



POLICY NUMBER: PUBLIC WORKS-023

SUBJECT: RIGHT OF WAY ACTIVITY

POLICY STATEMENT:

(Purpose/Objective)

To regulate activity on municipal right-of-way's.

RELATED POLICY PROCEDURES/GUIDELINES:

Definitions

“Activity” – The temporary occupancy of a right-of-way for any defined period of time, outside its normal intended use, which may include but it not limited to excavation, repairs to or installation of Utilities, driveway installation, material or equipment storage or façade improvements;

“Applicant” - Any person, utility company or contractor applying for a Right-of-Way Activity Permit;

“Boulevard” – The municipally owned area of the road allowance between the back of curb or edge and private property line, not intended to be used for vehicle travel;

“City” or **“City of Brantford”** – The Corporation of the City of Brantford

“City Staff” or **“Public Works Staff”** – Employee(s) of the City of Brantford, with authority to enforce all aspects of this policy.

“Contractor” - A person hired, retaining in their control of the means, method and manner to complete an Activity

“Emergency” - Unforeseen work that is necessary immediately because of imminent danger to life, health or property;

“Heave” – Any rise in the surface of a road cut in relation to the grade of the adjacent undisturbed highway;

“Highway” – A common and public highway, the area between the lateral property lines including the roadway, curbs, shoulders and boulevards, sidewalks and pathways;

“Issuer of Permits” – Employee(s) of the City of Brantford with the authority to grant permits;

“Municipal Consent” – The written consent of the City, given by an appropriately authorized employee of the City, with conditions, for access to and use of the Municipality’s Rights-of-Way, subject to obtaining a Right-of-Way Activity Permit as applicable;

“Notice Letter” – The letter required to be distributed as set out in Section 7 hereto, if applicable;

“O.P.S.S” – Ontario Provincial Standard Specifications, as amended. Refer to <https://www.library.mto.gov.on.ca/SydneyPLUS/TechPubs/Portal/tp/opsSplash.aspx>;

“Right-of-Way” - The municipally owned area, including the roadway, bike lane, sidewalk or multi-use path and shoulder or boulevard;

“Right-of-Way Activity Permit” – An authorization granted in writing by a the City pursuant to this policy, to complete an Activity within the public Right-of-Way;

“Road Cut” – A surface or subsurface cut in any part of the Highway made by any means, including but not limited to any excavation, reconstruction, cutting, saw cutting, overlaying, breaking, boring, directional drilling, jacking or tunneling operations;

“Roadway” - Part of the Highway that is improved, designed or ordinarily used

for vehicular traffic, but does not include the curb, shoulder, boulevard or sidewalk;

“Security” – Any cash deposit, certified cheque, credit card or bond and insurance, to be provided by the Applicant pursuant to the requirements of this policy;

“Settlement or Settled” – Any sinking of the surface of the Road Cut in relation to the grade of the adjacent undisturbed Highway;

“Shoulder” - Part of the Highway immediately adjacent to the roadway and having a surface, which has been improved for the use of vehicles, with asphalt, concrete or gravel;

“Sidewalk” - Part of the Highway that is owned and maintained by the City and is commonly understood to be for pedestrian use, located between the edge of the roadway and property line;

“Traffic Control Plan” – A standard document outlining the particulars of proposed work on any Highway within the City of Brantford that is submitted by the Applicant to the City for review;

“Utility/Utilities” – Any structures above or below ground which exist on a Right-of-Way and include buried and aerial hydro cable and ducts, telephone cable, television, and internet communication cables, water, including underground pipes, hydrants and valves, sanitary and storm sewer pipes, gas pipes, meters and valves;

“Utility Company” – Any company with the authority to construct within the Right-of-Way pursuant to provincial or federal legislation, by-law, franchise agreements or municipal access agreements;

1. Requirements to Obtain a Right-of-Way Activity Permit

Except as provided in this policy, no person, Utility Company, or Contractor shall undertake any Activity within a Right-of-Way within the City of Brantford without a permit to do so.

- a) An application for a Right-of-Way Activity Permit shall be filed with the Issuer of Permits not less than fifteen (15) working days in advance of such Right-of-Way Activity. When applying for the Right-of-Way Activity Permit, the Applicant shall:
 - i) Complete and submit the prescribed application form;

- ii) Provide to the City such information as the Issuer of Permits may require.
- b) When filing the completed application, the Applicant shall pay a non-refundable permit fee as set out in the City of Brantford's Fees and Charges By-law, as amended or replaced from time to time;
- c) A Right-of-Way Activity Permit shall not be issued until:
 - i) Security has been provided as required by this policy, if applicable;
 - ii) The permit fee or fees required hereof has or have been paid;
 - iii) Proof of insurance has been filed as required by this policy;
 - iv) A detailed diagram, drawing or map has been provided including north arrow, street names, existing and proposed infrastructure, edge of roadway, curb, boulevard/shoulder and sidewalk;
 - v) A Notice Letter has been provided as required by this policy, if applicable;
 - vi) A Traffic Control Plan has been provided as required by this policy;
 - vii) Parking arrangements have been made, if applicable and payment receipt provided should the Activity occur in the Downtown Brantford Business Improvement Area (DBBIA) and effect on-street parking. Parking Services can be reached by calling (519)759-4150;
 - viii) Proof of City of Brantford General Building Trades Licence has been provided, if applicable, and all conditions and fees have/will be complied with, pursuant to Chapter 326 of the Municipal Code, as amended from time to time;
 - ix) Approval for Municipal Consent has been issued and any conditions have been complied with, if applicable.

2. Work Not Requiring Permit

The following situations are exempt from the Right-of-Way Activity Permit:

- a) Work within the Right-of-Way that is minor (at the discretion of the Issuer of Permits) and of very short duration (i.e. does not cause and disruption to traffic flows, does not break ground and does not create a potential for damages to existing infrastructure);
- b) Work performed by or under contract with the City of Brantford;
- c) Emergency Services;

d) Emergency situations or events. Work may be undertaken without prior notice, however the person or Utility undertaking the work must notify roadclosures@brantford.ca within 24hrs of work commencement of the following:

- i) The name of the Utility or Contractor undertaking the Activity
- ii) The nature of the Activity
- iii) The location of the road Activity
- iv) The estimated duration of the Activity
- v) The reason for proceeding without obtaining a Right-of-Way Activity Permit

The Issuer of the Permits may require any or all information to confirm the validity of the Emergency Activity. Should insufficient proof of an Emergency be submitted, the person, Utility or Contractor may be notified in writing that they are subject to the same restrictions and penalties as performing the Activity without a Right-of-Way Activity Permit.

3. Renewal and/or Extension of Permit

- a) Any person, Utility Company or Contractor required to renew and or extend a Right-of-Way Activity Permit previously approved by the City, shall submit to the Issuer of Permits, a written request for renewal or extension. Every permit holder shall obtain any and all approvals and documentation as deemed necessary by the Issuer of Permits.
- b) Where the Issuer of Permits is satisfied that the Applicant is entitled to obtain a renewal or extension, the Issuer of Permits shall amend the original permit information to reflect the renewal or extension and initial the changes.

4. Fees & Security

- a) The fees for the Right-of-Way Activity Permit are established in the City of Brantford's Fees and Charges By-law and shall be due and payable to the City at the time of application. Alternate arrangements may be made for permit payment at the sole discretion of the City. No Right-of-Way Activity Permits shall be issued until such fees have been paid and there shall be no refund of any fees for any cause.
- b) The fees for Right-of-Way Activity inspections shall be invoiced to the Permit Holder once all inspections by City Staff have been completed as per this policy. Inspection fees will be charged as per the City's Fees and Charges

By-law.

- c) The fees related to invoices are due upon receipt. Failure to pay these fees may result in a claim against the Security deposit.
- d) The Applicant shall deposit with the City, Security in the minimum amount of \$2,000.00 in a form of cash deposit, certified cheque, credit card or bond. An additional amount may be requested by the Issuer of Permits.

5. Insurance & Indemnification

Insurance Requirements:

The Applicant, during the term of this Permit, at its expense, shall take out and keep in full force:

- a) Commercial general liability insurance including products and completed operations and blanket contractual to a limit of not less than two million dollars (\$2,000,000) per occurrence. The policy will be endorsed to name The Corporation of the City of Brantford as an additional insured. The policy will provide at least thirty (30) days prior written notice to the City before the insurer of the Applicant takes any steps to cancel, terminate, fail to renew, amend or otherwise change or modify the policy and;
- b) Standard form automobile liability insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than two million dollars (\$2,000,000).

Within ten (10) days and prior to the issuance of the Permit, the Applicant shall provide proof of insurance in the form of a Certificate of Insurance. Certificates of Insurance evidencing renewal or replacement of policies shall be delivered within fifteen (15) days prior to the expiration or replacement of the current policies, without demand by the City.

The City reserves the right to require the Applicant to purchase additional insurance coverage and higher limits as the City may reasonably require from time to time.

Indemnity:

The Applicant hereby agrees to release, waive and forever discharge The Corporation of the City of Brantford (the "City"), its employees, agents, officials, contractors, representatives, elected and appointed officials, successors and assigns from any and all claims, demands, damages, costs, expenses, actions and causes of action whatsoever, whether in law or equity, in respect of death,

injury, loss or damage to the Applicant ,its employees, agents, officials, officers, successors, assigns, contractors, volunteers and representatives or property, howsoever caused, and the Applicant further agrees to fully indemnify, defend, and save harmless all of the aforesaid from and against any and all liability incurred by any of them or all of them arising as a result of, or in any way connected with the issuance of the Permit.

6. Notice Letter Requirements

- a) Where the Activity will close a Highway and/or cause general inconvenience to all residents and businesses located beside or near the Right-of-Way where the Activity will occur, every person, Utility Company, or Contractor requiring a Right-of-Way Activity Permit shall provide a draft Notice Letter for review by the Issuer of Permits, at time of application submission and include the following information:
 - i) Activity location, including the nearest cross streets;
 - ii) Description and rationale for the Activity;
 - iii) The start date and duration of the Activity;
 - iv) Access restrictions and service interruptions; and
 - v) Contact information for the Permit Holder.
- b) Where the Issuer of Permits is satisfied with the Notice Letter, the Issuer of Permits shall notify the Applicant to proceed with distribution as outlined in this section.
- c) The Permit Holder or person responsible for the Activity shall, at least (5) working days prior to commencing the work, distribute the approved Notice Letter in the following manner:
 - i) Hand deliver the Notice Letter to all residents and businesses that have an affected driveway access;
 - ii) Email the Notice Letter to emergency services, Utilities and other City services at closurenotices@brantford.ca
 - iii) Email the Notice Letter to the Downtown Brantford Business Improvement Area (DBBIA) at info@downtownbrantford.ca should the Activity take place in the downtown core.
 - iv) The magnitude of the Activity shall dictate if additional notification is required by the Applicant, as directed by the Issuer of Permits.

7. Traffic Control Requirements

- a) Every person, Utility Company or Contractor requiring a Right-of-Way Activity Permit shall provide a Traffic Control Plan in compliance with the Ministry of Transportation's Ontario Traffic Manual, Book #7 (Temporary Conditions), at time of submission
- b) The Permit Holder shall supply, erect and maintain all warning devices, barricades and traffic signs where applicable, in accordance with the Occupational Health and Safety Act, R.S.O. 1990, c. 0.1 as amended from time to time and any applicable provincial traffic regulations, including but not limited to the Ministry of Transportation's Ontario Traffic Manual, Book #7 (Temporary Conditions)
- c) No person, Utility Company, or Contractor shall close or obstruct a Highway or portion of a Highway to traffic unless granted through the Right-of-Way Activity Permit
- d) Should the Right-of-Way Activity Permit authorize a road closure, and a detour be required, as determined by the Issuer of Permits, the City will supply, erect and maintain the detour route signage in compliance with the Ministry of Transportation's Ontario Traffic Manual, Book #7 (Temporary Conditions), unless otherwise noted to the Applicant by the Issuer of Permits;
- e) The Permit Holder shall include provisions for Paid Duty Officers and/or Traffic Control Persons should these be required as directed by the Issuer of Permits;

8. Locates

- a) It shall be the sole responsibility of the Permit Holder to request, from the appropriate Utility Company, marking or other location information to determine the location and to provide safeguards for all Utilities;
- b) The Permit Holder must abide by all Utility Company, including but not limited to Ontario One Call, requirements.

9. Form of Permit

Every Right-of-Way Activity Permit shall show therein:

- a) The operating name of the business or person to whom the Right-of-Way Activity Permit is issued;
- b) The operating address of the premise or location for which the Right-of-Way Activity Permit is issued;

- c) The type of Activity planned;
- d) The date of issue;
- e) The effective start and end dates of the Right-of-Way Activity Permit;
- f) Any other conditions if applicable;
- g) Such requirements as needed given the nature of the Activity being undertaken on a Right-of-Way; and
- h) The signature(s) of the Issuer of Permits.

10. Posting of the Permit

No Permit Holder shall work at a job site without the Right-of-Way Activity Permit on-site and available for inspection.

11. Expedited Permit

- a) Expedited permits are processed within 7 business days, should sufficient staff resources exist.
- b) Should the Applicant request an expedited permit, an additional fee will be charged as per the Fees and Charges By-law once the Issuer of Permits determines if an expedited permit is feasible.

12. Stop Work Order

- a) City Staff may at their discretion issue a stop work order.
- b) Stop work orders are issued where Public Works Staff find an Activity occurring that is not in accordance with the conditions of an issued Right-of-Way Activity Permit or where an Activity is taking place without a Right-of-Way Activity Permit.
- c) After the stop work order has been issued, the person, Utility Company, or Contractor may be required to perform temporary restoration and move all equipment and materials off-site until these requirements are met in-full, as directed by Public Works Staff;
- d) If situations arise, requiring immediate attention by City Staff, the Permit Holder will be notified the next business day of the issue and the action carried out. All associated costs will be the responsibility of the Permit Holder and will be invoiced as per the current Fees and Charges By-law.
- e) A stop work order shall be lifted once the issuer of the stop work order or the Issuer of Permits determines that all contraventions of this policy have been

rectified.

- f) Depending on the severity of the infraction, the Right-of-Way Activity Permit may be revoked or issuance withheld or delayed, at the sole discretion of Permit Issuer, until the infraction has been addressed by the Permit Holder or Applicant, to the satisfaction of the Permit Issuer.

13. Suspension/Revocation

- a) Any Right-of-Way Activity Permit issued pursuant to this policy may be suspended or revoked by the Issuer of Permits upon giving written notice to the Applicant for the following reasons:
 - i) A violation of any condition of the Right-of-Way Activity Permit or of any provision of this policy;
 - ii) A violation of any provision of any other law and/or legislation relating to work;
 - iii) The existence of any condition or the doing of any act constituting or creating a nuisance or endangering the lives of properties or others;
 - iv) Where the Right-of-Way Activity Permit has been issued on mistaken, false or misleading information; or
 - v) Where the Activity is not carried out in a diligent and workmanlike manner.
- b) The Issuer of the Permits may, in their sole discretion, suspend the Right-of-Way Activity Permit for a period of not more than 7 days to correct the breach or condition;
- c) Upon notice of such Right-of-Way Activity Permit being suspended or revoked, the Permit Holder must immediately cease and desist from carrying out any additional activities allowed under the Right-of-Way Activity Permit and immediately restore the Highway or portion thereof to City Standard as set out in this policy. Such restoration shall be carried out at the Permit Holder's sole expense, and if the Permit Holder should fail to carry out such restoration, such Highway shall be restored by the City as necessary and the entire cost of doing so shall be paid by the Permit Holder, in accordance with the Fees and Charges By-law, as amended from time to time. When such restoration is completed, the Permit Holder may reapply for a new Right-of-Way Activity Permit.

14. Non-Compliant Installations

- a) Where infrastructure is installed without a valid Right-of-Way Activity Permit, the person, Utility Company, or Contractor may be required to remove the

infrastructure immediately, at its own expense.

- b) Restoration shall be performed in accordance with the procedures outlined in this policy within.

15. Refusal to Grant a Permit

The Issuer of the Permits may refuse to grant a Right-of-Way Activity Permit to any Applicant for any of the following reasons:

- a) Persistent and/or serious violations of any condition of a Right-of-Way Activity Permit previously issued to the Applicant, or for any provisions to this policy applicable to a Right-of-Way Activity Permit previously issued
- b) Nonpayment or late payment of monies due to the City
- c) Such other reason as the Issuer of Permits may deem proper

16. Inspection

- a) City Staff may enter on any land, for the purpose of carrying out an inspection to determine whether or not the provisions of this policy, a direction or order, or a condition of the Right-of-Way Activity Permit are being complied with
- b) Following completion of the Activity, City Staff shall:
 - i) Inspect each temporary restoration once complete, to ensure adherence to this policy
 - ii) During winter conditions, inspect each temporary restoration on a monthly basis until final restoration is completed
 - iii) Inspect any temporary restoration as required, should a concern or safety issue arise
 - iv) Include all inspection fees as an additional itemized cost on the final invoice prepared after the permanent restorations are completed.
- c) All sewer and water services installed, pursuant to the Right-of-Way Activity Permit, must be inspected by City Staff as outlined in this policy.
- d) For the purposes of inspection, City of Brantford Public Works Staff or other duly appointed individuals may:
 - i) Require the production of documents or items relevant to the inspection;
 - ii) Inspect or remove documents or items relevant to the inspection for the

purpose of making copies;

- iii) Require information from any person concerning a matter related to the inspection
- iv) Alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of the inspection
- e) Any inspection by City Staff or other duly appointed individual shall not be construed as relieving the Permit Holder from any obligation outlined in this policy.

17. Excavation and Road Cut Methods

- a) Should the Right-of-Way Activity Permit authorize a Road Cut or excavation within the Highway, the Permit Holder shall:
 - i) Place material and equipment in a location where it will avoid any traffic or safety issues, as well as any damage to existing infrastructure.
 - ii) Maintain control of the work site until all of the following conditions are met:
 - (1) Installation of the work is completed
 - (2) City Staff has been notified
 - (3) The City begins final restoration
 - iii) Open cut in such a manner as to do the least possible damage to the Highway and to any existing infrastructure.
 - iv) Keep the site clean and safe, controlling sources of dust, mud and debris at all times until the final restoration has been completed. All dust, mud and debris that is tracked from the site, shall be promptly cleaned.
 - v) Comply with and be bound by the provisions of the Occupational Health & Safety Act, R.S.O. 1990, c. 0.1 as amended from time to time.
- b) Saw-cutting of existing curbs to create a driveway drop curb access will not be permitted.

18. Restoration and Backfill Requirements

- a) The Permit Holder shall be fully responsible for:
 - i) The temporary restoration of a Road Cut subject to the provisions of this

policy

- (1) For hard surfaces, cold patch is to be used throughout the year. Hot mix asphalt is an approved alternative in accordance with O.P.S.S.
 - ii) Backfilling using O.P.S.S. approved granular 'B' materials, topped with minimum 50mm of cold mix or hot mix asphalt to the same level as the adjacent surface.
 - iii) Compaction of backfill material as per O.P.S.S requirements, and verify through a third party testing agency on all collector and arterial Highways, unless otherwise directed by City Staff.
 - iv) Utilizing unshrinkable backfill as per O.P.S.S., when proper compaction cannot be reached due to the proximity of existing Utilities, as authorized or directed by City Staff.
 - v) Disposal or off site reuse of excess soil as per O. Reg 406/19 and all associated environmental testing and related costs.
 - vi) Prior to the Highway being opened to traffic, the temporary restoration shall be hand-tamped or rolled to a smooth, flat condition using commonly accepted practices and standard tamping or rolling equipment.
 - vii) All costs associated for work done by the City as a result of final restoration, Settlement and/or safety concerns as per the current Fees and Charges By-law, as amended from time to time.
 - viii) Any indemnification required that may result from any deficiencies.
 - ix) Any additional restoration conditions identified by the Issuer of Permits
- b) The City shall be fully responsible for:
- i) The final restoration of a Road Cut, unless otherwise arranged with the Permit Holder
 - ii) Advising the Permit Holder of any Settlement occurring prior to final restoration. City Staff will re-excavate and properly restore the work area at the Permit Holder's expense

19. Snow Removal/Winter Conditions

- a) Where the Permit Holder's Activity impedes snow removal and/or de-icing by the City on areas where vehicular and pedestrian traffic are being maintained, as reasonably determined City Staff, the Permit Holder shall be responsible for providing ice and snow removal services within the limits of the work site.

Such areas shall be cleared of ice and snow to the satisfaction of City Staff.

- b) Should the Permit Holder fail to complete the required snow removal services and de-icing within the set deadlines, the City, without any notice to the Permit Holder, may arrange for the snow and ice to be removed by others. All costs incurred by such removal shall be charged to the Permit Holder.
- c) During winter conditions when hot mix asphalt is not available (November 1st – April 30th), the Permit Holder shall be responsible for the temporary restoration of the excavation, including the placing of temporary emulsified cold mix asphaltic material to replace any paved surface, curb or sidewalk that has been disturbed. Such material shall be placed in accordance with O.P.S.S restoration policy for temporary restorations.
- d) The City shall complete the permanent restoration of such temporary repair areas as soon as possible following the opening of asphalt plants.
- e) Compaction testing shall occur at time of backfill, or as soon as conditions allow, to ensure compliance with O.P.P.S. compaction specifications. If such compaction does not meet O.P.S.S., the Permit Holder shall be responsible for re-excavating and compacting backfill material.

20. Water and Sewer Installations

- a) All water installations within the Right-of-Way shall:
 - i) Be inspected by a City Inspector throughout installation as deemed necessary by the Inspector, between 8:00am and 4:00pm Monday to Friday;
 - ii) Be arranged a minimum of two (2) business days in advance of starting the installation by calling (519)759-4150;
 - iii) Not be backfilled until final inspection is completed and recorded by the Inspector;
- b) All storm and sanitary lateral installations shall:
 - i) Be inspected by a City Inspector throughout installation as deemed necessary by the Inspector, between 8:30am and 4:30pm Monday to Friday;
 - ii) Be arranged a minimum of two (2) business days in advance of starting the installation by calling (519)759-4150;
 - iii) Not be backfilled until final inspection is completed and recorded by the Inspector;

- c) The Permit Holder is responsible for ensuring all adjacent infrastructure is supported and protected to avoid any disturbance or damage
- d) The Permit Holder shall ensure all that all trenches are safe and accessible as defined by the Occupational Health and Safety Act R.S.O. 1990 c. 0.1, as amended from time to time. Inspectors have the right to refuse entry into a trench that does not, in their opinion, comply with the Act.

21. Reporting Damage/Impact to Existing Utilities

- a) Any impact on existing Utilities including, but not limited to, the protective coating, support, cathodic protection or the housing of the Utilities shall be reported to the Public Works Operational Services and applicable Utility company immediately.
- b) The Utilities shall remain exposed, with the excavation property supported, until the Utilities owner has assessed the damage and made a repair or authorized the Permit Holder to proceed.

22. Reference Standards, Manuals and By-laws

The following documents have been referenced throughout the policy and/or may be of use when completing activities within the Right-of-Way:

- a) Ministry of Transportation’s Ontario Provincial Standard Specifications: <https://www.library.mto.gov.on.ca/SydneyPLUS/TechPubs/Portal/tp/opsSplash.aspx>
- b) Ministry of Transportation’s Ontario Traffic Manual, Book 7 Temporary Conditions <https://www.library.mto.gov.on.ca/SydneyPLUS/Sydney/Portal/default.aspx?component=AAAAY&record=34657287-fb36-43a2-84d7-7dc2c5e0d3a6>
- c) Ontario’s Occupational Health & Safety Act, R.S.O. 1990, c.. 0.1, as amended from time to time: <https://www.ontario.ca/laws/statute/90o01>
- d) City of Brantford’s Linear Design and Construction Manual: <https://www.brantford.ca/en/your-government/design-construction.aspx>

<p>Date of Enactment:</p> <p>April 27, 2021</p>	<p>Related By-law Number/Staff Report Number:</p> <p>84-2021/2021-206</p>
---	---

Review and Amendment Dates:	Responsible for Review: Operational Services
Date of Next Review: 2026	Applicable Legislation/Legislative Authority: