

THE REGIONAL MUNICIPALITY OF YORK

BYLAW NO. 2023-38

A bylaw to regulate activity on municipal right-of-ways

WHEREAS, under the broad powers delegated under the *Municipal Act, 2001*, S.O. 2001, c.25 (the “**Municipal Act**”), as amended, a council is authorized to pass bylaws designating highways as controlled access highways and prohibiting or regulating the construction or use of any access onto highways;

AND WHEREAS pursuant to Section 35 of the Municipal Act, a municipality may pass by-laws removing or restricting the common law right of passage by the public over a highway and the common law right of access to the highway by an owner of land abutting a highway;

AND WHEREAS Regional Council wishes to designate Regional roads as controlled access highways and to prohibit or regulate the construction and use of any access onto highways under the jurisdiction of the Region;

NOW THEREFORE, the Council of The Regional Municipality of York hereby enacts as follows:

1. DEFINITIONS

1.1 In this Bylaw:

“**Access**” means any private road, entranceway, structure or facility constructed or used as a means of access;

“**Activity/Activities**” includes any construction, connection or impact to Regional infrastructure within the Right-of-Way for any purposes above or below ground;

“**Applicant**” means the Person who is applying for a Permission under this Bylaw;

“**Area Municipality**” means each of the Town of Aurora, the Town of East Gwillimbury, the Town of Georgina, the Township of King, the City of Markham, the Town of Newmarket, the City of Richmond Hill, the City of Vaughan, and the Town of Whitchurch-Stouffville;

“Arterial Road” means a Highway whose primary function is to carry through traffic from one area to another with as little interference as possible from adjacent land uses, but which may provide direct access to real property as a secondary function, particularly for large traffic generators;

“Commissioner” means the Commissioner of Public Works for the Region or their designate;

“Controlled Access Highway” means a Highway designated as such by the Region, to or from which Access may be denied or controlled, in whole or in part, from or to adjoining real property or an intersecting Highway;

“Equipment” means any type of truck, grader, loader or any other type of Vehicle used for construction or related activities;

“Highway” means 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 passage of Vehicles and pedestrians and includes the area between the lateral property lines thereof;

“Neighbouring Municipality” means The Regional Municipality of Durham, The Regional Municipality of Peel, the County of Simcoe and the City of Toronto;

“Owner” means the registered owner of the property directly adjacent to the portion of the Regional Road which the Applicant is applying for Permission for Access or Activity;

“Permission” means approval of an Access or Activity within the Right-of-Way issued in the form of a permit or approval letter from the Region;

“Person” means any person, firm or corporation;

“Region” means The Regional Municipality of York;

“Regional Road” means any Highway designated as a Regional Road in the Regional Road System bylaw, being Bylaw No. R-1107-96-126, as amended or replaced from time to time;

“Right-of-Way” means publicly owned Regional Roads or lands including the publicly owned land between private property limits including but not limited to the roadway, medians, curbs, shoulders, sidewalks, cycling tracks, multi-use pathways, boulevard elements, utilities and other associated above and below infrastructure;

“Utility” or “Utilities” means any structures above or below ground which exist on a Right-of-Way including but not limited to buried and aerial hydro cable and ducts, Bell, cable, television and internet communication cables, trees, including watermain systems and appurtenances, sanitary and storm sewer systems and appurtenances, gas and steam pipes, meters, and valves;

“Utility Company” means any company with the authority to construct within a Right-of-Way pursuant to provincial or federal legislation, bylaw, franchise agreement or municipal access agreement; and

“Vehicle” means a motor vehicle, trailer, traction engine, farm tractor, road-building machine and any vehicle drawn, propelled or driven by any kind of power, including muscular power and including the live creature providing the muscular power, but does not include a motorized snow vehicle or a streetcar.

2. DESIGNATIONS

- 2.1 Every Regional Road is hereby designated as a Controlled Access Highway.
- 2.2 Every Regional Road is hereby designated as an Arterial Road.

3. CONSTRUCTION ACTIVITY AND/OR USE OF ACCESS

- 3.1 No Person shall use, construct, relocate or alter or cause to be used, constructed, relocated or altered an Access onto a Right-of-Way without Permission having been issued by the Commissioner or the Region under this Bylaw for such Access.
- 3.2 No Person shall use, construct, relocate or alter or cause to be used, constructed, relocated or altered any Access onto a Right-of-Way except in strict

compliance with all terms and conditions of the Permission issued by the Commissioner or the Region under this Bylaw for such Access.

- 3.3 No Person shall occupy a Right-of-Way for the purpose of carrying out any Activities or work, or constructing any works, without Permission having been issued by the Commissioner or the Region under this Bylaw for such Activities, work or works.

4. APPLICATION FOR RIGHT-OF-WAY ACCESS OR ACTIVITY PERMISSIONS

- 4.1 The Commissioner may approve, with or without conditions, or deny an application for Access or Activity onto a Right-of-Way taking into account the following:

- (a) the policies and procedures of the Region including, without limitation; the Region's design guidelines and standards for the engineering submission process, including the Region's Public Works Design, Standards Specification & Procedures Manual, as amended or replaced from time to time;
- (b) the *Planning Act*, R.S.O. 1990, c. P.13, as amended or replaced from time to time;
- (c) traffic safety and transportation capacity considerations;
- (d) water and wastewater capacity considerations;
- (e) input from staff of the appropriate Area Municipality where the Commissioner, at their sole discretion, has requested such input.

- 4.2 An Applicant for Permission shall submit to the Commissioner the following:

- (a) a completed application for Permission for Access or Activity, in a form approved by the Commissioner. The complete application shall include any documents, reports or assurances which may be required by the Commissioner. The application, if approved, shall be issued a Permission which shall contain terms and conditions on which the Access or Activity is

granted by the Commissioner, in addition to any other conditions imposed by the Commissioner pursuant to their authority under this Bylaw;

- (b) all applicable fees under the Region's Fees and Charges Bylaw, being Bylaw No. 2020-04, as amended or replaced from time to time; and
- (c) security in such an amount and form as, in the opinion of the Commissioner, is sufficient to cover the cost of repairing any damage to any infrastructure above or below ground.

4.3 In addition to the terms and conditions contained on the Permission, the Commissioner may also impose either or both of the following as conditions of granting an Access or allowing Activity onto a Right-of-Way, the costs of which shall be the sole responsibility of the Applicant:

- (a) that a reference plan and/or engineering drawings be prepared showing the location of the approved Access or Activity;
- (b) that the Owner enter into agreements including but not limited to an access agreement or letter of undertaking, the terms of which shall be determined by the Commissioner, to be registered on title to the Owner's property, setting out the conditions of the Access or Activity approval.

4.4 The Commissioner may grant approval for a temporary Access or Activity for a specified period to accommodate site development upon written request from the Owner or Applicant.

4.5 The Applicant shall engage a qualified contractor to undertake the construction of an Access at the Applicant's sole expense, in conjunction with the overall site work.

4.6 The issuance of a Permission under this Bylaw does not limit the liability of the Applicant, driver, operator or mover of any Vehicle or Equipment for which the Permission is obtained, from responsibility for all damages which may be caused to the Right-of-Way by reason of the driving, operation or moving of any such Vehicle or Equipment.

- 4.7 All Access or Activity works required by the Commissioner, whether temporary or permanent, associated with or arising as a result of the granting of an Access or Activity to the Applicant onto the Right-of-Way including, where applicable, subsequent reinstatement of the disturbed areas of the Right-of-Way shall be at the sole expense of the Applicant.
- 4.8 It shall be the sole responsibility of the Applicant to request from the appropriate Utility Company, marking or other location information to determine the location and to provide safeguards for all Utilities. Should the Applicant, in carrying out the work allowed under the Permission, cause damage to any such Utilities, the entire cost and responsibility of restoring any such Utilities shall be at the sole expense of the Applicant.
- 4.9 Any Access permitted under this Bylaw, between the edge of the travelled portion and the right-of-way limit, inclusive of asphalt, curbs, road signs, pavement markings and drainage culverts shall be maintained by the Owner in accordance with Regional standards as specified by the Commissioner.

5. 0.3 METRE RESERVES

- 5.1 Where the Region is the owner of a 0.3 metre (one (1) foot) reserve that is prohibiting an Access onto a Right-of-Way; the Commissioner has approved Access onto the Right-of-Way under this Bylaw; and the Applicant has complied with any and all terms and conditions imposed, the Commissioner may recommend that the reserve at the approved Access location be lifted, and, if so recommended, a bylaw shall be submitted to Regional Council for approval to dedicate the reserve as part of the public Highway adjacent thereto.

6. NOTICE

- 6.1 The Commissioner may give to any Person who contravenes Sections 3.1, 3.2 or 3.3 of this Bylaw notice in writing requiring rectification of the contravention within twelve (12) hours, or immediately if deemed a safety hazard, and notifying such Person that in default of compliance with the said notice, the Region will perform the work at the Person's sole expense.

6.2 In the event that such Person does not comply with the direction in the said notice, the Region may perform the work, or cause it to be done, at the Person's expense, and the cost thereof may be recovered from such Person by court action or the same may be added to the tax roll and collected in the same manner as property taxes.

7. BOUNDARY HIGHWAYS

7.1 In the case of a boundary Highway between the Region and a Neighbouring Municipality, over which the Region and Neighbouring Municipality have joint jurisdiction, subject to approval for application for Access by the municipality in which the property is situated, the municipality responsible for the maintenance of the Highway shall also be responsible for the construction of the Access, and Section 5.1 of this Bylaw shall apply. In the case where the Region is responsible for the maintenance of the boundary Highway, Sections 1 (Definitions), 2 (Designations), 3 (Construction Activity and/or Use of Access), 4 (Application for Right-of-Way Access or Activity Permissions), 5 (0.3 Metre Reserves), 6 (Notice) and 8 (Penalties and Enforcement) of this Bylaw shall apply.

8. PENALTIES AND ENFORCEMENT

- 8.1 Any Person who contravenes any provision of this Bylaw is guilty of an offence and is liable upon conviction to a fine in accordance with the provisions of the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended.
- 8.2 If a court of competent jurisdiction declares any section or part of a section of this Bylaw, as amended to be invalid, it is the intention of Council for the Region that the remainder of the Bylaw, as amended, continue to be in force.
- 8.3 The provisions of this Bylaw may be enforced by (a) a police officer; (b) any person or class of persons appointed for that purpose by a bylaw of the Region; or (c) any person who is a Provincial Offences Officer as defined under the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended.

9. INTERPRETATION

- 9.1 Words expressed in the singular number have a corresponding meaning when used in the plural, and words used in the present tense include the future.
- 9.2 The term “may” shall be construed as permissive.
- 9.3 The term “shall” shall be construed as imperative.

10. SHORT TITLE

- 10.1 This Bylaw may be referred to as the “Right-of-Way Management Bylaw”.

ENACTED AND PASSED on June 29, 2023.

Regional Clerk

Regional Chair

Authorized by Item F.2.3 of the Committee of the Whole dated June 15, 2023, adopted by Regional Council at its meeting on June 29, 2023

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