



# MISSISSAUGA

## THE CORPORATION OF THE CITY OF MISSISSAUGA

### Transitway Access Permit By-law 0175-2020

**WHEREAS** sections 8, 9 and 11 of the *Municipal Act, 2001* authorize The Corporation of the City of Mississauga (“City of Mississauga”) to pass by-laws necessary or desirable for municipal purposes, and in particular, paragraphs 4, 5, 6, 8 of subsection 11(2) and paragraphs 1 and 7 of subsection 11(3) authorize by-laws respecting highways, public assets of the municipality, the economic, social and environmental well-being of the municipality, the safety and well-being of persons, the protection of persons and property and structures;

**AND WHEREAS** the City of Mississauga is responsible for ensuring that:

- persons are protected from injury;
- property is protected from damage; and
- disruption is minimized for those using the road as well as for abutting properties;

**AND WHEREAS** section 425 of the *Municipal Act, 2001* authorizes the City of Mississauga to pass by-laws providing that a person who contravenes a by-law of the City of Mississauga passed under that Act is guilty of an offence;

**AND WHEREAS** the *Municipal Act, 2001* authorizes the City of Mississauga, amongst other things, to delegate its authority, to impose fees or charges on persons for services or activities provided or done by or on behalf of it, to provide for inspections and inspection orders, and to make orders to discontinue activity or to do work;

**NOW THEREFORE** the Council of The Corporation of the City of Mississauga enacts as follows:

#### PART 1 – DEFINITIONS

1.1 In this By-law:

- (a) “**Business Day**” means 8:30 a.m. to 4:30 p.m. on any day which the City’s administrative offices are open for business;
- (b) “**City**” means the municipality of The Corporation of the City of Mississauga or the geographic area of the City of Mississauga as the context requires;
- (c) “**Commissioner**” means the Commissioner of Transportation and Works for the City and their designate or successor;
- (d) “**Director**” means the Director of Transit and their designate or successor;
- (e) “**MiWay**” means the division of the City responsible for the operation and control of the City’s public bus transportation system;
- (f) “**Officer**” means a person appointed by Council, by the Director, or under this By-law, to administer or enforce this By-law and includes a person employed by the City whose duties are to enforce this By-law, and also includes, for the purposes of exercising any power of entry under this By-law, a police officer;
- (g) “**permit holder**” means a person to whom a Transitway Access Permit has been issued and includes persons acting on behalf of or doing work on behalf of the permit holder;

- (h) “**person**” includes an individual, association, partnership, corporation, municipality, provincial or federal agency, or an agent or employee of any one of these entities;
- (i) “**road**” means a road right-of-way under the jurisdiction of the City and includes a public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles, and includes the area between the lateral property lines thereof;
- (j) “**Municipal Requirements**” means all applicable municipal by-laws, rules, policies, standards, manuals and guidelines;
- (k) “**security**” means financial security deposited with the City as a condition of a permit or other consent granted under this By-law, in a form approved by the Director from time to time, and includes a security or deposit prescribed in a City by-law;
- (l) “**temporary access**” means temporary access to or travel on the Transitway;
- (m) “**Transitway**” means the dedicated east-west bus rapid transit corridor located in the City of Mississauga between Renforth Drive and Winston Churchill Boulevard established as public highway under By-law 0027-2016 and By-law 0024-2017, as amended or replaced, and any City roads designated as buses only for the purposes of accessing the bus rapid transit corridor, including its supporting infrastructure;
- (n) “**Transitway Access Permit**” means a permit issued under Part 4 of this By-law.

## **PART 2 – APPLICATION OF BY-LAW**

- 2.1 This By-law applies to the Transitway.
- 2.2 The Commissioner or his/her designate may waive the application of all or part of this By-law if the Commissioner is satisfied that the temporary access is adequately regulated by an agreement with the City or another form of approval given by the City.
- 2.3 Nothing in this By-law shall be construed as permitting anything which is prohibited under federal or provincial legislation, and where there is a conflict in this respect between federal or provincial legislation and this By-law, the federal or provincial legislation prevails.
- 2.4 Temporary access which is permitted under a current and valid Transitway Access Permit is not prohibited under this By-law provided there is full compliance with such Transitway Access Permit.

## **PART 3 – REQUIREMENTS AND PROHIBITIONS**

- 3.1 Every person who carries out or permits the carrying out of temporary access to the Transitway shall first obtain a Transitway Access Permit in accordance with this By-law.
- 3.2 Despite section 3.1, a Transitway Access Permit is not required for temporary access by:
  - (a) City vehicles;
  - (b) MiWay vehicles;
  - (c) Metrolinx vehicles;
  - (d) Brampton Transit vehicles at Dixie Station;
  - (e) TTC vehicles at Renforth Station;
  - (f) Ministry of Transportation vehicles;
  - (g) emergency vehicles; or
  - (h) contractor vehicles with prior written authorization from any of the entities set out in subsection 3.2 (a) – (f).
- 3.3 For the purposes of section 3.1, temporary access resulting in any lane closures, parking, or offloading is not permitted on the Transitway unless express approval is provided through the issuance of a Transitway Access Permit.

- 3.4 When undertaking temporary access, a holder of a Transitway Access Permit shall:
- (a) have a copy of the Transitway Access Permit readily available; and
  - (b) produce a copy of the Transitway Access Permit to the Director or an Officer upon request.
- 3.5 No permit holder shall carry out or permit the carrying out of temporary access that is not in compliance with:
- (a) this By-law; and
  - (b) any term or condition of a Transitway Access Permit issued under this By-law.
- 3.6 Every person who undertakes temporary access shall comply with all applicable statutes, regulations, standards, codes, by-laws, rules and similar requirements.
- 3.7 No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this By-law.
- 3.8 No person shall provide false or inaccurate information in an application for a Transitway Access Permit issued under this By-law or in any document or thing required to be submitted under this By-law.

#### **PART 4 – TRANSITWAY ACCESS PERMITS**

- 4.1 The Director may issue a Transitway Access Permit that authorizes a temporary access.
- 4.2 A person applying for a Transitway Access Permit shall submit a completed application to the Director that includes:
- (a) the applicant's name, municipal address, telephone number and email address, and the name, position, telephone number and email address of an individual contact, available at all times (24 hours) when the Transitway Access Permit is in effect, for that person;
  - (b) the date and time period for which the Transitway Access Permit is requested;
  - (c) a signed release and indemnification satisfactory to the Director;
  - (d) proof of insurance satisfactory to the Director;
  - (e) a deposit or security, by way of certified cheque or bank draft in a form satisfactory to the City, as required by the Director;
  - (f) revised or additional information to determine if the Transitway Access Permit should be issued as required by the Director;
  - (g) payment of the prescribed fees; and
  - (h) all of the requirements outlined in the Municipal Requirements.
- 4.3 The Director may refuse to issue a Transitway Access Permit if any one or more of the following circumstances apply:
- (a) the application for the Transitway Access Permit:
    - (i) is incomplete or inaccurate;
    - (ii) is not in compliance with this By-law; or
  - (b) the person applying for the Transitway Access Permit:
    - (i) is not in compliance with this By-law or has previously not complied with a verbal or written direction given in accordance with this By-law;
    - (ii) is not in compliance with this By-law with respect to another Transitway Access Permit;
    - (iii) is not in compliance with other municipal by-laws which apply to the proposed temporary access;
    - (iv) in the reasonable opinion of the Director, having regard to past performance of the person applying, where applicable, is unable to undertake the proposed temporary access in a safe manner;
    - (v) is in arrears to the City for municipal property taxes, or for fees and charges payable to the City, including any fees and charges referred to in this By-law; or
    - (vi) has not paid any penalty or court awarded costs resulting from a legal proceeding relating to this By-law.

- 4.4 The Director will issue a Transitway Access Permit if:
- (a) a completed application, including any revised or additional information required, has been submitted;
  - (b) all prescribed fees have been paid;
  - (c) all of the requirements of this By-law and Municipal Requirements have been met; and
  - (d) none of the circumstances in section 4.3 apply to the temporary access proposed in the application for a Transitway Access Permit.
- 4.5 A Transitway Access Permit expires:
- (a) on the date as set out in the Transitway Access Permit; or
  - (b) on notice of revocation by the Director.
- 4.6 If the temporary access will not be completed before the Transitway Access Permit expires under subsection 4.5(a), the permit holder may apply for an extension not less than 72 hours prior to the expiry date.
- 4.7 The Director may approve an application for an extension to a Transitway Access Permit having regard to:
- (a) any potential conflict that may result from the extension with other planned or ongoing temporary accesses; and
  - (b) the safety and convenience of the public.
- 4.8 A permit holder cannot apply for more than one extension and shall make a new application under section 4.2 for any other continuation or resumption of temporary access commenced under an expired Transitway Access Permit.
- 4.9 A Transitway Access Permit issued under this By-law is the property of the City and is not transferable.
- 4.10 A permit holder shall immediately inform the Director of any change to:
- (a) the information contained in an application for a Transitway Access Permit;
  - (b) the information contained in a Transitway Access Permit that has been issued; or
  - (c) cancellation of the proposed temporary access.
- 4.11 The Director may require any one or more of revised or additional information, additional prescribed fees, or a new application with respect to a change under section 4.10.
- 4.12 The Director may impose conditions in a Transitway Access Permit that they consider necessary for the protection of the Transitway, a road, any property abutting the Transitway or a road or of any person.
- 4.13 The Director may, on their own initiative, amend a Transitway Access Permit to impose, vary or remove conditions of the Transitway Access Permit at any time after it has been issued, if the Director considers it necessary for the purposes of this By-law.
- 4.14 The Director may immediately suspend or revoke a Transitway Access Permit issued under this By-law, in writing, where the Director is satisfied that a revocation is necessary in an emergency situation of immediate threat or danger to the Transitway, a road, any property abutting the Transitway or a road or to any person.
- 4.15 The Director may suspend a Transitway Access Permit for up to 30 days, or revoke a Transitway Access Permit, if in their opinion, the permit holder:
- (a) fails to comply with any term or condition of the Transitway Access Permit or this By-law;
  - (b) fails to notify the Director immediately of any change to the Transitway Access Permit referred to in section 4.10;
  - (c) fails to apply immediately for an amendment to the Transitway Access Permit where the characteristics of the temporary access for which the Transitway Access Permit has been issued have changed;
  - (d) provides false or inaccurate information in the application for the Transitway Access Permit; or

- (e) any person carrying out temporary access on behalf of the permit holder fails to comply with any applicable statutes, regulations, standards, codes, by-laws, rules or similar requirements.
- 4.16 The Director may give notice of the suspension or revocation of a Temporary Access Permit by contacting a permit holder in writing, by telephone or by email in accordance with the contact information provided on the Transitway Access Permit application.
- 4.17 The Director may reinstate a suspended or revoked Temporary Access Permit, subject to any terms or conditions, where the Director is satisfied that the temporary access no longer poses a threat or danger to the Transitway, a road, any property abutting the Transitway or a road or to any person, and that the permit holder is no longer in violation of any of the provisions of section 4.15.

## **PART 5 – ADMINISTRATION AND ENFORCEMENT**

### **General**

- 5.1 The Commissioner is authorized to negotiate and enter into agreements with respect to temporary access as required to ensure compliance with this By-law and to generally protect the City's interests.
- 5.2 The Commissioner and Director are authorized to administer and enforce this By-law including but not limited to:
- (a) arranging for:
    - (i) the assistance or work of City staff, City agents or the assistance of police officers;
    - (ii) the making of orders or other requirements and the imposition of conditions as authorized under this By-law;
    - (iii) the obtaining of court orders or warrants as may be required;
    - (iv) the commencement of such actions on behalf of the City to recover costs or restrain contravention of this By-law as deemed necessary; and
  - (b) prescribing the format and content of any forms or other documents required under this By-law.
- 5.3 The Commissioner and Director may assign Officers to enforce this By-law and Officers so assigned or appointed by Council to enforce this By-law shall have the authority to:
- (a) carry out inspections;
  - (b) make orders or other requirements as authorized under this By-law; and
  - (c) give immediate effect to any orders or other requirements made under this By-law.
- 5.4 The Commissioner, Director, Transit; Manager, Service Development; Supervisor, Transit Infrastructure Management; Transit Enforcement Officer are appointed as Officers for the purposes of the administration and enforcement of this By-law and the applicable sections of the *Municipal Act, 2001*.
- 5.5 All information submitted under this By-law, including all information submitted for any Transitway Access Permit issued under this By-law, may be made available to any member of the public subject to the *Municipal Freedom of Information and Protection of Privacy Act*, if requested.

### **Fees**

- 5.6 All fees referred to in this By-law, including fees for services provided, shall be as set out in the City's User Fees and Charges By-law 0156-2019, or as otherwise set and approved by Council from time to time.

### **Entry and Inspections**

- 5.7 An Officer may enter on land at any reasonable time and in accordance with the conditions set out in sections 435 and 437 of the *Municipal Act, 2001* for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- (a) an order or other requirement made under this By-law;
  - (b) a Transitway Access Permit issued under this By-law;
  - (c) a term or condition of a Transitway Access Permit issued under this By-law; or
  - (d) an order made under section 431 of the *Municipal Act, 2001*.
- 5.8 An Officer, for the purposes of the inspection under section 7 and in accordance with the conditions set out in section 436 of the *Municipal Act, 2001*, may:
- (a) require the production for inspection of documents or things relevant to the inspection;
  - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
  - (c) require information in writing or otherwise as required by an Officer from any person concerning a matter related to the inspection; or
  - (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
- 5.9 An Officer may undertake an inspection pursuant to an order issued by a provincial judge or justice of the peace under section 438 of the *Municipal Act, 2001*, in accordance with the conditions set out in that section, where he or she has been prevented or is likely to be prevented from carrying out an inspection under section 5.8.

### **Orders**

- 5.10 If an Officer is satisfied that a contravention of this By-law has occurred, they may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity.
- 5.11 An order under section 5.10 shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and
  - (b) the date or dates by which there must be compliance with the order, which may be of immediate effect should the Officer determine that the circumstances warrant.
- 5.12 If an Officer is satisfied that a contravention of this By-law has occurred, they may make an order requiring the person who has contravened this By-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention.
- 5.13 An order under section 5.10 or 5.12 shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land;
  - (b) the work to be completed which may include but is not limited to requiring that prior to performing any work, all necessary permits or other approvals be applied for and obtained;
  - (c) the date or dates by which the work must be completed; and
  - (d) notice that if the order is not complied with, then the work may be done at the expense of the person ordered to do the work.
- 5.14 An order under section 5.10 or 5.12 may be given verbally and shall be confirmed in writing within two Business Days and served in accordance with section 5.15.
- 5.15 An order under section 5.10 or 5.12 may be served:
- (a) personally on the person to whom it is directed;
  - (b) to an email address provided on a Transitway Access Permit application form;
  - (c) by registered mail to the last known address of a person who committed a contravention, and in the case of permit holder, the address of the permit holder on the Transitway Access Permit application form;
  - (d) in a conspicuous place on the road where the contravention occurred; or
  - (e) in a conspicuous place on or near the property affected by the work where the contravention occurred.

- 5.16 Where an order under this By-law is served personally or by email by the City, it shall be deemed to have been served on the date of delivery to the person or persons named.
- 5.17 Where an order issued under this By-law is sent by registered mail, it shall be sent to the address of the permit holder noted on the application, or last known address of the person that committed the contravention, and shall be deemed to have been served on the next Business Day following the date of mailing.
- 5.18 If there is no Transitway Access Permit application with respect to an order issued under this By-law, the Officer may issue the order to the person the Officer determines to be responsible for the work and the order may be served in accordance with section 5.15.
- 5.19 Where a time frame is set out in an order or other document for carrying out any action, an Officer may extend the time for compliance beyond the established time frame provided such extension is required and is acceptable to the Officer.

### **City Carrying Out Work**

- 5.20 Where a person does not comply with a direction or a requirement, including an order or a condition of a Transitway Access Permit under this By-law to do a matter or thing, the Director may carry out such direction, requirement or order at the person's expense.
- 5.21 Where the costs of doing a matter or thing under section 5.20 are estimated to be:
  - (a) up to but not including \$100,000, the Director may proceed without further approval and in accordance with the City's Purchasing By-law, as amended or replaced; or
  - (b) \$100,000 or greater, the Director may proceed with approval of an authorized person or of Council and in accordance with the City's Purchasing By-law, as amended or replaced.
- 5.22 The City may recover the costs of doing a matter or thing under section 5.20 by means of any one or more of:
  - (a) bringing an action;
  - (b) adding the costs to the tax roll and collecting them in the same manner as property taxes and such costs shall include an annual interest rate commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full;
  - (c) realizing on a deposit or security provided for this purpose; or
  - (d) charging a fee as set out in the applicable City Fees and Charges By-law or as otherwise set and approved by Council from time to time.

The amount of the City's costs, including interest to the date payment is made in full, constitutes a lien upon the land, upon the registration of a notice of lien upon the land.

### **PART 6 – PENALTIES**

- 6.1 Every person who contravenes any provision of this By-law, including any order issued under section 5.10 or 5.12, is guilty of an offence.
- 6.2 Every person other than a corporation who contravenes any provision of this By-law, is guilty of an offence and upon conviction is liable for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$10,000 for a first offence and not more than \$25,000 for a subsequent offence.
- 6.3 Every corporation that contravenes any provision of this By-law is guilty of an offence and upon conviction is liable for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$50,000 for a first offence and not more than \$100,000 for a subsequent offence.
- 6.4 Any person who contravenes an order made under this By-law, or an officer or director of a corporation who knowingly concurs in such a contravention by the corporation, is guilty of a continuing offence and upon conviction is liable to a daily fine or penalty of a maximum of \$10,000 for each day or part of a day that the offence continues, and despite section 6.2 and section 6.3, the total of all the daily fines imposed for an offence is not limited by the fine amounts listed in those sections.

- 6.5 Every person who is convicted of an offence under this By-law may be liable, in addition to the fines established under sections 6.2, 6.3 and 6.4, to a special fine, which may exceed \$100,000, designed to eliminate or reduce any economic advantage or gain from contravening this By-law or failing to comply with an order made under this By-law.
- 6.6 Where a person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, make an order prohibiting the continuation or repetition of the offence by the person convicted.
- 6.7 Where any person contravenes any provision of this By-law, such person shall be responsible for all costs incurred by the City related to the contravention.

#### **PART 7 – GENERAL PROVISIONS**

- 7.1 This By-law may be referred to as the “Transitway Access Permit By-law”.
- 7.2 If a court of competent jurisdiction declares any provision or part of a provision of this By-law invalid, the provision or part of a provision is deemed severable from this By-law and it is the stated intention of Council that the remainder of this By-law shall continue to be in force.
- 7.3 All approvals with respect to temporary access as defined in this By-law, that are in effect at the time this By-law comes into force, are continued and are subject to this By-law with all necessary modifications.
- 7.4 This By-law comes into force on the date of its passing.

**ENACTED and PASSED** this 22<sup>nd</sup> day of July, 2020.

Signed by Bonnie Crombie, Mayor and Diana Rusnov, City Clerk