a restaurant or other food service establishment adjacent to the proposed location of the sidewalk cafe at the time of the application;
 - (ii) file one or more sketches as may be necessary, drawn to scale, showing the:
 - (A) proposed location of the Sidewalk Café;
 - (B) location of the restaurant or other food service establishment operated by the applicant;
 - (C) distance from the proposed location of the sidewalk café to the nearest intersection or lane;
 - (D) width of the sidewalk in the proposed location;
 - (E) unoccupied portion of the sidewalk which will remain if the application is approved;
 - (F) particulars of the proposed temporary fence to be erected around the proposed sidewalk café location; and

- (G) clearance between the sidewalk and any existing or proposed awning;
- (iii) file evidence satisfactory to the General Manager that any awning used or proposed to be used in conjunction with the sidewalk café is retractable; and
- (iv) file a fee for the occupation of the sidewalk calculated in accordance with the Miscellaneous User Fee Bylaw, instead of the application fee provided for in Paragraph 6(1)(e).

and

- (i) provide such other information, documentation, fees as may be provided for in this By-law or as required by the General Manager to assess the application.

Application – Multiple Road Cuts

7.-(1) Where an applicant for a Road Occupancy Permit is proposing multiple road cuts on a single highway as part of a utility pole installation project, the applicant may apply for a single Road Occupancy Permit and pay the applicable fee for a single application.

(2) The General Manager, may, in his or her discretion, authorize an application for a single Road Occupancy Permit and payment of the applicable fee for a single application, where the applicant for a Road Occupancy Permit is proposing:

- (a) five or fewer road cuts per highway on five or fewer highway all as part of a utility pole installation; or
- (b) multiple road cuts on a single highway as part of a project other than utility pole installation.

(3) Where two (2) or more road cuts are authorized by a Road Occupancy Permit the General Manager may specify in the Road Occupancy Permit the order in which the road cuts are to be performed.

Application – Processing Time – Fully Complete

8-(1) Every applicant for a Permit shall submit a fully complete application to the General Manager at least 10 working days before the applicant proposes to start the road occupancy or road closure to be authorized by the Permit. The application is complete once all required information, documentation and fees have been submitted.

(2) The General Manager shall not be required to review or process any application for a Permit which is not complete at least 10 working days before the proposed date for the road occupancy or the road closure.

PART 4 – REFUSAL TO ISSUE

Refusal to Issue - General

9.-(1) The General Manager shall refuse to issue a Permit:

- (a) if the application is incomplete;
- (b) if, for any reason the issuance of the Permit would be inconsistent with this By-law;

- (c) the applicant owes any fine, administrative penalty or fee to the City;
- (d) in the case of an application for a Road Occupancy Permit for a sidewalk café unless the proposed location of the sidewalk café:
 - (i) is adjacent to and abutting the frontage or flankage of the applicant's restaurant or food service establishment;
 - (ii) is more than 6 metres from an intersection or public laneway;
 - (iii) has or will have a portable fence, one metre in height, erected to delineate the area on the sidewalk being used for a café;
 - (iv) will leave at least 1.5 metres of the sidewalk space unoccupied and free for pedestrian movement;
 - (v) will not require patrons or staff to cross sidewalk traffic; and
 - (vi) does not provide for a clearance of at least 2.45 metre between the sidewalk and the overhang of any retractable canopy; and
- (e) in the case of an application for Road Occupancy Permit authorizing a road cut in a location where roadway construction, reconstruction or resurfacing has occurred in that location within the year of or the three (3) calendar years preceding the date of the proposed road cut unless:
 - (i) Council has first authorized the issuance of the Permit;
 - (ii) the General Manager is satisfied that the emergency provisions of Subsection 5(1) applied;
 - (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 provision or preservation;
 - (iv) the work involves the repair of fluid or gas leaks by a public utility; or
 - (iv) the work is necessary because of a major interruption to any existing public works.
- (f) In the case of an application for a Box Occupancy Permit, where the General Manager is of the opinion that the proposed location:
 - (a) may cause disruption to pedestrian use of the sidewalk;
 - (b) may cause disruption to public traffic on the roadway; or
 - (c) may interfere with roadside maintenance; or
 - (d) may pose a hazard.

(2) The General Manager shall advise the applicant of his or her decision to not issue a permit under this By-law and the reason for the refusal.

(3) In the event that the applicant is not satisfied with the General Manager's decision the applicant shall be entitled to appeal the decision to the Hearing Committee.

(4) The Hearing Committee shall be entitled to make any decision the General Manager might have made. The decision of the Hearing Committee shall be final.

Council Consent to Road Cut

10-(1) A person who wishes seek the consent of Council to the issuance of a Road Occupancy Permit authorizing a road cut in a location where roadway construction, reconstruction or resurfacing has occurred in that location within the year of or the three (3) calendar years preceding the date of the proposed road cut shall submit an application in writing to the Clerk of the City, setting out:

- (a) an explanation why the proposed work must be effected within the year of or the three (3) prior calendar years of roadway construction, reconstruction or resurfacing; and
- (b) an explanation why alternatives such as trenchless installation, the use of alternative highways, or the use of abandoned or other active plant is not available to the applicant.

(2) Council may refuse the application for consent for the road cut, may consent to the road cut or may consent to the road cut, subject to conditions.

(3) Where Council imposes conditions to its approval for a road cut, such conditions are deemed to be conditions of the Road Occupancy Permit authorizing the road cut, whether or not such conditions are set out on the face of the Road Occupancy Permit and in addition to any other conditions imposed by the General Manager or this By-law.

PART 5 - ISSUANCE OF PERMIT

General Delegation of Authority

11.-(1)The General Manager is delegated the authority to:

- (a) establish such conditions for the issuance of a Permit as the General Manager determines to be necessary in the circumstances;
- (b) make all decisions or determinations required of the General Manager under this By-law; and
- (c) issue, refuse to issue, suspend or revoke a Permit as provided in this By-law.

(2) The General Manger may delegate the performance of any one or more of his or 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.

(3) Without limiting the generality of Subsection 11(1)(a), the General Manager may as a condition of issuing a Road Occupancy Permit authorizing a road cut, impose any one or more of the follow requirements, where the General Manager in his or her discretion determines it to be appropriate in the circumstances:

- (a) that the Permit Holder secure at its expense and file with the General Manager a report from a testing laboratory satisfactory to the General Manager, showing the degree of compaction of the backfill prior to final reinstatement;
- (b) that the Permit Holder secure at its expense and file with the General Manager file a certificate from an engineer or from a testing laboratory

satisfactory to the General Manager, certifying that the backfilling procedures have been performed in accordance with this By-law;

- (c) that the Permit Holder complete surface restoration over an area greater than the surface area affected by the road cut by applying at its expense a forty (40 mm) millimeter lift of hot mix HL3 asphalt; and
 - (d) that the Permit Holder give notice to such persons as the General Manager may determine, and provide evidence that such notice was given.
- (4) In issuing a Permit, the General Manager may set out in the Permit, particulars of:
- (a) the location of the permitted road occupancy or road closure or box occupancy;
 - (b) the particulars of the permitted road occupancy or road closure or box occupancy;
 - (c) dates and times for the permitted road occupancy or road closure as the case may be;
 - (d) the expiry date of the Permit; and
 - (e) such conditions for the permitted road occupancy or road closure or box occupancy as may be determined by the General Manager to be appropriate in the circumstances.
- (5) The Permit is issued when it has been dated and signed by the General Manager.
- (6) Whether or not it is specified on the face of the Permit, every Permit or extension to a Permit is issued subject to the condition that the Permit Holder:
- (a) indemnify the City, its elected and non-elected officials, agents, servants and workmen from all causes of action, loss, costs or damages arising from the execution, non-execution or imperfect execution of any work or activity authorized by this By-law or the Permit, whether with or without negligence on the part of the Permit Holder or the officers, agents, servants or workmen of the Permit Holder; and
 - (b) place and maintain in good standing during the effective period of the Permit, a policy of comprehensive general liability insurance with an insurer licenced 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 City of Greater Sudbury 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.

Limitations – Effective Date of Permit

12-(1) In issuing a Permit, the General Manager shall not be required to establish a start date for the road occupancy or road closure or box occupancy, as the case may be, which is sooner than:

- (a) five (5) working days after the Permit issued, where it is required to reroute buses, or where the work will or is likely to result in a significant disruption to traffic, to the City or to a public utility; or
- (b) two (2) working days after Permit is issued, in other instances.

(2) Despite Subsection 12(1), the effective date of a Road Occupancy Permit authorizing a Sidewalk Café shall not be earlier than May 1st in any year or expire later than September 30th of the year in which it is issued.

(3) Where a Road Closure Permit is issued, the General Manager shall give notice to the public of the dates of the road closure.

Permit

13.-(1) The Permit Holder shall ensure that the Permit Holder or an authorized representative of the Permit Holder can be contacted at the contact number provided in the application for the Permit, 24 hours a day, seven days a week, during the period that the Permit is effective.

(2) The Permit Holder shall keep or cause to be kept, a copy of the Road Occupancy Permit or Road Closure Permit as the case may be, at the site of the road occupancy or road closure authorized in the Permit.

(3) The Permit Holder of a Box Occupancy Permit shall keep or cause to be kept on the face of the box or object authorized to be placed on the highway, a copy of the Box Occupancy Permit or such sticker or other evidence of the issuance Box Occupancy Permit as may be provided by the City for such purpose.

(4) The Permit Holder shall produce or cause the Permit to be produced when asked to do so by the General Manager or by a By-law Enforcement Officer.

(5) Every Permit Holder shall comply and cause compliance with the Permit and this By-law.

Warning Devices, Barricades and Traffic Signs

14.-(1) Every Permit Holder shall erect and maintain or cause to be erected and maintained on site of a road occupancy or road closure, 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 *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended or replaced from time to time; 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 which conform to the Ontario Traffic Manual 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 reflectors as may be applicable, which are clean, visible and in good working order; and
- (ii) are lighted from sunrise to sunset.

Prohibition – Removal Etc of Warning Devices etc.

(3) No person shall remove, knock over or obscure from view, any warning device, barricade or traffic sign erected pursuant to this By-law.

PART 6 - ROAD OCCUPANCY PERMITS – GENERAL CONDITIONS

Road Occupancy - Notice Requirements

15.-(1) Except as may be provided to the contrary in the Road Occupancy Permit, every Permit Holder of a Road Occupancy Permit shall provide notice at least two (2) business days in advance of the commencement of the authorized road occupation to those residents and operators of businesses occupying property along the highway, if the authorized work or activity:

- (a) will affect the ingress and egress to the property; or
- (b) will or is likely to cause general inconvenience to the residents and businesses occupying those properties.

(2) The Notice required pursuant to Subsection 15(1) shall be in writing and include particulars of:

- (a) the work or activity authorized under the Road Occupancy Permit;
- (b) the approximate start date; and
- (c) the expected duration of the work or activity.

(3) Every Permit Holder of a Road Occupancy Permit shall display or cause to be displayed at the site of the road occupancy, a clearly visible and legible sign showing the name of:

- (a) the Permit Holder; and
- (b) the name of the person conducting the work or activity on behalf of the Permit Holder or on whose behalf the Permit Holder is conducting the work.

Road Occupancy – Work Conditions

16.-(1) Every Permit Holder of a Road Occupancy Permit shall:

- (a) when occupying the highway proceed expeditiously with the work or activity or cause the work or activity 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 or activity authorized by the 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 *Occupational Health and Safety Act*, R.S.O. 1990, . c. O.1, as amended or replaced from time to time;
- (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 General Manager or a By-law Enforcement Officer.

Road Occupancy - Cleanup

- (2) Upon completion of the work or activity authorized by the Road Occupancy Permit, the Permit Holder shall:
 - (a) remove or cause to be removed, all excess material from the highway; and
 - (b) leave or cause the work area to be left in a safe, hazard free and clean condition, similar to the condition of the highway adjacent to the work area.

Road Occupancy- Peak Hour Restrictions

17.-(1) During any Peak Hour period identified in a Road Occupancy Permit, no Permit Holder of a Road Occupancy Permit shall or shall authorize or permit:

- (a) any trucks, vehicles, or equipment to be parked or placed or continue 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 Road Occupancy Permit, a Permit Holder of a Road Occupancy Permit shall ensure that any road cut is reinstated in accordance with this By-law or is covered with a steel plate which is:

- (a) designed to prevent any movement or displacement of the plate; and
- (b) of sufficient size to allow pedestrian and vehicular traffic to pass safely and expeditiously over the road cut.

PART 7 - ROAD OCCUPANCY PERMIT – CONDITIONS FOR ROAD CUTS

Road Cut

- 18.** Every Permit Holder of a Road Occupancy Permit 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;
 - (c) ensure the surface is cut with a concrete saw in a manner to produce:
 - (i) a rectangular opening with edges which are vertically straight; and

- (ii) a cut, which is large enough to accommodate the proposed works without undermining the adjacent pavement;
- (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 General Manager;
- (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 General Manager; 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 General Manager; and
- (f) before opening a lane to traffic while work is ongoing under the Road Occupancy 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.

Road Cut – Reinstatement – General Requirements

19.-(1) Every Permit Holder of a Road Occupancy Permit authorizing a road cut shall take such steps or cause such steps to be taken to ensure that any temporary or final reinstatement of the roadway is completed:

- (a) by a contractor approved in advance by the General Manager;
- (b) to current O.P.S.S. standards;
- (c) to current standards for Utility Cut Reinstatement; and
- (d) to the satisfaction of the General Manager.

(2) Every Permit Holder of Road Occupancy Permit authorizing a road cut shall take such steps or cause such steps to be taken to ensure that any temporary or final reinstatement of the roadway 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 General Manager;
- (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 General Manager;
- (c) to the same level as the adjacent surface; and
- (d) with Granular “B” between the top of the sub-grade and one hundred and fifty (150 mm) millimeters below the roadway surface where the native on-site material is not of a quality or condition acceptable to the General Manager.

Road Cut - Backfilling

20.-(1) Every Permit Holder of a Road Occupancy Permit authorizing a road cut 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 effected with native on-site material, unless the native on-site material is not of a quality or condition acceptable to the General Manager.

(2) Every Permit Holder of a Road Occupancy Permit authorizing a road cut 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%) per cent 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%) per cent 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.

Road Cut – Final Reinstatement

21.-(1) Every Permit Holder of a Road Occupancy Permit authorizing a road cut shall complete or shall cause to be completed the final reinstatement of the roadway within 30 days of backfilling and no later than September 30th in the year in which the work was authorized

Road Cut – Final Reinstatement Exception

(2) Despite Subsection 21(1), the General Manager may authorize in writing, a temporary reinstatement of the road, 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 road is not in a condition to be permanently reinstated prior to September 30th in any year; or
- (b) for other reasons, the General Manager, in his or her discretion, determines it is not feasible to effect a permanent reinstatement within the required timeframe or by the required date.

Road Cut – Temporary Reinstatement – Conditions

(3) Any approval by the General Manager for a temporary reinstatement of the road under Subsection 21(2) shall be subject to the following conditions:

- (a) the base and sub-base shall be completed to the satisfaction of the General Manager before the temporary reinstatement is effected;
- (b) the temporary road reinstatement shall be completed no later than September 30th of the year in which the Permit issued, or such other date as may be specified by the General Manager;
- (c) the temporary reinstatement over the base shall consist of not less than 75 mm of asphalt, unless otherwise directed by the General Manager;

- (d) the temporary reinstatement shall be maintained by the Permit Holder at the Permit Holder's cost and to the satisfaction of the General Manager until the final reinstatement occurs;
- (e) repairs to the temporary reinstatement shall be effected by the Permit Holder within 24 hours of notification by the General Manager of any deficiency; and
- (f) final reinstatement of the road shall be completed to the satisfaction of the General Manager 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 General Manager.

Road Cut – Backfilling/Reinstatement - Unsatisfactory

22.- (1) 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 of this By-law, or where the backfilling or temporary or final reinstatement settles or subsides, the General Manager 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.

Road Cut – Written Notice

(2) Any oral notice referred to in subsection 22.-(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 the Permit or by using such other notification means and contact information as may be provided for in the application for the Permit.

Remediation

(3) In the event that the work identified in the notice is not completed by the date specified in the notice or is not completed to the satisfaction of the General Manager, the General Manager may authorize the necessary work to be effect 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.

Road Cut – Emergency Repairs to Reinstatement

23.-(1) Despite Subsection 22.-(1), if the General Manager 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 General Manager may take such steps as the General Manager determines to be necessary to protect the area and may advise the Permit Holder orally, of the repair work which must be completed. The General Manager 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.

Road Cut – Emergency – Notice of Remediation

(2) 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 General Manager within four (4) hours of placing the telephone call under Subsection 23(1), the General Manager may order the work to be done by or on behalf

of the City and the General Manager shall confirm in writing to the Permit Holder the remedial action which has been taken 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.

Road Cut – Responsibility for Claims

24.-(1) Except as limited by subsection 24(2), and in addition to Subsection 11(5) a Permit Holder shall be responsible for all loss or damages arising from or related to the work done by or for the Permit Holder or required to be done by the Permit Holder pursuant to the Permit or this By-law.

(2) A Permit Holder shall be responsible for all loss or damage arising directly or indirectly from settlement of the surface of a highway within a period of two (2) years following the date of 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.

PART 8 – ROAD OCCUPANCY PERMIT – SIDEWALK CAFÉ - CONDITIONS

Sidewalk Café - Conditions - Daily Operation

25.-(1) Every Permit Holder of a Road Occupancy Permit authorizing the operation of a Sidewalk Café shall on each day that the Sidewalk Café is open for business, operate or cause the Sidewalk Café to be operated:

- (a) only during normal business hours of the Permit Holder's restaurant or food service establishment;
- (b) such that exits from adjacent buildings are unobstructed by the operation of the Sidewalk Café;
- (c) such that access to any City of Greater Sudbury Fire Services connections are unobstructed by the operation of the Sidewalk Café; and
- (d) only in the location approved in the Road Occupancy Permit.

Sidewalk Café – Conditions – End of Day

(2) Every Permit Holder of a Road Occupancy Permit authorizing the operation of a Sidewalk Café shall, at the end of each day that the Sidewalk Café is open for business:

- (a) remove from the sidewalk, all fixtures, furniture and similar items used in the operation of the Sidewalk Café;
- (b) sweep and wash the sidewalk in and around the area of the Sidewalk Café;
- (c) remove debris to a covered refuse receptacle; and
- (d) remove or retract fully, any canopy over the Sidewalk Café area.

PART 9 SPECIAL CONDITIONS- BOX OCCUPANCY PERMIT

26.-(1) Every Permit Holder of a Box Occupancy Permit shall:

- (a) place the box or other object authorized by the Box Occupancy Permit on a surface comprised of one or more precast concrete patio slabs; and
 - (b) remove the precast concrete patio slab or slabs from the site immediately upon the expiry of the Box Occupancy Permit and within 72 hours of the revocation of the Box Occupancy Permit.
- (2) Every Permit Holder of a Box Occupancy Permit places the box or other object authorized to be placed on the highway at the Permit Holder's own risk.

PART 10

TRANSFER / RENEWAL / EXPIRY / REVOCATION / NONCOMPLIANCE

Permit - No Transfer

27.-(1) No Permit Holder may transfer a Permit to another person.

Permit - Expiry

(2) A Permit shall expire on the date specified in the Permit and if no date is specified, on the completion of the work or activity authorized by the Road Occupancy Permit or the work or activity requiring the Road Closure Permit.

Permit – Extension - Application

(3) Where the work authorized under a Permit cannot be completed prior to the expiry date specified in that Permit, a Permit Holder may apply in writing to the General Manager, for an extension of the expiry date of the Permit.

Permit Extension – Application - Process

- (4) A Permit Holder applying for an extension of the expiry date of the Permit shall:
- (a) submit a fully completed application in the form prescribed by the General Manager providing particulars of the need for an extension, the proposed completion date, such other information as may be required by the General Manager and duly signed by a person with signing authority for the Permit Holder, certifying to the accuracy of the information;
 - (b) submit such documentation as may be specified in the application or as required by the General Manager; and
 - (c) pay a non-refundable administrative fee for the extension of the expiry date in the Permit in the amount set out in the City's Miscellaneous User Fee Bylaw then in effect .

Permit Extension - Authorized

(5) Where the applicant has complied with the requirements of Subsection 25(4), the General Manager may, if he or she is satisfied that it is appropriate to do so, extend the expiry date of a Permit by issuing a new Permit which reflects the next expiry date.

Permit - Revocation

(6) The General Manager may revoke a Permit if the Permit Holder fails to comply with this By-law or with any of the conditions imposed in the Permit. Revocation shall not release the Permit Holder from obligations to indemnify the City.

Box Occupancy Permit - Revocation

(7) In addition to the rights under Subsection 27(6), the General Manager may revoke a Box Occupancy Permit in the event of construction or other work on the highway or part thereof in the vicinity of the box occupancy or in the event that the General Manager, in his discretion determines that the location is no longer suitable for box occupancy. Nothing herein shall prevent the Permit Holder for applying for a new permit upon completion of the construction or other work on the highway or any part thereof.

PART 11 – ENFORCEMENT

Enforcement - No Obstruction Etc.

28-(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.

Offences and Penalties

29-(1) 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 on conviction is liable to a fine as provided for in the *Provincial Offences Act*.

(2) For the purposes of Subsection 29 (1), 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.

(3) 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.

(4) 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.

(5) 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, 2001*, 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.

Prohibition Order

30. 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.

Remediation

31. Where the General Manager determines that a person is not in compliance with this BY-law the General Manager may make an order. The order shall set out reasonable particulars of the contravention adequate to identify the contravention; the location where the contravention occurred; the work to be done; the date by which the work must be done to correct the contravention; and advise that in default of the work being done by the specified date, the City may correct the contravention at the person's expense and if unpaid, the debt shall bear interest at the rate specified in the City's Miscellaneous user Fee By-law for unpaid amounts and shall be 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.

PART 12 - GENERAL

Interpretation.

32 -(1) Whenever this By-law refers to a person or thing with reference to gender or the gender neutral, the intention is to read the By-law with the gender applicable to the circumstances.

(2) References to items in the plural include the singular, as applicable.

(3) The words "include", "including" and "includes" are not to be read as limiting the phrases or descriptions that precede them.

(4) Headings are inserted for ease of reference only and are not to be used as interpretation aids.

(5) Specific references to laws in the By-law are printed in italic font and are meant to refer to the current laws applicable with the Province of Ontario as at the time the By-law was enacted, as they are amended from time to time.

(6) Any reference to periods of time, stated in numbers of days, shall be deemed applicable on the first business day after a Sunday or Statutory holiday if the expiration of the time period occurs on a Sunday or Statutory holiday.

(7) The obligations imposed by this By-law are in addition to obligations otherwise imposed by law or by contract.

Severability/ Conflict

33.-(1) If any section, subsection, part or parts of this By-law is declared by any court of law to be bad, illegal or ultra vires, such section, subsection, part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such.

(2) Nothing in this By-law relieves any person from complying with any provision of any Federal or Provincial legislation or any other By-law of the City.

(3) Where a provision of this By-law conflicts with the provisions of another By-law in force in the City, the provision that establishes the higher standard to protect the health, safety and welfare of the general public shall prevail.

Confidential Information

34.-(1) All information submitted to and collected by the City, will, except as otherwise provided in this Section, be available for disclosure to the public in accordance with the

Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56 (MFIPPA).

(2) In the event that any person in submitting information to the City or to the General Manager in any form, as required under this By-law, where such information is confidential or proprietary or otherwise may be exempt from disclosure under the MFIPPA, the person submitting the information shall so identify that information upon its submission to the City or the General Manager and shall provide sufficient details as to the reason for its purported exemption from disclosure.

Short Title

35. This Bylaw may be referred to as the “Road Occupancy / Road Closure By-law”.

Administration

36. This Bylaw shall be administered by the General Manager.

Transition

37. Every permit issued pursuant to a by-law in effect prior to the effective date of this By-law, continues in force and shall be deemed to be issued under this By-law for regulatory and enforcement purposes.

Conflicts

38. Where a provision of this By-law conflicts with the provisions of another By-law in force in the City, the provision that establishes the higher standard to protect the health, safety and welfare of the general public shall prevail

Enactment

39. This By-law shall come into force and take effect immediately upon the final passing thereof.

READ AND ENACTED IN OPEN COUNCIL this day of April, 2011

_____ Mayor

_____ Clerk

BY-LAW 2011-*

**A BYLAW OF THE CITY OF GREATER SUDBURY TO
REGULATE THE USE OF PRIVATE ENTRANCES**

WHEREAS the Council of the City of Greater Sudbury deems it desirable to regulate the use of private entrances to municipal highways;

**NOW THEREFORE THE COUNCIL OF THE CITY OF GREATER SUDBURY
HEREBY ENACTS AS FOLLOWS:**

Terminology

1. In this By-law:

“access impact study” means a study undertaken by a professional engineer that assesses, to the satisfaction of the General Manager, the effect that a proposed access or accesses will have on the transportation network and on public safety. Elements of the study will include, but need not be limited to, an analysis of generated traffic volumes, the additional number of pedestrian and vehicular movements, queue lengths and times, variations on the above based on the size of the access and the impact of road characteristics;

“boulevard” means that part of the highway situate between the roadway and the property lines of the lots abutting the highway and includes a shoulder but does not include a sidewalk, if any;

“By-law Enforcement Officer” means a member of any police service with jurisdiction in the City, or any person appointed by Council for the enforcement of municipal by-laws, including this By-law;

“City” means the municipal corporation of the City of Greater Sudbury or the geographic area, as the context requires;

“culvert” means a sub-surface pipe with a circular, elliptical or rectangular cross-section of corrugated steel, or any other such material approved by the General Manager, which acts as a conduit for storm water within a highway;

“General Manager” means the General Manager of Infrastructure Services and includes his or her authorized representative;

“grade” means the percentage rate of the rise or fall of the private entrance with respect to the horizontal;

“headwall” means a vertical wall at the end of a culvert used to prevent earth from spilling into the ditch;

“Hearing Committee” means the Hearing Committee appointed by Council of the City from time to time to hear matters referred to the Hearing Committee by By-law;

“highway” includes a common and public highway and includes any bridge, trestle, viaduct or other structure, forming part of the highway and except as otherwise provided, includes a portion of the highway and the area between the lateral property line thereof;

“owner” includes the person holding registered title to land and the person for the time being managing or receiving the rent or paying the municipal taxes on the land

in question, whether on his, her or its own account or as agent or trustee of any other person or who would so receive the rent if such were let, and shall also include a lessee or occupant of the land. Where the person holding registered title to land is a condominium corporation, the owner is the corporation and not its members;

“parking space” means that part of private or public property legally designated for the purpose of vehicle parking;

“person” includes any individual, firm, partnership, association, corporation, company or organization of any kind;

“private entrance” means an improved surface within a highway used or intended for use for vehicular access to and from private property adjacent to the highway;

“property” means land and any buildings thereon located in the City which is separately assessed, and which is transferable separately from any surrounding lands pursuant to the *Planning Act*,

“private property” means a property, the owner of which is not the City or the Crown;

“property line” means the common boundary line between adjacent properties but does not include the common boundary line between private property and the highway;

“Road Occupancy By-law” means the City’s By-law to Regulate Road Occupancy, Including Road Cuts, Temporary Closure and Sidewalk Cafes, 2011-**, as amended or replaced;

“roadway” means that part of a highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the shoulder, and, where a highway includes two or more separated roadways, the term “roadway” refers to any one roadway separately and not to all of the roadways collectively;

“shoulder” means that part of a highway immediately adjacent to the roadway and having a surface of asphalt, concrete or gravel, for the use of vehicles;

“sidewalk” means a part or strip of land, paved or otherwise, in, on, or alongside a highway and designed and intended for, or used by, the general public for pedestrian travel, and includes any structure above or below ground designed or intended for the use of pedestrians even if said structure is not wholly or partially above or below ground;

“temporary private entrance” means a private entrance granted by the General Manager for a temporary period during construction, repair or improvement on private property or for any other purpose approved by the General Manager; and

“vehicle” includes a motor vehicle, trailer, traction engine, farm tractor, road-building machine, bicycle and any vehicle drawn, propelled or driven by any kind of power, including muscular power, but does not include a motorized snow vehicle or a street car.

Interpretation

2.-(1) Whenever this By-law refers to a person or thing with reference to gender or the gender neutral, the intention is to read the By-law with the gender applicable to the circumstances.

(2) References to items in the plural include the singular, as applicable.

- (3) The words “include”, “including” and “includes” are not to be read as limiting the phrases or descriptions that precede them.
- (4) Headings are inserted for ease of reference only and are not to be used as interpretation aids.
- (5) Specific references to laws in the By-law are printed in italic font and are meant to refer to the current laws applicable with the Province of Ontario as at the time the By-law was enacted, as they are amended from time to time.
- (6) Any reference to periods of time, stated in numbers of days, shall be deemed applicable on the first business day after a Sunday or Statutory holiday if the expiration of the time period occurs on a Sunday or Statutory holiday.
- (7) The obligations imposed by this By-law are in addition to obligations otherwise imposed by law or contract.

Severability / Conflict

3.-(1) If any section, subsection, part or parts of this By-law is declared by any court of law to be bad, illegal or ultra vires, such section, subsection, part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such.

(2) Nothing in this By-law relieves any person from complying with any provision of any Federal or Provincial legislation or any other By-law of the City.

(3) Where a provision of this By-law conflicts with the provisions of another By-law in force in the City, the provision that establishes the higher standard to protect the health, safety and welfare of the general public shall prevail.

Administration

4.-(1) The administration of this By-law is assigned to the General Manager who is also delegated the authority to make all decisions required of the General Manager under this By-law and to perform all administrative functions identified herein and those incidental to and necessary for the due administration of this By-law, including the authority to:

- (a) receive and process all applications for all permits and extensions of permits under this By-law;
- (b) issue permits in accordance with the provisions of the By-law;
- (c) impose terms and conditions on permits in accordance with this By-law; and
- (d) refuse to issue or to extend a permit.

(2) The General Manager may delegate the performance of any one or more of his or her functions under this By-law to one or more persons from time to time as the occasion requires and may impose conditions upon such delegation and may revoke any such delegation.

Private Entrance Permit Required

5.-(1) No owner shall construct, relocate, alter or close a private entrance, or authorize or cause a private entrance to be constructed, relocated, altered or closed without first obtaining:

- (a) a private entrance permit from the General Manager in accordance with the provisions of this By-law; and

- (b) where applicable a road occupancy permit in accordance with the provisions of the City's Road Occupancy By-law.
- (2) No owner shall construct, install, relocate, excavate, remove or reset a culvert under a private entrance or authorize or cause a culvert to be constructed, installed, relocated, excavated, removed or reset under a private entrance without first obtaining:
- (a) a private entrance permit from the General Manager authorizing such work in accordance with the provisions of this By-law; and
 - (b) where applicable, a road occupancy permit in accordance with the provisions of the City's Road Occupancy By-law.
- (3) Where there is a private entrance, the owner of the private property benefitting from the private entrance shall be deemed to have constructed, relocated, altered or closed installed the private entrance and where a culvert is installed under a private entrance, the owner of that private property shall be deemed to have constructed, installed, relocated, excavated, removed or reset the culvert.

Exceptions

6-(1) Despite Subsection 5-(1), a private entrance permit is not required for a private entrance approved through the City's Site Plan approval process.

(2) Despite Subsection 5(2), a private entrance permit is not required where a culvert is constructed, installed, relocated, excavated, removed or reset as a result of highway construction or reconstruction, drainage improvements or sewer and water work where such work is completed by or on behalf of the City.

(3) Despite anything herein, no private entrance permit is required for an entrance to a property owned by the City.

Application for Permit

7.-(1) Every applicant for a permit under this By-law shall:

- (a) file with the General Manager an application in the form established by the General Manager from time to time, which includes the following:
 - (i) particulars of the owner, municipal address, legal description and zoning of the private property to which the application applies;
 - (ii) a telephone number or other acceptable emergency contact information;
 - (iii) particulars of the work for which authorization is sought, including the size, type of construction, design and grade of any proposed private entrance including particulars of any required culvert;
 - (iv) particulars of the location of any existing private entrance and the proposed location of the new or replacement private entrance;
 - (v) particulars of any culvert to be installed, replaced or reset;
 - (vi) particulars of whether the applicant proposes to have the City install, replace or reset any culvert at the applicant's expense, or will make other arrangements for the work to be done;
 - (vii) the number of the building permit application where the application is made in conjunction with an application for a building permit;

- (viii) such other particulars as the General Manager may require to investigate and process the application; and
 - (ix) the signature of the applicant, and where the applicant is a corporation, the signature of a person who has authority to bind the applicant, certifying the accuracy of the information provided.
- (b) file with the General Manager as part of the application a sketch drawn to scale showing, as applicable:
- (i) the dimensions of the private property for which the application is being made and of any adjoining property;
 - (ii) the location and dimensions of any existing private entrance and any existing culvert under the private entrance;
 - (iii) the location and dimensions of any proposed private entrance and any proposed culvert under a private entrance;
 - (iv) the location of any tree, shrub, utility pole or access box, hydrant, or other structure or topographical feature likely to affect the private entrance;
 - (v) the location of any 0.3 reserve or any easement adjacent to the proposed private entrance;
 - (vi) the location of the nearest cross street to the private property which is the subject of the application and distance from property lines;
 - (vii) the location of the private entrance to each abutting property and the distance from the proposed entrance way;
 - (viii) the grade profile, elevation from the centre of the road to the building on the private property and the distance from the centre of the road to the building on the property unless the General Manager determines such to be unnecessary; and
 - (ix) such other information as the General Manager may require to assess the application;
- (c) pay a non-refundable application fee determined in accordance with the City's Miscellaneous User Fee By-law then in effect;
- (d) where the applicant has requested that the City install, replace or reset a culvert, pay the applicable fee determined in accordance with the City's Miscellaneous User Fee By-law then in effect; and
- (e) where necessary, file an application for a road occupancy permit under the City's Road Occupancy By-law.

(2) Where the application is for a private entrance to a private property with 50 or more parking spaces or carries traffic which, in the opinion of the General Manager might impact adversely the quality of traffic service on the adjacent highway, the owner shall provide an access impact study in addition to the information and materials provided in Subsection 7(1).

(3) Every applicant for a permit shall submit a fully complete application at least 20 working days before the applicant proposes to start the work or activity to be authorized by the Permit. The application is complete once all required information, documentation and fees have been submitted.

Refuse to Issue Permit

8.-(1) The General Manager shall refuse to issue a permit under this By-law:

- (a) if the application is incomplete; or
- (b) the application is non-compliant with the guidelines set out in Schedule A.

(2) The General Manager shall advise the applicant in writing of his or her decision to not issue a permit under this By-law and the reason for the refusal. Notice of the decision may be delivered to the applicant, or mailed to the address for the applicant in the application. Service shall be deemed effective immediately, if delivered to the applicant or on the 5th day after mailing, if the notice of decision is mailed to the applicant.

(3) In the event that the applicant is not satisfied with the General Manager's decision the applicant shall be entitled to appeal the decision to the Hearing Committee within 10 days of the effective date of the service of the General Manager's decision, failing which the decision of the General Manager is final.

(4) Despite Paragraph 8(1)(b), the General Manager may, in his or her discretion issue a Permit under this By-law where the General Manager is satisfied that in the circumstances, compliance is not possible and issuance of the Permit will not:

- (a) result in undue interference with the safe movement of public traffic, pedestrians or other users of the abutting highway; or
- (b) create hazardous conditions due to inadequate sight distance, horizontal or vertical alignments or other considerations.

Issuance of Permit / Permit Conditions

9.-(1) Where the applicant has complied with the requirements of section 7 and the issuance of the permit is not otherwise prohibited under this By-law, the General Manager is authorized to issue a permit specifying particulars of:

- (a) the authorized work, including requirements as to design, construction, size or dimension;
- (b) the location of the authorized work;
- (c) dates and times for the conduct of the activities permitted under the Permit;
- (d) in the case of a private entrance, the permitted grade;
- (e) in the case of a culvert, whether the work will be done by the City or a contractor chosen by the permit holder; and
- (f) such conditions or provisions as the General Manager determines to be appropriate in the circumstances.

(2) In issuing a permit, the General Manager may specify a location and design for a private entrance that differs from that proposed in the application.

(3) Whether or not specified by the General Manager in the permit, every permit, including an extension permit, is issued subject to the following conditions:

- (a) the permit holder shall remove at his cost:

- (i) any private entrance, culvert, curb, sidewalk or ancillary installation along the frontage of the property, which becomes redundant as a result of the issuance of the permit; and
 - (ii) any private entrance which contravenes this By-law by reason of the construction, relocation or alteration of the private entrance authorized by the permit;
- (b) a permit holder who closes a private entrance shall reinstate, at his expense, the sidewalk, shoulder, curb and boulevard to City standards;
 - (c) the design and construction of the private entrance and the removal and reset of any culvert shall be consistent with City standards then in effect, as established by the General Manager from time to time;
 - (d) the owner of property to which there is a private entrance is responsible for the maintenance and upkeep of the private entrance, including any curbs;
 - (e) the owner of property where there is a culvert installed below a private entrance is responsible for the maintenance and upkeep of the culvert including any headwalls;
 - (f) the permit holder is responsible at the permit holder's own cost, to effect the surface restoration of the private entrance and for replacement of the headwall where a culvert has been installed, replaced or reset, even if the installed, replacement or reset was done by the City;
 - (g) the permit holder is responsible to remove at his expense, all vegetation, earth, rock or other obstacles necessary to establish and maintain an adequate minimum stopping sight distance, determined in accordance with Schedule A; and
 - (h) the private entrance shall be constructed in accordance with the City's Standard Drawings (GSSD – 303.020 & 350.010 as amended or replaced from time to time and the approved drawings.
- (4) Where the application is for a private entrance to a private property with 50 or more parking spaces or carries traffic which, in the opinion of the General Manager might impact adversely the quality of traffic service on the adjacent highway, the permit holder shall in addition to the conditions in Subsection 9(3):
- (a) pay for additional road works required to maintain the quality of traffic service on the adjacent highway, including channelization, deceleration and acceleration lanes, turning lanes and traffic control installations, which shall be constructed to the satisfaction of the General Manager; and
 - (b) convey at no cost to the City, good title, free of encumbrance, any land required for the purposes set out in paragraph 9(4)(a)
- (5) The General Manager issues a Permit by dating as of the date of issuance and signing the Permit.
- (6) No permit holder shall fail to comply with the conditions in the permit or deemed to be included in the Permit.
- (7) The General Manager may revoke a permit for failure to comply with any provision or condition of a permit of this By-law, in addition to any other enforcement proceedings against the permit holder.

(8) Upon revocation of a permit, the permit holder of the revoked permit shall immediately cease or ensure the immediate cessation of all the activities for which the permit was issued.

Temporary Private Entrance

10.-(1) Despite any other provision of this By-law, the General Manager may issue a permit for a temporary private entrance and may impose in the permit for the temporary private entrance, such conditions and restrictions for the safe and efficient movement of pedestrians and vehicles as the General Manager determines to be appropriate, including the removal and reinstatement of traffic signs and traffic signals.

(2). When a temporary private entrance requires the erection, removal or relocation of any traffic control device including, but not limited to, traffic signals and traffic signs, the permit holder shall be responsible for the cost of all work involved to the General Manager's satisfaction.

Expiry of Permit/ Extension of Permit

11.-(1) A permit issued under this By-law shall expire after 12 months, if the work authorized under the permit has not been completed.

(2) A permit holder may apply for a new permit where a permit has expired without the work being completed.

(3) A permit holder may apply in writing to the General Manager for an extension of the permit where further time is required to complete the proposed work, provided such application is made prior to the expiry of the permit.

(4) Where a fully complete application is submitted under Subsection 11(1), the General Manager is authorized to issue one extension permit for a period not in excess of 6 months, either on the same terms as the original permit, or on such additional terms and conditions as the General Manager determines to be appropriate. Any extension permit shall be subject to the conditions in Section 9.

Duties – Permit Holder

12.-(1) No permit holder shall fail to keep or fail to cause a copy of the permit to be kept at the site of the work authorized in the permit.

(2) No permit holder shall fail to produce the permit or fail to cause the permit to be produced when asked to do so by a By-law Enforcement Officer.

(3) No permit holder shall fail to comply with or fail to cause any person doing work pursuant to the permit to comply with the provisions of the permit and the provisions of this By-law.

Duties - General

13.-(1) No owner of private property to which there is a private entrance shall fail to maintain and keep in good condition, the private entrance, including any curbs and headwalls.

(2) No owner of private property shall fail to maintain and keep in good condition:

- (a) any culvert under a private entrance to the private property; or
- (b) the headwalls of the culvert in the private entrance to the private property.

(3) No owner of private property shall fail to replace or reset or cause to be replaced or reset, a culvert under a private entrance as and when necessary to ensure proper flow of water through the culvert.

(4) No owner of private property shall construct or cause to be constructed, any curbing, headwalls, decorative stonework or landscaping on a private entrance the height of which extends above the level of the shoulder of the private entrance.

14.-(1) Where the City undertakes any construction or reconstruction work on a highway or undertakes drainage improvements or sewer and water work that affects a private entrance that conforms with this By-law the City shall at its own expense:

- (a) undertake any reconstruction of the private entrance made necessary by the construction or reconstruction of the highway; and
- (b) where applicable, install a replacement entrance culvert to maintain the entrance and provide for side sloping. The City shall not be required to replace culvert head walls.

(2) The replacement private entranceway shall be compliant with this By-law, unless the General Manager, in his discretion, authorizes a private entrance way which does not conform to this By-law, in a location and with a design approved by the General Manager.

Enforcement - No Obstruction Etc.

15.-(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.

Right of Entry - Inspection

16. A By-law Enforcement Officer may enter on private property at all reasonable times to ascertain whether the provisions of this By-law are complied with, a direction or order or notice given under this By-law, or a term of a permit issued under this By-law are complied with.

Order to Discontinue

17. Where the General Manager determines that a person is installing or causing or permitting a private entrance to be installed without a permit, or contrary to the terms and conditions of a permit, the General Manager may make an order requiring the person installing the private entrance, or causing or permitting the private entrance to be installed without a permit or contrary to the terms and conditions of a permit to discontinue the installation or to discontinue the non-compliant installation. The Order shall set out reasonable particulars of the contravention, the location of the land on which the contravention is occurring and the date by which there must be compliance.

Order to Comply

18. Where the General Manager determines that an owner of private property has contravened this By-law he may make an order to comply. The order shall set out:

- (a) reasonable particulars of the contravention;
- (b) particulars of the location where the contravention occurred;
- (c) the work to be done to comply with this By-law;
- (d) the date by which the work must be done; and

- (e) provide that if the work is not completed by the date specified to the satisfaction of the General Manager, that the General Manager may cause the work to be done at the expense of the owner.

Service of Orders

19-(1) Service of an Order under Section 17 or Subsection 18(1) shall be given to the owner, by delivering personally to the owner or by mailing to the owner by registered mail at the address recorded for the owner in the assessment roll for the property.

(2) Where order is served by personal service, it shall be effective on the date given; when given by registered mail, shall be deemed effective upon the earlier of the date on which the registered mail is signed for and 5 days after mailing; and when placed in the mail box or other depository ordinarily used for mail or posted on the door of the building, shall be deemed effective on the 5th day after the leaving or posting as the case may be.

Comply with Order

20. Every person who is served with an Order under this By-law shall comply with the requirements of the Order within the time period specified in the Order.

Remediation by City

21. Where the owner fails to comply with the requirements of the Order under Subsection 18(1) within the time period specified in the Order, the General Manager may cause such work to be done or take such steps as are necessary to meet the requirements of the Order, and the cost thereof including interest thereon at the rate of 15%, from the date the costs were incurred until payment in full, may be recovered from the owner by action or by adding same to the property tax rolls for the property owned by the owner and collecting them in the same manner as property taxes.

Offences and Penalties

22-(1) 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 on conviction is liable to a fine as provided for in the *Provincial Offences Act*.

(2) For the purposes of Subsection 22 (1), 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.

(3) 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.

(4) 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, 2001*, 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.

(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.

Prohibition Order

23. 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.

Confidential Information

24.- (1) All information submitted to and collected by the City, will, except as otherwise provided in this Section, be available for disclosure to the public in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 (MFIPPA).

(2) In the event that any person in submitting information to the City or to the General Manager in any form, as required under this By-law, where such information is confidential or proprietary or otherwise may be exempt from disclosure under the MFIPPA, the person submitting the information shall so identify that information upon its submission to the City or the General Manager and shall provide sufficient details as to the reason for its purported exemption from disclosure.

PART 7 - GENERAL

Short Title

25. This Bylaw may be referred to as the "Private Entrance By-law".

Schedules

26. The following schedule is incorporated into and forms a part of this By-law:

Schedule A – Guidelines for Approving Private Entrances

Repeals

27. By-law 2003-88A of the City of Greater Sudbury and all amendments thereto are hereby repealed.

Transition

28. Every driveway permit and every culvert permit issued prior to the passage of this By-law shall continue in force and be deemed to be issued under this By-law.

Conflicts

29. Where a provision of this By-law conflicts with the provisions of another By-law in force in the City, the provision that establishes the higher standard to protect the health, safety and welfare of the general public shall prevail

Enactment

30. This By-law shall come into force and take effect immediately upon the final passing thereof.

READ AND PASSED IN OPEN COUNCIL this day of April, 2011

_____ Mayor

_____ Clerk

DRAFT

SCHEDULE A
TO BY-LAW 2011-*

GUIDELINES FOR APPROVAL OF PRIVATE ENTRANCE

The following guidelines apply to private entrances:

1. The proposed location of the entrance should meet the minimum stopping sight distance as established from time to time by the Transportation Association of Canada, (TAC) for the design speed on the highway abutting the property for which the entrance permit is sought. Sight distance are to be measured in accordance with the TAC Manual guidelines then in effect.

Sample Design Speeds and Stopping Sight Distances are set out below for road grades of less than 3%

Design Speed in kilometres per hour	Stopping Sight Distance in metres, rounded to the nearest metre
40	45
50	65
60	85
70	110
80	140
90	170
100	210

NOTE 1: in circumstances where the grade of the highway abutting the land to which the application applies is equal to or exceeds 3%, the minimum stopping sights distance should be adjusted in accordance with the TAC Manual

NOTE 2 the Applicant is responsible to remove from time to time, any vegetation, earth, rock or other obstacle necessary to maintain the minimum stopping sight distance on wet pavement in accordance with the TAC manual

2. The private entrance should not result in a contravention of the City's Official Plan or Zoning By-law then in effect for the land to which the application for the Driveway Permit applies. The following notations are included for assistance in issuing permits only and are not intended to be an all-inclusive listing of prohibitions:

- (a) the entrance should not be located within the sight triangle as defined in the City's Zoning By-law;
- (b) the entrance to a property in a residential zone should not result in more than 50% of the front yard being used for parking;
- (c) the entrance should not result in front yard parking contrary to the zoning for the property;

- (d) the entrance to a property in a residential zone which has less than 30 metres frontage, should not result in the property having more than one entrance;

NOTE: the Official Plan requires that entrances onto arterial roads be strictly regulated and kept to a minimum. Whenever property has frontage along more than one roadway, access will generally be limited to the lowest volume road

3. The sketch forming part of the application for the entrance permit should disclose that the entrance will be constructed in accordance with the City's Standard Drawings (GSSD – 303.020 & 350.010) as amended or replaced from time to time; and

4.(1) Subject to Subsection 4(2), the private entrance to a property in a residential zone should not be less than 3 metres in width and not more than 6.3 metres in width, measured at the street line.

(2) Despite Subsection 4(1) the private entrance to a property with a single detached dwelling with a shared entrance way may be in excess of 6.3 metres in width, provided the entrance does not exceed 10 metres in width.

5. The private entrance to a property zoned for commercial, industrial, agricultural uses should not exceed 9.1 metres in width;

6. The private entrance to a property should not have a grade in excess of 10% at any point.

7. The centerline of a private entrance should intersect the centerline of the roadway as nearly as practicable at a right angle, but in no case should the acute angle between the centerline of the private entrance and the centerline of the roadway be less than 70 degrees.

8. No private entrance permit should be issued where the General Manager, in his sole discretion determines that the private entrance as set out in the application would be likely to:

- (i) result in undue interference with the safe movement of public traffic, pedestrians or other users of the abutting highway; or
- (ii) create hazardous conditions due to inadequate sight distance, horizontal or vertical alignments or other considerations.

9. One additional entrance should be permitted to access a farm or field on a parcel of land zoned for agricultural use only where evidence is provided that the said property is being used for agricultural purposes.

10. A non-conforming entrance should not be approved unless in the circumstances a conforming entrance is not possible.