

## 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 1<sup>st</sup> in any year or expire later than September 30<sup>th</sup> 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 30<sup>th</sup> 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 30<sup>th</sup> 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 30<sup>th</sup> 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 30<sup>th</sup> 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