

A By-Law of the Municipality of Rothesay Respecting Streets and Sidewalks By-law No. 5-03

Title

1. This By-law is entitled the “Rothesay Streets and Sidewalks By-law”.
2. This By-law applies only to streets, sidewalks and other property owned by Rothesay and to activities or conditions affecting such Rothesay streets, sidewalks and property.
3. Nothing in this By-law shall be construed as prohibiting or limiting the municipality in the maintenance, expansion or reconstruction of its streets and Rothesay infrastructure.

Definitions

4. In this By-law:
 - (1) “abutter” means the owner, lessee or occupier of any premises or lot in Rothesay which abuts a Rothesay street, and where the premises or lot has been registered as a condominium under the Condominium Property Act, includes the condominium corporation which manages the premises or lot;
 - (2) “crosswalk” means that portion of a Rothesay roadway ordinarily included within the prolongation or connection of curb lines or the edge of a roadway and property lines at intersections or any portion of a roadway clearly indicated for pedestrian crossings by lines or other markings on the road surface;
 - (3) “Engineer” means the person appointed as the Rothesay Town Engineer and includes a person acting under the supervision and direction of the Engineer;
 - (4) “Rothesay infrastructure” includes infrastructure that supports the provision of Town services including the Rothesay sewer or water system, and without restricting the generality of the foregoing includes public trees, street lighting, traffic lights, traffic signs and other Rothesay signs;
 - (5) “Rothesay sewer or water system” means a sewer or water system owned and operated by Rothesay;
 - (6) “roadway” means that portion of a Rothesay street between the curb lines or the traveled portion of a street designed for vehicular traffic and, except where the context indicates otherwise, includes a crosswalk;
 - (7) “sidewalk” means that portion of a Rothesay street between the curb line and adjacent property line or any part of the street especially set aside for pedestrian travel and separated from the roadway;
 - (8) “street” means a Rothesay street, highway, road, lane, sidewalk, thoroughfare, bridge, square and the curbs, gutters, culverts and retaining walls in connection therewith and, without restricting the generality of the foregoing, includes the full width of the right-of-way;

(9) “utility” includes any person or corporation that provides water, electric power, telecommunications service, natural gas or other gas intended for use as fuel to the public, except a water utility owned by Rothesay;

(10) “utility facilities” includes any pole, pole lines (including braces and anchors), aerial cables, manholes, conduits, underground cables, pipes for the carriage of gas or liquids, and associated apparatus for the provision of utility services, including amplifiers, connection panels, transformers, valves and other fittings or equipment.

Removal of Ice and Snow from Sidewalks

5. Except in the areas identified in Schedule “A” of this By-law identifying the areas in which there is municipal sidewalk plowing, in which Rothesay snow removal service is provided, abutters shall remove all snow and ice:
 - (1) from any sidewalk which abuts any side of their property;
 - (2) from any pathway leading from a sidewalk abutting their property to the roadway; and
 - (3) between any sidewalk abutting their property and a crosswalk.
6. The removal of snow and ice required by the immediately preceding section of this By-law shall be such as to leave an area entirely cleared of snow and ice of not lesser width than either:
 - (1) 1 meter; or
 - (2) the full width of the sidewalk.
7. Subject to section [7], the removal of snow required pursuant to section [4] following a snowfall shall be completed:
 - (1) when a snowfall ceases during daylight hours and at least 4 hours in advance of sunset, within 4 hours after the snow stops falling;
 - (2) at other times, within 4 hours after sunrise on the following day.
8. Irrespective of whether a sidewalk is one listed in Schedule “A” or is otherwise plowed periodically by Rothesay, when a sidewalk is slippery in the winter due to the presence of compressed snow or ice, the abutter shall apply sufficient sand, salt or gravel to provide good traction for pedestrian traffic:
 - (1) on any sidewalk which abuts any side of their property;
 - (2) on any pathway leading from the sidewalk abutting their property to the roadway; and
 - (3) between any sidewalk abutting their property and a crosswalk.
9. Abutters whose property has snow, icicles or ice overhanging or abutting a sidewalk, including snow or ice on a roof which might slide onto a sidewalk, shall remove such snow, icicles or ice before they fall or are likely to fall onto a sidewalk at an uncontrolled time or in an uncontrolled manner.
10. When an abutter fails to remove snow, ice or icicles from sidewalks or structures as required by this By-law, the Engineer may give to the abutter an

order to remove the snow and ice within 24 hours upon service of such notice.

11. If the remedial work ordered pursuant to section [9] is not made within the time provided for by the order, the Engineer may make or cause to be made such snow, ice or icicle removals.
12. Rothesay may recover the expense incurred in making snow, ice or icicle removals pursuant to section [10], together with costs and pre-judgment interest by action in any court of competent jurisdiction, or may charge and collect same as a first lien on the property.
13. Nothing in this By-law creates a duty upon Rothesay to inspect or become aware of hazardous conditions created by snow or ice on or near or overhanging sidewalks. Council hereby declares, having regard to the resources and fiscal priorities of Rothesay, that it is the express policy of Rothesay:
 - (1) only to carry out inspections upon receiving a complaint about such conditions in respect of a specific location; and
 - (2) such complaints shall be deemed to be remedied upon the removal or remediation of the hazardous condition that existed at the time of the making of the complaint.

Vegetation in Street Right-of-Way

14. Abutters shall maintain any grass between the curb and a sidewalk abutting their property and between the curb and their abutting property except in areas designated by Council resolution as exempt from this requirement including:
 - (1) clipping, cutting or mowing the grass to a height of not greater than 8 cm.;
 - (2) raking and renewing grass as necessary in order to maintain a neat and tidy appearance; and
 - (3) collecting and removing litter or waste.

Encroaching Vegetation

15. Abutters shall trim the branches of trees, hedges, bushes or other shrubbery which encroaches from the abutting property over a street so as to prevent such tree, hedge, bush or other shrubbery:
 - (1) from interfering with pedestrian traffic on a sidewalk;
 - (2) from interfering with or affecting the sight lines of any person on a bicycle or in a motor vehicle traveling on the roadway up to a minimum height of 2.25 meters; or
 - (3) from interfering with any structure on or in a street.

Nuisance

16. No abutter shall place, permit to be placed, or permit to escape from the abutter's property or driveway, dirt, dust, or other nuisance onto the street.

Damage

17. No person shall

(1) move any heavy load over or deposit any heavy load on any sidewalk unless the sidewalk has first been protected by a covering of boards of adequate thickness to prevent any visible damage or disturbance to the surface of the sidewalk, or

(2) otherwise cause or permit any visible damage or disturbance to the surface of a sidewalk,

except as authorized by a Street Disturbance Permit.

18. No person shall

(1) drag or cause or permit any load or part of a load to drag on any roadway in such a manner as to cause any visible damage or disturbance to the surface of the roadway, or

(2) otherwise cause or permit any visible damage or disturbance to the surface of a sidewalk

except as authorized by a Street Disturbance Permit.

19. No person shall drive over a curb with a heavy load or otherwise cause any visible damage or disturbance to the surface of the curb, except as authorized by a Street Disturbance Permit.

Gates

20. No person shall construct or permit to be used any gate or barriers that open into or encroach upon any portion of the street or that may in any way impede pedestrian or vehicular traffic.

Encroachments

21. When any part of a street or other Rothesay property has been built upon, the encroachment may be authorized to continue upon obtaining an Encroachment Permit.

22. Application for an Encroachment Permit shall be made to the Engineer and the Engineer may issue such permit upon

(1) determination by the Engineer that the encroachment was made in error;

(2) payment of a permit fee of \$50.00;

(3) submission of an application in writing, in duplicate, on such form as may be specified by the Engineer from time to time, and signed by the person applying therefore;

(4) determination by the Engineer that the encroachment does not significantly impede pedestrian or wheelchair traffic on a sidewalk or vehicular traffic on a roadway;

- (5) determination by the Engineer that the encroachment does not pose a traffic hazard having regard to sight lines or otherwise;
 - (6) provision of an indemnity in favour of, and in form satisfactory to, Rothesay for the defence and indemnification of any claims arising out of or in relation to the encroaching structure; and
 - (7) provision of an acknowledgement that the permission of Rothesay to encroach may be withdrawn without payment of any compensation.
23. Notwithstanding the issuance of an Encroachment Permit, no person shall permit or cause a further or renewed encroachment once the original encroaching structure is demolished, destroyed or removed to the extent of 75% or more.
24. Notwithstanding sections 21 to 23, Council may by Agreement, authorize an encroachment or the continuation of an encroachment upon, under or over a street for such period of time and upon such conditions as it deems appropriate.
25. Sections 21 to 24 do not apply to utility facilities.
26. Encroachment Permits shall remain in effect for a period of three (3) years from the date of issuance and applications for a renewal shall be made at least one (1) month before the renewal date, on such form as may be specified by the Engineer from time to time, accompanied by the permit fee.
27. In the event of a change in ownership of the business for which the Permit has been issued, the new owner shall notify the Engineer in writing of his name and postal address and no fee shall be payable for substituting the new owner's name and address for that of the former owner.
28. The Engineer may refuse to issue or renew, or may revoke or suspend a Permit for breach of this By-law or for not meeting or for ceasing to meet the terms of eligibility for the Permit, upon [10 days] notice to an applicant or Permit holder from the date of mailing the notice to the address of record of the Applicant or Permit holder.
29. A person aggrieved by a decision of the Engineer pursuant to section 28, may appeal that decision to Council by written notice of appeal to the Clerk within 15 days from the date of mailing of the decision to the owner's address of record,
30. After the hearing of an appeal, Council may confirm, rescind or vary the decision of the Engineer.
31. Notwithstanding the issuance of a Permit, if Council is at any time of the opinion that terminating an encroachment would serve the interests of the municipality, it may, by resolution, terminate any permission or authority to encroach provided that:
- (1) 60 days notice shall be provided to the affected Permit Holder except in the event of imminent danger or harm in which event no notice is required; and

(2) the affected Permit Holder shall be given a rebate of the Permit fee, pro-rated to reflect the proportion of unexpired time for which the Permit would otherwise have remained in effect.

Street Disturbance Permit

32. No person shall:

- (1) make any excavation in a street;
- (2) cause or permit the breaking of the surface of a street or other physical damage to a street by construction activities in or near a street or by the operation or transport of tracked vehicles on the street or sidewalk;
- (3) otherwise engage in construction activity or other temporary activity that is likely to obstruct pedestrian or vehicular traffic in a street without first obtaining a Street Disturbance Permit from the Engineer.

33. Every application for a Street Disturbance Permit shall include

- (1) a non-refundable fee of \$10.00 when the Permit is required solely because of an obstruction of one month or less to the pedestrian or vehicular traffic in a street, without breaking or damaging the surface or subsurface of a street or to Rothesay infrastructure or property in, on or under a street;
- (2) a non-refundable fee in the amount of \$100.00 in all other cases; and
- (3) where an excavation or other construction activity is involved that may, in the opinion of the Engineer, cause damage to a street, a security deposit in the amount of \$1,500.00.

34. The security deposit required under subsection (3) of section 33 shall be retained as security that the applicant will properly perform and complete the work for which the permit is granted, and restore and keep the surface of the street and other Rothesay property when such work is done, to a good condition to the satisfaction of the Engineer for a period of twelve months after the completion of the work.

35. If the Engineer is of the opinion that the surface of the street or other Rothesay property is not restored and kept in good condition for the twelve month period, he may, upon advance notice to the Permit holder, perform such work in respect of the street as he considers necessary and the cost shall be deducted from the deposit, and the balance, if any, returned upon the expiry of the twelve month period. If the cost of such work exceeds the deposit, Rothesay may recover the balance, together with costs and pre-judgment interest from the Permit holder, by action in any court of competent jurisdiction, or may charge and collect the balance, together with costs and pre-judgment interest as a first lien on the property for whose benefit the work was undertaken.

36. The Engineer may grant an Annual Street Disturbance Permit to a utility for the purpose of the installation of Utility facilities, including pavement patching related thereto which require excavations in municipal streets, subject to such conditions as the Engineer may determine, and, without restricting the

generality of the foregoing, any such permit shall require that the Engineer be informed of the location and time of each instance of street disturbance prior to its commencement.

37. An application for an Annual Street Disturbance Permit shall include
 - (1) a non-refundable fee of \$500.00; and
 - (2) a security deposit in the amount of \$10,000.00 to be maintained in place for the duration of the permit.
38. The provisions of sections 34 and 35 shall apply, with any necessary changes for context, to the annual security deposit pursuant to subsection (2) of section 37 and the balance of the security deposit shall be returnable upon expiration of the permit.
39. Every Permit holder shall file in the office of the Engineer a notice of completion of work for all facilities constructed or repaired within a street within one week of the completion of the work.
40. Every excavation in a street shall, after notice, either written or verbal, given by Engineer to the Permit holder, be closed and filled as required by the notice, and if it is not so closed and filled within 48 hours after such notice, then it may be closed and filled by Rothesay at the expense of the Permit holder.
41. In the event of an emergency arising at the location of the excavation, the Engineer may immediately fill or direct the filling of the excavation at the expense of the Permit holder.
42. Every person obtaining a Street Disturbance Permit to make any excavation or opening in any street shall:
 - (1) sufficiently and continuously light the excavation at night;
 - (2) enclose and secure the excavation by a fence or barrier at least one meter in height; and
 - (3) comply with any standards relating to excavations in the Occupational Health & Safety Act or Regulations or any other applicable statutes or regulations.
43. In addition to any other conditions imposed by the Engineer for the granting of a Street Disturbance Permit, all permits shall be subject to the following conditions:
 - (1) the Engineer may stipulate the hours of work;
 - (2) the Permit holder shall keep the work site at all times safe with respect to vehicular and pedestrian traffic, including direction of traffic, barricades, lights, signs, and supply of properly equipped and trained traffic control personnel for protection of traffic, in accordance with standards in force pursuant to the Occupational Health and Safety Act;
 - (3) the Engineer may order additional precautions, work stoppages and restorations of the street should circumstances warrant and upon the failure of the Permit Holder to comply within 24 hours with such order, or

immediately in the event of an emergency, Rothesay may undertake any necessary action at the expense of the Permit holder.

(4) the Permit holder shall ensure that the street is kept free from nuisance, dirt, and dust;

(5) the Permit holder shall dispose, store, or haul away any clean material suitable for use as structural fill excavated from a street in accordance with the directions of the Engineer and the material may, at the Engineer's discretion, remain Rothesay property;

(6) the Permit holder shall ensure that all excavations are backfilled and restored in such manner and with such material as is approved by the Engineer and that advance notice of a minimum of 24 hours of the backfilling operation shall be provided to the Engineer so that it may be properly inspected;

(7) the Permit holder shall comply and ensure compliance by any agents, contractors or employees, with the Rothesay Development Standards and any other Policies or Standards of Rothesay, regarding design or construction standards applicable to Rothesay infrastructure or property in, on, under or near a street;

(8) the provision of an indemnity in favour of, and in form satisfactory to, Rothesay for the defence and indemnification of any claims arising out of or in relation to the proposed street disturbance activities;

(9) the permit shall be valid for a period of 6 months from date of issuance, but where work has commenced the permit shall expire 12 months after the date of issuance; and

(10) any other condition in respect of safety or preservation of Rothesay property interests that the Engineer may impose.

44. In the event of an emergency requiring the immediate excavation of the street, the Engineer may give verbal permission for such excavation on the condition that a Street Disturbance Permit is applied for and obtained on the first working day subsequent to the granting of such permission.

45. The Engineer may refuse to issue, renew or amend, or may revoke or suspend a Street Disturbance Permit, upon reasonable notice to an applicant or Permit holder, when

(1) the Engineer is not satisfied that the steps taken, or proposed steps to be taken, by the applicant or Permit holder has adequately protected or will adequately protect Rothesay's property;

(2) the Engineer is not satisfied that the steps taken, or proposed steps to be taken, by the applicant or Permit holder has minimized or will minimize the obstruction to pedestrian or vehicular traffic in the street;

(3) the Engineer is not satisfied that the steps taken, or proposed steps to be taken, by the applicant or Permit holder has achieved or will achieve compliance with any applicable Policies or Standards of Rothesay;

(4) this By-law or the terms or conditions of a Permit have been contravened;
or

(5) for any other reason in the public interest.

46. A person aggrieved by a decision of the Engineer pursuant to section 45 may appeal that decision to Council within 15 days of the decision by written notice of appeal to the Clerk.

47. After the hearing of an appeal, Council may confirm, rescind or vary the decision of the Engineer.

Penalty

48. Any person who contravenes any provision of this By-law is punishable on conviction by a fine of not less than \$100.00 and not more than \$500.00.

49. Any person who contravenes this By-law and who is given notice of the contravention may pay to Rothesay, at the place specified in the notice, the sum of \$50.00 within 14 days of the date of the notice and shall thereby avoid prosecution for that contravention.

Effective Date

50. This By-law comes into effect on the date of final enactment thereof.

FIRST READING BY TITLE 9 February , 2004

SECOND READING BY TITLE 8 March , 2004

READ BY SECTION NUMBER
(Advertised as to content on the Rothesay website in accordance with Municipalities Act, R.S.N.B. (1973) Chapter M-22) 8 March , 2004

THIRD READING AND ENACTMENT 8 March , 2004

William J. Bishop, Mayor

Mary Jane E. Banks, Clerk

Schedule A

The streets that are provided with snow plowing of sidewalks under this By-law are as follows:

- (a) Arthur Avenue
- (b) Broadway
- (c) Charles Crescent.
- (d) Church Street
- (e) Clark Road
- (f) Clermont Lane
- (g) College Hill Road
- (h) Crestwood Drive
- (i) Fox Farm Road
- (j) French Village Road.
- (k) Gondola Point Road
- (l) Grove Avenue
- (m) Hampton Road
- (n) Highland Avenue
- (o) Hillcrest Drive
- (p) John Street
- (q) Joseph Street
- (r) Kingswood
- (s) Maiden Lane
- (t) Marr Road
- (u) McMackin Lane
- (v) Robertson Drive
- (w) Rothesay Road.
- (x) Steele Street
- (y) School Avenue
- (z) Vincent Road
- (aa) Wright Lane