

The Corporation of the City of Port Colborne

By-law No. 6665/29/19

Being a By-law to Adopt a Policy for Encroachments on Municipal Property

Whereas Section 8(1) of the *Municipal Act, 2001*, as amended, (the "Act") provides that the powers of a municipality shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues; and

Whereas Section 9 of the Act provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority; and

Whereas Item 1, Table to Section 11 of the Act provides a lower tier municipality and an upper tier municipality may pass by-laws respecting matters within the sphere of jurisdiction for highways; and

Whereas a municipality has the authority within its general highway powers to permit buildings and other structures to wholly or partly occupy or encroach on highways, permit the use of highways for general purposes, and pass such additional measures relating to the highways as Council deems necessary; and

Whereas Section 23.1 of the Act authorizes a municipality to delegate certain powers and duties under the Act; and

Whereas Section 391 of the Act authorizes the Council of a local municipality to pass by-laws imposing fees or charges on persons for services or activities provided or done by or on behalf of the municipality, and for the use of its property including property under its control; and

Whereas Section 446 of the Act provides, inter alia, that where a municipality has authority by a by-law to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense; and

Whereas the municipality has encountered encroachments on municipal property, including road allowances; and

Whereas the Council of the City of Port Colborne has deemed it desirable to adopt a policy relating to encroachments on municipal property;

Now therefore the Council of the Corporation of the City of Port Colborne hereby enacts as follows:

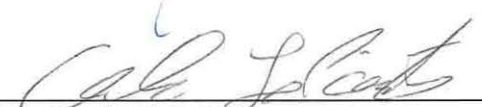
1. In this by-law:
 - (a) "City" means The Corporation of the City of Port Colborne;
 - (b) "Council" means Council of The Corporation of the City of Port Colborne;
 - (c) "Director" means the Director of Planning and Development of the City or his or her designate;
 - (d) "Encroachment" means any fence, tree, shrub, hedge, landscape berm, vegetative planting, building, structure or other object placed on municipal property;
 - (e) "Municipal Consent" means approval to encroach on a municipal property;

- (f) "Municipal Property" shall mean any lands owned or leased by the City, including any municipal road allowance.
2. Council hereby authorizes, approves and adopts the Policy for Encroachments on Municipal Property (the "Policy") attached hereto and marked as Schedule A and forming part of this By-law.
 3. Council hereby authorizes, approves and adopts the administration fees in respect of Encroachments as set out in Appendix "1" to Schedule "A", annexed hereto and forming part of this By-law.
 4. Council hereby delegates to the Director the authority to authorize Encroachments on Municipal Property in accordance with the Policy.
 5. The administration and enforcement of this By-law and the Policy shall be performed by the Director or his or her designate.
 6.
 - (a) No person shall place an Encroachment on Municipal Property, unless Municipal Consent has been granted in accordance with the Policy.
 - (b) No person shall place an Encroachment on Municipal Property contrary to the terms and conditions of a Municipal Consent.
 7. Where a person has placed an Encroachment on Municipal Property without Municipal Consent or in contravention of the terms and conditions of a Municipal Consent, the Director may make an order directing the person to do any or all of the following:
 - (a) remove the Encroachment;
 - (b) comply with the terms and conditions of the Municipal Consent; or
 - (c) undertake work to correct the contravention of the Policy or to repair or restore Municipal Property as a result of the Encroachment,all within the time specified in the Director's order.
 8.
 - (a) Where a person fails to comply with the requirements of a Director's order, the City, in addition to any other remedies it may have, may take all necessary steps to bring the lands into compliance with this by-law and/or the Policy and may enter upon land, at any reasonable time for that purpose.
 - (b) Any costs incurred by the City in action taken under Section 6(a) may be added to the municipal tax roll of the Owner and collected in the same manner and with the same priorities as municipal taxes.
 9. The short title of this By-law will be the "Municipal Encroachment By-law/Policy".

Enacted and passed this 8th day of April, 2019.



William C. Steele
Mayor



Amber LaPointe
City Clerk

CITY OF PORT COLBORNE
POLICY FOR ENCROACHMENTS
ON MUNICIPAL PROPERTY

1. BACKGROUND

An encroachment occurs when things are placed on, in, or under Municipal Property. Encroachments may be deliberate or inadvertent, and may be man-made or natural including but not limited to:

- a) “structural encroachments” such as fences, gates, decks, buildings, pools, wells, septic systems, docks, retaining walls, parking lots, awnings, ramps or other appurtenances;
- b) “non-structural encroachments” such as pool drainage, waste, signs, benches, tables, chairs; or
- c) “vegetative encroachments” such as plantings, flowers, vegetable gardens, decorative landscaping, shrubs, trees, bushes.

Encroachments are of concern because they:

- a) may restrict or limit the use and enjoyment of Municipal Property which is for the benefit of all property owners, residents, tourists and visitors;
- b) may pose a safety hazard to the public and give rise to potential damage claims from resultant injuries;
- c) may damage the natural environment and undermine the City’s stewardship role in protecting natural features;
- d) may destabilize public lands with resultant damage to adjacent private lands;
- e) may result in ratepayers absorbing costs to restore degraded Municipal Property;
- f) may interfere with existing or future municipal infrastructure (ie. drainage, highway improvements, water and/or sewer lines); and
- g) may interfere with other services such as gas, telephone, electrical distributors, cable television or electronic data transfer having been subject to proper location on Municipal Property through easement or other agreement.

It is the policy of the City that there shall be no unauthorized encroachments onto Municipal Property.

Property owners shall be required to seek permission from the City in order to encroach on Municipal Property.

An Encroachment Agreement shall be required for all approved encroachments and may, at the discretion and request of the City, be registered against the property that has been benefited by the agreement.

The purpose of this Policy is to:

- i) implement an administrative process to provide a consistent application for approval of encroachments on Municipal Property;
- ii) provide for administration and annual fees for encroachments; and
- iii) provide a mechanism for the identification of, phasing out and removal of encroachments where there is no municipal consent and the encroachment is considered not to be in the public interest according to this Policy.

2. DEFINITIONS

In this by-law:

- (a) “**Applicant**” means a person seeking authorization for an encroachment onto a municipal property, including a road allowance;
- (b) “**By-law**” means the Municipal Encroachment By-law of Council authorizing this Policy;
- (c) “**City**” means The Corporation of the City of Port Colborne;
- (d) “**Clerk**” means the Clerk of the City or his or her designate;
- (e) “**Council**” means the Council of The Corporation of the City of Port Colborne;
- (f) “**Director**” means the Director of Planning and Development of City or his or her designate;
- (g) “**Encroachment Agreement**” means an agreement entered into between the City and an owner in respect of an encroachment;

- (h) **“Existing Residential Encroachment”** means a residential encroachment that existed prior to the enactment of the Municipal Encroachment By-law and this Policy;
- (i) **“Municipal Consent”** shall mean approval to encroach on Municipal Property.
- (j) **“Municipal Property”** shall mean any land owned by or leased by the City including any municipal road allowance;
- (k) **“Municipal Road Allowance”** shall mean:
 - i. all highways that existed on December 31, 2002,
 - ii. all highways established by by-law on or after January 1, 2003,
 - iii. all highways transferred to the municipality under the *Public Transportation and Highway Improvement Act*,
 - iv. all road *allowances* made by the Crown surveyors located in the municipality,
 - v. all road allowances, highways, streets and lanes shown on a registered plan of subdivision,

that have not been permanently closed by by-law pursuant to the *Municipal Act, 2001* as amended from time to time, or its predecessor legislation.
- (l) **“Non-Residential Encroachments”** shall mean encroachments on Municipal Property other than Residential Encroachments;
- (m) **“Owner”** shall mean the registered owner of land abutting Municipal Property;
- (n) **“Residential Encroachment”** shall mean an encroachment on Municipal Property appurtenant to a residential use;
- (o) **“Temporary Encroachment”** shall mean a non-structural encroachment on Municipal Property for a temporary period.

3. **RESIDENTIAL ENCROACHMENTS**

- 3.1 Typical Residential Encroachments are structural, non-structural and/or vegetative, appurtenant to a residential use and often inadvertently erected/constructed without the benefit of a survey. These encroachments usually come to the attention of the City through surveys obtained by

proposed purchasers in real estate transactions, or minor variance and consent applications to the Committee of Adjustment.

- 3.2 It is the policy of the City that Residential Encroachments be prohibited. No Municipal Consent will be provided for new Residential Encroachments.
- 3.3 Where an Existing Residential Encroachment is brought to the attention of the Director, the Director shall cause a review of the Existing Residential Encroachment to be undertaken and a decision will be made as to whether or not the Existing Residential Encroachment will be permitted to remain in place. The decision of the Director is final.
- 3.4 Every Owner shall comply with the decision of the Director in respect of an Existing Residential Encroachment.
- 3.5 Where an Existing Residential Encroachment is permitted to remain on Municipal Property, the Owner shall be subject to the Municipal Consent process set out in this Policy, including the requirement for an Encroachment Agreement.

4. NON-RESIDENTIAL ENCROACHMENTS

- 4.1 Typical Non-Residential Encroachments are structural or non-structural and include parking lots, buildings, roof projections, awnings, signs, sidewalk patios and steps appurtenant to a commercial use and often inadvertently placed without the benefit of a survey.
- 4.2 It is recognized that Non-Residential Encroachments benefit a commercial corporate enterprise. Accordingly, the annual fee for an Encroachment Agreement shall reflect a lease/rental arrangement based upon the area of the encroachment multiplied by the annual taxes for the Owner's property (per square foot cost).
- 4.3 Every Owner wishing to place a Non-Residential Encroachment on Municipal Property shall apply for Municipal Consent in accordance with this Policy.

5. TEMPORARY ENCROACHMENTS

- 5.1 Typical Temporary Encroachments are non-structural encroachments placed on Municipal Property for a temporary period of time and include a dumpster, a sign, debris.

- 5.2 Every Owner wishing to place a Temporary Encroachment on Municipal Property shall apply for approval through the Department of Engineering and Operations. For greater certainty, this Policy does not apply to Temporary Encroachments. Rather, Temporary Encroachments are administered on an informal basis through the Department of Engineering and Operations and approval must be sought from that Department.

6. APPLICATION TO PERMIT ENCROACHMENTS

Every person wishing Municipal Consent to encroach on Municipal Property as required by this Policy shall submit an Application, in the form provided by the City, along with the required fee, to the Director.

Where the Applicant is not the registered owner of the property, the Applicant shall provide written authorization from the Owner to make the Application.

- 6.1 The Director shall consider the general guidelines for considering encroachments in determining whether or not to provide Municipal Consent.
- 6.2 The Director shall, in accordance with the provisions of this Policy, grant or refuse the Application.
- 6.3 Where an Application is refused, the Director may demand removal of an existing Encroachment.
- 6.3 The decision of the Director is final.

7. GENERAL GUIDELINES FOR CONSIDERING ENCROACHMENTS

The intent of this Policy is to ensure that each Application for Municipal Consent considers the unique circumstances of every Application with regard to the guidelines set out below.

The following general guidelines shall be applied by the Director when determining whether or not to provide Municipal Consent.

- 7.1 Is that part of the Municipal Property to be encroached upon required for municipal purposes.

7.2 Is/was/did the proposed encroachment:

- i) placed inadvertently;
- ii) exist for a long period of time;
- iii) maintained in good repair, used or abandoned;
- iv) pose a safety hazard to the public;
- v) destabilize public lands with possible resultant damage to adjacent private lands;
- vi) damage the natural environment and undermines the City's stewardship role in protecting natural features;
- vii) a natural feature which should be preserved or protected – ie. mature trees and sensitive flora or fauna;
- viii) conflict with the City's Official Plan Policies or other applicable by-laws;
- ix) interfere with any existing, planned, proposed or possible future municipal improvements;
- x) compromise drainage or interferes with existing or proposed drainage works;
- xi) minor in nature;
- xii) take into consideration the surrounding neighbourhood;
- xiii) compromise other legally authorized encroachments.

7.3 In the case of a structure, determine also whether the encroachment:

- i) is constructed on a permanent foundation;
- ii) is being maintained in good condition.

7.4 The requirement to obtain Municipal Consent does not apply to the following:

- (i) mailboxes and newspaper boxes placed to facilitate mail and newspaper delivery, provided that their location meets the approval of the Director of Engineering and Operations; and
- (ii) mature trees which do not hinder or discourage public access to Municipal Property, subject to all other applicable laws and the right of the City to remove such mature trees for reasons of public safety, security or municipal works;
- (iii) Notwithstanding Subsection 7.4 (ii) above, Council may, in its sole discretion, require the removal of such mature trees for reasons of public safety, security of City property or to facilitate the completion of present or future municipal works or improvements on or to a Municipal Property.

8. ENCROACHMENT AGREEMENT

- 8.1 Unless the requirement is waived by the Director, a Municipal Consent shall be recognized in an Encroachment Agreement. An Encroachment Agreement shall clearly establish the terms and conditions specific to the Municipal Consent being granted, including but not limited to a provision that the Municipal Consent is granted in accordance with the time frame set out in the Encroachment Agreement, or until such time as the City requires the encroachment to be removed, in its sole discretion.
- 8.2 The Owner will be required to indemnify and save harmless the City against any and all damages which result from the encroachment.
- 8.3 Where required by the Director, the Owner will deposit with the Clerk an Ontario Lands Survey that clearly identifies the extent of the encroachment, and serves to assist in eliminating subsequent enlargements of the encroachment without permission.
- 8.4 An Encroachment Agreement shall, at the discretion of the Clerk, be registered on title.
- 8.5 Where Municipal Consent is granted, no Non-Residential Encroachment shall take place until the Encroachment Agreement has been executed.

9. ADMINISTRATION FEES, ANNUAL FEES AND ASSOCIATED COSTS

- 9.1 Administration fees are based on cost recovery and account for administrative time spent reviewing surveys, visiting sites, formulating recommendations, preparing the Encroachment Agreement, facilitating and registering the Agreement. Applying fees eliminates the benefit to the Owner at the expense of taxpayers generally.

Annual fees are charged for the use of municipal land in a similar manner as a lease/rental arrangement.

- 9.2 Administration fees and annual fees for a Non-Residential Encroachment is set out in Appendix "2" annexed hereto.
- 9.3 In addition to the administration and annual fees set out in Appendix "2", where Municipal Consent is given and an Encroachment Agreement

entered into, an Owner shall be responsible for all other associated costs, including but not limited to:

- i) The cost of a Survey prepared and deposited on title by an Ontario Land Surveyor;
 - ii) All title search costs;
 - iii) All fees payable for the registration of the Encroachment Agreement on the registered title of the Owner's property and the Municipal Property
 - iv) Advertising costs;
 - v) Additional conveyance and/or legal fees and disbursements, if applicable;
 - vi) Any other fees, costs, charges which the City may incur relating to the processing of the Encroachment Agreement;
 - vii) liability insurance naming the City as additional insured with a 30 day cancellation period. (5 million dollars for residential encroachments and 5 million for non-residential encroachments).
- 9.4 The full amount of the applicable administration fee shall be payable and submitted with the Application to permit an encroachment. The administration fee is non-refundable, regardless of whether the Clerk approves the request.
- 9.5 Harmonized Sales Tax (H.S.T) shall be charged and collected, where applicable, on all applicable fees.
- 9.6 The annual fee, plus H.S.T. where applicable, shall be prorated for the year in which the Encroachment Agreement is entered into or permission to encroach is given, and such prorated amount shall be payable and collected prior to registration of the Encroachment Agreement or immediately following the granting of permission, if an Encroachment Agreement is not required.
- 9.7 The annual fee may be increased annually in accordance with the Consumer Price Index (C.P.I.) as determined by the Treasurer.
- 9.8 The annual fee and C.P.I. increase (plus H.S.T. where applicable) for each subsequent year shall be added to the municipal tax roll of the Owner and collected in the same manner and with the same priorities as municipal taxes.

APPENDIX "1" TO SCHEDULE "A" OF BY-LAW NO. 6665/29/19TABLE OF ADMINISTRATION AND ANNUAL FEES

CLASS OF ENCROACHMENT	ADMINISTRATION FEE	ANNUAL FEE	INSURANCE REQUIRED
NON-RESIDENTIAL	\$350.00	\$100.00	\$5 MILLION DOLLARS Naming the City as additional insured with a 30 day cancellation certificate