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Date **November 19, 2019** **Report No. 2019-731**

To Mayor and Members of City Council

From R. Loukes, P. Eng., Acting General Manager
Public Works Commission

1.0 Type of Report

- Consent Item []
- Item for Consideration [X]

2.0 Topic **Permitting the Use of Off-Road Vehicles Used in Snow Clearing on Highways [Financial Impact – None]**

3.0 Recommendation

THAT a by-law to amend Traffic By-law 37-83, as set out in Appendix “A” hereto, BE PRESENTED to City Council for consideration.

4.0 Purpose and Overview

To permit the operation of off-road vehicles on highways under the jurisdiction of the municipality from November 1 through April 30 for the purposes of clearing ice and snow from the public roadway portion of the road allowance, including sidewalks and driveways, abutting commercial or industrial properties.

5.0 Background

At the Council meeting on September 24, 2019, the members of City Council approved the following resolution:

Motion Regarding By-law to Permit the Operation of Off-Road Vehicles Used in Snow Clearing on Highways Pursuant to The Highway Traffic Act

WHEREAS the Highway Traffic Act prohibits the operation of off-road vehicles on highways unless certain requirements set out in that Act and applicable regulations are met; and

WHEREAS the prohibition with respect to the operation of off-road vehicles on highways pursuant to the Highway Traffic Act does not apply to off-road vehicles used by employees of the City acting in the course of their employment or in response to an emergency; and

WHEREAS section 191.8(3) of the Highway Traffic Act permits the council of a municipality to pass by-laws permitting the operation of off-road vehicles on any highway within the municipality that is under the jurisdiction of the municipality; and

WHEREAS the clearing of snow and ice from sidewalks and driveway approaches located on the municipal portion of highways in the City is a necessary part of ensuring the safe passage of pedestrians and vehicles during the winter months; and

WHEREAS several private contractors utilize off-road vehicles for the purposes of ensuring the efficient and effective clearing of snow and ice from commercial and industrial properties in the City;

NOW THEREFORE BE IT RESOLVED THAT Staff BE DIRECTED to prepare and present to Council a by-law to permit the operation of off-road vehicles on highways under the jurisdiction of The Corporation of the City of Brantford during the winter months for the purposes of clearing ice and snow from the public roadway portion of the road allowance, including sidewalks and driveways, abutting commercial or industrial properties.

The Chief Administrative Officer has deemed this to be an urgent report for presentation directly to City Council because the recent snow event in the City has private snow contractors mobilizing for the 2019/2020 season earlier than usual. Should Council approved the recommended amendment to the traffic by-law 73-83, this would permit the operation of off-road vehicles on highways under the jurisdiction of the municipality for the purposes of clearing ice and snow from the public roadway portion of the road allowance to begin immediately.

6.0 Corporate Policy Context

The following long term desired outcome from the Strategic Plan is addressed with the recommendation:

Brantford will be supported by well-developed and maintained transportation and servicing infrastructure.

7.0 Input from Other Sources

Legal and Real Estate staff provided assistance in preparing this report.

Brantford Police Service (BPS) indicated concern regarding to the transportation of off-road vehicles between job locations. The concern that BPS have experienced in the past is that these vehicles are driving on municipal highways moving from one job location to another without proper authority. BPS recommends that transporting the off-road vehicles between job sites should be done using a certified trailer, thus not permitting the operator to drive the off-road vehicle freely and without authority. The off-road vehicles are a hindrance to other vehicular traffic when operated on a highway and further this could open the door for others to use their personal off-road vehicle in the same manner.

Further, if the by-law is passed it must ensure that all other requirements under the Off-Road Vehicles Act and Highway Traffic Act are adhered too. Requirements such as proper lighting, helmets, insurance, licensing and the ability of the operator to operate such vehicle must all be required. BPS also suggests that every operator of such vehicle carry proof of contract for the business that they are clearing snow.

8.0 Analysis

Ministry of Transportation (MTO) Driver's Handbook describes off-road vehicles (ORVs) as:

“any two- or three-wheeled motorized vehicles, as well as specific vehicles with four or more wheels as prescribed by regulation, intended for recreational use. Examples of off-road vehicles include all-terrain vehicles (ATVs), two-up ATVs, side-by-side ATVs, utility terrain vehicles (UTVs), amphibious ATVs, off-road motorcycles and dune buggies.”

8.1 Current Regulations

Pursuant to Ontario Regulation 316/03 under the Highway Traffic Act (HTA), employees of a municipality or a local board, acting in the course of their employment or in response to an emergency, may operate an off-road vehicle on a highway. This same right is not extended to persons who do not meet the definition of “employee” under the Act. The purpose of these amendments is to respond to Council's desire to extend the rights afforded to municipal

employees, acting in the course of their employment, to private contractors, also acting in the course of employment, engaged in clearing snow and ice from sidewalks and parking lots in the City of Brantford.

Ontario Regulation 316/03 under the HTA states “off-road vehicle” has the same meaning as in the Off-Road Vehicles Act (ORVA), which defines off-road vehicles as:

a vehicle propelled or driven otherwise than by muscular power or wind and designed to travel,

(a) on not more than three wheels, or

(b) on more than three wheels and being of a prescribed class of vehicle; (“véhicule tout terrain”).

Other definitions that pertain to the Council resolution are also found in O. Reg. 316/08, and include:

“all-terrain vehicle” means an off-road vehicle that,

(a) has four wheels, the tires of which are all in contact with the ground,

(b) has steering handlebars,

(c) has a seat that is designed to be straddled by the driver, and

(d) is designed to carry,

(i) a driver only and no passengers, or

(ii) a driver and only one passenger, if the vehicle,

(A) has one passenger seat that is designed to be straddled by the passenger while sitting facing forward behind the driver, and

(B) is equipped with foot rests for the passenger that are separate from the foot rests for the driver;

“multi-purpose off-highway utility vehicle” means an off-road vehicle that,

(a) has four or more wheels, the tires of which are all in contact with the ground,

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- (b) has a steering wheel for steering control,
 - (c) has seats that are not designed to be straddled, and
 - (d) has a minimum cargo capacity of 159 kilograms;

“recreational off-highway vehicle” means an off-road vehicle that,

- (a) has four or more wheels, the tires of which are all in contact with the ground,
- (b) has a steering wheel for steering control,
- (c) has seats that are not designed to be straddled, and
- (d) has an engine displacement equal to or less than 1,000 cubic centimetres

Section 4.1 of O. Reg. 316/03 of HTA pertaining to the Operation of ORV on Highways provides as follows:

Permitted municipal highways for certain off-road vehicles

4.1 (1) Subject to subsection (2), an off-road vehicle may be driven on a highway or part of a highway in a municipality if,

a) by-law made by the municipality under subsection 191.8 (3) of the Act permits the operation of the off-road vehicle on the highway or part of the highway;

(b) the off-road vehicle is driven only during the months or hours specified in the by-law, in the case where the by-law limits the operation of the off-road vehicle on the highway or part of the highway within the municipality to certain months or hours; and

(c) the requirements of Part III are met. O. Reg. 135/15, s. 2.

(2) Subsection (1) does not apply to an off-road vehicle other than,

- (a) an all-terrain vehicle;
- (b) a multi-purpose off-highway utility vehicle; and
- (c) a recreational off-highway vehicle. O. Reg. 135/15, s. 2.

Clause 191.8 (3)(a) of the HTA under Part X.3 (Off-Road Vehicles) further states:

Municipal by-laws

(3) The council of a municipality may pass by-laws,

(a) permitting the operation of off-road vehicles with three or more wheels on any highway within the municipality that is under the jurisdiction of the municipality, or on any part or parts of such highway.

It should be noted that clause 191.8 (3)(a) of the HTA is subject to be replaced by the following on a day to be named by proclamation of the Lieutenant Governor:

(a) permitting the operation of off-road vehicles with three or more wheels, or prohibiting the operation of off-road vehicles on any highway within the municipality that is under the jurisdiction of the municipality, or on any part or parts of such highway;

8.2 ORV Related Collisions

Currently ORVs are mostly prohibited on the city's road allowance except for city operations. An increase presence of ORVs is expected to contribute to the overall collision numbers. Depending on the severity of collisions, this may have negative impacts to City's Vision Zero targets. A cursory review of ORV related collisions was undertaken to identify the current trend.

In the past ten year period (2009-2019), there have been eight (8) collisions involving off-road vehicles on municipal highways. Of the eight (8) collisions, two (2) resulted in injuries and one (1) resulted in a fatality. The numbers are consistent to staff's expectations that collisions involving an ORV tend to be severe given the operator exposure and small size as compared to typical motor vehicles operating on highways. The number of collisions related to ORVs is relatively low right now. However, an increase number of ORVs on the public roads is expected to cause a disproportionate increase of injuries and fatalities on the road. The magnitude of the increase is expected to correlate with the number of ORVs on the road and experience of the operators.

8.3 Proposed Amendments

The recommendations contained in this report have been drafted to address the resolution of Council on this topic, while minimizing conflicts between various users of the highways and sidewalks in the City of Brantford, such as other,

faster moving vehicles, bicycles and pedestrians. Although this amendment will permit the use of off-road vehicles on highways in the City of Brantford, all other provisions of the HTA, specifically the following provisions set out in O. Reg. 316/03, will continue to apply:

- requiring that all operators of off-road vehicles on highways hold a valid driver's licence;
- requiring all operators to carry and display a plate and permit pursuant to the *Off-Road Vehicles Act*;
- requiring safety equipment, such as protective structures; and
- requiring insurance, etc.

In accordance to Council's direction, Staff recommends amending Traffic By-law 37-83 as follows:

1. Adding the following definitions thereto:

"Off-road Vehicle" means:

- (a) an all-terrain vehicle
- (b) a multi-purpose off-highway utility vehicle; and
- (c) a recreational off-highway vehicle.

"All-terrain Vehicle" has the same meaning as in O. Reg. 316/03 to the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended.

"Multi-purpose Off-highway Utility Vehicle" has the same meaning as in O. Reg. 316/03 to the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended.

"Recreational Off-highway Vehicle" has the same meaning as in O. Reg. 316/03 to the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended.

2. Adding a new section, Section 30, to permit the use of off-road vehicles on municipal highways as follows:

30. OFF-ROAD VEHICLES – OPERATION ON HIGHWAY

- (1) From November 1 through April 30, inclusive, off-road vehicles are permitted to operate on any highway or sidewalk in the City of Brantford while actively engaged in the clearing of snow and ice from commercial or industrial properties, and shall be permitted to operate on any

highway, but not sidewalk, while moving from property to property for this purpose.

- (2) The authorization set out in subsection 30(1) above does not apply to any highway under the jurisdiction of the Province of Ontario or any of the ministries of the Province, include, without limitation, the Ministry of Transportation, and is subject to compliance with the requirements set out in the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended from time to time, and the regulations thereunder, including, without limitation, O. Reg. 316/03, as amended from time to time.

9.0 Financial Implications

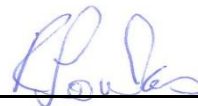
There are no financial implications resulting from the recommendation of this report.

10.0 Conclusion

Approval of the recommendations in this report will permit the use of off-road vehicles on highways under the jurisdiction of the municipality from November 1 through April 30 for the purposes of clearing snow and ice from sidewalks and driveway approaches along or on commercial or industrial properties.



Inderjit Hans, P. Eng., Acting Director
Engineering Services



Russ Loukes, P. Eng., PTOE
Acting General Manager, Public Works
Commission



Ting Ku, P. Eng., PTOE
Manager Transportation Services

In adopting this report, is a by-law or agreement required? If so, it should be referenced in the recommendation section.

By-law required yes no

Agreement(s) or other documents to be signed by Mayor and/or City Clerk yes no

Is the necessary by-law or agreement being sent concurrently to Council? yes no

Attachment

APPENDIX A

BYLAW NUMBER XX-2019
OF
THE CORPORATION OF THE CITY OF BRANTFORD
*Being a By-law to amend By-law 37-83 to permit the
operation of off-road vehicles on municipal highways
for the purposes of clearing ice and snow.*

WHEREAS subsection 191.8(1) of the *Highway Traffic Act* prohibits the operation of off-road vehicles on highways except in accordance with that Act and applicable regulations and any municipal by-laws; and

WHEREAS the prohibition with respect to the operation of off-road vehicles on highways pursuant to the *Highway Traffic Act* does not apply to off-road vehicles used by employees of the City acting in the course of their employment or in response to an emergency; and

WHEREAS section 191.8(3) of the *Highway Traffic Act* permits the council of a municipality to pass by-laws permitting the operation of off-road vehicles on any highway, or part or parts of a highway, within the municipality that is under the jurisdiction of the municipality; and

WHEREAS subsection 191.8(4) of the *Highway Traffic Act* provides that a by-law passed by municipal council permitting the operation of off-road vehicles on municipal highways, or parts thereof, may permit the operation of off-road vehicles on municipal highways only during specific months or hours; and

WHEREAS subsection 4.1 of O. Reg. 316/03 under the *Highway Traffic Act*, provides that off-road vehicles may be driven on a highway or part of a highway subject to a by-law of the municipality

WHEREAS, pursuant to section 8 of the *Municipal Act, 2001*, the powers of a municipality are to be interpreted broadly, and pursuant to section 27(1) of the *Municipal Act, 2001*, a municipality may pass by-laws in respect of a highway over which the municipality has jurisdiction;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF BRANTFORD HEREBY ENACTS AS FOLLOWS:

1. Section 1, Definitions, of By-law 37-83 is hereby amended by adding the following definitions thereto, and by serially renumbering all definitions therein:

Off-road Vehicle - means:

- (d) an all-terrain vehicle;
- (e) a multi-purpose off-highway utility vehicle; and
- (f) a recreational off-highway vehicle.

All-terrain Vehicle - has the same meaning as in O. Reg. 316/03 to the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended.

Multi-purpose Off-highway Utility Vehicle - has the same meaning as in O. Reg. 316/03 to the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended.

Recreational Off-highway Vehicle - has the same meaning as in O. Reg. 316/03 to the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended.

2. By-law 37-83 is hereby amended by adding the following section 30 thereto:

30. OFF-ROAD VEHICLES – OPERATION ON HIGHWAY

- (1) From November 1 through April 30, inclusive, off-road vehicles are permitted to operate on any highway or sidewalk in the City of Brantford while actively engaged in the clearing of snow and ice from commercial or industrial properties, and shall be permitted to operate on any highway, but not sidewalk, while moving from property to property for this purpose.
- (2) The authorization set out in subsection 30(1) above does not apply to any highway under the jurisdiction of the Province of Ontario or any of the ministries of the Province, include, without limitation, the Ministry of Transportation, and is subject to compliance with the requirements set out in the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended from time to time, and the regulations thereunder, including, without limitation, O. Reg. 316/03, as amended from time to time.

3. This by-law shall come into force on the day it is passed.

READ A FIRST TIME: November 19, 2019

READ A SECOND TIME: November 19, 2019

PASSED: November 19, 2019

MAYOR

CITY CLERK