

BYLAW NO. 14-2003

A BYLAW OF PARKLAND COUNTY, IN THE PROVINCE OF ALBERTA, FOR THE PURPOSE OF REGULATING THE USE AND OCCUPATION OF MUNICIPAL RIGHTS-OF-WAY.

WHEREAS pursuant to Section 7 of the Municipal Government Act, S.A. 1994 c.M-26.1, as amended, a Council of a Municipality may pass bylaws for municipal purposes respecting the safety, health and welfare of people and the protection of people and property;

AND WHEREAS pursuant to Section 7 of the Municipal Government Act, S.A. 1994 c.M-26.1, as amended, a Council may pass bylaws for municipal purposes respecting people, activities and things in, on or near a public place or place that is open to the public;

AND WHEREAS pursuant to Section 18 of the Municipal Government Act, S.A. 1994 c.M-26.1, as amended, a municipality has the direction, control and management of certain roads within the municipality;

AND WHEREAS pursuant to Section 61 of the Municipal Government Act, S.A. 1994 c.M-26.1, as amended, a municipality may grant rights, exclusive or otherwise, with respect to its property, including property under the direction, control and management of the municipality;

AND WHEREAS pursuant to Section 61 of the Municipal Government Act, S.A. 1994 c.M-26.1, as amended, a municipality may levy rates and charges for the use of its property including property under the direction, control and management of the municipality;

NOW THEREFORE, the Council of Parkland County duly assembled, hereby enacts as follows:

1. PURPOSE

The purpose of this Bylaw is:

- (a) to require every person proposing to carry out work for the installation, maintenance, repair, replacement, extension or operation of Equipment in Rights-of-Way to obtain the Municipality's consent to any such work and to apply to the Municipality for the required Permits;
- (b) to provide the Municipality with information on the type and location of Equipment situated in Rights-of-Way and in lands adjacent to Rights-of-Ways so that the Municipality can manage its Rights-of-Way effectively and efficiently;
- (c) to establish permit and other fees to compensate the Municipality for the installation, maintenance, repair, replacement, extension, operation or ongoing presence of Equipment in Rights-of-Way; and
- (d) to protect the Municipality from costs, damages or liability associated with the installation, maintenance, repair, replacement, extension or operation of Equipment in Rights-of-Way by any person.

2. DEFINITIONS

In this Bylaw:

- (a) "Alignment" means a location specified or approved by the Municipality for the location of Equipment in Rights-of-Way;
- (b) "Applicant" means a person applying for a Permit;
- (c) "Council" means the council of the Municipality;
- (d) "Emergency Work" means the installation, maintenance, repair or replacement of Equipment in Rights-of-Way where health, safety or the provision of essential services is endangered;
- (e) "Equipment" means any poles, cables, pipes, conduits, pedestals, antennas, vaults, support structures or other similar facilities or structures;
- (f) "General Manager" means the Manager of Operations Services of the Municipality or his/her delegate(s);
- (g) "in", with reference to the placement of Equipment in Rights-of-Way only, means "in, on, over, under, along or across";
- (h) "Municipality" means Parkland County;
- (i) "Permit" means any one of the permits and any corresponding applications, in a form set out in Schedule "A" and/or other bylaws of the Municipality, as further modified by the General Manager in any specific case;
- (j) "Owner" means the Owner of the Work, Emergency Work or Equipment being done or located within the Rights-of-Way together with the Owner's agents, contractors, invitees or legal representatives.
- (k) "Person" includes one or more individuals, partnerships, bodies corporate, unincorporated organizations, governments, government agencies, trustees, executors, administrators or other legal representatives, other than the Municipality or its legal representatives, and specifically includes the Applicant and the Owner.
- (l) "Rights-of-Way Access Agreement" means a form of agreement approved by Council by resolution from time to time or the General Manager.
- (m) "Rights-of-Way Fees" means the fees set out in Schedule "B" and/or other bylaws of the Municipality or the corresponding fees set out in a Rights-of-Way Access Agreement other than Rights-of-Way Use and Occupancy Fees;
- (n) "Rights-of-Way Use and Occupancy Fees" means the fees set out in Schedule "C" and/or other bylaws of the Municipality or the corresponding fees and/or other consideration as set out by the mutual agreement of the parties to Rights-Of-Way Access Agreements.
- (o) "Rights-of-Way Resolution" means a resolution passed by Council granting consent for a person to do Work in Rights-of-Way upon compliance by such person with all other applicable municipal requirements;

- (p) "Rights-of-Way" means the highways, roads, road allowances, streets, lanes, road diversions, bridges, or other public places within the jurisdiction of the Municipality, excluding:
 - (i) reserve property;
 - (ii) tax recovery property;
 - (iii) easements, leases and licenses;
 - (iv) fee simple titled property;
 - (v) other property designated by the General Manager.
- (q) "Violation Ticket" means a ticket issued pursuant to Part II or Part III of the *Provincial Offenses Procedure Act*, S.A. 1988, c.P-21.5, as amended, or repealed and replaced from time to time, and regulations thereunder.
- (r) "Work" means the installation, maintenance, repair, replacement, extension or operation of any Equipment in Rights-of-Way, excluding Emergency Work.

3. REQUIREMENT FOR MUNICIPAL CONSENT

- (1) Council may pass Rights-of-Way Resolutions and Council or the General Manager may approve Rights-of-Way Access Agreements, subject to such terms and conditions, as Council deems appropriate.
- (2) No person shall do any Work in Rights-of-Way unless the person has:
 - (a) obtained the consent of the Municipality or is acting on behalf of a person who has obtained consent of the Municipality by way of a Rights-of-Way Resolution or Rights-of-Way Access Agreement,
 - (b) obtained all applicable Permits required by the Municipality as determined by the General Manager, and
 - (c) paid all applicable Rights-of-Way Fees required by the Municipality as determined by the General Manager.

4. ALTERNATIVES TO THE REQUIREMENT FOR MUNICIPAL CONSENT

- (1) The following agreements shall constitute consent of the Municipality for the purposes of performing Work in Rights-of-Ways, however, the person obtaining such consent shall in all other respects be subject to and comply with this Bylaw:
 - (a) Development agreements for residential developments or subdivisions entered into by the County unless otherwise provided for in other agreements specifically providing for the installation of the equipment by the developer;
 - (b) Any access agreement already approved by the County prior to the date of final passage of this Bylaw.
- (2) Work within the Rights-of-Way, which in the sole and unfettered determination of the General Manager, does not adversely interfere with the Municipality's management of the Rights-of-Way and the public's safe use and enjoyment of the Rights-of-Way shall not require the consent of the Municipality for the purposes of performing such Work in the Rights-of-Way; however, the Person responsible for such Work shall, in all other aspects, be subject to and comply with this Bylaw.

5. APPLICATION FOR A PERMIT

(1) Every application shall provide all of the information required for a Permit to the General Manager and pay the applicable Rights-of-Way Fees at the time that the application for the Permit is made. An application for a Permit that does not meet these requirements shall be deemed to be incomplete.

(2) Subject to subsection (3), upon receipt of a complete application for a Permit, the General Manager shall issue the required Permit subject to the Applicant complying with such terms and conditions as the General Manager deems appropriate. The terms and conditions contained in Schedule "A" are deemed to be included in every Permit for Work in Rights-of-Way, unless otherwise specifically excluded.

(3) The General Manager may reject an application for a Permit where:

- (a) the application for the Permit is incomplete,
- (b) the payment of all applicable Rights-of-Way Fees has not been made,
- (c) the consent of the Municipality has not been obtained in accordance with Section 3, or
- (d) any conditions precedent to granting the Permit have not been met.

(4) The General Manager shall provide an Applicant whose application for a Permit is refused, written reasons for the refusal at the time that the Applicant is advised of the refusal.

(5) Any permit by the County will be subject to any and all standards as adopted by resolution of Council from time to time.

6. APPEALS TO COUNCIL

(1) Any Applicant whose application for a Permit has been refused may appeal the decision of the General Manager to Council by filing with the General Manager, within thirty (30) days of the General Manager's decision, a notice of appeal containing the Applicant's contact information, grounds of appeal and any related submissions.

(2) Within thirty (30) days of the filing of an appeal notice as set out in Subsection (1), the General Manager shall prepare and deliver a report to Council that shall include:

- (a) the Permit application,
- (b) the General Manager's decision and reasons for any refusal to issue the Permit, and
- (c) the notice of appeal.

(3) Following receipt of the report prepared by the General Manager, Council shall, at such time and place as it determines, review the report described in Subsection (2) and shall:

- (a) confirm the original decision made by the General Manager; or
- (b) refer the matter back to the General Manager and direct the General Manager to reconsider the matter having regard to such considerations or directions as Council may provide; or

- (c) direct the General Manager to issue a Permit on such terms and conditions as Council may determine.

7. COMPLIANCE WITH MUNICIPAL CONSENT AND PERMITS

- (1) Every person who obtains the consent of the Municipality to do Work in Rights-of-Way shall comply with the terms and conditions of that consent.
- (2) Every person who obtains a Permit shall comply with the terms and conditions of that Permit, including, without limitation, terms and conditions restricting Work in the Rights-of-Way to the Alignments or other portion of the Rights-of-Way for which authorization is granted in the Permit.

8. EMERGENCY WORK

A person whose equipment is situated in rights-of-way may arrange to have such Emergency Work done as is strictly necessary to end a situation in which the health, safety or the provision of essential services is endangered without the prior consent of the municipality, if it is not possible to obtain such consent prior to the commencement of the Emergency Work, provided that the person, without delay, and in any event within 24 hours of the commencement of the Emergency Work, notifies the General Manager of the occurrence of the Emergency Work and provides such additional information concerning the Emergency Work and its consequences as the General Manager requests. The person performing such Emergency Work shall in all other respects comply with all the provisions of this bylaw.

9. NOTIFICATION OF WORK ADJACENT TO RIGHTS-OF-WAY

Every person proposing to carry out Work for the installation, replacement, extension or operation of Equipment within 30 metres of the boundary of Rights-of-Way shall provide the Municipality with one (1) year prior written notice of such work or such other acceptable period of notice as agreed to, in writing, by the General Manager. In the event that the Municipality shall determine that such work will impact the planned future widening, upgrading or maintenance of the Rights-of-Way, the Work shall be carried out in such a manner satisfactory to the Municipality by the responsible person so as to not adversely impact the future widening, upgrading or maintenance of the Rights-of-Way.

10. RIGHTS-OF-WAY OCCUPANCY FEES

- (1) Every person whose Equipment is situated in Rights-of-Way is liable to pay the applicable Rights-of-Way Use and Occupancy Fees in respect of the period of time during which the Equipment is situated in the Rights-of-Way.
- (2) Payment of Rights-of-Way Use and Occupancy Fees does not constitute a condition precedent for the granting of municipal consent to Work in Rights-of-Way or for the granting of a Permit or Rights-of-Way Access Agreement.

11. PENALTIES

- (1) Every person who fails to do anything that he or she is required to do pursuant to this Bylaw or who does anything that he or she is prohibited from doing under this Bylaw is guilty of an offence and is liable upon summary conviction to fines as set out in Schedule "D".

(2) Nothing in this Bylaw shall be construed as curtailing or abridging the right of the Municipality to obtain compensation or to maintain an action for loss of or damage to property from or against the person responsible for a contravention of this Bylaw.

12. VIOLATION TICKET

A municipal Bylaw Enforcement Officer, the General Manager or his designate is hereby authorized and empowered to issue a Violation Ticket pursuant to the Part II or III of the *Provincial Offenses Procedure Act*. S.A. 1988, c.P-21.5, as amended, or repealed and replaced from time to time, to any person who the Bylaw Enforcement Officer, General Manager or his designate have reasonable grounds to believe has contravened any provision of this Bylaw.

13. SEVERABILITY

If any portion of the Bylaw is, for any reason, declared invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion. Such declaration shall not affect the validity of the remaining portions, which shall remain in full force and effect.

14. RESOLUTION OF INCONSISTENCIES

In the event of any inconsistency between any provision in this Bylaw and a provision in a Rights-of-Way Resolution or a Rights-of-Way Access Agreement, the provision in this Bylaw shall take precedence.

READ the first time this 11th day of March, 2003.

READ the second time this 11th day of March, 2003.

READ the third time and duly passed this 11th day of March, 2003.

PARKLAND COUNTY

PER: _____

MAYOR

PER: _____

MANAGER OF LEGISLATIVE AND
ADMINISTRATIVE SERVICES

RIGHT OF WAY PERMIT APPLICATION**OPERATIONS SERVICES****Permit Application**

Project File Number:	Date:
Applicant:	Contact Name:
Utility Owner:	
Address:	Phone #:

1. Location of Proposed Work:

Infrastructure Affected	Road ☐	Walk ☐	Curb & Gutter ☐
	Lane ☐	Boulevard ☐	
Other _____			

2. Installation:

Alignment/Offset _____	Length (in right of way) _____	Depth _____
No. of Cable/Conduit _____	Size _____	Joint Use? Yes ☐ With _____ No ☐
Type of Installation:	Aerial ☐	Direct Buried ☐
	Push ☐	Other _____
	Copper ☐	Fibre ☐
	Coaxial ☐	Other _____

3. Backfill Method: (if applicable)**4. Utility installation/backfill by:**Contractor ☐ Name/Phone _____**5. Surface restoration by:**Contractor ☐ Name/Phone _____**6. Anticipated construction start date:**

Duration: _____

7. 3-Year no-cut location?Yes ☐ No ☐**8. Part of County initiated project?**Yes ☐ No ☐

Program/Project: _____

9. Drawing Requirements:

Alignment ☐	Ped/Vault Locations ☐	Ped/Vault Size ☐
Cable Type ☐	No. Cable /Conduit ☐	Geo-spatial Data ☐

Comments and/or other information: _____

Parkland County Approval to Proceed: _____

Conditions: _____

Applicable Fees: ☐ \$25.00 inspection fee for a short permit/limited circulation charge (20 meters or less).
☐ \$505.00 inspection fee for a long permit full circulation charge (greater than 20 metres).

Security Required: ☐ Yes ☐ No

This permit is subject to the attached terms and conditions and any and all standards as adopted by resolution of Council from time to time.

PERMIT STANDARD TERMS AND CONDITIONS

1. These standard terms and conditions apply to all Work conducted by or on behalf of the Applicant.
2. Unless otherwise specifically provided in these standard terms and conditions, capitalized terms herein have the same meaning given to them in Bylaw No. 14-2003, "A Bylaw to Regulate the Use and Occupation of a Municipal Rights-of-Way", as amended from time-to-time.
3. All Work shall conform to all applicable federal, provincial and municipal statutes, laws and by-laws and other applicable legal requirements.
4. All Work shall be conducted and completed to the satisfaction of the General Manager.
5. All Work shall be performed in a manner that safeguards and protects all other support structures, transmission lines, equipment, facilities and improvements of any kind ("Improvements") present in the Rights-of-Way.
6. After completion of any Work or Emergency Work, the Applicant shall leave the Rights-of-Way in substantially the same condition in which it was before such Work or Emergency Work was undertaken by the Applicant, free from nuisance and to the satisfaction of the General Manager. After completion of any work, if the Applicant fails to repair and restore any Rights-of-Way to the satisfaction of the General Manager within two weeks of being notified by the Municipality, the Municipality may effect such repairs and charge all costs related thereto to the Applicant. After completion of any Emergency Work, if the Applicant fails to repair and restore any Rights-of-Way to the satisfaction of the General Manager immediately upon notification by the Municipality, the Municipality may effect such repairs and charge all costs related thereto to the Applicant.
7. If the Municipality requires that any Work be stopped, the Applicant shall cease such Work upon delivery of a written notice to the Applicant to that effect by the General Manager.
8. The Applicant shall be at all times responsible for all Work, including the cost of such Work.
9. The Applicant's Work shall not unduly interfere with the public use and enjoyment of the Rights-of-Way.
10. The Applicant shall notify the Municipality promptly of any damage caused by the Applicant in connection with its Work.
11. The Municipality has made no representations or warranties as to the state of repair of the Rights-of-Way or the suitability of the Rights-of-Way for any business, activity or purpose whatsoever and the Applicant hereby agrees to take the Rights-of-Way on an "as is" basis for the purpose of the carrying out of the Applicant's Work and the Municipality is not responsible, either directly or indirectly, for any damage to property or injury to a person, including death, arising from the escape, discharge or release of any hazardous substance from its Rights-of-Way.

12. The Applicant may be required to post security with the Municipality from time-to-time in an amount and form acceptable to the General Manager to guarantee the performance by the Applicant of its obligations in connection with Work performed under this Permit. The vehicle by which such security is granted shall, in each case, specify with precision the Work that is guaranteed by the security, and the circumstances under which the Municipality may have recourse to the security. Security posted in respect of certain Work shall be released promptly by the Municipality if and to the extent that the Work is completed to the satisfaction of the General Manager.
13. The Applicant shall conform and shall be responsible for the conformance by its officers, employees, agents, contractors and invitees to all health and safety laws including any regulations requiring installation of safety devices or appliances, and any applicable traffic laws or regulations (collectively "Safety Rules"). The Municipality may, on twenty-four (24) hours written notice to the Applicant, or sooner if in the opinion of the Municipality the likelihood of harm to persons is imminent, suspend Work performed by or on behalf of the Applicant where there appears to be a lack of compliance with the Safety Rules or because conditions of danger exist that would likely result in injury to any person. Such suspension shall continue until the lack of compliance or danger is eliminated.
14. For the purpose of this provision, "hazardous substance" means any hazardous substance and includes, but is not limited to, radiation, petroleum products and byproducts, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any law, ordinance, rule, regulation, by-law or code, whether federal, provincial or municipal. The Applicant agrees to assume all environmental liability relating to its Work in the Rights-of-Way, including but not limited to any liability for clean-up of any hazardous substance in, on, under, along, across and around the Rights-of-Way which result from:
 - a) the operations of the Applicant in, on, over, under, along, across or around the Rights-of-Way; or
 - b) any products or goods brought in, on, over, under, along, across or around the Rights-of-Way by the Applicant, or by any other person with the express or implied consent of the Applicant.
15. The Municipality shall not, in connection with the Applicant's Work, be liable for the injury or death of any officer, employee, agent, contractor, licensee or invitee of the Applicant whatsoever. Further the Municipality shall not, in connection with the Applicant's work, be liable for any damage to the equipment or other property of the Applicant, except where caused by the willful misconduct of the Municipality or its employees, in which case the Municipality's liability is limited to the cost of replacing such equipment or other property of the Applicant.
16. The Applicant hereby indemnifies the Municipality from and against all losses, liabilities, costs, damages, and expenses (including reasonable legal fees and disbursements) incurred by the Municipality in connection with the Applicant's Work as a result of any claim, action, suit or proceeding based on a claim of injury to the person or property of any third party caused by the wilful misconduct or negligence of the Applicant, its officers, employees, agents, contractors, licensees or invitees.
17. The Municipality shall not be liable in any way for indirect or consequential losses or damages, or damages for pure economic loss, howsoever caused or contributed to, in connection with the Applicant's Work.

18. The Applicant shall, at its own expense, procure and carry, or cause to be procured and carried and paid for, full workers' compensation coverage for itself and all workers, employees, and others engaged in or upon any Work.
19. The Applicant shall maintain insurance coverage, sufficient in amount and coverage to meet the requirements of the Municipality, as notified by the Commissioner from time-to-time. All such insurance policies shall provide that they cannot be cancelled, lapsed or materially changed without at least thirty (30) days notice to the Municipality by registered mail. All such insurance policies shall contain a cross-liability clause and no subrogation clause as against the Municipality and shall name the Municipality as a named insured.

Construction Requirements in Parkland County

1. Any road crossings shall be completed by directional boring or pushed at a depth of 1.5 meters below the lowest point in the road allowance. The crossing shall be installed level at this depth across the road allowance unless otherwise directed, and constructed in such a manner that the shoulders and surface of the roadway are not disturbed.
2. Any equipment is to be installed a minimum of 3 metres from culverts and signs.
3. Secondary installations of Buried Drop Orders from the pedestal to the customer's home shall be completed using the shortest route possible within the road allowance. Where no road crossing is required, and when installing a cable from a pedestal on County property to a residential or industrial building, the cable shall be taken straight back from the pedestal at a 90 degree angle to the road allowance onto private property.
4. When a pedestal is not directly in front of the property and a cable is to be installed in any adjacent portion of the road allowance, the cable must be plowed as close to the property line as possible in a straight line. If the cable cannot be plowed adjacent to the property line, the cable may be plowed at the toe of the backslope or on the back slope. The line cannot be plowed within the ditch bottom or where the water would typically flow in the ditch.
5. All paved and asphalt surfaced approaches are to be pushed. Approaches with large fills and steep sideslopes must also be pushed.
6. Approaches that are not surfaced or do not have large fills may be plowed provided the cable depth is kept consistent throughout the installation.
7. All road crossings shall be marked with acceptable signs installed at the property line boundary of the road allowance.
8. As per Section 1 of Schedule "B" of the Bylaw, an inspection fee of \$25.00 will be charged where the length of the equipment is less than twenty (20) metres and the Work requires a limited circulation or no circulation.
9. As per Section 1.2 of Schedule "B" of the Bylaw, an inspection fee of \$505.00 will be charged where the length of the Work is greater than twenty (20) metres and requires a full circulation.

If a line is installed improperly, the contractor will be required to re-install it to the County's satisfaction at no cost to the County.

If the above-mentioned requirements cannot be met, the County's Utilities Officer must be notified and an on-site meeting will be required.

RIGHTS-OF-WAY FEES**PERMITTING AND INSPECTION FEES**

1. These fees are charged to recover the costs of reviewing and circulating applications, issuing Permits and inspecting restoration of the Rights-of-Way.

- 1.1 The short permit/limited circulation charge of \$25.00 per Permit Application will apply to all applications for a Permit Application where the length of the Equipment or Work is less than twenty (20) metres and the proposed Work only requires a limited circulation or no circulation.

- 1.2 For Permit Applications where the length of the Equipment or Work is greater than twenty (20) metres require a full circulation and the long permit charge of \$505.00 per Permit Application will apply. In addition to this base fee a long permit linear charge of \$1.50 per metre of length for each Permit Application assigned which has Equipment or Work that is greater than twenty (20) metres will apply.

2. The fees outlined above in Sections 1.1 and 1.2 are 2001 rates and will be adjusted annually based on a percentage increase equal to the Consumer Price Index Variation, expressed as a percentage rate per annum, calculated and compounded annually for each and every year of the Bylaw. If the change in the Consumer Price Index is a negative sum for any given year then the change in the base rate for that year shall be zero. In addition to the annual adjustment for the Consumer Price Index Variation, the Municipality reserves the right to make further adjustments to the fees as it deems appropriate in its sole discretion.

AGREEMENT PREPARATION AND ADMINISTRATION FEES

1. These fees are charged to recover the costs associated with preparing and negotiating Rights-of-Way Access Agreements between the Municipality and all other relevant Parties as well as to cover the costs of administering these agreements.

- 1.1 Within thirty (30) days of execution of a Rights-of-Way Access Agreement, the Company covenants and agrees to pay to the County an Agreement Preparation and Administration Fee of up to \$2,000.00 to recover the approval and administration costs associated with the negotiation of the Rights-of-Way Access Agreement. The General Manager, acting reasonably, reserves the right to set this fee commensurate with time required to negotiate, prepare and administer any such Rights-of-Way Agreement.

RIGHT-OF-WAY USE AND OCCUPATION FEES**A. LOST PRODUCTIVITY COSTS**

1. The Lost Productivity Costs are charged to recover the extra costs incurred by the Municipality as a result of extra work required by the Municipality over and above the costs that would be anticipated if the Equipment did not exist in the Rights-of-Way. These costs are charged out based on actual costs incurred by the Municipality.

2. The Lost Productivity Costs are payable to the Municipality within thirty (30) days of receipt of an invoice thereof, provided that the Municipality has provided reasonable written documentation describing these costs including:

- a) the location of the Equipment;
- b) a description of the Municipality's work;
- c) an explanation of the nature of the interference caused by the Equipment; and
- d) an itemized breakdown of the Municipality's costs including labour, supplies, equipment and applicable loading factors.

B. Goods and Services Tax (GST)

1. All charges and fees applicable as per this Bylaw and pursuant to this Schedule "C" shall be payable at the rates stated plus the Goods and Services Tax (GST), if applicable.

FINES

<u>VIOLATION</u>	<u>PENALTY</u>
Each contravention of any provision of this Bylaw	\$10,000.00