

THE CORPORATION OF THE TOWNSHIP OF CARLING

BY-LAW 2019-29

Being a By-law to prohibit the Obstruction of
Township Roads.

WHEREAS section 11(3) 1 of the Municipal Act, 2001, provides that a municipality may pass By-laws within the following sphere of jurisdiction: Highways, including parking and traffic on highways:

AND WHEREAS section 391(1) of the Municipal Act, 2001, provides that a municipality may pass By-laws imposing fees or charges on any person for services or activities provided by the municipality or done on behalf of it;

AND WHEREAS section 436(1) of the Municipal Act, 2001, provides that a municipality may pass By-laws providing the entry onto the land at any reasonable time for the purpose of carrying out an inspection to determine compliance with a By-law;

AND WHEREAS section 429 (1) of the Municipal Act, 2001, provides that a municipality may establish a system of fines for a By-law passed under the Act;

AND WHEREAS section 444 of the Municipal Act, 2001, provides that a municipality may make an order to require a person to discontinue contravening a By-law and to do the work required to correct the contravention;

NOW THEREFORE the Council of the Township of Carling enacts as follows:

1. DEFINITIONS:

- 1.1. **By-law** means this By-law.
- 1.2. **Contractor** means a person, alone or with others conducting work on a property on behalf of the Owner or Occupant.
- 1.3. **Council** means the Council of the Township of Carling.
- 1.4. **Damage** means harm or injury to the street, including without limitation, harm, injury, disturbance, cracking, gouging, rutting or displacement of or to pavement, curb, landscaping, trees including root zone, retaining walls, street furniture or sidewalks resulting from the use of the street to access work such that, in the sole opinion of the Manger of By-law Enforcement, the street is not in its per-constructed condition.
- 1.5. **Highway** means a common and public highway, and includes one or both of the following:
 - a) Any street, road, avenue, parkway, lane, driveway, boulevard, sidewalk, square, place, bridge, viaduct or trestle, any part which is intended for or used by the general public for the passage of vehicles or persons, or
 - b) The area between the lateral property lines of any highway or road allowance including any curbs, gutters, boulevards, culverts, ditches and retaining wall.
- 1.6. **Landscape or Construction Material** means gravel, soil, sod, bricks and paving stones, landscaping rocks, wooden planks or boards.

- 1.7. **Notice of Obstruction** means a notice provided to an Owner, Occupant or Contractor under section 5 of this by-law.
- 1.8. **Obstruct** means to obstruct, encumber, damage or foul.
- 1.9. **Occupant** means a lessee, tenant, mortgagee in possession or any other Person who appears to have care and control of any property.
- 1.10. **Officer** means a person employed by the Township to perform the duties of enforcing By-laws and appointed by Council or Chief Administrative Officer as a Municipal By-law Enforcement Officer.
- 1.11. **Owner** means:
- a) The person who is registered owner of a property; or
 - b) The person for the time being, managing or receiving the rent of the property whether on the person's own account or as an agent or trustee of any other Person, or who would receive the rent if the land or premises were let.
- 1.12. **Person** means an individual, corporation, partnership or limited liability partnership.
- 1.13. **Street Furniture** mean benches, garbage containers, hand rails, tables, signs, posts, any other above ground appurtenance that is owned and used for public purpose.
- 1.14. **Township** means the Corporation of the Township of Carling.

2. GENERAL PROVISIONS

- 2.1. No person(s), agent or otherwise shall by any means whatsoever do any of the following:
- a) Deposit snow or ice on the portion of a Highway normally used for pedestrian or vehicular traffic;
 - b) The relocation of snow from a Highway or private property to the portions of a highway normally used for pedestrian or vehicular traffic;
 - c) Throwing, placing or depositing of dirt, glass, handbills, paper or other refuse and debris or the carcass of any animal on a Highway;
 - d) The excavation, removal or damage to any portion of a Highway including sod, trees, light poles, street signs or other objects within the Highway without the permission to do so from the Township;
 - e) The placing or depositing of any kind of furniture or fencing on a Highway.
- 2.2. If an Officer determines that an obstruction of a Highway exists, the Officer may issue an order requiring the Owner, Occupant and/or Contractor of the property from which the obstruction comes from, relates to, or was created for, to discontinue causing the obstruction and to remove the obstruction and repair as necessary, at the expense of the Owner, Occupant and/or Contractor, so that the Highway is brought back to its former condition prior to the obstruction.
- 2.3. Any landscape or Construction Material removed by the Township from a Highway under this By-law may be directly deposited onto the property

from which the Obstruction comes from, relates to, or was created for, or the material may be treated as refuse by the Township or become the property of the Township which can be disposed of in any manner or used for any Township purpose.

2.4. Where an Officer determines that an obstruction of a highway is, or may create, a hazardous condition to the safety of any person using the highway, the Officer may take any action necessary to have the obstruction immediately removed and the highway repaired, if necessary. All costs incurred by the Township in undertaking this work shall be expenses owed to the Township by the owner, occupant and/or contractor of the property from which the obstruction comes from, relates to or was created for.

2.5. Notwithstanding that any section or sections of this by-law, or any part, or any part thereof, may be found by any court of law to be invalid or beyond the power of council to enact, such clause, schedule or parts thereof shall be deemed to be severable, and all other clauses and schedules of this by-law or parts thereof, are separate and independent therefrom and enacted as such.

3. RECOVERY OF EXPENSE

3.1. Where the order described in subsection 2.2 is not complied with, within the time period stipulated therein, the Township may remove the obstruction and repair, as necessary, the Highway and all the costs incurred by the Owner, Occupant and/or Contractor of the property for which the obstruction comes from, relates to, or was created for.

3.2. The Township may retain the services of a contractor to carry out any of the work that the Township may carry out under this By-law at the expense of the owner, occupant and/or contractor.

3.3. All expenses incurred by the Township in connection with the enforcement of this By-law shall be paid to the Township by the person owing those expenses, within thirty (30) days of their billing date, and in the event of failure to pay the entire amount within thirty (30) days, the outstanding balance of the expenses owed may be added to the tax roll of the property from which the Obstruction comes from, relates to, or was created for and collected in the same manner as property taxes.

3.4. The amount of said fee(s) or charge(s) shall be the amount of administrative costs, cost of enforcement and all other costs incurred by the Township in accordance with the Township's fees By-law.

4. ENFORCEMENT

4.1. The Manager of By-law Enforcement or their designate are hereby authorized and empowered to enforce the provisions of this By-law.

4.2. No Person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this by-law.

4.3. By-law Enforcement Officers and persons under their direction may at any reasonable time enter onto any lands within the Township to determine if the provisions of this By-law are being complied with or may enter onto any lands within the Township to carry out the remedial actions required to bring the property into conformity with the by-law.

4.4. By-law Enforcement Officers and persons under their direction may require the production for inspections of documents or things relevant to the inspection, including the removal of all documents for the purpose of making copies or extracts.

4.5. By-law Enforcement Officers and persons under their direction may require information from any person concerning a matter related to the inspection.


5. NOTICE OF OBSTRUCTION

5.1. The Notice of Obstruction from the Township may be:

- a) Served personally upon the owner, contractor, or permit holder;
- b) Posted on site; or
- c) Mailed by regular mail or sent by email to the last known address of the owner, contractor, or permit holder according to the current assessment rolls;

5.2. If served by regular mail, a notice of obstruction under subsection 5.1c shall be deemed to have been served in the fifth day after mailing.

READ and FINALLY PASSED in OPEN COUNCIL this 9th day of July, 2019.


Mike Konoval, Mayor


Kevin McLwain, CAO/Clerk