

**Minor Updates and Amendments to Right of Way By-laws**

**Mises à jour et modifications mineures de règlements sur les emprises**

**Committee Recommendation**

That Council approve minor amendments to improve administration as well as clarify and harmonize existing regulation as detailed in Document 1 for the following By-laws:

- a) Road Activity By-law
- b) Over-dimensional Vehicle By-law
- c) Right-of-Way Patio By-law
- d) Encroachment By-law
- e) Private Approach By-law
- f) Signs on City Roads By-law
- g) Use and Care of Roads By-law.

**Recommandation du comité**

Que le Conseil approuve des modifications mineures visant à améliorer l'administration des règlements suivants, à les clarifier et à les harmoniser, comme l'expose en détail le document 1 :

- a) Règlement municipal sur les activités routières
- b) Règlement municipal régissant les véhicules surdimensionnés
- c) Règlement régissant les terrasses sur emprise
- d) Règlement en matière d'empiétement sur les voies publiques de la Ville
- e) Règlement sur les voies d'accès privées
- f) Règlement sur l'affichage sur la voie publique
- g) Règlement sur l'utilisation et l'entretien des routes

**DOCUMENTATION**

Manager's report, dated 25 May 2020 (ACS2020-PIE-RHU-0003)

Rapport du gestionnaire, daté le 25 mai 2020 (ACS2020-PIE-RHU-0003)

**Report to  
Rapport au:**

**Transportation Committee  
Comité des transports  
3 June 2020 / 3 juin 2020**

**and Council  
et au Conseil  
10 June 2020 / 10 juin 2020**

**Submitted on May 25, 2020  
Soumis le 25 mai 2020**

**Submitted by  
Soumis par:**

**Court Curry, Manager / Gestionnaire  
Right of Way, Heritage and Urban Design Services / Services des emprises, du  
patrimoine et du design urbain Planning, Infrastructure and Economic  
Development Department / Direction générale de la planification, de  
l'infrastructure et du développement économique**

**Contact Person**

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**Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE      File Number: ACS2020-PIE-RHU-0003**

**SUBJECT: Minor Updates and Amendments to Right of Way By-laws**

**OBJET: Mises à jour et modifications mineures de règlements sur les  
emprises**

## **REPORT RECOMMENDATIONS**

**That Transportation Committee recommend Council approve minor amendments to improve administration as well as clarify and harmonize existing regulation as detailed in Document 1 for the following By-laws:**

- a) Road Activity By-law**
- b) Over-dimensional Vehicle By-law**
- c) Right-of-Way Patio By-law**
- d) Encroachment By-law**
- e) Private Approach By-law**
- f) Signs on City Roads By-law**
- g) Use and Care of Roads By-law.**

## **RECOMMANDATIONS DU RAPPORT**

**Que le Comité des transports recommande au Conseil d'approuver des modifications mineures visant à améliorer l'administration des règlements suivants, à les clarifier et à les harmoniser, comme l'expose en détail le document 1 :**

- a) Règlement municipal sur les activités routières**
- b) Règlement municipal régissant les véhicules surdimensionnés**
- c) Règlement régissant les terrasses sur emprise**
- d) Règlement en matière d'empiétement sur les voies publiques de la Ville**
- e) Règlement sur les voies d'accès privées**
- f) Règlement sur l'affichage sur la voie publique**
- g) Règlement sur l'utilisation et l'entretien des routes**

## **EXECUTIVE SUMMARY**

**Assumptions and Analysis**

The Minor Updates and Amendments to Right-of-Way By-laws report is a housekeeping report that sets out amendments to address items such as organizational changes, changes in business process, changes to clarify intent, or to address specific issues that have been identified through By-law administration and enforcement. Reports such as this provide an opportunity to address minor issues on a continual basis outside of the larger review process for each of the By-laws administered by Right-of-Way Heritage and Urban Design. The proposed amendments do not require public consultation, and do not alter the intent of the By-laws. Under the [By-law Review Framework](#) approved by Council in April 2019, this is a Minor Amendments Report.

### **Public Consultation/Input**

As the proposed amendments are largely administrative in nature, and do not change the intent of the By-laws, no public consultation was required.

## **RÉSUMÉ**

### **Hypothèses et analyse**

Le rapport intitulé *Mises à jour et modifications mineures de règlements sur les emprises* prévoit que l'on apporte certaines modifications d'ordre administratif reflétant certains changements, notamment organisationnels, liés aux processus opérationnels, de clarification ou visant à résoudre certaines questions soulevées dans le cadre de l'administration ou de l'application des règlements. Les rapports de ce type sont l'occasion d'aborder de façon continue des enjeux mineurs, hors du cadre plus général du processus d'examen de chacun des règlements administrés par Emprises, Patrimoine et Design urbain. Les modifications proposées ne nécessitent aucune consultation publique et ne changent pas l'intention des règlements en question. En vertu du cadre d'examen des règlements municipaux approuvé par le Conseil en avril 2019, il s'agit d'un rapport sur des modifications mineures.

### **Consultation publique et commentaires**

Puisque les modifications proposées sont essentiellement de nature administrative et ne changent pas l'intention des règlements, aucune consultation publique n'était requise.

## **BACKGROUND**

The purpose of this report is to allow for housekeeping amendments to By-laws administered by the Right-of-Way (ROW) Branch of Right-of-Way, Heritage and Urban

Design Services in the Planning, Infrastructure and Economic Development (PIED) Department.

These amendments are required from time to time to address specific issues related to such things as ensuring effective administration and implementation, clarification of intent, legislative changes, and organizational changes. The proposed amendments do not require public consultation, do not result in significant budget impacts, and do not alter the overall intent of the By-laws.

This minor updates and amendments report proposes changes to several By-laws administered by the ROW Branch, as detailed in the discussion section below. Under the By-law Review Framework approved by Council in April 2019, this is a Minor Amendments Report.

## **DISCUSSION**

Over time By-laws require housekeeping and minor amendments to address specific issues that arise. These issues may be identified through such means as the administration or enforcement of the By-law, as part of process improvements, as well as through questions and feedback from stakeholders and residents.

The purpose of this report is to provide an opportunity to bring forward these issues outside of the context of a comprehensive review of a By-law to help ensure that the City's By-laws continue to be clear in their intent, and responsive to Council's regulatory objectives.

Significant amendments to the Road Activity By-law were approved by Council on April 10, 2019 and came into effect on July 1, 2019. Since that time, staff have identified necessary changes to provide further clarity, and to improve administrative efficiency. Table 1 below identifies the proposed amendments to the Road Activity By-law.

Table 2 identifies proposed amendments to the Over-dimensional Vehicle By-law. The intent of these modifications is to update references within the By-law to reflect the current organizational structure and harmonize the PM peak hour time restrictions with those of the Road Activity By-law.

The proposed amendment to the ROW Patio By-law 2017-92 described in Table 3 below concerns an update to the Traffic and Parking By-law reference.

Finally, Table 4 describes a definition update to the “General Manager” definition in four By-laws: The Encroachment By-law, Use and Care of Roads By-law, Private Approach By-law and the Signs on City Roads By-law.

Document 1 sets out the specific amendments to the affected By-laws.

**Table 1 – Proposed Amendments to Road Activity By-law:**

I Item	II Summary of Amendment
Minimum threshold for Pavement Degradation Fee (PDF) adjustment.	<p>For cuts made into the roadway pavement a Pavement Degradation Fee (PDF) is payable at the time of application for a Road Cut Permit. The amount of PDF is based on two factors; the age of the roadway pavement, which has a corresponding rate per square metre, and the estimated size of the cut.</p> <p>Upon completing the cut, if the estimated size of the cut was less than the actual size, staff may require the permit holder to pay the additional PDF. Conversely, a permit holder may request a refund if the actual size of the cut is less than that originally estimated.</p> <p>This process ensures the City is collecting the majority of PDF at the time of application for a permit. Previously, PDF was not payable until after the work was inspected and the Permit holder was invoiced for the amount owing. The new process is more administratively efficient.</p> <p>However, where the amount of PDF either to be collected or refunded is minor, the inspection and administrative work to determine and process any difference in PDF payable is overly burdensome relative to the amount.</p> <p>Staff are recommending the establishment of a threshold amount of \$125.00 for both the collection and refunding of PDF. That would mean that where the amount of PDF representing the difference between the estimated and the actual roadway pavement cut size is less than \$125.00, staff would neither seek collection of, or refund</p>



I Item	II Summary of Amendment
	<p>the amount. It is anticipated that these would equal out, and therefore there will be no financial implication.</p> <p>This threshold represents the approximate amount of PDF payable on a roadway with pavement in the middle age range of five to seven years and based on an area of five square meters. This is in keeping with the minimum PDF charge based on an area of five square meters and is similar in approach to that of the City's Building By-law, which states that a refund shall not be payable where the amount to be refunded is less than the minimum fee for a permit to construct. This will also encourage Road Cut permit applicants to provide more accurate estimates as to the size of a cut into the roadway pavement.</p>
Warranty start date and submission of the Road Cut Completion Report	<p>Upon completion of the reinstatement of a road cut, a Road Cut Permit holder must submit a Road Cut Completion Report. The By-law requires that this be done within ten working days of completing the reinstatement.</p> <p>The Road Cut Completion Report is the trigger for staff to inspect the work. If the work is acceptable, the Road Cut Permit holder's two-year warranty begins from the date the reinstatement was completed. The Road Cut Completion Report is essential for the coordination of the inspection and tracking of the Road Cut permit.</p> <p>Staff are recommending an amendment to delegate to the General Manager the discretion to start the warranty period from the date of receipt of the Road Cut Completion Report where it is submitted outside of the prescribed ten working day timeframe.</p>

I Item	II Summary of Amendment
	<p>This would help encourage the timely submission of the report while providing flexibility to the General Manager to nevertheless permit the warranty to begin from the date of reinstatement in circumstances where despite the Road Cut Permit holder's reasonable efforts, they do not submit the Road Cut Completion Report within the prescribed timeframe.</p>
<p>Applicability of Peak Hour Restrictions to Persons working on City streets</p>	<p>To help mitigate the impact of work on vehicles, cyclists and pedestrians the By-law prohibits the placement of trucks, vehicles, materials and equipment during weekday rush hour periods. It does not currently include workers such as flagging staff.</p> <p>Staff recommend also including persons working on City streets to ensure the intent of Council in minimizing the impact of work on City streets during rush hour periods is achieved.</p>
<p>Clarification of "remain open" in Subsection 9(2)</p>	<p>Subsection 9(2) states that work shall proceed expeditiously, and no Road Cut Permit holder shall allow a road cut to remain open for more than twenty-four hours unless the work is actively in progress.</p> <p>The intent of this subsection is to ensure that a Road Cut Permit holder is proceeding as quickly as possible to do the work and reinstate the street. To ensure the intent of this subsection is clear, staff recommend the words "allow a road cut to remain open for more than twenty-four hours" be replaced with "fail to temporarily reinstate a road cut within twenty-four hours....", such that the subsection would now read:</p> <p>"The work shall proceed expeditiously, and no permit holder shall fail to temporarily reinstate a road cut within</p>

I Item	II Summary of Amendment
	twenty-four (24) hours unless the work is actively in progress.”
Collection of PDF for work done by, or on behalf of the City	<p>In order to effectively coordinate and manage work within the City's streets the By-law applies to all work, including work done by or on behalf of the City.</p> <p>Similarly, Pavement Degradation Fees (PDF) are applied to all cuts within the roadway pavement to compensate for the impact such cuts have on the accelerated decline of the pavement. In the context of work done by or on behalf of the City, PDF applied with respect to work done by or on behalf of Public Works and Environmental Services remain with that Department, while all other PDF is dedicated to the 2020 selective resurfacing program. The By-law exempts from PDF work done by or on behalf of the City, the prime purpose of which is the provision or preservation of pavement.</p> <p>As part of amendments to the Road Activity By-law that came into effect on July 1, 2019 as described in report <a href="#">ACS2019-PIE-RHU-0001</a>, staff re-commenced the collection of PDF, (which had ceased in 2013), based on the existing model and exemptions instituted in 2003. Within the report, staff advised that as part of the second phase of the By-law review, the collection and use of PDF would be reviewed. This will include an assessment of whether PDF should be applied to work done by or on behalf of the City. This report is tentatively scheduled to be before Transportation Committee in Q1 of 2021.</p> <p>In the interim staff are recommending that PDF not be collected for any work done by or on behalf of the City.</p> <p>PDF will still be collected for cuts into the roadway pavement related to work for external parties. Of all the</p>

I Item	II Summary of Amendment
	<p>PDF collected between July 2019 and November 2019, roughly ten per cent is related to work done by or on behalf of the City. This represents approximately \$20,000 of a total \$160,000 in PDF collected. All other City related work fell under the existing exemption provisions.</p>
Road Cut Permit Sign for City work	<p>The By-law requires Road Cut Permit holders to provide notification of their work to residents, and to post a sign identifying information about the work. Where work is done on behalf of the City, the By-law allows for resident notification to be provided by the City instead of by the Road Cut Permit holder working on behalf of the City. This ensures communication about the project flows directly between the City and residents where the work involves a City program or project. The same flexibility is not provided with respect to the Road Cut Permit Sign.</p> <p>The purpose of the proposed amendment is to provide flexibility for the City to post its own signs where work is being done by a Road Cut Permit holder on behalf of the City.</p>
Schedule "A" - Definition of boulevard	<p>Item 5 in Schedule A of the By-law identifies the minimum amount of security required as part of an individual Road Cut Permit for work in the roadway and for work in the boulevard. The intent is that the term boulevard represents all parts of the highway located outside of the roadway and includes the curb and sidewalk. The term roadway is defined in the By-law, whereas the term boulevard is not.</p> <p>To provide further clarity, staff recommend replacing the term boulevard with the words "not in the roadway" so that the distinction between the two areas is clear.</p>

I Item	II Summary of Amendment
Harmonization of tree protection regulations with new Tree Protection By-law	<p>The Road Activity By-law contains regulations to protect trees within the right-of-way, however the City recently completed a review of its principal tree protection regulations and has enacted a new Tree Protection By-law.</p> <p>To ensure consistency between the Road Activity By-law and the new Tree Protection By-law, it is recommended that the tree protection regulations of the Road Activity By-law be repealed as of the date of the new Tree Protection By-law comes into effect.</p> <p>Road Cut Permit holders will be required to adhere to the new Tree Protection By-law.</p>
Extension of Accountability to Contractors	<p>The Road Activity By-law places responsibility on Road Cut Permit holders to ensure contractors working on their behalf abide by the requirements of the by-law. Should a contractor fail to comply with the by-law, enforcement action may be taken against the Road Cut Permit holder.</p> <p>In circumstances where non-compliance stems from the actions of the contractor, such as working during peak hours, failing to keep the worksite safe and clean, or failing to implement proper traffic control around the worksite, the by-law provides limited ability for the City to take enforcement action against the contractor directly.</p> <p>To help improve the administration of the by-law and to help achieve compliance with its objectives, staff recommend replacing the term “Permit holder” with “Permit holder or person working under the authority of a Road Cut Permit” within the sections of the by-law detailed in Document 1. This provides staff with the</p>

I Item	II Summary of Amendment
	ability to require compliance by both the Road Cut Permit holder and their contractor.

**Table 2 – Proposed Amendment to Over-dimensional Vehicle By-law:**

I Item	II Summary of Amendment
Update the definition of "General Manager"	Update the definition of "General Manager" to: "General Manager" means the General Manager of the City's Department of Planning, Infrastructure and Economic Development, or authorized representative
Extension of PM Peak hour period	<p>Clause 29(1)(a) of the Over-dimensional Vehicle By-law prohibits vehicles exceeding the prescribed width and height limits from using any highway within the downtown core between the hours of 7-9 am and 3:30-5:30 pm on normal working days.</p> <p>The intent of this restriction is the same as the peak hour restrictions within the Road Activity By-law. The PM peak hour period in the Road Activity By-law was extended from 5:30 to 6 pm effective July 1, 2019. To keep peak hour restrictions consistent, it is recommended that the PM peak hour period in the Over-dimensional Vehicle By-law be also extended to 6 pm</p>

**Table 3 – Proposed Amendment to the ROW Patio By-law:**

I Item	II Summary of Amendment
Update Traffic and Parking By-law reference	Update Traffic and Parking By-law reference from 2003-520 to 2017-301 in the definitions section

**Table 4: Proposed Amendment to the Encroachment By-law, Use and Care of Roads By-law, Private Approach By-law and the Signs on City Roads By-law:**

I Item	II Summary of Amendment
Update the definition of "General Manager"	Update the definition of "General Manager" to: "General Manager" means the General Manager of the City's Department of Planning, Infrastructure and Economic Development, or authorized representative;

## **RURAL IMPLICATIONS**

There are no rural implications associated with this report.

## **CONSULTATION**

There was no public consultation required, as the report recommendations do not change the intent of the By-laws.

## **COMMENTS BY THE WARD COUNCILLORS**

This is a city-wide report – not applicable.

## **LEGAL IMPLICATIONS**

There are no legal impediments to implementing the recommendation as outlined in the report.

## **RISK MANAGEMENT IMPLICATIONS**

There are no risk management implications associated with the recommendation in this report.

## **ASSET MANAGEMENT IMPLICATIONS**

There are no direct asset management implications associated with the recommendations of this report.



## **FINANCIAL IMPLICATIONS**

There are no direct financial implications.

## **ACCESSIBILITY IMPACTS**

There are no accessibility implications associated with this report.

## **ENVIRONMENTAL IMPLICATIONS**

There are no direct environmental implications.

## **TERM OF COUNCIL PRIORITIES**

This report supports the following 2019-2022 term of Council priority:

- Service Excellence through Innovation: Deliver quality services that are innovative and continuously improve to meet the needs of individuals and communities.

## **SUPPORTING DOCUMENTATION**

Document 1 Details of Proposed Amendments

## **DISPOSITION**

Right-of-Way (ROW) Branch, Right-of-Way, Heritage and Urban Design Services to prepare the implementing By-law and forward to Legal Services.

Legal Services, Office of the City Clerk and Solicitor to forward the implementing By-law to City Council.

## Document 1 – Details of Proposed Amendments

1. Amend the Road Activity By-law as follows:

- a. By adding to Schedule “A” – Road Cut Fees and Securities the following text at the end of item 4:

“Pavement Degradation Fees paid at the time of application for a Road Cut Permit that exceed the actual amount owing based on the greater of the size of the Road Cut or five (5) square metres, shall not be refunded where the amount of excess Pavement Degradation Fees is equal to or less than \$125.00.

No additional Pavement Degradation Fees shall be payable by a permit holder where the amount owing based on a difference of the amount paid at the time of application for a Road Cut Permit and the actual amount owing based on the greater of the size of the Road Cut or five (5) square metres, is equal to or less than \$125.00.”;

- b. By adding a new Subsection 18(4) containing the following:

“Notwithstanding Clause 25(2)(a), where a permit holder fails to submit a Road Cut Completion Report in accordance with the timelines of Subsection (2) herein, the General Manager may require that the warranty period set out in Clause 25(2)(a) is to begin following the date of submission of the Road Cut Completion Report.”;

- c. By adding to the end of Clause 22(1)(a) the text “and no person shall work on a Highway”;
- d. By replacing in Subsection 9(2) the text “allow a road cut to remain open for more than twenty-four (24) hours” with “fail to temporarily reinstate a road cut within twenty-four (24) hours”;
- e. By replacing Clause 4(3)(b) with the following new Clauses (b) and (c) and re-lettering subsequent clauses accordingly:

“(b) municipal works;

(c) work done as a condition of City development control, the prime purpose of which is the provision of pavement or its preservation;”;

- f. by adding to Subsection 5(16) the text “and Subsection 4(16)” immediately after the text “requirements of this section” and before the text “where notice of the work is being provided by the City.”;
  - g. by replacing in item 5 of Schedule “A” – Road Cut Fees and Securities the text “For work in the boulevard” with “For work not in the roadway”;
  - h. by deleting Section 20 as of the date of new Tree Protection By-law comes into effect; and,
  - i. by replacing the words “Permit holder” with the words “Permit holder or person working under the authority of a Road Cut Permit” in Subsections 9(1), (2) and (4), Subsections 10(1) and (2), Subsections 21(1) and (2), Subsection 22(4), and Subsection 23(1).
- 2. Amend the Over-dimensional Vehicle By-law as follows:
  - a. By replacing the definition of General Manager with the following:

“General Manager means the General Manager of the City’s Planning, Infrastructure and Economic Development Department, or authorized representative”;
  - b. By replacing in Clause 29(1)(a) the time “5:30 PM” with “6:00 PM”;
- 3. Amend the definition of “Traffic and Parking By-law” in the ROW Patio By-law by replacing the text “By-law No. 2003-530” with “By-law No. 2017-301”.
- 4. Replace the definition of “General Manager” in Encroachment By-law, Use and Care of Roads By-law, Private Approach By-law and Signs on City Roads By-law with the following:

“General Manager means the General Manager of the City’s Planning, Infrastructure and Economic Development Department, or authorized representative.”