

**By-Law Number XX-2024**  
Of the Corporation of the Municipality of Chatham-  
Kent

**“Excavation in Potential Gas Emission Areas By-law”**

A By-law to regulate excavations in hazardous areas within the Municipality of Chatham-  
Kent

Finally Passed the \_\_\_\_ day of \_\_\_\_\_, 2024.

Whereas Sections 8, 9 and 10 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (hereinafter referred to as the “*Municipal Act*”) permit a municipality to pass by-laws necessary or desirable for municipal purposes, including in respect of health, safety and well-being of persons, protection of persons and property, and environmental well-being of the municipality;

And Whereas repeated uncontrolled releases of underground gasses have occurred in the community of Wheatley constituting a danger to the health and safety of persons and to property;

And Whereas the Wheatley Emergency Gas Emission report by T.L. Watson & Associates and the Pathways for Analysis for the Wheatley Natural Gas Emission report by WSP Canada Inc. recommended future prohibitions on deep digging and drilling in the town of Wheatley;

And Whereas excavations are necessary for economic activity and growth of the Municipality, thus requiring a process through which excavations can occur;

And Whereas Section 425 of the *Municipal Act* authorizes a municipality to pass by-laws providing that a person who contravenes a by-law of the municipality passed under the *Municipal Act* is guilty of an offence;

And Whereas Subsection 444(1) of the *Municipal Act* authorizes a municipality, if satisfied that a contravention of a by-law of the municipality passed under the *Municipal Act* has occurred, to make an order requiring the person who has contravened the by-law or who has caused or permitted the contravention, or the owner of occupier of the land on which the contravention has occurred, to discontinue the contravening activity;

And Whereas Council for the Municipality deems it in the public interest to pass this By-law to regulate digging, drilling and excavating in the town of Wheatley;

Now Therefore the Council of The Corporation of the Municipality of Chatham-Kent enacts as follows:

1. **Definitions**

**In this By-law:**

- 1.1. “**Adverse Effect**” shall have the meaning as set out in the *Environmental Protection Act*, R.S.O. 1990, c. E. 19, as amended (hereinafter referred to as the “*EPA*”) and also includes without limitation a Gas Release;
- 1.2. “**Applicant**” means the Owner of a Property and includes a Person formally identified in writing to act on behalf of the Owner to apply for a Permit;
- 1.3. “**Application**” means a submission to request or amend a Permit under this By-law;
- 1.4. “**Conditions**” means the mandatory requirements outlined in a Permit or Order;
- 1.5. “**Conservation Authority**” shall mean the Lower Thames Valley Conservation Authority, and/or the Essex Region Conservation Authority, as having jurisdiction in the context;
- 1.6. “**Council**” means the Council of the Corporation of the Municipality of Chatham-Kent;
- 1.7. “**Deep Excavation**” means any Excavation which exceeds a depth of six (6) metres, measured from the existing grade;
- 1.8. “**Chief Building Official**” or “**CBO**” shall mean the Chief Building Official for the Municipality of Chatham-Kent, or his or her designate, or such other person so designated by Council;
- 1.9. “**Excavation**” means any activity which involves digging, drilling, boring, trenching, grading, excavating, moving or breaking earth, rock or the materials in the ground;
- 1.10. “**Excavation Plan**” means a document prepared by or on behalf of an Owner, required as a condition of a Permit under this By-law, which accords with the requirements of this By-law and the Guidelines, and is approved by the CBO;
- 1.11. “**Excavator**” means any individual, partnership, corporation, public agency or other person or entity who engages in an Excavation, has charge, management, or control of an Excavation, or is an Owner of land upon which an Excavation occurs;
- 1.12. “**Gas Release**” means any underground gas which is combustible, toxic, asphyxiant, or otherwise hazardous, released without lawful authorization, unintentionally, inadvertently, or as a by-product of another activity;

- 1.13. “**Guidelines**” means the Application requirements, information, supporting documentation and material, and Conditions as determined by the CBO from time to time, to be used for the purpose of applying this By-law and to consider any Application for Permit and administration of this By-law;
- 1.14. “**Municipality of Chatham-Kent**” shall mean the geographic region of the Municipality of Chatham-Kent;
- 1.15. “**Officer**” shall mean a police Officer, municipal by-law enforcement Officer appointed by Council, or other person appointed by Council for the purpose of enforcement of the by-laws of the Municipality;
- 1.16. “**Order**” shall mean a requirement for specified action issued by an Officer or the CBO pursuant to this By-law;
- 1.17. “**Owner**” shall mean the registered owner of land, as well as any person, firm or corporation managing, occupying, or controlling such lands;
- 1.18. “**Permit**” shall mean a Permit issued pursuant to this By-law;
- 1.19. “**Property**” shall mean land and shall include a parcel of land, or if approved by the Director, a combination of two or more parcels of Property that are adjacent to one another;
- 1.20. “**Regulated Zone**” means the urban boundary of the Community of Wheatley as defined in the Chatham-Kent Official Plan;
- 1.21. “**Site**” shall mean a lot or lots of a Property where a Deep Excavation has or is occurring or is proposed to occur;
- 1.22. “**Well**” means a well as defined in *Ontario Water Resources Act*, R.S.O. 1990, c. O.40, and/or a well as defined under the *Oil, Gas and Salt Resources Act*, R.S.O. 1990, c. P.12.

## 2. **Application and Administration**

- 2.1. This By-law applies to the Regulated Zone.
- 2.2. This By-law shall be administered by staff of the Municipality under the direction of the CBO, or his or her designate, or such other person designated by Council of the Municipality. The CBO is authorized and has the delegated authority to:
  - a) Approve, refuse, exempt, waive, issue, revoke, extend, renew, amend, or close a Permit and/or impose Conditions on any Permit, in addition to the requirements under this By-law, as he or she may deem advisable;
  - b) Approve amendments to Excavation Plans;
  - c) Review Applications and assess compliance with the requirements of this By-

law, the Guidelines, including requiring testing and documentation;

- d) Authorize any person to carry out any powers or duties of the CBO and/or any Municipal Law Enforcement Officer pursuant to this By-law; and
- e) Authorize and/or hire such agents, third party consultants, scientific and technical experts, contractors or other persons to perform duties and work as required by this By-law.

### 3. **General Prohibitions**

- 3.1. No Excavator shall conduct a Deep Excavation in an area designated as a Regulated Zone except in accordance with this By-law.
- 3.2. Where a Permit has been issued under this By-law, the Permit holder shall comply in all respects with the requirements of the Permit and Conditions therein.
- 3.3. Compliance with this By-law does not relieve an Excavator from responsibility to obtain all other approvals as required by any other by-law, legislation, level of government or authority.
- 3.4. No Excavator shall perform, cause, or permit a Deep Excavation that may result in an Adverse Effect.
- 3.5. No Excavator shall continue an Excavation, including a Deep Excavation, upon the occurrence of an Adverse Effect, but shall immediately cease any such Excavation and notify the CBO and any other applicable public agency when the Excavator knows or reasonably ought to know that an Adverse Effect has occurred.
- 3.6. No Excavator shall conduct a Deep Excavation except in compliance with the requirements of *Ontario Underground Infrastructure Notification System Act, 2012, S.O. 2012, c. 4*, as amended, and all regulations thereunder.
- 3.7. No Excavator shall drill a Well except in compliance with the requirements of *Ontario Water Resources Act, R.S.O. 1990, c. O.40*, as amended, and all regulations thereunder, and all other applicable laws and bylaws.
- 3.8. No Excavator shall fail to obey an Order issued under this By-law.
- 3.9. No Excavator shall hinder or obstruct, or attempt to hinder or obstruct, any Person who is exercising a power or performing a duty under this By-law.

### 4. **Exemptions**

- 4.1. A Municipally-issued Permit is not required under this By-law for the following activities:
  - a) Activities or matters undertaken by the Municipality or a Local Board of the Municipality, a Conservation Authority, provided however that those organizations are required to consult with the Municipality before undertaking any Deep Excavations;

- b) Activities of the Provincial government, or Federal government;
- c) A Deep Excavation lawfully undertaken by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
- d) A Deep Excavation lawfully undertaken for the purpose of, in accordance with, and on land described in, a licence or a permit issued under the *Aggregate Resources Act*, R.S.O. 1990, c. A.8;
- e) A Deep Excavation lawfully undertaken for the purpose of, in accordance with, and on land described in, a licence or a permit issued under the *Oil, Gas and Salt Resources Act*, R.S.O. 1990, c. P.12; and,
- f) A Deep Excavation lawfully undertaken for the purpose of drilling a Well in a Regulated Area, provided such Deep Excavation and Well is in compliance with the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40, any other applicable law, and located at least seventy five (75) metres from any building or structure.

4.2. Notwithstanding section 4.1, an Excavator who conducts a Deep Excavation for which a Permit is not required shall:

- a) Notify the CBO in writing no later than thirty (30) days prior to commencing work in respect of the Deep Excavation. Such notice shall be in a form prescribed by the CBO and shall include the following information:
  - i. Purpose of the Deep Excavation;
  - ii. Location of the Deep Excavation, including mapping;
  - iii. Proposed depth of the Deep Excavation;
  - iv. Excavation methods to be utilized; and,
  - v. Copies of any permits, licences, or approvals authorizing the Deep Excavation for the purposes listed in section 4.1.
- b) If required by the CBO, the Excavator shall implement a gas monitoring system approved by the CBO.

## 5. **Permit**

5.1. **Activities Covered:** A Municipally-issued Permit under this By-law is required prior to the commencement of a Deep Excavation in a Regulated Zone, unless exempted above.

5.2. **Permit Application.** Any Person applying for a Permit shall complete an Application in the form established by the CBO and submit the Application along with the required fee and documentation outlined in Section 5.3 and user fee by-law, as amended from time to time.

5.3. **Completed Application.** The Application will not be reviewed, or considered complete, until the requirements outlined below have been met. No permit will be issued until the

CBO is satisfied that the completed Application has been submitted, including:

- 5.3.1. A complete Application form;
- 5.3.2. The prescribed fee for a permit;
- 5.3.3. An Excavation Plan, the requirements of which are set out in Section 5.4 of this By-law;
- 5.3.4. A plan showing the location, depth, and diameter of the proposed Deep Excavation;
- 5.3.5. A security in a form and amount to be determined in accordance with Section 5.5;
- 5.3.6. A certificate of commercial general liability insurance in the owner's name, in the amount of \$5,000,000, naming the Corporation of the Municipality of Chatham-Kent as an additional insured party for the duration in which the Permit is valid and for a year following completion of the work under the Permit;
- 5.3.7. Any required Permit or approval by any external agency (i.e. Conservation Authority, Ministry of Transportation, Ministry of Natural Resources, etc.) or as required by applicable law;
- 5.3.8. Any other information deemed necessary by the CBO to properly and fully evaluate the proposed site alteration activities.

5.4. **Excavation Plan.** The Excavation Plan shall be prepared at the sole cost and expense of the Applicant or Owner and shall be signed and stamped by a certified Professional Engineer (P.Eng) who is qualified in geotechnical engineering. The Excavation Plan shall clearly describe and illustrate all proposed Deep Excavation, and shall include the following details:

- 5.4.1. A key map and scale drawing showing the location of the Site;
- 5.4.2. The Site boundaries of the Site (in hectares);
- 5.4.3. The current use of the Site and the location of and use of any buildings and other structures adjacent to the Site;
- 5.4.4. The location, dimensions and use of any existing structures and/or buildings on the Site;
- 5.4.5. The location of lakes, streams, wetlands, channels, drainage courses, and other bodies of water on the Site and within 30 meters beyond the Site boundary;
- 5.4.6. A description and location of the predominant soil type(s);
- 5.4.7. The location and dimensions of utilities, structures, roads, driveways, right-of-ways, and paving;
- 5.4.8. The location, dimensions design details and specifications of all work which is the subject of the Application for a Permit;
- 5.4.9. A schedule of the anticipated starting and completion dates and proposed phasing of all proposed work which is the subject of the Application for a Permit, including the installation of Site control measures needed to meet the requirements of this By-law;
- 5.4.10. A list of the type of equipment and machinery that will be used during the process including the expected days and times of operation;
- 5.4.11. A plan for remediation of the Site in the event that a Permit is abandoned, expires or is revoked;
- 5.4.12. Proposed Site access location(s);
- 5.4.13. Gas Release monitoring plans at the Site;
- 5.4.14. Safety plan to be implemented in the event of a detected Gas Release;
- 5.4.15. Contact information for a 24/7 person to contact in the event of a Gas Release;

5.5. **Security.** As part of the Application for a Deep Excavation Permit, the Applicant shall

provide the Municipality with a refundable security in the form of an Irrevocable Letter of Credit in effect for the full duration of the Permit with an automatic renewal to secure performance of the work for which the Permit was obtained, and available to recover the cost of the Municipality performing any required works which the Permit holder has failed to perform or rectify to the satisfaction of the CBO;

- 5.6. **Referral to Council meeting.** The CBO may elect, in its sole direction, to refer a proposed Application to a meeting of Council for decision.
- 5.7. **Permit Conditions.** The CBO may elect, in its sole discretion to impose condition the CBO based on the Excavation Plan, or that the CBO deems necessary to ensure the protection of the environment, people, and property throughout the Excavation.
- 5.8. **Abandonment.** In the event an Application for a Permit has been received by the Municipality but remains incomplete for a period of twelve (12) months or more and the Municipality has advised the Applicant of the incomplete status of the Application, the Application may be deemed abandoned by the CBO and the associated file may be closed.
- 5.9. **Amendment.** An Applicant or Owner may submit a written request to the CBO seeking an amendment to a Permit. The CBO shall consider such requests in accordance with this By-law, the Guidelines, and Conditions in the Permit.
- 5.10. **Transfer.** Permits are non-transferrable unless otherwise agreed to by the Municipality in the advance of such transfer, in writing.
- 5.11. **Expiry and Renewal.** All Permits will be issued for a one (1) year period and shall expire at the end of that period, unless otherwise specified as a Condition of the Permit. An Application may submit a request to the CBO for a renewal of the Permit for a subsequent one-year term if the only change from the initial Application and Conditions is an extension of the Permit and expiry date. No reimbursement of any applicable fees shall be provided.
- 5.12. **Permit Closed.** A Permit shall be deemed closed when all Conditions in the Permit have been met as determined through an letter of certification prepared, signed and stamped by a Professional Engineer (P.Eng) and completed to the satisfaction of the CBO at the sole cost of the Applicant or Owner. Any discrepancies or deficiencies that might exist between the approved Permit, Excavation Plan, the rehabilitation plan and the letter of certification be addressed and corrected by the Applicant to the satisfaction of the CBO prior to the closing of a permit. Any deficiencies left unaddressed by the applicant will be corrected by the Municipality at the applicant's expense, the cost of which will be recovered through the Security or otherwise at law. The CBO shall communicate all decisions in this regard in writing to the Applicant.
- 5.13. **Revocation.** A Permit may be revoked by the CBO at any time and without prior notice for any of the following reasons:
  - a) The Permit was obtained on mistaken, false, fraudulent or inaccurate information;
  - b) The Permit was issued in error;
  - c) The Permit holder requests in writing that the Permit be revoked;
  - d) The Permit holder has failed to comply with the Permit or any provision of this By-law;

- e) The occurrence of an Adverse Effect, including the detection of a Gas Release; or
- f) Any circumstances which may, in the Director's sole opinion, pose a risk to health and safety or property damage.

5.14. **Event of Revocation.** In the event of Revocation of a Permit by the Director, a Person shall immediately cease all Excavating and follow all directions of the Director, including without limitation:

- a) Backfilling or capping the Deep Excavation in such manner as directed;
- b) Leaving the Deep Excavation exposed until further directed;
- c) Permitting an inspection or monitoring of the Deep Excavation;
- d) Ensuring all persons keep a specified distance away from the Deep Excavation;
- e) Notifying any agency, authority, or other entity; and,
- f) Undertaking such work as may be directed, including retaining such qualified contractors, engineers, consultants, or other professionals to perform such work, as directed.

In addition, Revocation of a Permit by the CBO shall not entitle a Person to a return of any fees paid under this By-Law or user fee by-law.

5.15 **Adverse Effect and/or Gas Release.** In the event that the Excavator knows or reasonably ought to know that an Adverse Effect and/or Gas Release has occurred or is occurring, the Excavator shall immediately:

- a) cease work in respect of the Deep Excavation;
- b) notify the Chatham-Kent Fire & Rescue Department;
- c) notify the P.Eng who prepared the Excavation Plan; and
- d) notify the CBO, and comply with all directions and guidelines of the CBO;

## 6. **Enforcement**

6.1. This by-law may be enforced by Officers and/or the CBO.

6.2. Where the CBO and/or an Officer is satisfied that an Excavator has contravened any aspect of this By-law or a Permit issued pursuant hereto, the CBO and/or Officer may issue an Order to the Permit Holder:

- a) Requiring that the contravention be corrected at the Excavator's expense, including that remedial measures be undertaken and damage be remedied, within a specified time period;
- b) Requiring the immediate cessation of the contravening activity or activities within a specified time period, at the Excavator's expense; and/or
- c) Requiring that immediate steps be taken to mitigate any Adverse Effects or other damaging or deleterious effects of the contravening activity at the Excavator's expense, within a specified time period.

6.3. An Order given under section 6.2 may be served by personal service, regular mail or registered mail to the last known address of the Excavator. An Order shall be deemed served immediately when personally served, three days after mailing when sent by registered mail, and five days after mailing when sent by regular mail. In any emergency



situation or in the event that the CBO does not reasonably believe that the Order will come to the attention of the Excavator, service may be effected by posting the Order at the Site.

- 6.4. Where an Order given under section 6.2 is not acted upon within the specified time period, and in addition to all other remedies available to the Municipality, the CBO may arrange for remedial measures to be carried out at the Excavator's expense, and in doing so, may enter upon any lands (except a dwelling house). The CBO may charge associated costs for all such remedial measures incurred by the Municipality to the Excavator. The Municipality may recover such amounts by security, action or by addition to the Owner tax roll and collecting in a like manner as taxes. The exercise of any one remedy shall not preclude the exercise of any other available remedy.
- 6.5. Where the CBO determines that an emergency situation exists, the CBO may take any actions to remedy the emergency situation as is reasonably required, without the requirement to provide notice the Excavator, to any Owner or other person.
- 6.6. Any Excavator who contravenes a provision of this By-law, a Condition of a Permit, or fails to comply with an Order issued pursuant to this By-law, is guilty of an Offence and upon conviction is liable to penalty as provided by the *Provincial Offences Act*. The court, in which a conviction has been entered, or any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted and such order shall be in addition to any other shall be in addition to any other penalty imposed or the person convicted.

7. **Severability**

- 7.1. If a court of competent jurisdiction declares any section, or any part of any Section, of this By-law to be invalid, or to be of no force or effect, it is the intention of the Municipality that every other provision of this By-law be applied and enforced in accordance with its terms to the extent possible according to law.

8. **Effective Date**

- 8.1. This By-law comes into force and effect upon its passage.

READ A FIRST, SECOND AND THIRD TIME this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

Original Signed by:

\_\_\_\_\_  
Mayor – Darrin Canniff

\_\_\_\_\_  
Clerk – Judy Smith