

THE CORPORATION OF THE CITY OF WELLAND

BY-LAW NUMBER 2007 - 173

BEING A BY-LAW FOR PROHIBITING AND REGULATING THE DAMAGING, OBSTRUCTING AND FOULING OF HIGHWAYS AND TO REPEAL BY-LAWS 4477, 9265, 2000-94 and 2000-122

WHEREAS Section 11 of the Municipal Act, 2001, S.O. 2001, Chapter 25, as amended provides that By-laws may be passed by a lower-tier municipality;

AND WHEREAS Sections 8 and 9 of the Municipal Act, 2001, S.O. 2001, Chapter 25, as amended provides for the interpretation and scope of By-law making powers;

AND WHEREAS Section 55.(1) of the Municipal Act, 2001, S.O. 2001, Chapter 25, as amended provides that a lower tier municipality has jurisdiction over sidewalks of an upper tier municipality;

AND WHEREAS Sections 27, 44, and 62 of the Municipal Act, 2001, S.O. 2001, Chapter 25, as amended provides that a municipality has specific powers to regulate highways;

AND WHEREAS Section 128 of the Municipal Act, 2001, S.O. 2001, Chapter 25, as amended provides that a local 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 130 of the Municipal Act, 2001, S.O. 2001, Chapter 25, as amended provides that a municipality may regulate matters not specifically provided for by the Municipal Act or any other Act for purposes related to the health safety and well-being of the inhabitants of the municipality;

AND WHEREAS Section 135.(1) of the Municipal Act, 2001, S.O. 2001, Chapter 25, as amended provides that a local municipality may prohibit or regulate the destruction or injuring of trees;

AND WHEREAS Section 446 of the Municipal Act, 2001, S.O. 2001, Chapter 25, as amended provides that where a municipality has the authority by any Act or By-law to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do so, the matter or thing shall be done at the person's expense and the municipality may recover the costs of doing the matter or thing from the person required to do it, by action or by adding the costs to the tax roll and collecting them in the same manner as taxes;

AND WHEREAS it is the desire of the Council of the Corporation of the City of Welland to regulate the damaging, obstructing and fouling of highways under its jurisdiction with a view to ensuring the safety and enjoyment of the public in respect to the use of such highways;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF WELLAND ENACTS AS FOLLOWS:

SECTION 1 SHORT TITLE

1.1. This By-law may be cited as "The Highway Damage and Obstruction Control By-law"

SECTION 2 **SCOPE**

- 2.1. The provisions of this By-law shall be applicable concerning all highways within the limits of the City and for which the City has jurisdiction, including the sidewalks on the road allowance of the Regional Municipality of Niagara.
- 2.2. The City and its City Officials shall not be responsible for damages to a person, thing or the environment resulting from the damaging, fouling or obstruction of a highway by a person or Owner and such person or owner shall bear all liability.
- 2.3. By-law Exemptions
- 2.3.1. This By-law does not apply to the Government of Canada, the Province of Ontario, the Regional Municipality of Niagara, the City of Welland, or any public utility or local board as described in Section 5.16 of Zoning By-law 2667 of the City of Welland.
- 2.3.2. This by-law does not apply to a sign erected or installed in compliance with the City Sign By-law, except Subsection 4.4 continues to apply.
- 2.3.3. Nothing in this By-law shall prevent a property owner from using a driveway entrance providing access to the property or from maintaining the lawn on a City boulevard adjacent to the property.

SECTION 3 **DEFINITIONS**

- 3.1. In this By-law,
- (a) "Boulevard" means all parts of the highway save and except any roadway, shoulder, driveway or sidewalk;
- (b) "City" means the Corporation of the City of Welland;
- (c) "City Engineer" means the General Manager, Engineering, Public Works and Transportation Services of the City or his designate;
- (d) "City Official" means the City Engineer, City Parks, or a Law Enforcement Officer;
- (e) "City Parks" means the General Manager, Parks, Facilities and Leisure Services of the City or his/her designate;
- (f) "City Permission" means an Encroachment Agreement, License of Occupation, or other approval from Council, or a Road Occupancy Permit, issued by the City to allow use or occupancy of a portion of a City highway specified in the permit, for the time period and purpose so specified, and includes written permission issued by the Region concerning a sidewalk on a Regional Road;
- (g) "Council" means the Council of the Corporation of the City of Welland;
- (h) "Foul" means to throw, place, drop, deposit, abandon, discharge, or plant, or cause or permit the throwing, placing, dropping, depositing, abandoning, discharging, or planting of any dirt, mineral, tree, fence, hedge, waste, leaves,

branches, liquid, vegetation, material, or thing on a highway, in a manner that is not acceptable to the City as determined by a City Official;

- (i) "Highway" includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof;
- (j) "Law Enforcement Officer" means a Law or By-law Enforcement Officer appointed by the City for enforcement of its regulatory By-laws or a Police Officer, or any person appointed or otherwise delegated the authority of administration and enforcement of this By-law;
- (k) "Obstruct" means to foul a highway, including with snow, in such a manner that the ability to travel on the highway is impeded or reduced, or, the ability for a vehicle operator or pedestrian to safely discern other vehicles or pedestrians traveling the highway is compromised;
- (l) "Owner" means the property owner or other person in control of, or who has an interest in, the property abutting a highway and which is affiliated or associated with the subject damage, hedge or thing fouling or obstructing the highway;
- (m) "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 2 or more separate roadways, the term "roadway" refers to any one roadway separately and not all of the roadways collectively;
- (n) "Shoulder" means that portion of the highway lying adjacent to the roadway where there is no barrier curb, and which is improved or maintained to support a stopped vehicle;
- (o) "Sidewalk" means a foot path or any portion of a highway set aside or improved for the use of pedestrians.

SECTION 4 GENERAL PROVISIONS

4.1. General Regulations Applicable

- 4.1.1. No person or owner shall damage, or cause to be damaged a Highway.
- 4.1.2. No person or owner shall foul, or cause to be fouled a Highway.
- 4.1.3. No person or owner shall obstruct, or cause to be obstructed, or continue to obstruct, or continue to permit to be obstructed, a Roadway or Sidewalk.
- 4.1.4. Notwithstanding Sections 4.1.1. through 4.1.3., the provisions therein do not apply where City Permission has been granted concerning the damage, fouling or obstruction.
- 4.1.5. Notwithstanding Sections 4.1.1. through 4.1.3., the provisions therein do not apply to a vehicle regulated by City By-law 89-2000.
- 4.1.6. No person shall alter a Highway in any manner, that, in the opinion of a City Official is unsafe.

4.2. Specific Regulations

- 4.2.1. No person or Owner shall permit a hedge, or part of a hedge, to continue to obstruct a sidewalk or a highway.
- 4.2.2. No person shall alter a Highway in any manner, that, interferes with the intended operation of a public utility or traffic control system.
- 4.2.3. No person shall plant or place, or permit to remain in place, a flowerbed or rock garden on a boulevard or highway, without City Permission, unless approved by a City Official.
- 4.2.4. No person shall deposit, or cause to be deposited, snow on the driveway entrance of a property owner, with a truck snow plow or blade, in a manner that obstructs vehicular travel, without the consent of the property owner.

4.3. Trees

- 4.3.1. No person shall plant a tree on a highway without City Parks approval.
- 4.3.2. No person shall remove, cut down, or injure a tree located on a highway, or alter any protection system installed for the purpose of protecting a tree.
- 4.3.3. Every person, who is the owner of property upon which stands a tree, shall forthwith remove any portion of the tree, dead, diseased or decayed, that may fall on a highway.
- 4.3.4. Every person, who is the owner of property upon which stands a tree, shall forthwith remove any portion of the tree, which interferes with highway street lights.
- 4.3.5. No person shall fasten anything to a tree located on a highway, except when such thing is designed to enhance the survival or growth of the tree.

4.4. City Authority

- 4.4.1. The City may repair, alter, or remove at its sole discretion, anything whatsoever on a Highway, including a tree or hedge, whether or not the thing is used or maintained by an Owner, if, in the opinion of a City Official, the thing is unsafe, or interferes with the expected use of a highway.

SECTION 5 REMOVAL AND REINSTATEMENT

- 5.1. Where an owner or person is in contravention of any provision of this By-law, the City, or a Law Enforcement Officer, in addition to any other action, may send notice to the owner or person, requiring the highway be made to conform with this By-law by repairing the damage, removing the obstruction and removing the matter fouling the highway. In the event that a notice is sent and the highway is not reinstated to conform with the provisions of this By-law within the time period set out in the notice, the City, its employees, agent or contractor may enter upon the highway and upon private property and remove such things or carry out the work required as described in the notice, and may charge costs incurred for such work to the owner or person, or may recover all costs in accordance with Section 446 of the Municipal Act.

- 5.2. Any notice given under this By-law may be given by ordinary mail or hand delivery to the address of the owner or person who is in contravention of this By-law, and such service shall be deemed good and sufficient service.
- 5.3. The City, its employees, agent or contractor may, without notice, repair any highway or remove any thing which contravenes this By-law, where there is an immediate danger to persons using the highway. In such cases of public safety the cost of repair or removal may be charged to the owner or person or recovered in accordance with Section 446 of the Municipal Act.
- 5.4. Any thing removed by this Section may be deposited elsewhere on the untravelled portion of the highway on which it is located, or on the abutting property if applicable, or may be stored by the City, its employees, agent or contractor. Where a thing has been removed and stored, the owner or person may reclaim such thing upon payment to the City any costs incurred by the City, its agent or contractor in the removal of such thing. Where the thing has not been reclaimed within 30 days of its removal, such thing may be forthwith destroyed or otherwise disposed of by the City, its employees, agent or contractor.

SECTION 6 ADMINISTRATION, ENFORCEMENT AND RIGHT OF ACCESS

- 6.1. This By-law shall be administered and enforced by the City, a Law Enforcement Officer or any person appointed or otherwise delegated the authority of administration and enforcement.
- 6.2. Subject to Section 435 of the Municipal Act, 2001, a Law Enforcement Officer may enter upon and within and inspect any land, property, building or structure at any time to determine if any section of this By-law is complied with, or to determine if any condition, direction or order issued pursuant to this By-law or the Municipal Act, or court has been complied with.
- 6.3. A Law Enforcement Officer shall have inspection powers described in Section 436 of the Municipal Act, 2001.
- 6.4. No person shall obstruct or hinder, or attempt to obstruct or hinder, a Law Enforcement Officer, in the exercise of a power or the performance of a duty under this By-law.
- 6.5. No person shall refuse to produce any documents or things required by a Law Enforcement Officer under Section 6.3, and every person shall assist any entry, inspection, examination, or inquiry by a Law Enforcement Officer.
- 6.6. No person shall knowingly furnish false information in any form to the City or Law Enforcement Officer with respect to this By-law.

SECTION 7 OFFENCES AND PENALTIES

- 7.1. A person is guilty of an offence if the person,
- (a) fails to comply with an order, notice, direction, or other requirement under this By-law, or
 - (b) contravenes this By-law.

- 7.2. A director or officer of a corporation who knowingly concurs in the contravention of this By-law by the corporation is guilty of an offence.
- 7.3. A person who is convicted of an offence under this By-law is liable to a fine of not more than \$25,000 for a first offence, and to a fine of not more than \$50,000 for a subsequent offence, where there has been a previous conviction under this By-law.
- 7.4. A person who is convicted of a continuing offence under this By-law is liable to a fine of not more than \$10,000 for each day or part of a day that the offence continues.

SECTION 8 VALIDITY

- 8.1. Should any section, clause or provision of this By-law be held by a court of competent jurisdiction to be invalid, the validity of the remainder of the By-law shall not be affected.


SECTION 9 REPEAL OF OTHER BY-LAWS

- 9.1. By-laws 4477, 9265, 2000-94 and 2000-122 be and the same are hereby repealed.


SECTION 10 EFFECTIVE DATE

- 10.1. This By-law shall come into force and take effect on the date of passing thereof.

READ A FIRST, SECOND AND THIRD TIME AND PASSED BY COUNCIL THIS 20th DAY OF NOVEMBER, 2007.



MAYOR



DEPUTY
CLERK