



Interoffice Memorandum

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Date: May 29, 2024
To: Regional Council
From: Adnan Naeem, Solicitor, Legal Services
Subject: By-law to repeal and replace By-law 211-79

Regional staff in the Legal Services Division have worked with the Works Department roads group staff to update By-law 211-79 the Region's All Roads Control Access By-law.

Upon review of By-law 211-79, Regional staff noted that several updates were required to make the by-law current including references to the legislative authority being updated to the applicable sections under the Municipal Act, S.O. 2001 from the now repealed Regional Municipality of Durham Act, the ability for Regional staff to close problematic driveway entrances leading onto Regional Roads that may be deemed "unsafe" by today's current road design and safety standards, including driveways and entrances that may be within the functional zone of a Regional intersection.

Regional staff have also updated the fees and charges in the by-law which have not changed since 1979 and updated references to the use of Entranceway Permits as is the Region's current permitting system.

Recommendation to Regional Council is to pass the attached draft updated All Roads Control Access By-law which upon passage shall repeal the previous All Roads Control Access By-law 211-79

Adnan Naeem

Solicitor

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Enc.

By-law Number 2024-***

of The Regional Municipality of Durham

Being a by-law to designate all roads or parts thereof that constitute the Regional Road System as controlled-access roads and to regulate the construction or use of any private road, entranceway, structure or facility as a means of access to all Regional roads and to remove or restrict the common law right of passage by the public over a highway and the common law right of access to a highway pursuant to Section 35 of the Municipal Act, 2001.

Whereas sections 8, 9 and 11 of the Municipal Act, 2001, S.O. 2001, c. 25 (the "Municipal Act, 2001") authorize The Regional Municipality of Durham to pass by-laws necessary or desirable for municipal purposes, and in particular paragraphs 5, 6, 8 of subsection 11(2) authorize by-laws respecting the economic, social and environmental well-being of the municipality; the health, safety and well-being of persons, and the protection of persons and property;

Whereas Section 35 of the Municipal Act, 2001 provides that 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;

Whereas Section 128 of the Municipal Act, 2001 authorizes a municipality to prohibit and regulate public nuisances, including matters that, in the opinion of the Council of The Regional Municipality of Durham are or could become or cause public nuisances;

Whereas by definition, a public nuisance may include something that by its presence may pose a danger to the public, compromising health and safety;

Whereas it is the opinion of the Regional Municipality of Durham that certain driveway entrances or common law rights of access to private properties along the Regional Road network are considered and classified as being within the functional area of an intersection which may pose a danger to the public;

Whereas formerly under Subsection I of Section 48 of The Regional Municipality of Durham Act, as amended, provided that the Regional Council may by by-law designate any road in the Regional Road System, or any portion thereof, as a controlled-access road;

Whereas formerly under Section 49 of the said Act provided that the Regional Council passed by-laws prohibiting or regulating the construction or use of any private road, entranceway, structure or facility as a means of access to a Regional controlled-access road;

Where, it is the wish and intent of the Council of The Region for Durham for all Regional roads to remain as controlled access highways as established by previous bylaws that were passed and that The Region of Durham continue regulating the construction or use of any private road, entranceway, structure or facility as a means of access to a Regional controlled-access road and that in doing so the Region is further regulating matters that are or could become or cause a public nuisance or pose a danger to the public.

Now therefore, the Council of The Regional Municipality of Durham hereby enacts as follows:

1. In this by-law, "close up" includes the removal, replacement or elimination of any

culvert, curb and gutter, gravel, asphalt, curb ramping material or any other facility constructed or used as a means of access to a Regional road.

2. That all roads or parts thereof that from time to time constitute the Regional Road System are hereby designated as controlled-access roads (Controlled Access Highway).
3. That no person shall construct, use, relocate, or alter any private road, entranceway, structure or facility as a means of access to a Regional road except in accordance with the conditions of a Entranceway Permit issued by the Commissioner of Works of the Regional Municipality of Durham (hereinafter called the "Commissioner") or his designated representative.
4. That in determining whether or not a Entranceway Permit shall be granted, the Commissioner shall consider the Transportation Section of the Regional Municipality of Durham Official Plan, the location, width and proposed use of the private road, entranceway, structure or facility to be constructed or used as a means of access to the Regional road and shall have regard to the sight distance along the road, the location of trees and public utility services and the Entranceway Policy of the Regional Municipality of Durham as adopted by Council.
5. That all costs pertaining to the construction of the private road, entranceway, structure or facility constructed or used as a means of access to a Regional road including the installation of culverts and catchbasins, the removal of concrete curbs and gutter and the replacement with concrete curbs and gutter with or without concrete drop curb sections, the saw cutting of existing concrete curb to provide a drop curb section and other associated works shall be paid by the person applying for Entranceway Permit (hereinafter called the 'Applicant').
6. That all works undertaken within a Regional road allowance shall be carried out by the Regional Works Department unless otherwise authorized by the Commissioner.
7. That any existing drop curb sections fronting or abutting the Applicant's property which have no further use for access shall be removed and replaced with concrete barrier-type curb and gutter at his expense.
8. That any existing culverts fronting or abutting the Applicant's property which have no further use for access shall be removed and replaced with ditching at his expense.
9. That a sum of money being the flat rate charge for either,
 - a. a culvert installation type access of up to 600 millimetres diameter by 12.2 metres long, or
 - b. any curb cut type accesswill be paid to the Region at the time the application is made for an Entranceway Permit.
10. That any access or closure to be constructed in excess of those stated in subsection 4 is to be carried out as an actual cost installation. A deposit based upon the estimated cost of the work is to be given to the Region at the time of application for a Entranceway Permit. If the sum deposited, being the estimated cost of constructing the means of access or closing up an existing means of access within a Regional road allowance is more than the actual cost, then the Region will refund the excess to the applicant. Should the fund deposited be less than the actual cost, then the applicant shall pay the difference between the sum deposited and the actual cost.
11. That no person shall tile or cover a roadside ditch except in accordance with the conditions of a Entranceway Permit.

12. That any person applying an asphalt, concrete or any other type of surface to any portion of the driveway situated on a Regional road allowance, in accordance with the conditions of the Entranceway Permit, shall do so at his own expense. That person shall be responsible for the maintenance and repair of same and all costs of such maintenance and repair.
13. That the provisions of this By-law shall apply to any private road, entranceway, structure or facility constructed or used as a means of access to a Regional road before the day on which this By-law takes effect.
14. That if the owner of any land constructs an access which the Commissioner deems hazardous, the Region will remove that access. Any expense or costs incurred by the Region in removing the access shall be paid by that person.
15. That the Regional Corporation may give notice to the owner of any land requiring him to close up any private road, entranceway, structure or facility constructed or used as a means of access to a Regional road in contravention of this by-law at the Regional Corporations sole discretion.
16. That every notice given under Section 15 shall be in writing and shall be served personally or by registered mail, and in the case of service by registered mail, shall be deemed to have been received on the fifth day following the mailing thereof.
17. That where the person to whom notice is given under Section 15 fails to comply with the notice within thirty (30) days after its receipt, the Regional Council may by resolution direct any officer, employee or agent of the Regional Corporation to enter upon the land of such person and do or cause to be done whatever may be necessary to close up the private road, entranceway, structure or facility constructed or used as a means of access to a Regional road, as required by the notice and any expense or cost incurred by the Region in closing up a private road, entranceway, structure or facility shall be paid by that person.
18. That every person who fails to comply with a notice given under Section 15 is guilty of an offence and on a summary conviction is liable to a fine of not less than \$20.00 and not more than \$190.00 for a first offence and to a fine of not less than \$100.00 and not more than \$950.00 for a second or subsequent offence.
19. That the Regional Municipality of Durham shall maintain and replace from time to time as required all culverts and curb and gutter installed pursuant to this By-law. The maintenance or repair of the driving surface of the driveway necessitated by the above mentioned work shall be the responsibility of the owner of the land for which the entranceway provides access.
20. That this by-law shall apply to those boundary roads between the Region of York and the Region of Durham and the City of Kawartha Lakes and the Region of Durham which are under the jurisdiction of the Regional Municipality of Durham.
21. That every person who contravenes any Section of this by-law, with the exception of Section 15, is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,900.00.
22. No person shall use, construct, relocate or alter or cause to be used constructed, relocated or altered an Access onto a Regional Road without a Permit having been issued by the Commissioner under this By-law for such Access.
23. No Owner shall use any Access onto a Regional Road except in strict compliance

with all terms and conditions of the Permit issued by the Commissioner under this By-law for such Access.

24. That the Regional Municipality of Durham may close certain driveway entrances or common law rights of access to private properties along the Regional Road network that are considered and classified by the Region of Durham as being a risk to public health and safety and therefore constitute being a public nuisance.
25. That this bylaw and the closure of driveways and common law rights of access to private properties along the Regional Road network may be administered by Regional staff at all times, as well their agents and contractors constructing and administering road construction projects.
26. By-law 211-79 is hereby repealed and this by-law takes effect on the day of its passing by Regional Council.

This By-law Read and Passed on the 29th day of May, 2024.

J. Henry, Regional Chair and CEO

A. Harras, Regional Clerk