

Town of Digby Streets and Sidewalks By-Law
Bylaw #2009 - 06

Title

1. This By-Law is entitled the Town of Digby "***Streets and Sidewalks By-Law.***"
2. This By-Law applies only to streets, sidewalks and other property owned by the Town of Digby and to activities or conditions affecting such Town of Digby streets, sidewalks and property.

Definitions

3. In this By-Law:
 - (1) "**abutter**" means the owner, lessee or occupier of any premises or lot in the Town of Digby which abuts a Town of Digby 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 Town of Digby 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 Town of Digby Engineer and includes the Superintendent of Public Works.
 - (4) "**Town of Digby infrastructure**" includes infrastructure that supports the provision of Town of Digby services as well as water services, and without restricting the generality of the foregoing includes public trees, street lighting, traffic lights, traffic signs and other Town of Digby signs;
 - (5) "**Town of Digby sewer or water system**" means a sewer or water system owned and operated by the Town of Digby or by a water utility owned by the Town of Digby;
 - (6) "**roadway**" means that portion of a Town of Digby street between the curb lines or the travelled 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 Town of Digby street between the curb line and adjacent property line or any part of the street especially set aside

Town of Digby Streets and Sidewalks By-Law # 2009-06

for pedestrian travel and separated from the roadway;

- (8) **"street"** means a Town of Digby 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 right-of-way width;
- (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 the Town of Digby;
- (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

Town of Digby ice and snow removal service is provided in accordance with the Department of Public Works Operating procedure for snow removal and street & sidewalk clearing.

- 5. Irrespective of whether a sidewalk or street is plowed periodically by the Town of Digby, it shall be the responsibility of the abutter to ensure that their driveway, sidewalk and pathways snow clearing, by the abutter or other snow removal contractor, does not obstruct the pedestrian use of Town sidewalks and/or obstruct motor vehicle traffic on the Town streets.
- 4. 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.
- 7. When an abutter fails to remove snow, ice or icicles from overhanging sidewalks or abutting structures as required by this By-Law, the Bylaw Enforcement Officer may give to the abutter an order to remove the snow and ice within 24 hours of OR forthwith upon service of such notice.
- 8. If the remedial work ordered pursuant to Section 6 is not made within the time provided for by the order, the Bylaw Enforcement Officer may make or cause to be made such snow, ice or icicle removals.
- 9. The Town of Digby may recover the expense incurred in making snow, ice or icicle removals pursuant to Section 7, together with costs and prejudgment interest by

Town of Digby Streets and Sidewalks By-Law # 2009-06

action in any court of competent jurisdiction, or may charge and collect same as a first lien on the property.

10. Nothing in this By-Law creates a duty upon the Town of Digby to inspect or become aware of hazardous conditions created by snow or ice on or near or overhanging sidewalks. The Council hereby declares, having regard to the resources and fiscal priorities of the Town of Digby, that it is the express policy of the Town of Digby:

- (1) only to carry out inspections within one (1) hour of 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.

Sidewalk Inspections

11. Nothing in this By-Law creates a duty upon the Town of Digby to inspect or become aware of hazardous conditions of sidewalks. Council hereby declares, having regard to the resources and fiscal priorities of the Town of Digby, that it is the express policy of the Town of Digby:

- (1) only to carry out inspections within one (1) hour of 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.

Encroaching Vegetation

12. 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 travelling on the roadway up to a minimum height of 2.25 meters.
- (3) from interfering with any structure on or in a street.

Town of Digby Streets and Sidewalks By-Law # 2009-06

Nuisance

13. 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

14. 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.
15. 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.
16. 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.

17.

Gates

17. 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.

Sidewalk Signage

18. Subject to the restrictions contained in the Town of Digby Municipal Planning Strategy and the Land Use By-Law, **sandwich boards or temporary or mobile signs** may be placed on a sidewalk by an abutter lawfully operating a commercial enterprise or by a vendor authorized to carry on vending pursuant to the Vending By-Law, provided that such signage:
- (1) shall not be placed or left on the sidewalk when the associated commercial enterprise is not open to the public;

Town of Digby Streets and Sidewalks By-Law # 2009-06

- (2) shall not be placed or left on the sidewalk when there is snow or ice on the sidewalk;
- (3) ***Sidewalk sandwich boards or temporary or mobile signs, tables, etc. shall only be placed on the sidewalk abutting the commercial enterprise, leaving a minimum of 7' [seven feet] of unobstructed walkway to the curb for pedestrian passage and without limiting the forgoing, use of wheel-chairs, scooters and snow clearing.***
- (4) shall contain a maximum signage face area of 1 square meter.
- (5) The commercial enterprise or vendor shall indemnify, defend and hold harmless the Town of Digby, its officers, agents or employees from any loss, claim, damage, judgement, cost and expense, including reasonable legal fees, of any claims arising out of or in relation to the signage.
- (6) ***Any person or persons who post, stick, stamp or otherwise affix or cause to be posted, stuck, stamped, or otherwise affixed, any bill, poster, notice, or advertisement, on any property of the Town, or on any telegraph, telephone, electric light or other post, or pole, standing on or near any public street in the Town, or on any board, or other object placed against any such property, telegraph, telephone, electric light, or other post or pole shall ensure the removal of said bill, poster, notice, or advertisement within 24 (twenty-four) hours of the termination of the event, yard sale or other public/private notice.***

Awnings and Signs Encroaching on Airspace

19. No person shall erect or permit a sign, awning or other structure to encroach upon the air space above a street or sidewalk or other municipally owned property without the written consent of the Town, and subject to the restrictions contained in the Municipal Planning Strategy and the Land Use Bylaw.

Sidewalk Cafes and Restaurants

20. Council may enter into leases, containing such terms and conditions as it deems appropriate, for the seasonal or temporary use of a sidewalk or other suitable Town of Digby property as a sidewalk cafe or restaurant. Nothing in this section limits any other authority of Council or the Town Clerk to make leases of other Town of Digby property.

Town of Digby Streets and Sidewalks By-Law # 2009-06

Street Disturbance Permit

21. 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
 - (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.

22. 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 Town of Digby 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 **\$1,000.00**.

23. The security deposit required under Subsection 3 of Section 22 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 Town of Digby property when such work is done, to a good condition to the satisfaction of the Engineer for a period of six months after the completion of the work.

24. If the Engineer is of the opinion that the surface of the street or other Town of Digby property is not restored and kept in good condition for the six 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 six month period. If the cost of such work exceeds the deposit, the Town of Digby may recover the balance, together with costs and pre-judgment interest, by action in any court of competent jurisdiction from the Permit holder, 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.

Town of Digby Streets and Sidewalks By-Law # 2009-06

25. 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.
26. 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.
27. The provisions of sections **25 and 26** shall apply, with any necessary changes for context, to the annual security deposit pursuant to **Subsection (2) of Section 26** and the balance of the security deposit shall be returnable upon expiration of the permit.
28. 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.
 1. 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 dosed and filled within 48 hours after such notice, then it may be closed and filled by the Town of Digby at the expense of the Permit holder.
30. 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.
31. 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.

Town of Digby Streets and Sidewalks By-Law # 2009-06

32. 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 the Temporary Workplace Control Manual or other 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, the Town of Digby 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 Town of Digby 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 provision of an indemnity in favour of, and in form satisfactory to, the Town of Digby for the defence and indemnification of any claims arising out of or in relation to the proposed street disturbance activities;
 - (8) 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
 - (9) any other condition in respect of safety or preservation of Town of Digby property interests that the Engineer may impose.
33. 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

Town of Digby Streets and Sidewalks By-Law # 2009-06

Street Disturbance Permit is applied for and obtained on the first working day subsequent to the granting of such permission.

34. 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 the Town of Digby'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 the Town of Digby;
 - (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.
35. A person aggrieved by a decision of the Engineer pursuant to Section 36 may appeal that decision to Council within 15 days of the decision by written notice of appeal to the Clerk.
36. After the hearing of an appeal, Council may confirm, rescind or vary the decision of the Engineer.

Penalty

37. Any person who contravenes any provision of this By-Law is punishable on summary conviction by a fine of not less than **\$100.00 (one) hundred dollars** and not more than **\$5,000.00 (five) thousand dollars** and to imprisonment of not more than **60 (sixty) days** in default of payment thereof.
38. Any person who contravenes Sections **5, 6, 12 (1) (2) (3), 14 (1) (2), 15 (1) (2), 16, 17, 18 or 19** of this By-Law and who is given notice of the contravention may pay to the Town of Digby, at the place specified in the notice, the sum of **\$50.00 pursuant to Payment in Lieu of Prosecution Policy** within 14 days of the date of the notice and shall thereby avoid prosecution for that contravention.
39. The Town of Digby Streets Bylaw # 2001-05 is hereby repealed.

Town of Digby Streets and Sidewalks By-Law # 2009-06

Clerk's Annotation for Official By-Law Book

Date of first reading: 04 August 2009

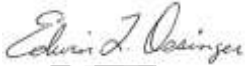
Date of advertisement of Notice of Intent to Consider: 20 August 2009

Date of second reading: 08 September 2009

*Date of advertisement of Passage of By-Law: 17 September 2009

Date of mailing to Minister a certified copy of By-Law: 17 September 2009

I certify that this town of Digby Streets and Sidewalks By-law # 2009-06 was adopted by Council and published as indicated above.



E. Thomas Ossinger, Clerk

17 September 2009

Date

* Effective Date of the By-Law unless otherwise specified in the text of the By-Law

