



CITY OF VANCOUVER

ADMINISTRATIVE REPORT

A15

Date: September 12, 2006
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TO: Vancouver City Council

FROM: General Manager of Engineering Services and the
Director of Legal Services

SUBJECT: Proposed Street Utilities By-law

RECOMMENDATION

- A. THAT Council authorize the General Manager of Engineering Services to distribute the draft Street Utilities By-law attached as Appendix A for consultation and comment by the various utility companies using City streets.
- B. THAT, after the consultation process is completed, the General Manager of Engineering Services report back to Council concerning the results of the consultation, including the comments made by the utility companies about the draft Street Utilities By-law.

GENERAL MANAGER'S COMMENTS

The General Manager of Engineering Services and the Director of Legal Services RECOMMEND approval of Recommendations A and B.

COUNCIL POLICY

There is no directly applicable Council policy. The *Vancouver Charter* provides that no person may excavate in or damage a street except under such terms and conditions as may be imposed by Council. Council may regulate the activities of utility companies accessing City streets to install and operate equipment. To date the City has entered into access

agreements in order to set out the terms and conditions imposed by Council for access to streets by utility service providers for the installation and operation of equipment. Council approves each such access agreement.

An encroachment of improvements or other works onto City streets by an adjacent property owner, which is dealt with under the Encroachment By-law, is not covered by the proposed Street Utilities By-law.

PURPOSE

Staff recommends that a new approach, regulation by by-law, be considered for regulating the activities of utilities installing and operating works in City streets. The attached draft Street Utilities By-law sets out the proposed terms and conditions to be met before any utility may access a street to install or operate its equipment. This draft by-law clearly sets out the conditions for access and provides standard conditions applicable to all utilities, replacing the present inconsistent treatment of various utility companies by the City. The by-law approach would streamline the process for access, increase consistency and, because Council approval of each access agreement would no longer be required, expedite the process for granting utilities access to City streets.

BACKGROUND

The City has entered into access agreements for utility installations in streets since at least the early years of the last century. Agreements with the British Columbia Telephone Company, a predecessor of Telus, date back to 1905.

Over the years, access agreements have been required for all persons (other than adjacent property owners) seeking access to streets (including lanes) for the installation and operation of utility equipment. For example, the City has entered into agreements with Telus, Terasen (formerly BC Gas), Central Heat Distribution Limited and BC Hydro. Many of these remain in effect but, because they have been signed at various times, there are many inconsistencies in the provisions in these agreements.

These access agreements generally specify:

- the conditions of access to the streets;
- the technical specifications to be followed in installing utility equipment;
- provisions to facilitate the restoration of the street; and
- provisions to reimburse the City for some of its costs.

Some of these agreements, particularly those signed with telecommunications companies in the late 1990's, included the payment to the City of various fees for the City granting access to streets. Older agreements with Telus, BC Hydro and Terasen do not provide for this.

Over the past several years, the Federation of Canadian Municipalities and municipalities across Canada have been involved in litigation with various telecommunications companies concerning their access to municipal streets. As a result of the decision of the CRTC and the Federal Court of Appeal in a case known as the "Ledcor Case", some telecommunications

companies are unwilling to enter into new municipal access agreements that do not comply with their interpretation of the Ledcor Case. In the interim, the City has been signing a series of agreements with various telecommunications companies, which apply only to specific sites.

DISCUSSION

It is in the public interest that public utilities, including telecommunications companies, have access to City streets to install their equipment in order to provide service to their customers, which access should be on appropriate terms that protect the public interests. In the past, these terms have been contained in individual agreements between the City and each utility. However, in reviewing the options for regulating utilities in City streets, staff has determined that a by-law of general application, whose terms would apply equally to all utilities, is preferable to negotiating with each company resulting in access agreements with differing terms and conditions.

The proposed Street Utilities By-law would apply to all utilities accessing streets to install and operate equipment, however it would exempt any utility that has a valid municipal access agreement with the City, a provision that currently would exempt BC Hydro, Terasen and Central Steam Heat Distribution. Ultimately, it is our intention to have all utilities covered by the bylaw or through agreements with similar terms. This will require renegotiation of existing agreements as opportunities arise.

The draft by-law provides for the following:

1. City to manage streets

The City manages the installation, replacement, repair, removal, and operation of equipment in its streets, including determining the routing of installations, their location within the street, technical specifications, construction scheduling, traffic control, and requiring that as-built drawings be provided to the City.

The By-law provides that all powers otherwise exercisable by Council under the By-law are delegated to a "Street Utilities Committee" comprised of the General Manager of Engineering Services and the Deputy City Engineer.

2. Recovery of municipal costs

Currently the City recovers the following:

- lost parking meter revenue as provided in the Parking Meter By-law;
- traffic management costs (signage and hooding meters) as provided in the Street and Traffic By-law; and
- pavement restoration costs as provided in various municipal access agreements between the City and a utility.

Cost recovery in the draft Street Utilities By-law is limited to costs incurred by the City that are directly attributable to the installation or operation of the utility. This

approach is consistent with the decision in the Ledcor Case and will result in consistency in the treatment of all utilities, including telecommunications carriers.

If the draft Street Utilities By-law is enacted, the City would recover other costs directly caused by the installation or operation of the utility, including:

- the costs incurred by the City as a result of staff reviewing utility plans, assisting the utility service provider or other user with route planning, and maintaining the database of locations of all equipment within City streets;
- the costs incurred by the City as a result of staff inspecting equipment installed in the streets;
- the estimated cost to the City of pavement degradation caused by the utility installation (the cost associated with the decrease in lifespan plus future maintenance costs when pavement is cut for a utility, even when properly repaired); and
- the estimated cost of lost productivity (the cost associated with the extra work incurred by City crews constructing City utilities and having to work around the utilities owned by others).

3. Other provisions

As a result of equipment in our streets placed by utility service providers and others, the City faces exposure to increased liability for claims, a liability which should be assumed by those receiving the benefits of the use of our streets. For this reason the draft by-law provides that the City is released from this liability and is indemnified for any claims made as a result of the installation and/or operation of the equipment of a utility in City streets. This protection is limited, however, and would not include claims arising from the negligence or wilful misconduct of the City.

Infrequently, the City may need to relocate some equipment placed in City streets by a utility, if that location is required for a legitimate municipal purpose. The draft by-law provides the City that capability and sets out a cost sharing formula between the City and the utility. This general approach was endorsed in the Ledcor Case and, once again, would create consistency in the treatment of all utilities.

The Street Utilities By-law will not apply to City utilities (sewer and water) because staff funded from those utilities already undertake the needed plan preparation, data entry, inspection, etc. The City utilities are also already paying the same pavement degradation fee that the by-law will charge to the other utilities.

FINANCIAL IMPLICATIONS

While the City is currently being reimbursed for some of the costs it incurs in allowing access to City streets for the installation and operation of equipment by utilities, there is not complete recovery of costs. The new fees included in the draft by-law, to reimburse the City for costs that it incurs which are not currently recovered, are:

- Plan Review and Administration Fee
- Inspection Fee
- Pavement Degradation Cost
- Lost productivity reimbursement

The first two fees have been set at a level that would be expected to recover the cost of providing that service if all utilities were required to pay. As noted, a company with a valid municipal access agreement will be exempt. Notwithstanding, it is expected that these fees will recover approximately \$200,000 per year in current City expenditures. Some additional staff will be required to administer the by-law and collect the fees, as noted in the section below, and these costs would be recovered from the fees collected.

The City currently spends in the order of \$1,000,000 per year dealing with the additional maintenance associated with utility cuts and the goal is to recover a significant portion of this. This is a new principle, albeit one that was supported in the Ledcor Case for the telecommunications industry. Of particular note, City utilities (Sewer and Water) are already paying the pavement degradation fee, on the principle that the City must treat all utilities equally.

PERSONNEL IMPLICATIONS

As noted, the additional workload associated with administering the by-law, calculating and collecting the various fees, etc. will require additional staff resources in the Utilities Branch of Engineering. It is anticipated that this will be met by an additional EAIII, at an annual cost of \$57,000 (2006 rates), with the source of funds being the fee revenues. The fees were set at a level anticipating this position. We expect to recommend funding for this position when the by-law is brought back to Council following the consultation period.

CONSULTATION PLAN

Because regulation by by-law is a new approach to the use of City streets by utilities, it is important that there be consultation with the utilities that would be affected. Therefore, it is recommended that the draft Street Utilities By-law be distributed to the utility companies for their review and comment. After the consultation process is completed, the General Manager of Engineering Services will report back to Council with the results of the consultation process.

CONCLUSION

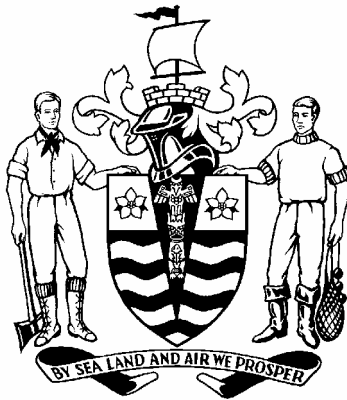
The *Vancouver Charter* provides that no person may excavate in or damage a street except under such terms and conditions as may be imposed by Council. Staff recommend a new approach to regulating utility works in City streets, a by-law of general application with terms which would apply equally to all utilities, except those utilities that have a valid municipal access agreement with the City.

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APPENDIX A

Draft Street Utilities By-law

CITY OF VANCOUVER
BRITISH COLUMBIA



STREET UTILITIES BY-LAW NO. _____

STREET UTILITIES BY-LAW

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DRAFT

BY-LAW NO. _____

**A By-law to regulate, and to impose terms
and conditions on, utilities which occupy streets**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

**SECTION 1
INTERPRETATION**

Name of By-law

1.1 The name of this By-law, for citation, is the "Street Utilities By-law".

Definitions

1.2 In this By-law:

"applicant" means a person who is eligible, under section 3.1, to apply for a permit;

"approved alignment" means a location in a street or on a city support structure, approved by the street utilities committee, in which a permit holder may do work under a permit or carry on a use;

"approved work area" means a location in a street or on a city support structure, adjacent to an approved alignment and approved by the street utilities committee, which a permit holder may occupy to do work in an approved alignment under a permit;

"city standards" mean those terms and conditions, described as "Utility Construction Standards", that:

- (a) Council has approved concurrently with enactment of this By-law, and
- (b) the street utilities committee amends from time to time,

to regulate any work or use or the conduct of any work or use, and that, at the time application for a permit, are current;

"city support structure" means a support structure that the city owns or controls;

“claims” mean general, special, exemplary or consequential damages, direct or indirect losses including economic losses whether or not known or suspected, compensation, expenses, costs including costs on a solicitor-client basis, common law or statutory penalties or fines, demands, suits, actions, orders, judgments, or proceedings, at law or at equity;

“equipment” includes:

- (a) systems, structures, utilities, and facilities including telecommunication facilities defined in the Telecommunications Act (Canada),
- (b) poles, cables, wires, governors, regulators, pipes, ducts, conduits, pedestals, vaults, braces, anchors, amplifiers, connection panels, transformers, valves, fittings, and other equipment whether or not any of them form part of or are accessory to the systems, structures, utilities, or facilities referred to in subsection (a), and
- (c) wireless facilities, located under the street, that provide for the transmission, emission, or reception of voice, data, video, and other signals by electromagnetic waves propagated in space;

“in a street” means in, on, over, or under a street;

“pavement degradation” means the diminished lifespan or the increased need for maintenance of the pavement structure of a street resulting from the conduct of work in that street;

“permanent restoration” means restoration of the surface of a street to a condition as near as possible to or better than that which existed before a permit holder has excavated, broken up, or otherwise disturbed the street during the course of doing work, including:

- (a) the repair or replacement of curbs, sidewalks, poles, conduits, or other facilities,
- (b) testing, backfilling, permanent patching, and line painting,
- (c) if repaving or overlaying of the pavement has occurred during the five year period immediately prior to the date of issuance of the permit for such work, grinding and overlaying or repaving the full lane width of pavement, and
- (d) if repaving or overlaying of the pavement has occurred during the two year period immediately prior to the date of issuance of the permit for such work, grinding and overlaying or repaving the full width of the pavement from curb to curb;

“permit” means a permit, issued by the street utilities committee under section 3.8, to do work or to carry on a use;

“permit holder” means an applicant to whom the street utilities committee issues a permit under section 3.8;

“person” means an individual, partnership, corporation, trustee, government, government agency, board or commission, or other legal entity capable of suing or being sued;

“re-locate” or “re-location” means a change in the alignment of equipment by either or both line and elevation;

“security” means any letter of credit or other security referred to in Section 5;

“street utilities committee” means a committee comprised of the city’s General Manager of Engineering Services and Deputy City Engineer;

“support structure” means a terrestrial or non-terrestrial infrastructure in a street including a bridge, viaduct, and utility pole;

“use”, as a noun, means to occupy, or to operate equipment in, an approved alignment; and

“work” means to:

- (a) excavate, or to place, erect, install, construct, repair, maintain, alter, extend, replace or re-locate equipment, in a street or on a city support structure, or to remove equipment from a street or city support structure, and
- (b) do all things ancillary to the work described in subsection (a), as required by this By-law, including temporary restoration, permanent restoration which the permit holder, under section 3.3(i), has elected to undertake, and removal from the approved work area and approved alignment all abandoned equipment and all surplus sand, rubbish, and other materials resulting from the work,

but does not include routine maintenance of equipment under a street, or installation of equipment in existing ducts under a street, that does not involve excavation of a street or, in the opinion of the street utilities committee, cause undue disruption to a street or city support structure or to users of a street or city support structure.

Delegation to street utilities committee

1.3 Unless this By-law otherwise provides, Council delegates to the street utilities committee all powers otherwise exercisable by Council under this By-law.

Calculation of costs

1.4 Calculation of the city's costs of doing anything under this By-law using its own work force or engaging an independent contractor is to include, without duplication, those costs plus an amount equal to 20% of those costs to cover the city's overhead and administrative expenses.

Table of contents

1.5 The table of contents for this By-law is for convenient reference only, and is not for assistance in interpreting or enforcing this By-law.

Schedules

1.6 The schedules attached to this By-law form part of this By-law.

Severability

1.7 A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.

SECTION 2 APPLICATION OF BY-LAW

Application of By-law

2.1 A person must not do work or carry on a use unless that person complies with:

- (a) the terms and conditions of this By-law;
- (b) the terms and conditions of any permit that applies to the work or use; and
- (c) all other by-laws of the city that apply to the work or use unless such compliance would result in the inability of the person to comply with this By-law.

Exception to application of By-law

2.2 Despite section 2.1, if a person who intends to do work or carry on a use:

- (a) is party to a binding and enforceable agreement with the city that deals with such work and use; or
- (b) owns an interest in real property adjacent to the street where the person is to do the work or carry on the use, the work and use is to benefit that real property, and the Encroachment By-law or another city by-law deals with such work and use;

then this By-law does not apply.

SECTION 3 PERMIT PROCESS

Applicant for permit

3.1 The person named in an application for a permit as the applicant must be the owner of the equipment that is the subject of the work or use, and not an employee, agent, contractor, or consultant of the owner.

Application for permit generally

3.2 An applicant for a permit must submit to the street utilities committee an application, in the form prescribed by the street utilities committee, signed by the applicant or by an individual who has legal authority to bind the applicant.

Application for permit to do work

3.3 If the application is for a permit to do work, the applicant must submit, with the application:

- (a) proposed plans and specifications, in a format acceptable to the street utilities committee, detailing the:
 - (i) work,
 - (ii) alignment of the work including area, elevation, and distance,
 - (iii) work area,
 - (iv) construction methods and materials,
 - (v) equipment including the configuration, number and size of pipes, ducts, chutes, and manholes,
 - (vi) aesthetic and safety considerations for work above ground, and
 - (vii) existing equipment and support structures in or about the proposed alignment that the work may affect;
- (b) a proposed traffic management plan, that complies with city standards, for the vehicular and pedestrian traffic the work may impact;
- (c) a proposed schedule of timing for doing the work;
- (d) the plan review and administration fee calculated on the basis set out in Part 1 of Schedule A to this By-law;
- (e) the inspection fee calculated on the basis set out in Part 2 of Schedule A to this By-law;

- (f) an estimate of the cost to the city of permanent restoration after completion of the work, based upon the quantities of restoration necessary, the unit costs of such work, as set out in Part 3 of Schedule A, and the applicable city standards;
- (g) an estimate of the cost to the city of pavement degradation, based upon the age of the surface of the pavement as determined by the street utilities committee and the cost for each square metre of excavation, as set out in Part 4 of Schedule A;
- (h) such other information as the street utilities committee may require; and
- (i) an election as to whether or not, after completion of the work, the applicant wishes to undertake permanent restoration.

Application for permit for use

3.4 If the application is for a permit to carry on a use, as required by section 4.4, the applicant must submit, with the application, such other information as the street utilities committee may require.

Refusal to issue permit for work

3.5 If:

- (a) the applicant is in breach of any term or condition of:
 - (i) this By-law,
 - (ii) any other city by-law that applies to the proposed work or use, or
 - (iii) any existing permit related to equipment that the proposed work may affect;
- (b) the proposed plans and specifications for the work:
 - (i) are incomplete or inaccurate, or
 - (ii) do not meet city standards;
- (c) the proposed alignment or proposed work area:
 - (i) conflicts with other existing or planned work, or
 - (ii) does not meet city standards;

- (d) proposed work that is on or over the street ground does not meet city standards regarding aesthetics or safety;
- (e) the street utilities committee does not approve of proposed work on a city support structure;
- (f) the proposed traffic management plan does not meet city standards;
- (g) the proposed schedule of timing for doing the work is not acceptable to the street utilities committee;
- (h) the estimate of the cost of permanent restoration is not acceptable to the street utilities committee;
- (i) the estimate of the cost of pavement degradation is not acceptable to the street utilities committee;
- (j) the applicant has not paid the fees under section 3.3(d) or (e);
- (k) the street utilities committee refers the application to Council, and Council decides that the proposed work or use is not in the public interest or will unduly interfere with public use and enjoyment of the street; or
- (l) the applicant fails to submit the information required under section 3.3(h) or such information does not meet city standards;

then the street utilities committee must refuse to issue a permit.

Refusal to issue permit for use

3.6 If:

- (a) the permit holder referred to in section 4.4 is in breach of any term or condition of:
 - (i) this By-law,
 - (ii) any other city by-law that applies to the work that is the subject of the use referred to in the application, or
 - (iii) any existing permit related to equipment that is the subject of the use referred to in the application;
- (b) the applicant fails to submit the information required by the street utilities committee under section 3.4 or such information does not meet city standards;

then the street utilities committee must refuse to issue the permit.

Refund of fees in case of refusal

3.7 If the street utilities committee refuses to issue a permit under section 3.5, the street utilities committee must refund to the applicant the fee referred to in section 3.3(d) but the plan review and administration fee referred to in section 3.3(e) is non-refundable.

Issuance of permit

3.8 If no ground of refusal set out in section 3.5 or 3.6 applies, the street utilities committee must issue a permit in the form prescribed by the street utilities committee.

Terms and conditions of permit

3.9 The street utilities committee may attach to the permit one or more terms and conditions that are to apply to the work or use including any requirements that are to apply to work on, or use of, a city support structure.

SECTION 4 EFFECT OF PERMIT

Non-exclusive licence

4.1 Subject to the terms and conditions of this By-law and the permit, issuance of a permit gives the permit holder the non-exclusive license to:

- (a) enter the approved work area to do work in the approved alignment; and
- (b) carry on the use in the approved alignment.

Limits on scope of permit

4.2 Issuance of a permit does not:

- (a) confer any exclusive rights or privileges on the permit holder;
- (b) restrict the grant of similar or concurrent rights or privileges to other persons whether or not the grant of such rights or privileges would enable another person to carry on a use competitive with the permit holder's use;
- (c) give the permit holder priority over the existing rights of any other person who does work or carries on a use in or about the approved alignment;
- (d) give any interest in land to the permit holder;
- (e) entitle the permit holder to register or file in any government office any instrument, claim, or notice with respect to the work that is the subject of the permit, the approved alignment, or the use;

- (f) constitute consent for the permit holder to do work on a support structure unless the permit expressly sets out such consent and conditions that are to apply to such work;
- (g) make the equipment that is the subject of the work the property of the city;
- (h) constitute approval, or waiver of approval, of the work under any other city by-law or under any laws of other competent authorities; or
- (i) constitute permission to interfere in any manner with any existing equipment or support structures.

Non-disposition of permit

4.3 A permit holder must not dispose of the permit, or any of the permit holder's rights or obligations under the permit, to another person.

Disposition of ownership of equipment

4.4 If a permit holder disposes of ownership of the equipment in an approved alignment to another person then, at least 30 days before the effective date of the disposition:

- (a) the permit holder must deliver notice to the street utilities committee of such effective date; and
- (b) the person who is to acquire ownership of that equipment must apply for a permit under section 3.4.

Exceptions to disposition requirements

4.5 Section 4.4 does not apply to:

- (a) a change in the effective voting control of the permit holder;
- (b) a consolidation, merger, or amalgamation of the permit holder with another person; or
- (c) utilization of space within ducts, conduits, or similar equipment under section 4.6.

Utilization of space by another person

4.6 Despite section 4.3, a permit holder may allow another person to utilize space within the permit holder's ducts, conduits, or similar equipment in an approved alignment but, in connection with the utilization of such space, the permit holder:

- (a) despite section 3.1, must be the applicant for any permit; and

- (b) must be responsible for compliance with the terms and conditions of this By-law and of any permit referred to in section 4.6(a).

SECTION 5 SECURITY

Letters of credit or other security

5.1 Before beginning to do any work under a permit, the permit holder must give the street utilities committee a letter of credit that meets the terms and conditions set out in Schedule B to this By-law in an amount equal to the estimated:

- (a) permanent restoration cost referred to in section 3.3(f); and
- (b) pavement degradation cost referred to in section 3.3(g);

or, instead of such letters of credit, cash or other security acceptable to the street utilities committee.

No interest

5.2 The permit holder is not entitled to any interest from the city on the amount of the security.

SECTION 6 CONDUCT OF WORK

Supervision of work

6.1 The permit holder must:

- (a) retain a competent individual to supervise the work, and cause such individual to be present at the approved alignment at all times during the course of the work; and
- (b) if such individual is not an employee of the permit holder, ensure that a representative of the permit holder is available by telephone at all times during the course of the work.

Revisions to schedule for work

6.2 The street utilities committee may deliver notice to the permit holder from time to time that the street utilities committee:

- (a) requires revisions to the schedule for any remaining work; or

- (b) approves revisions to the schedule for any remaining work requested by the permit holder;

and the permit holder, from and after the date of receipt of such notice, must comply with such revisions.

Conduct of work

6.3 The permit holder must do the work:

- (a) in the approved work area and approved alignment;
- (b) in compliance with the plans and specifications for the work approved by the street utilities committee;
- (c) in compliance with the traffic management plan for the work approved by the street utilities committee;
- (d) in compliance with all terms and conditions attached to the permit;
- (e) in compliance with city standards;
- (f) in compliance with the schedule or revised schedule of work approved from time to time by the street utilities committee;
- (g) in a good and workmanlike manner;
- (h) in a manner that safeguards all support structures or equipment in or about the approved alignment or approved work area;
- (i) in a manner that does not interfere unduly with public use and enjoyment of the street in which the permit holder is doing the work; and
- (j) to the satisfaction of the street utilities committee.

Inspection of work

6.4 The permit holder must:

- (a) notify the street utilities committee when the work is ready for inspection as required by the permit; and
- (b) allow city inspectors to inspect the work at any time.

Stop work order

6.5 If:

- (a) the permit holder, in doing the work, fails to comply with the requirements of this By-law;
- (b) a city inspector advises that the approved alignment, approved work area, or surrounding street is unsafe; or
- (c) the work, or manner of doing the work, interferes unduly with public use and enjoyment of the street in which the permit holder is doing the work;

then:

- (d) the city inspector may give the permit holder's supervisor or representative written or verbal notice to stop work immediately by reason of a default or problem under subsection (a), (b), or (c);
- (e) the permit holder must comply immediately with any written or verbal notice from the city inspector to make the approved alignment, approved work area, or surrounding street safe, and otherwise comply with the directives of the city inspector; and
- (f) except as set out in section 6.5(e), work must not proceed until the permit holder has satisfied the street utilities committee that the permit holder has rectified such default or problem.

Removal of abandoned equipment and surplus material

6.6 During the course of the work, as appropriate, and before completion of the work, the permit holder, at its cost, must remove from the approved work area and approved alignment all abandoned equipment and all surplus sand, rubbish, and other materials resulting from the work.

SECTION 7 COMPLETION OF WORK

Submission of as-built drawings

7.1 Within 30 days after completing the work, the permit holder must submit to the street utilities committee as-built drawings, in a format acceptable to the street utilities committee, that establish the approved alignment of the work, including duct sizes and configurations, relative to property lines, elevation, and distance.

Acceptability of as-built drawings

7.2 If the street utilities committee delivers notice to the permit holder that the as-built drawings referred to in section 7.1 are not acceptable, and specifies the deficiencies, the permit holder must correct the as-built drawings until they are acceptable to the street utilities committee.

Corrections to work

7.3 If, after completion of any work, and despite any approvals or inspections by the city, the street utilities committee decides that the permit holder has installed equipment that is defective or faulty, or that the permit holder has not done the work in compliance with the terms and conditions of this By-law, the permit for the work, and city standards:

- (a) the street utilities committee may deliver to the permit holder notice to rectify such defect, fault, or breach;
- (b) the permit holder must rectify such defect, fault, or breach within the lesser of:
 - (i) 15 days after receipt of the notice referred to in section 7.3(a),
 - (ii) the number of days specified by the street utilities committee in such notice, and
 - (iii) immediately in case of emergency;
- (c) if the permit holder refuses or fails to rectify as required by section 7.3(b), the city may do so; and
- (d) if the city does work under section 7.3(c), the permit holder must pay the city its costs of doing the work within 30 days after receipt of an invoice for such costs from the street utilities committee.

SECTION 8 RESTORATION

Temporary restoration

8.1 As part of completing the work, the permit holder, at its cost, must temporarily restore the surface of the street in compliance with city standards and the permit for the work.

Inspection of temporary restoration

8.2 The permit holder must inspect the temporary restoration:

- (a) if the city is to undertake the permanent restoration, during the period that is the lesser of 90 days after completion of the temporary restoration and completion of permanent restoration; and
- (b) if the permit holder is to undertake the permanent restoration, until the completion of permanent restoration;

at least monthly, and if the permit holder discovers a deficiency, must give immediate notice to the street utilities committee.

Responsibility for temporary restoration

8.3 If, within the relevant period set out in section 8.2, a deficiency in the temporary restoration occurs:

- (a) after discovering a deficiency during an inspection under section 8.2 or on receipt of notice from the street utilities committee, the permit holder must correct the deficiency;
- (b) the permit holder must correct the deficiency within the lesser of:
 - (i) 15 days after discovery of the deficiency or receipt of the notice under section 8.3(a), and
 - (ii) immediately in case of emergency;
- (c) if the permit holder refuses or fails to rectify as required by section 8.3(b), the city may do so; and
- (d) if the city does work under section 8.3(c), the permit holder must pay the city its costs of doing the work within 30 days after receipt of an invoice for such costs from the street utilities committee.

Permanent restoration by permit holder

8.4 If the permit holder, under section 3.3(i), elected to undertake permanent restoration, the permit holder, at its cost, must:

- (a) submit proposed plans and specifications for the permanent restoration that are satisfactory to the street utilities committee;
- (b) undertake and complete the permanent restoration in accordance with the approved plans and specifications, city standards, the permit for the work, and specifications set out by the street utilities committee from time to time;

- (c) use only materials and mix design approved by the street utilities committee;
- (d) submit test results for materials used; and
- (e) submit a certification, signed by a professional engineer or other materials testing professional approved by the street utilities committee, that the work of the permanent restoration complies with the other requirements of this section 8.4.

Responsibility for permanent restoration by permit holder

8.5 If, within one year after completion of the permanent restoration referred to in section 8.4, a deficiency in the restoration occurs:

- (a) the street utilities committee may deliver notice of such deficiency to the permit holder; and
- (b) after receiving such notice, the permit holder must correct the deficiency to city standards;

except that such one year limitation does not to any backfilling deficiency.

Cost of permanent restoration by city

8.6 If:

- (a) the permit holder, under section 3.3(j), elected not to undertake permanent restoration; or
- (b) the permit holder fails to commence or complete permanent restoration under section 8.4;

and the city undertakes and completes such permanent restoration:

- (c) the street utilities committee is to invoice the permit holder for the cost to the city of permanent restoration after completion of the work, based upon the quantities of restoration necessary, the unit costs of such work, as set out in Part 3 of Schedule A, and the applicable city standards; and
- (d) within 30 days after receipt of such invoice, the permit holder must pay the city such cost.

Realization on permanent restoration security

8.7 If the permit holder fails to pay the city, when due, the permanent restoration cost, the city:

- (a) without notice to the permit holder, may realize on the security for the permanent restoration cost to satisfy such amount;

- (b) may collect from the permit holder on demand any deficiency between the permanent restoration cost and the amount realized under such security; and
- (c) must return to the permit holder any balance remaining under such security.

SECTION 9 PAVEMENT DEGRADATION

Calculation of pavement degradation cost

9.1 After completion of any work, and if applicable, the street utilities committee is to:

- (a) calculate the pavement degradation cost resulting from the work, based upon the age of the surface of the pavement as determined by the street utilities committee and the cost for each square metre of excavation, as set out in Part 4 of Schedule A; and
- (b) invoice the permit holder for such cost.

Payment of pavement degradation cost

9.2 Within 30 days after the receipt of such invoice, the permit holder must pay the city such cost.

Realization of pavement degradation security

9.3 If the permit holder fails to pay the city, when due the pavement degradation cost, the city:

- (a) without notice to the permit holder, may realize on the security for the pavement degradation cost to satisfy such amount;
- (b) may collect from the permit holder on demand any deficiency between the pavement degradation cost and the amount realized under such security; and
- (c) must return to the permit holder any balance remaining under such security.

SECTION 10 WORK AND USE

Plans of approved alignments

10.1 On or before December 31st in each year, a permit holder must give the street utilities committee:

- (a) detailed plans and specifications, current to that date, showing all approved alignments in which the permit holder has equipment; and
- (b) a list of emergency contact personnel authorized by the permit holder to receive notices, orders, and other communications from the city on behalf of the permit holder.

Assistance regarding alignments

10.2 Within three days after receiving a request from the street utilities committee, or within 24 hours if the request indicates an emergency, a permit holder must give the city the locations and elevations of equipment within any requested approved alignment.

Promptness

10.3 A person must comply promptly with all terms and conditions of this By-law and of any permit unless the By-law or permit sets out a specific deadline for compliance.

Lost productivity costs

10.4 If the city, in undertaking repair, maintenance, or replacement of any part of a street or of city property in a street, incurs additional costs attributable to the presence of equipment in an approved alignment, the owner of such equipment must pay to the city an amount equal to such additional costs within 45 days after receipt from the street utilities committee of:

- (a) an invoice that sets out such costs as determined by the street utilities committee;
- (b) a description of the city's undertaking;
- (c) an explanation of the nature of the interference caused by the presence of such equipment in the approved alignment; and
- (d) an itemized breakdown of the city's additional costs including labour, supplies, equipment, and loading factors.

SECTION 11 EMERGENCIES

Emergency work

11. Despite anything to the contrary in this By-law, a person who owns equipment in a street may do work with respect to such equipment without first obtaining a permit or delivering notice to the street utilities committee if:

- (a) the work requires immediate completion to avoid endangerment to health, safety, or provision of an essential service;
- (b) obtaining a permit or consent from the street utilities committee before doing the work is not practicable;
- (c) the person does only such work as is necessary to end the emergency;
- (d) the person notifies the street utilities committee of the work as soon as possible;
- (e) the person provides to the street utilities committee such information concerning the work as the street utilities committee may reasonably require; and
- (f) after the emergency, the person complies with the requirements of this By-law to the extent it is still possible to do so.

SECTION 12 RE-LOCATION OF EQUIPMENT

Notice to re-locate equipment

12.1 If the city requires the removal of equipment from an approved alignment for a municipal or public purpose, the street utilities committee may deliver notice to the permit holder to re-locate the equipment in accordance with the terms and conditions of section 12.2.

Re-location process

12.2 The permit holder, at its cost, must:

- (a) within 90 days after receipt of the notice referred to in section 12.1, apply for a permit to do the work necessary to re-locate the equipment to a new alignment; and
- (b) after receipt of such permit, do the work of re-locating the equipment in compliance with the terms and conditions of this By-law and the permit.

Failure to re-locate

12.3 If the permit holder fails to remove the equipment referred to in section 12.1 in accordance with the terms and conditions of this By-law, the city may do so and may invoice the permanent holder for the city's cost of doing so, and, within 30 days after receipt of such invoice, the permit holder must pay the city such cost.

Contribution to cost of re-location

12.4 Despite sections 12.2 and 12.3, if:

- (a) the permit holder has given the street utilities committee evidence of payment of the cost referred to in section 12.2 or if the permit holder has paid the cost referred to in section 12.3; and
- (b) if the date of the notice referred to in section 12.1 is prior to the end of the fifth year after the date of the permit for the work of installing the equipment referred to in section 12.1;

the city will refund to the permit holder a portion of such costs of relocation on a straight line declining basis from such date to and including the end of the fifth year following such date as follows:

- Year 1 -- 100% of costs of relocation
- Year 2 -- 80% of costs of relocation
- Year 3 -- 60% of costs of relocation
- Year 4 -- 40% of costs of relocation
- Year 5 -- 20% of costs of relocation.

SECTION 13 REMOVAL OF EQUIPMENT FROM SUPPORT STRUCTURE

Notice to remove equipment

13.1 Despite sections 12.1 and 12.2, if the city requires the removal of equipment from a city support structure:

- (a) because the city intends to maintain or repair the city support structure;
- (b) for a municipal or public purpose; or
- (c) because the city support structure is nearing the end of its economic life;

the street utilities committee may deliver notice to the permit holder to remove the equipment from the approved alignment on the city support structure in accordance with the terms and conditions of section 13.2.

Removal process

13.2 The permit holder, at its cost, must:

- (a) within 90 days after receipt of the notice referred to in section 13.1, apply for a permit to do the work necessary to remove the equipment from the city support structure; and

- (b) after receipt of such permit, do the work of removing the equipment in compliance with the terms and conditions of this By-law.

Failure to remove

13.3 If the permit holder fails to remove from the support structure the equipment referred to in section 13.1 in accordance with the terms and conditions of this By-law, the city may do so and may invoice the permit holder for the city's cost of doing so, and, within 30 days after receipt of such invoice, the permit holder must pay the city such cost.

SECTION 14 TERMINATION OF PERMIT CESSATION OF USE

Termination of permit

14.1 If the permit holder does not complete the work authorized by the permit, in compliance with this By-law, within the later of:

- (a) six months after the date of issuance of the permit; or
- (b) expiry of any extension of time granted by the street utilities committee on request by the permit holder;

the permit is to expire and have no further force or effect except to the extent that this By-law or the permit provides for the survival of any terms or conditions set out in this By-law or in the permit.

Cessation of use

14.2 A permit holder who:

- (a) ceases to carry on the use authorized under the permit; and
- (b) does not obtain a permit to remove the equipment from the approved alignment;

must deliver notice to the street utilities committee of abandonment of the equipment in the approved alignment.

Notice to remove abandoned equipment

14.3 Whether or not a permit holder has delivered to the street utilities committee a notice of abandonment referred to in section 14.2, if:

- (a) a permit holder is no longer carrying on a use in an approved alignment;

- (b) the city requires the removal of abandoned equipment for:
 - (i) preservation of the street in which such approved alignment is situated,
 - (ii) safety,
 - (iii) a concern related to the environment, or
 - (iv) any other municipal purpose;

the street utilities committee may deliver notice to the permit holder that if the permit holder does not, within 90 days after receipt of such notice, obtain a permit to remove the abandoned equipment from the approved alignment and remove the equipment, the city intends to do so.

Failure to remove abandoned equipment

14.4 If the permit holder fails to remove the equipment referred to in section 14.3 in accordance with the terms and conditions of this By-law, the city may do so and may invoice the permit holder for the city's cost of doing so, and, within 30 days after receipt of such invoice the permit holder must pay the city such cost.

SECTION 15 RELEASE AND INDEMNITY AND INSURANCE

Release and indemnity

15.1 From and after the date an applicant submits an application under section 3.2, the applicant must:

- (a) release and discharge the city and all city personnel from all claims of the applicant; and
- (b) indemnify and save harmless the city and all city personnel from all claims of a third person;

in connection with, arising out of, incidental to, or which would not have arisen but for, the work authorized or required under the permit issued pursuant to such application or the existence, use, maintenance, or abandonment of the equipment that is the subject of such permit, except for claims arising from the negligence or wilful misconduct of the city.

Life of release and indemnity

15.2 A release and indemnity referred to in section 15.1 is to remain in effect for so long as equipment authorized under the permit remains in the street, with respect to all claims that arose or could have arisen prior to the removal of such equipment, and is to survive the termination of the permit.

Application to contain release and indemnity

15.3 Each application for a permit under section 3.2 is to include the release and indemnity referred to in section 15.1.

Insurance

15.4 A person who grants a release and indemnity to the city under section 15.1, must:

- (a) before commencing work under the permit, obtain and maintain comprehensive/commercial general liability insurance:
 - (i) in an amount of at least \$5,000,000.00 inclusive per occurrence,
 - (ii) that names the city as an additional named insured,
 - (iii) that contains an endorsement to give the city engineer at least 60 days' prior notice by registered mail of cancellation, lapse, or material change,
 - (iv) that remains in effect until the release and indemnity expires, and
 - (v) that is otherwise satisfactory to the city's director of risk management in accordance with the city's standard requirements for similar insurance; and
- (b) deliver a certificate issued by the insurer evidencing such insurance to the city engineer from time to time on demand.

SECTION 16 ENFORCEMENT

Offences under By-law

16.1 A person who:

- (a) violates any provision of this By-law, or does any act or thing which violates any provision of this By-law, or suffers or allows any other person to do any act or thing which violates any provision of this By-law;
- (b) neglects to do or refrains from doing anything required to be done by any provision of this By-law; or
- (c) fails to comply with an order, direction, or notice given under any provision of this By-law, or suffers or allows any other person to fail to comply with an order, direction, or notice given under any provision of this By-law;

is guilty of an offence against this By-law, and liable to the penalties imposed under this Section 16.

Fine for offence

16.2 Every person who commits an offence against this By-law is punishable on conviction by a fine of not less than \$500.00 and not more than \$2,000.00 for each offence.

Fine for continuing offence

16.3 Every person who commits an offence of a continuing nature against this By-law is liable to a fine not exceeding \$50.00 for each day such offence continues.

**SECTION 17
ENACTMENT OF BY-LAW**

Force and effect

17. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this day of , 2006

Mayor

Clerk

SCHEDULE A

SCHEDULE OF FEES AND COSTS

Part 1 - Plan review and administration fee

The applicant must pay to the city, in respect of a proposed alignment that is 20 meters or:

- (a) shorter, a plan review and administration fee of \$500.00;
- (b) longer, a plan review and administration fee of \$1,500.00;

together with a fee of \$10.00 per metre of the total length of the proposed alignment.

Part 2 - Inspection fee

The permit holder must pay to the city, to cover the cost of inspection of the proposed work, \$65.00 per street block of the total length of the proposed alignment for each day from commencement to completion of the work and for one day of any pre-construction organizing meeting.

Part 3 - Permanent restoration cost

The permit holder must pay to the city the cost to the city of permanent restoration after completion of the work, based upon the quantities of restoration necessary, the unit costs of such work, as follows, and the applicable city standards:

Repair Type	Description	Fee Per Square Metre or Per Lineal Metre as applicable
Concrete Pavement	Less than 10 m ²	\$159.00
Concrete Pavement	10 m ² to less than 50 m ²	\$111.00
Concrete Pavement	50 m ² or more	\$91.00
Light Asphalt Pavement	Less than 3 m ²	\$186.00
Light Asphalt Pavement	3 m ² to less than 10 m ²	\$80.00
Light Asphalt Pavement	10 m ² to less than 100 m ²	\$54.00
Light Asphalt Pavement	100 m ² to 300 m ²	\$49.00
Light Asphalt Pavement	301 m ² or more	\$32.00
Heavy Asphalt Pavement	Less than 100 m ²	\$75.00
Heavy Asphalt Pavement	100 m ² to 300 m ²	\$66.00
Heavy Asphalt	More than 300 m ²	\$62.00
Grading and Asphalt Aprons	Quotes by street utilities committee only	
Light Asphalt Pavement (2005 & Prior)	Less than 100 m ²	\$46.00

Concrete Sidewalk	Less than 10 m ²	\$186.00
Concrete Sidewalk	10 m ² to less than 25 m ²	\$149.00
Concrete Sidewalk	25 m ² to less than 50 m ²	\$85.00
Concrete Sidewalk	50 m ² or more	\$75.00
Exposed Aggregate Sidewalk	All	\$159.00
Concrete Crossing	All	\$159.00
Curb & Gutter	Less than 10 m	\$212.00
Curb & Gutter	10 m or more	\$133.00
Boulevards Top Soil & Seed	Less than 50 m ²	\$43.00
Boulevards Top Soil & Seed	50 m ² or more	\$21.00
Brick or Paver Sidewalks	All	\$265.00
Stamped Concrete	Quotes by street utilities committee only	
Unusual Damages / At-Cost Repairs	Quotes / Actual Cost + Overhead)	
Concrete Bus Slab - 12" Thick w. Integral C & G		\$185.00
Asphalt/Concrete Pavement	Less than 10 m ²	\$159.00
Asphalt/Concrete Pavement	10 m ² to less than 50 m ²	\$134.00
Asphalt/Concrete Pavement	50 m ² or more	\$118.00
Asphalt/Concrete Pavement - follow behind (install of 5" Asphalt when concrete + cutback is done by Utility Group)		\$51.00
Brick / Paver / Stone Pavements	Quotes by street utilities committee only	

Part 4 - Pavement degradation cost

The permit holder must pay to the city, as a contribution to the cost of pavement degradation based on the total area of pavement excavated, in accordance with the following table:

Age of street in years since last re-surfaced as determined by the City	Fee per square metre of excavation
0 - 5 years	\$50.00
6 - 10 years	\$40.00
11 - 15 years	\$30.00
16 -20 years	\$20.00
21 years or greater	\$10.00

SCHEDULE B

LETTER OF CREDIT TERMS AND CONDITIONS

The letter of credit must:

1. be drawn on a Canadian Schedule A chartered bank or other financial institution acceptable to the city and situate in the city, and bear an identifying number;
2. be issued to the city as beneficiary, and identify the city by name and address;
3. be in an amount equal to or greater than the estimated restoration cost;
4. state the issue date and expiry date, and be for a term of at least one year from the issue date;
5. identify the applicant for the letter of credit, who must be the permit holder, by name and address;
6. identify this By-law;
7. secure the obligations of the permit holder to the city under the By-law;
8. be clean, irrevocable, and payable at sight at an identified branch of the issuer;
9. state that the issuer will not enquire as to whether or not the beneficiary has a right to make demand on the letter of credit, that the city may make partial drawings, and that the issuer engages with the City that drafts drawn in conformity with the letter of credit will be duly honoured if presented to the issuer on or before the expiry date of the letter of credit;
10. not include any expression or implication that the letter of credit is a guarantee;
11. state that except as the letter of credit may otherwise expressly provide, the letter of credit is subject to the Uniform Customs and Practice for Documentary Credits most recently published by the International Chamber of Commerce;
12. be signed by an authorized signatory of the issuer; and
13. otherwise be in form and substance acceptable to the city's director of legal services.

The letter of credit may provide for automatic renewal for successive terms of at least one year each unless the issuer delivers to the city and to the permit holder at least 60 days prior written notice that the issuer declines to renew the letter of credit. The first renewal term must begin on the first annual anniversary of the original issue date, and each following renewal term must begin on the first annual anniversary of the issue date for the preceding renewal term.

If the letter of credit does not provide for automatic renewal or if the issuer delivers such notice declining to renew, the permit holder, at least 50 days before the expiry date of the then current letter of credit term, will deliver to the city a renewal or replacement of the letter of credit on the terms set out in this section and with an issue date that is the first annual anniversary of the issue date for the then current term.

If the letter of credit secures an ascertainable financial obligation of the permit holder to the city and if the permit holder reduces the amount of that obligation from time to time by payment to the city according to the terms and conditions of the By-law, the permit holder may request the city's consent to replacing the letter of credit with one for a lesser amount equal to the amount of the permit holder's then outstanding financial obligation to the city. The city will not unreasonably withhold its consent if the replacement letter of credit meets the requirements of the By-law with respect to the original letter of credit except for the reduced amount.