

Municipality Of Chatham-Kent

Infrastructure and Engineering Services

Public Works

To: Mayor and Members of Council

From: Ryan Brown
Director, Public Works

Date: October 22, 2020

Subject: Use and Care of Municipal Highways By-Law

Recommendations

It is recommended that:

1. A Use and Care of Municipal Highways bylaw (Appendix A) be adopted with regard to regulating the use and care of Municipal highways in the Municipality of Chatham-Kent.
2. The set fines (Appendix B) be approved by Council, subject to final approval given by the Regional Senior Justice of the Ontario Court of Justice.

Background

In recent years, there have been many incidents where residents have taken action that has generated additional maintenance costs to the Municipality related to roads, sidewalks, and storm water collection/drainage systems. Examples include:

- Dumping or spill of hazardous substances
- Placing garbage dumpster or temporary storage unit
- Constructing overland piping for the purposes of irrigation or substance removal
- Dumping snow or ice from a private property
- Depositing, dropping, scattering, storing, spilling or throwing any earth, ashes, manure, leaves, or garbage
- Erecting basketball net temporarily or permanently
- Obstructing or altering a drain, gutter or water course
- Setting or carrying fire
- Throwing, piling, storing, or causing any material to be thrown or piled upon a highway, except for the purpose of having it immediately delivered upon adjacent premises.
- Sawing or splitting cordwood or depositing firewood or topsoil on any highway
- Obstructing or altering a Municipal sidewalk, including the construction of scaffolding over Municipal sidewalks

- Moving, or causing to be moved, a vehicle equipped with cleats, flanges, or tracks on its wheels, or rollers, or any of them, on or along the traveled portion of the highway, except by means of a float, trailer
- Removing a barricade or notice or entering upon or use a highway temporarily closed
- Removing or moving a barricade, sign or light placed around any excavation
- Erecting or maintaining any gate or door so that the same shall open or swing outward
- Erecting, constructing or maintaining any encroachment upon a highway, including but not limited to below grade piping
- Planting or allowing any part of a tree, shrub, sapling, hedge, crop or any other plant to extend over or upon any highway
- Erecting a fence, constructing a wall, or planting a hedge in, over, or upon a highway
- Putting down, destroying, defacing or in any way interfering with any municipal infrastructure, including but not limited to: any post, surveyor's mark, bench mark, traffic sign, highway name sign, sign board, regulatory sign, traffic signal, traffic cone, or any other traffic control device affixed or placed on a highway
- Erecting or placing private driveway lighting, address/name posts, or reflectors on a highway
- Hauling earth, sand, stone or other substances on a highway so loaded to permit or cause the contents thereof to fall, spill or be deposited on a highway
- Bringing a vehicle, or permitting it to be brought upon a highway without removing mud, clay, lime, and similar material, or any fertilizer or manure which is likely, if not removed, to cause an obstruction or dangerous condition or nuisance in a highway or cause damage to the surface of the highway.

Comments

At this time, there is currently no effective legislation in place allowing enforcement of undesired behaviour on municipal roads and sidewalks. The proposed by-law will provide a means for the Municipality to recover the costs from offenders. Public Works estimates that approximately \$25,000 per year on average could be recovered with this by-law. Due to public safety concerns, these situations must be rectified immediately and currently the costs for remedial work is being paid for by all residents of Chatham-Kent.

Specific behaviour that should be prohibited on roadway and sidewalks is described in detail in the by-law (Appendix A). Other Ontario municipalities have similar bylaws already in place. The proposed bylaw also includes provisions to grant exemption or permits to allow the prohibited acts when justified.

Areas of Strategic Focus and Critical Success Factors

The recommendations in this report support the following areas of strategic focus:

- Economic Prosperity:

Chatham-Kent is an innovative and thriving community with a diversified economy

- A Healthy and Safe Community:
Chatham-Kent is a healthy and safe community with sustainable population growth
- People and Culture:
Chatham-Kent is recognized as a culturally vibrant, dynamic, and creative community
- Environmental Sustainability:
Chatham-Kent is a community that is environmentally sustainable and promotes stewardship of our natural resources

The recommendations in this report support the following critical success factors:

- Financial Sustainability:
The Corporation of the Municipality of Chatham-Kent is financially sustainable
- Open, Transparent and Effective Governance:
The Corporation of the Municipality of Chatham-Kent is open, transparent and effectively governed with efficient and bold, visionary leadership
- Has the potential to support all areas of strategic focus & critical success factors
- Neutral issues (does not support negatively or positively)

Consultation

Legal Services was consulted in the preparation of the by-law proposed in this report and in the search of existing legislation.

Engineering and Transportation Services was consulted and did not have any concern with the enactment of this by-law.

Financial Implications

Additional revenue expected of approximately \$25,000 per year will be managed by existing administration.

Prepared by:

Ryan Brown, P.Eng.
Director, Public Works

Reviewed by:

Thomas Kelly, P.Eng, MBA
General Manager
Infrastructure and Engineering Services

Consulted and confirmed the content of the consultation section of the report by:

David Taylor
Director, Legal Services

Attachments: Appendix A – Draft Road Use Bylaw
Appendix B – Schedule of Set Fines

C: Deputy Chief of Police, Police Services
Director, Legal Services

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BY-LAW NUMBER #
OF THE CORPORATION OF THE
MUNICIPALITY OF CHATHAM-KENT

A by-law to regulate the use and care of Municipal Highways.

FINALLY PASSED the ____ day of _____, 2020

WHEREAS the Municipality has broad authority over highways under sections 10 and 28 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended and wishes to regulate certain uses of highways;

AND WHEREAS Section 128 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of council, are or could become or cause public nuisances;

AND WHEREAS Section 425(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may pass by-laws providing that a person who contravenes a By-Law of the municipality passed under the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, is guilty of an offence;

AND WHEREAS Section 429(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may establish a system of fines for offences under a By-Law passed under the *Municipal Act, 2001*, S.O. 2001, c.25, as amended;

AND WHEREAS Section 446 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may direct that where an owner has defaulted, the municipality may have the default remedied at the owner's expense and add the cost to the tax roll in the same manner as municipal taxes.

NOW THEREFORE be it resolved that the Council of The Corporation of The Municipality of Chatham-Kent enacts as follows:

1. DEFINITIONS

In this By-law:

“General Manager” means the General Manager of Infrastructure and Engineering Services, or authorized designate;

“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;

“Municipality” means the Corporation of Municipality of Chatham-Kent;

“Roadway” means that part of the 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 separate roadways, the term “roadway” refers to any one roadway separately and not to all of the roadways collectively;

“Shoulder” means the portion of a Highway that provides lateral support to the Roadway and that may accommodate stopped Vehicles and emergency use;

“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 an all-terrain vehicle.

2. INTERPRETATION

- 2.1 Headings are for reference purposes and shall not affect in any way the meaning or interpretation of the provisions of this by-law.
- 2.2 It is declared that if any section, subsection or part or parts thereof be declared by any Court of Law to be illegal or ultra vires, such section, subsection or part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such
- 2.3 In this By-law, a word interpreted in the singular number has a corresponding meaning when used in the plural.

3. GENERAL PROHIBITIONS

- 3.1 No person shall, unless otherwise authorized by the provisions of this or any other By-law of the Municipality:
 - a) permit oils, chemicals or substances to be deposited or spilled on a highway including such substances deposited as a result of car maintenance activities, car rust prevention measures and the spillage of rust protecting substances, vacating storage tanks from vehicles or trailers, and the general spillage of substances from vehicles and trailers;
 - b) place or store a garbage dumpster or temporary storage unit on a highway;
 - c) construct overland piping for the purposes of irrigation or substance removal on or along any highway or watercourse under the control of the Municipality within or adjacent to a highway
 - d) dump or otherwise deposit snow or ice on a highway from private property;
 - e) deposit, drop, scatter, store, spill or throw any earth, ashes, manure, leaves, or garbage on any highway except where permitted by the Municipality;
 - f) permanently or temporarily erect a basketball net on any highway;
 - g) obstruct or alter a drain, gutter or water course along or upon a highway;
 - h) set or carry fire on a highway;
 - i) throw, pile, store, or cause any material to be thrown or piled upon a highway, except for the purpose of having it immediately delivered upon adjacent premises, nor shall any person saw or split any cordwood or firewood upon a highway or being the owner of cordwood, firewood or topsoil deposit on any highway, or permit it to remain thereon for a longer time than is necessary for its immediate removal to the premises adjacent thereto;
 - j) obstruct or alter a Municipal sidewalk, including the construction of scaffolding over Municipal sidewalks without Municipal approval;
 - k) 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 traveled portion of the highway, except by means of a float, trailer, or other similar device, providing that a vehicle is so equipped including a vehicle for the digging and backfilling of trenches, may be moved directly across the traveled portion of the highway, if a preventative mat has first been laid on the surface of the portion of the highway to be crossed, provided however that this paragraph shall not apply when a vehicle is operating with the written permission of the General Manager;

- l) remove a barricade or notice or enter upon or use a highway temporarily closed under the provisions of this or any other by-law of the Municipality;
 - m) remove or move a barricade, sign or light placed around any excavation in a highway;
 - n) erect or maintain any gate or door so that the same shall open or swing outward over any part of a sidewalk or highway;
 - o) erect, construct or maintain any encroachment upon a highway, including but not limited to below grade piping, without express permission of the Municipality;
 - p) permanently or temporarily erect curbing, landscaping, rocks, or ornamental material on a Highway; or
 - q) alter a Shoulder with a surface or material inconsistent with surrounding road structure without permission of the General Manager of Infrastructure and Engineering Services.
- 3.2 No owner or occupier of land shall plant or allow any part of a tree, shrub, sapling, hedge, crop or any other plant to extend over or upon any highway, so as to interfere with, impede or endanger persons using the highway.
- 3.3 No person, other than the Municipality, shall erect a fence, construct a wall, or plant a hedge in, over, or upon a highway.

4. EXEMPTIONS

- 4.1 The provisions of Section 3, paragraph (d) shall not apply to an employee or an agent of the Municipality who is engaged in moving snow or ice.
- 4.2 Section 3 paragraph (i) does not apply to any person putting sand or salt on the icy portions of a highway to reduce the danger of pedestrians falling or to enable a vehicle to use a roadway.
- 4.3 The General Manager may approve any exemptions to section 3 in accordance with Municipal policies regarding approvals of encroachments over Municipal Highways, and shall have the right to apply such conditions to any approval as he or she may deem advisable.

5. HIGHWAY NAME SIGNS, TRAFFIC SIGNALS AND SIGNAGE

- 5.1 No person shall put down, destroy, deface or in any way interfere with any municipal infrastructure, including but not limited to, any post, surveyor's mark, bench mark, traffic sign, highway name sign, sign board, regulatory sign, traffic signal, traffic cone, or any other traffic control device affixed or placed on a highway.

6. LIGHTING

- 6.1 No person shall erect or place private driveway lighting, address/name posts, or reflectors on a highway without the permission of the General Manager.

7. POWERS TO REMOVE

7.1 The General Manager may:

- a) provide notice by registered mail, regular mail or personal delivery to the last known address of the owner or person responsible for any item, structure or material placed or deposited on a highway contrary to this By-law and in such notice require that the item, structure or material be removed and any damage be remedied within a time period established by the General Manager. Such notice shall be deemed served upon the owner: when personally served- immediately upon service, when sent by registered mail- three days after sending, and when sent by regular mail- five days after sending.
- b) where such notice is not acted upon within the time period provided, arrange for the item, structure or material removed and any damage to be repaired at the owner's expense. The General Manager may arrange for the disposal of any item, structure or material removed and no person shall have a claim for compensation from the Municipality for such disposal.

7.2 Where the General Manager determines that an emergency situation exists, the General Manager may take any actions to remedy the emergency situations without the requirement to provide notice to any owner or person.

7.3 The Municipality may recover expenses resulting from actions taken in accordance with subsection 7.1 or 7.2 by action, or in the like manner as municipal taxes.

8. HIGHWAY DEBRIS

8.1 No person hauling earth, sand, stone or other substances on a highway shall so load his vehicle or drive the same as to permit or cause the contents thereof to fall, spill or be deposited on a highway.

8.2 No person in charge of a vehicle shall bring the vehicle, or permit it to be brought upon a highway unless there has been removed from the wheels thereof as completely as is reasonably practicable, all mud, clay, lime, and similar material, or any fertilizer or manure which is likely, if not removed, to cause an obstruction or dangerous condition or nuisance in a highway or cause damage to the surface of the highway.

9. ADMINISTRATION AND ENFORCEMENT

9.1 This By-law shall be administered and enforced by any municipal by-law enforcement officer(s) of the Municipality and any police officer.

10. APPEAL

9.1 An appeal of an Order made pursuant to this By-law shall lie to the municipal By-law Appeal Committee

9.2 A person who appeals an Order made pursuant to this By-law shall submit a request for a Hearing in the time frame and in the manner prescribed in By-law Number 22-2015 and the By-law Appeal Committee Rules of Procedure, both as amended, and shall submit any applicable fees established under the Municipality's User Fees By-law, as amended, for the processing of the Appeal

11. PENALTIES

- 11.1 Any person who contravenes any provision of this part of this By-law is guilty of an offence and upon conviction is liable to a fine as set out in Schedule A, or to the maximum allowable under the *Provincial Offences Act*, as the case may be.
- 11.2 When a person has been convicted of an offence under this By-law any court of competent jurisdiction, may, in addition to penalty imposed on the person convicted, issue an order prohibiting the continuation or repetition of the offence or the doing of any act or thing by the person convicted directed toward the continuation or repetition of the offence.

12. SHORT TITLE

- 12.1 This By-law may be referred to as the “Use and Care of Roads By-Law”

READ A FIRST, AND SECOND AND THIRD TIME this ____ day of _____, 2020.

ORIGINAL SIGNED BY:

MAYOR – Darrin Canniff

CLERK – Judy Smith

Schedule A**Part I: Provincial Offences Act****MUNICIPALITY OF CHATHAM-KENT BY-LAW -2020****TITLE: Use and Care of Municipal Highways By-law**

Item	Column 1 Short Form Wording	Column 2 Provision Creating or Defining Offence	Column 3 Set Fine
1.	Permit oils, chemicals or substances to be deposited or spilled on a highway.	3.1a)	\$400.00
2.	Place or store a garbage dumpster or temporary storage unit on a highway.	3.1b)	\$250.00
3.	Construct overland piping on or along any highway or watercourse.	3.1c)	\$400.00
4.	Dump snow or ice on a highway from private property.	3.1d)	\$250.00
5.	Deposit earth, ashes, manure, leaves, or garbage on a highway.	3.1e)	\$250.00
6.	Erect a basketball net on a highway.	3.1f)	\$250.00
7.	Obstruct or alter a drain, gutter, or water course along or upon a highway.	3.1g)	\$400.00
8.	Set or carry fire on a highway.	3.1h)	\$250.00
9.	Throw, pile, store, or cause material to be thrown or piled on a highway.	3.1i)	\$250.00
10.	Saw or split any cordwood or firewood upon a highway or permit cordwood, firewood or topsoil to remain on any highway for a longer time than is necessary for its immediate removal.	3.1i)	\$250.00
11.	Obstruct or alter a Municipal sidewalk.	3.1j)	\$400.00
12.	Move or cause to be moved a vehicle with cleats, flanges, or tracks on its wheels, or rollers, or any of them, on or along the traveled portion of the highway.	3.1k)	\$400.00
13.	Remove a barricade or notice or enter upon or use a highway temporarily closed.	3.1l)	\$400.00
14.	Remove or move a barricade, sign or light placed around any excavation in a highway.	3.1m)	\$400.00
15.	Erect or maintain any gate or door so it opens or swings outward over any part of a sidewalk or highway.	3.1n)	\$250.00
16.	Erect, construct or maintain any encroachment upon a highway without the Municipality's permission.	3.1o)	\$250.00
23.	Erection or placing of curbing, rocks, landscaping or ornamental materials on a highway.	3.1p)	\$250.00
24.	Alter a shoulder with a material inconsistent to surrounding	3.1q)	\$250.00
17.	Plant or allow a tree, shrub, sapling, hedge, crop, or other plant to extend over or onto the highway.	3.2	\$250.00
18.	Erection of a fence or wall, or planting of a hedge in, over, or upon a highway.	3.3	\$250.00

Item	Column 1 Short Form Wording	Column 2 Provision Creating or Defining Offence	Column 3 Set Fine
19.	Interference with municipal infrastructure, including any post, surveyor's mark, bench mark, traffic sign, highway name sign, sign board, regulatory sign, traffic signal, traffic cone, or any other traffic control device affixed or placed on a highway.	5.1	\$400.00
20.	Erection or placing of private driveway lighting, address/name posts, or reflectors on a highway without the permission of the General Manager.	6.1	\$250.00
21.	Spill of hauled substances (earth, sand, stone, or other substances) on a highway.	8.1	\$250.00
22.	Obstruction or dangerous condition or nuisance or damage to the surface of the highway caused by mud, clay, lime or other similar material, or any fertilizer or manure not removed from the tires of a vehicle.	8.2	\$250.00

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