

THE CORPORATION OF THE MUNICIPALITY OF NEEBING

BY-LAW NUMBER 2017-042

(Office Consolidation – as amended by By-law 2018-022)

Being a by-law to regulate and control the Corporation's highways.

Recitals:

1. Subsection 10(2) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended ("the Act"), grants broad powers to municipalities to pass by-laws regarding, among other matters, the municipality's public assets, the health and safety of people, and any services that the municipality is authorized to provide.
2. Paragraph 1 of Subsection 11(3) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended ("the Act"), authorizes single-tier municipalities in Ontario to pass by-laws to prohibit or regulate the placing, stopping, standing or parking of an object, Vehicle or Motor Vehicle on or near a Highway.
3. Subsection 63(1) of the Act provides that by-laws passed under the authority of Paragraph 1 of Subsection 11(3) may also provide for the removal and impounding of any object, Vehicle or Motor Vehicle placed or parked in contravention of the By-law.
4. By-law 616-2002 of the Corporation prohibits the obstruction of Highways.
5. By-law 181-1990 of the Corporation prohibits the obstruction of the drainage of Highways and provides for a system of entrance permits for driveways.
6. By-laws 462-1999, 468-1999, and 474-1999 prohibit parking on certain Highways.
7. Council considers it appropriate to consolidate and update its historic Highway control by-laws and to further regulate and control various matters relating to the Corporation's Highways.

ACCORDINGLY, THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF NEEBING ENACTS AS FOLLOWS:

Part One: Definitions and Interpretation Rules

1.01 Definitions:

Where the words defined in the lettered paragraphs of this Section appear in the text of this By-law with their initial letters capitalized, it is intended that they are interpreted as defined. Where a word appears in the text of this by-law without its initial letter capitalized, it is intended that it is to be interpreted as ordinarily defined in the English language.

- (a) "Act" means the Municipal Act, 2001, S.O. 2001, c. 25, as amended from time to time.

- (b) “By-law” means this by-law, as amended from time to time, including its recitals and schedules, which form integral parts of it, unless the word is followed by a number. Where the word “by-law” is capitalized and followed by a number, the reference is to the Corporation’s by-law that possesses that number.
- (c) “Corporation” means The Corporation of the Municipality of Neebing.
- (d) “Council” means the Council of the Corporation, elected in accordance with the Municipal Elections Act, 1996 (S.O. 1996, c. 32, Sched., as amended from time to time).
- (e) “Roads Foreman” means the person employed by or contracted with the Corporation for the purposes of overseeing the maintenance and operation of the Corporation’s Highway system, regardless of the title currently used by the Corporation to identify that person.
- (f) “Highway” means a road under the jurisdiction of the Corporation, listed in the Corporation’s By-law 2016-023, as amended from time to time.
- (g) “Motor Vehicle” means a “motor vehicle” as defined in the Highway Traffic Act (R.S.O. 1990, c. H.8, as amended from time to time).
- (h) “Municipal Law Enforcement Officer” means a person appointed by the Corporation to enforce its by-laws, or a member of any police force with jurisdiction to enforce the Corporation’s by-laws.
- (i) “Neebing” means the geographic area under the jurisdiction of the Corporation.
- (j) “Public Authority” means an order of government or an agency of an order of government.
- (k) “Public Utility” means any utility owned by the Corporation or its Boards, an electrical power or energy generating, transmission or distributing system, natural or artificial gas works or supply system, a transportation system or a telephone system. The term includes any lands, buildings or equipment required for the operation of the system.
- (l) “Vehicle” means a “vehicle” as defined in the Highway Traffic Act (R.S.O. 1990, c. H.8, as amended from time to time).

1.02 **Interpretation of “Includes”:**

The words “include”, “including” and “included” do not limit in any way the words or phrases that precede or follow them.

1.03 **Gender/Plural:**

This By-law is to be read with all changes of gender or number required by the context.

1.04 **Headings:**

The captions, article and section names and numbers appearing in this By-law are for convenience of reference only and have no effect on its interpretation.

1.05 **Direct or Indirect Actions:**

In this By-law,

- (a) a clause which prohibits a person from doing something, also prohibits that person from causing or allowing the prohibited thing to be done; and
- (b) a clause which requires a person to do something can be complied with by causing or allowing another person to undertake that activity.

1.06 **Severability:**

If any portion of this By-law is declared invalid or inoperable by a court or tribunal of competent authority, that portion of the By-law shall be deemed severed, and the balance of the By-law shall remain valid and operable.

1.07 **Owner Deemed Responsible for Parked Vehicles:**

Where a Vehicle or Motor Vehicle has been left parked in contravention of this By-law, the owner of the Vehicle or Motor Vehicle is guilty of an offence, even though the owner was not the driver of the Vehicle or Motor Vehicle at the time of the contravention of the by-law, and is liable to the penalties prescribed in this By-law.

This section does not apply unless, at the time of the offence, the Vehicle or Motor Vehicle had been in the possession of another person without the owner’s consent.

Part Two: Parking Prohibitions

2.01 No Parking on any Highways between midnight and 8:00 a.m.:

No person shall park a Vehicle or a Motor Vehicle on a Highway between the hours of midnight on any given day, and 8:00 a.m. on the following day.

2.02 No Parking on any Highways in Winter:

No person shall park a Vehicle or a Motor Vehicle on a Highway between December 15th in any given year, and May 31st of the following year.

2.03 No Parking in a Manner that Interferes:

No person shall park a Vehicle or a Motor Vehicle on any Highway, at any time, in a manner which interferes with the movement of traffic or the clearing of snow from the Highway.

2.04 No Parking on certain Highways:

No person shall park a Vehicle or a Motor Vehicle on the south side of the Highway known as Podres Road, from a point at the top of the hill nearest Oliver Lake to the end of Podres Road at the lake.

No person shall park a Vehicle or a Motor Vehicle on either side of the Highway known as East Oliver Lake Road, from the intersection of East Oliver Lake Road and Griffis Road to a point which is one and one tenths (1.1 km) of a kilometer south of that intersection.

No person shall park a Vehicle or a Motor Vehicle on the east side of East Oliver Lake Road from the point which is one and one tenths (1.1 km) of a kilometer south of the intersection of East Oliver Lake Road and Griffis Road, to a point which is one-half of one (0.5 km) kilometer further south of that point.

No person shall park a Vehicle or a Motor Vehicle on either side of the Highway known as Cloud Lake Road, from the point where the road is shown on the easternmost part of Registered Plan of Subdivision 779, to the point where the road is shown on the westernmost part of Registered Plan of Subdivision 789, a distance of approximately three point two (3.2) kilometers. (amended by By-law 2018-022)

The Corporation authorizes the Roads Foreman to erect appropriate "no parking" signs on the portions of the Highways in this Section, in keeping with the provisions of this Section.

2.05 Exemption: Disabled Vehicles:

The provisions of this By-law do not apply to the driver, operator or owner of a Vehicle or a Motor Vehicle that is so disabled while on a Highway that it is impossible to temporarily avoid a contravention of the provisions. Vehicles or Motor Vehicles left in this manner must be removed as soon as is reasonably practicable in the circumstances in order for the driver, operator or owner to be able to rely on this exemption.

2.06 **Exemption: Public Authorities and Public Utilities:**

The provisions of this By-law do not apply to the driver, operator or owner of a Vehicle or a Motor Vehicle that is being used by a Public Authority or a Public Utility in the conduct of the operations of that Public Authority or Public Utility.

Part Three: Placement of Matter on Highways

3.01 **Prohibition: Any part of a Highway:**

No person shall place or deposit on any portion of a Highway any matter or thing whatsoever.

This prohibition includes matters such as dirt, mud, ashes, glass, nails, litter, rubbish, garbage, wood, equipment, machinery, etc.

3.02 **Prohibitions: Drainage:**

No person shall obstruct any drain, culvert, ditch or watercourse serving a Highway within Neebing. This prohibition does not apply to the construction of an entrance to property, provided that the appropriate Public Authority has authorized that construction.

No person shall direct drainage water of any type from private property onto a Highway within Neebing, including into the ditch serving the Highway.

3.03 **Prohibition: Private Snow Clearing:**

No person shall remove snow from private property and deposit it on any Highway.

3.04 **Prohibition: Culverts or Bridges on Highways:**

No person shall construct or erect any culvert or bridge over a drain, ditch or watercourse upon or serving a Highway without first having obtained a permit to do so under the provisions of Part Six of this By-law.

3.05 **Prohibition: Work on Highways:**

No person shall undertake any work, or change the appearance or structure in any way, of any part of a Highway in Neebing.

This provision is effective to prohibit any type of disturbance of the Highway, including: the planting of vegetation, the placement of decorative objects, the erection of fences, the repair of road surfaces, the digging of ditches, etc.

3.06 **Inadvertent Placement:**

Where a person inadvertently or accidentally deposits matter on a highway in contravention of Section 3.01, he or she shall contact the Roads Foreman as soon as he or she becomes aware of the contravention. The Roads Foreman will either dispatch workers to clear the site or, in circumstances where it is safe and reasonable to do so, authorize the person to clear the site himself or herself.

Part Four: Removal, Towing or Impoundment

4.01 **General:**

Any substance or item, other than a Vehicle or a Motor Vehicle, which has been placed in contravention of this By-law may be removed by the Corporation, at the expense of the person who placed it, pursuant to the provisions of the Act. The Corporation's costs of removing and/or storing the substance or item constitute a debt of the person who placed them in contravention of this By-law, and may be recovered by the Corporation through any lawful means.

Except in accordance with Section 6.06 of this By-law, the Corporation need not provide notice to any person prior to removal of the substance or item under this Section of the By-law.

4.02 **Towing of Vehicles or Motor Vehicles:**

Any Vehicle or Motor Vehicle that is placed or parked in contravention of this By-law may be towed away and impounded by the Corporation. The provisions of the Repair and Storage Liens Act (R.S.O. 1990, c. R.25, as amended from time to time) apply to the impoundment and recovery of the Vehicle or Motor Vehicle.

4.03 **Deemed Forfeiture:**

Any substance, item or Vehicle (other than a Motor Vehicle) that was placed for the purpose of selling anything on or near the Highway, which is removed by the Corporation under the provisions of Section 4.01, if not claimed by the owner within sixty (60) days of the date it was removed, becomes the property of the Corporation, to do with as it sees fit.

4.04 **Perishable Items or Refreshment:**

Any substance or item which is perishable, including items of refreshment, which is removed by the Corporation under the provisions of Section 4.01, becomes the property of the Corporation immediately upon removal, and may be destroyed or given to a charitable institution.

Part Five: Damage to Highways

5.01 Prohibition:

No person shall damage a Highway or bridge.

5.02 Cost Recovery:

Where a person damages a Highway in contravention of Section 5.01 of this By-law, the costs to the Corporation to restore the Highway or bridge to its pre-damage condition constitute a debt of the person who damaged the Highway or bridge, and may be recovered by the Corporation through any lawful means.

Part Six: Entrance permits

6.01 Prohibition:

No person shall construct an access driveway to property from a Highway without the consent of the Corporation, expressed through the approval of an entrance permit under this By-law (or a predecessor by-law).

6.02 Application for Permit:

Any person wishing to construct a permanent or temporary access driveway to property from a Highway shall apply for an entrance permit using the form provided by the Corporation from time to time.

Prior to submitting the application to the Corporation, the owner shall mark the location of the intended access point so that the Roads Foreman can identify the location upon inspection for the purposes of considering the application.

Where the Corporation has imposed an application fee, the applicant shall provide the fee at the time the application is submitted.

6.03 Rules:

Except in accordance with Section 6.04, only one permanent access driveway is permitted per land parcel.

No shared driveways shall be approved unless access to the shared driveway by all those entitled to access is secured through the registration on title of the relevant permanent easements granted through the appropriate lawful planning processes or by the order of a court or tribunal with competent authority.

The Roads Foreman shall inspect the property which is the subject matter of the application prior to approving or denying the application. In reviewing the application, the Roads Foreman shall take into consideration:

- (a) lines of sight relating to other users of the Highway for persons entering or

- exiting the proposed driveway;
- (b) the topography of the area relating to the type of construction that will be required for the proposed driveway;
- (c) whether there is another more appropriate site for access to the land parcel which is the subject matter of the application; and
- (d) any other criteria that he or she considers to be relevant in the circumstances for the provision of safe and reasonable access to the land parcel.

Approval of an entrance permit where a culvert is required will detail the size and type of culvert to be installed, based upon the topography of the site.

When the application has been approved, the applicant shall purchase and supply to the Corporation any required culvert, meeting the specifications noted on the approval form. The Corporation shall undertake the work necessary to install the culvert. The Corporation shall supply up to and including one load of gravel for the purposes of the culvert installation. The applicant will be required to purchase any additional gravel that is necessary.

Once installed, the culvert becomes the property of the Corporation for the purposes of maintenance and repair, including ultimate replacement if and when required.

6.04 **Second Access Point:**

Where an applicant seeks to have more than one permanent access point to his or her land parcel, the application shall detail the reasons why the applicant requires the additional access.

The Roads Foreman shall inspect the site, as set out in Section 6.03, and shall provide his or her comments relating to the application in a report to Council.

Council shall review the application and take into consideration the applicant's concerns as well as any comments of the Roads Foreman, and shall decide whether an additional entrance permit will be approved or denied. The decision of Council in this regard is final.

6.05 **Appeal to Council:**

Where the Roads Foreman denies the application for an entrance permit, he or she shall detail the reasons for the refusal to the applicant.

The applicant may appeal the decision of the Roads Foreman to Council.

Council shall review the application and take into consideration the applicant's concerns as well as any comments of the Roads Foreman, and shall decide whether the entrance permit will be approved or denied. The decision of Council in this regard is final.

6.06 **Removal of Driveway:**

Where a driveway has been installed without benefit of an entrance permit issued in accordance with this By-law (or a predecessor by-law), the Corporation may remove the

driveway at the expense of the owner of the land parcel accessed by the driveway.

Prior to removing the driveway under this Section, the Corporation shall make reasonable efforts to notify the owner of the land parcel that this action will be undertaken unless the owner makes application for retroactive approval under Section 6.03.

Any costs incurred by the Corporation in the removal of an unauthorized driveway under this Section of the By-law constitutes a debt owed to the Corporation by the owner of the land parcel accessed by the unauthorized driveway, and may be recovered by the Corporation through any lawful means.

Part Seven: Penalties and Enforcement

7.01 Enforcement:

This By-law may be enforced by a Municipal Law Enforcement Officer.

7.02 Interference:

No person shall interfere with a Municipal Law Enforcement Officer who is carrying out his or her duties in enforcing this By-law.

7.03 Offence & Penalties:

Any person contravening the prohibitions in Sections 2.01, 2.02, 2.03, 2.04, 3.01, 3.02, 3.03, 3.04, 3.05, 5.01, 6.01 and/or 7.02 of this By-law is guilty of an offence, and, upon conviction, is subject to the fines prescribed by the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended from time to time.

Part Eight: General

8.01 Effective Date:

This By-law shall take effect on the date that it is passed.

8.02 **Repeals:**

The following by-laws are repealed:

- (a) 616-2002;
- (b) 181-1990;
- (c) 462-1999;
- (d) 468-1999; and
- (e) 474-1999.

ENACTED AND PASSED IN COUNCIL this 6th day of December, 2017, as witnessed by the Corporate seal of the Corporation and the hands of its proper Officers duly authorized in that behalf.

**THE CORPORATION OF THE
MUNICIPALITY OF NEEBING**

Ziggy Polkowski
Mayor

Rosalie Evans
Solicitor-Clerk