

CORPORATION OF THE UNITED COUNTIES OF PRESCOTT & RUSSELL

BY-LAW NUMBER 2013-26

A BY-LAW TO REGULATE THE CONSTRUCTION AND INSTALLATION, OF ROAD CUTS AND CURB CUTS LOCATED ON ROADS IN THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, AND TO PROVIDE FOR THE ENTRY UPON AND REINSTATEMENT OF ROADS IN THE UNITED COUNTIES OF PRESCOTT AND RUSSELL.

AND WHEREAS Section 8 (1) of the Act, as amended, further provides that section 8 shall be interpreted broadly so as to confer broad authority on municipalities,

- a) To enable them to govern their affairs as they consider appropriate; and
- b) To enhance their ability to respond to municipal issues.

AND WHEREAS Section 11 (3) of the Act, as amended, authorises the Corporation of the United Counties of Prescott and Russell to pass by-laws respecting matters within the “Highway” sphere of jurisdiction;

AND WHEREAS pursuant to Section 44(1) of the Municipal Act, 2001, the municipality that has jurisdiction over a highway or bridge shall keep it in a state of repair that is reasonable in the circumstances, including the character and location of the highway or bridge;

AND WHEREAS Section 27 (1) of the Act, as amended, authorises the Corporation of the United Counties of Prescott and Russell to pass by-laws in respect of the highways under its jurisdiction;

AND WHEREAS it is desirable that criteria should be established to govern the installation of objects in, on or under roads and sidewalks under the jurisdiction of the Corporation of the United Counties of Prescott and Russell;

NOW THEREFORE BE IT ENACTED by the Council of the Corporation of the United Counties of Prescott and Russell that:

DEFINITIONS

1. In this By-Law:

- (a) "Director" means the Director of Public Works of the Corporation of the United Counties of Prescott and Russell appointed to administer and manage the provisions of this by-law and includes his authorized subordinates and assistants;
- (b) “Final Acceptance” means the date that the reinstated Road Cut is finally re-inspected pursuant to section 14 of this By-law.
- (c) "Preliminary Acceptance" means the date that the completed Road Cut works are initially inspect by the Counties, subject to the Final Acceptance inspection.;
- (d) "Road" means a road allowance and includes all lands and structures contained within the outer limits of the allowance including grassed areas, ditches, curbs, gutters, sidewalks and other structures and includes a “Highway” as defined under the *Highway Traffic Act (Ontario)* which is under the jurisdiction of the Counties;
- (e) “Road Cut” means a surface or subsurface cut in any part of a Road made by any means, including any excavation, reconstruction, cutting, saw cutting, overlaying, crack sealing, breaking, boring, jacking or tunneling operations;

- (f) "Security" means cash, certified cheque, letter of credit or bearer bonds approved by the Corporation of the United Counties of Prescott and Russell;

ROAD CUTS

2. No person shall undertake any Road Cut without first obtaining a road cut permit.
3. Every person requiring a road cut permit shall apply in writing on a form provided by the Director.
4. This By-Law shall not apply so as to require a permit fee from any local municipality, a public utility service in the Counties nor to any railway incorporated under the laws of Canada.
5. Every application for a road cut permit shall be made to the Engineer and shall be accompanied by a non-refundable permit fee of two hundred dollars (\$200.00) and a security deposit as set out in Schedule "A". No permit shall be issued until the required security deposit has been deposited and the fee has been paid.
6. In order to do the works set out in the road cut permit, the permit holder shall hire a "competent person" as defined under the *Occupational Health and Safety Act* and shall submit a Traffic Control Plan to the Director, which Traffic Control Plan must be approved in writing prior to proceeding with any works. The road cut shall be completed within three (3) months from the date of issuance of the permit. The Director may, upon application, renew or extend any permit issued under this By-Law, at no charge to the applicant, if he deems it expedient.

INSURANCE

7. Every applicant for a road cut permit shall provide and maintain Comprehensive/ Commercial General Liability insurance acceptable to the Corporation and subject to limits specified in Schedule "B"
8. The insurance coverage referred to above shall be maintained for three (3) years following the date of Preliminary Acceptance..
9. The insurance policy referred to above shall contain an endorsement to provide the Corporation with thirty (30) days written notice of cancellation.
10. Evidence of the insurance referred to above shall be provided to the Corporation prior to issuance of a road cut permit and in subsequent years, including the three (3) year period referred to herein. Such evidence of insurance shall be satisfactory to the Corporation and if requested by the Corporation, the applicant shall provide certified copies of the Comprehensive/Commercial General Liability policy.

REINSTATEMENT

11. Every Road Cut shall be backfilled with approved materials compacted by mechanical means to obtain a degree of compaction of not less than ninety-five percent (95%) of maximum density and shall otherwise be reinstated to the condition prevailing prior to the Road Cut being made, all to the satisfaction of the Engineer.
12. The permit holder shall remain responsible for satisfactory performance of the reinstatement of the Road Cut for a period of two (2) calendar year following the date of the Preliminary Acceptance.

13. In the event of unsatisfactory performance by the reinstated Road Cut during the two (2) year period following Preliminary Acceptance or of unsatisfactory condition on final inspection, the permit holder shall be notified of remedial works required and if such required work has not been satisfactorily completed within five (5) working days from notification, the Engineer shall have the required work completed at the permit holder's sole expense, and the cost thereof shall be deducted from the security deposit held and the permit holder shall be liable to the Counties for any shortfall.
14. After the expiration of two (2) calendar years from the date of the Preliminary Acceptance, the reinstated Road Cut shall be re-inspected and, if approved for Final Acceptance, the Engineer shall prepare a statement of all inspections, repairs or reinstatement costs incurred and shall deduct all such costs from the security deposit then held and shall release any balance remaining to the permit holder.

ADVANCE NOTICE

15. Before any permit holder cuts a Road which will result in the complete closing of the Road to traffic during any part of a day, the applicant shall first obtain, not less than twenty-four (24) hours in advance, the consent in writing of the Engineer to such closing and, in addition, the applicant shall produce evidence that the Officer commanding the Police Department having jurisdiction in the area, the Chief of the Fire Department, ambulance services, any School Board or public transportation commission operating transportation services or any relevant agency in the area have been notified in writing of the proposed closing.

INDEMNIFICATION

16. A road cut permit is issued subject to the condition that the permit holder shall indemnify the Corporation and each of its officers, 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 authorized by this by-law whether with or without negligence on the part of the permit holder or the officers, agents, servants or workmen of the permit holder.

RESPONSIBILITY FOR CLAIMS

17. Except as limited by section 20 hereof, a permit holder shall be responsible for all loss or damages arising from the work done by or for the permit holder.
18. A permit holder shall be responsible for all loss or damage arising directly or indirectly from settlement of the surface of a highway.
19. Where a highway or public utility on the highway has been damaged by a permit holder, the Corporation or the public utility respectively has the sole authority to decide who shall carry out the repairs.

OFFENCE

20. Except as otherwise provided by law, any person who contravenes any provisions of this By-Law is guilty of an offence and upon conviction, is liable to a fine as provided for in the Provincial Offences Act, R.S.O., 1990 as amended.
21. In addition to imposing a fine, a Court of competent jurisdiction may, upon conviction of an offence under this by-law, issue an order prohibiting the continuation or repetition of the violation by the person convicted.

REPEAL

22. By-Laws Number 88-20, 94-03 and 97-15 are hereby repealed.

EFFECTIVE DATE

23. This By-Law shall come into effect on the passing thereof.

SHORT TITLE

24. This By-law may be cited as the "Road Cut By-law".

ENACTED AND PASSED in open Council this 24th day of April 2013.

René P. Berthiaume, Warden

Stéphane P. Parisien, Clerk

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SCHEDULE "A"

Security Deposit Fees

TYPE OF WORK PERFORMED	FEE
. ditch cut, including drilling under a road from a ditch;	\$ 25.00 per square meter \$ 500.00 minimum
. gravel shoulder cut 3m wide or less;	\$ 1,000.00 plus \$ 50.00 per square meter for additional width
. asphalt cut, of less than 50% of the travelled roadway Width, by 3m wide or less; paved shoulder or parking area is extra;	\$ 3,000.00 plus \$ 200.00 per square meter for additional width
. asphalt cut, over 50% of the travelled roadway width by 3 m wide or less; paved shoulder or parking area is extra;	\$ 5,000.00 plus \$ 200.00 per square meter for additional width

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SCHEDULE "B"

Minimum Insurance Requirements

The land owner, at the application process and prior to the commencement of work, obtain and maintain until the termination of the contract or otherwise stated, provide the United Counties of Prescott Russell with evidence of:

Commercial General Liability Insurance

Commercial General Liability Insurance issued on an occurrence basis for an amount of not less than \$2,000,000. per occurrence / \$2,000,000. annual aggregate for any negligent acts or omissions by the land owner relating to their obligations under this Agreement. Such insurance shall include, but is not limited to bodily injury and property damage including loss of use; personal injury; contractual liability; premises, property & operations; non-owned automobile; broad form property damage; broad form completed operations; owners & contractors protective; occurrence property damage; products; employees as Additional Insured(s); contingent employers liability; tenants legal liability; cross liability and severability of interest clause

This insurance shall be non-contributing with and apply as primary and not as excess of any insurance available to the Counties. The land owner shall indemnify and hold United Counties of Prescott Russell harmless from and against any liability, loss, claims, demands, costs and expenses, including reasonable legal fees, occasioned wholly or in part by any negligence or acts or omissions whether willful or otherwise by the land owner, their employees or other persons for whom the land owner is legally responsible.

Automobile Liability Insurance

Automobile liability insurance with respect to owned or leased vehicles used directly or indirectly in the performance of the services covering liability for bodily injury, death and damage to property with a limit of not less than \$1,000,000. inclusive for each and every loss.

Environmental Impairment Liability (if applicable)

The Contractor shall effect and maintain Environmental Impairment Liability with a limit of not less than \$1,000,000. Per Incident /Annual Aggregate. Coverage shall include Third Party Bodily Injury and Property Damage including on-site and off-site clean-up. If such insurance is issued on a claims made basis, such insurance shall be maintained for a period of two years subsequent to conclusion of services provided under this Agreement.

This insurance shall be non-contributing with and apply as primary and not as excess of any insurance available to the Counties. The land owner shall indemnify and hold United Counties of Prescott Russell harmless from and against any liability, loss, claims, demands, costs and expenses, including reasonable legal fees, occasioned wholly or in part by any negligence or acts or omissions whether willful or otherwise by the land owner, their employees or other persons for whom the land owner is legally responsible.

Should the land owner hire a contractor to carry out the work on their behalf, the contractor shall provide the United Counties of Prescott-Russell with evidence of the following Insurance:

Commercial General Liability Insurance

Commercial General Liability Insurance issued on an occurrence basis for an amount of not less than \$5,000,000. per occurrence / \$5,000,000. annual aggregate for any negligent acts or omissions by the contractor while carrying out the work associated

with the road permit. Such insurance shall include, but is not limited to bodily injury and property damage including loss of use; personal injury; contractual liability; premises, property & operations; non-owned automobile; broad form property damage; broad form completed operations; owners & contractors protective; occurrence property damage; products; employees as Additional Insured(s); contingent employers liability; tenants legal liability; cross liability and severability of interest clause

Such insurance shall add the United Counties of Prescott Russell and the land owner as Additional Insured with respect to the operations of the contractor. This insurance shall be non-contributing with and apply as primary and not as excess of any insurance available to the Counties and/or land owner. The contractor shall indemnify and hold United Counties of Prescott Russell and the land owner harmless from and against any liability, loss, claims, demands, costs and expenses, including reasonable legal fees, occasioned wholly or in part by any negligence or acts or omissions whether willful or otherwise by the contractor, their officers, employees or other persons for whom they are legally responsible.

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Automobile liability insurance with respect to owned or leased vehicles used directly or indirectly in the performance of the services covering liability for bodily injury, death and damage to property with a limit of not less than \$5,000,000. inclusive for each and every loss.

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Such insurance shall add the United Counties of Prescott Russell and the land owner as Additional Insured with respect to the operations of the contractor. This insurance shall be non-contributing with and apply as primary and not as excess of any insurance available to the Counties and/or land owner. The contractor shall indemnify and hold United Counties of Prescott Russell and the land owner harmless from and against any liability, loss, claims, demands, costs and expenses, including reasonable legal fees, occasioned wholly or in part by any negligence or acts or omissions whether willful or otherwise by the contractor, their officers, employees or other persons for whom they are legally responsible.

The above noted policies shall not be cancelled, altered or lapsed unless the Insurer notifies the Counties in writing at least thirty (30) days prior to the effective date of the change or cancellation.

Prior to commencement of work, the land owner and / or contractor shall furnish to the Counties with a certificate of insurance or copies of the policies confirming the aforementioned insurance. The insurance policy will be in a form and with a company which are, in all respects, acceptable to the Counties.