

The Corporation of the Town of Amherstburg

By-Law 2023-061

A By-law of the Corporation of the Town of Amherstburg regulating Encroachments on Public Lands.

WHEREAS the Municipal Act, 2001, S.O. 2001, c.25 (hereinafter the “Municipal Act, 2001”) provides that a municipality may pass by-laws within the following spheres of jurisdiction: Highways, including parking and traffic on highways at section 11(3) 1; Culture, parks, recreation and heritage at section 11(3) 5; and Structures, including fences and signs at section 11(3) 7 and any other provisions relating to the City owned property, whether land or buildings;

AND WHEREAS section 8(1) of the Municipal Act, 2001 provides that sections 8 and 11 shall be interpreted broadly as to confer broad authority on municipalities to (a) enable them to govern their affairs as they consider appropriate, and (b) enhance their ability to respond to municipal issues;

AND WHEREAS section 391(c) of the Municipal Act, 2001 provides that a municipality may pass by-laws imposing fees or charges on any class of persons for the use of its property, including property under its **control**;

AND WHEREAS section 446(1) of the Municipal Act, 2001 provides that a municipality, in default of a person doing things that he or she is required to do under by-law, may do such things at the person’s expense;

AND WHEREAS section 446(2) of the Municipal Act provides that for purposes of section 446(1) the municipality may enter upon land at any reasonable time; - 2 –

AND WHEREAS section 446(3) of the Municipal Act, 2001 provides that the costs incurred by a municipality in doing things under section 446(1) may be recovered by adding the costs to the tax roll and collecting them in the same manner as taxes;

AND WHEREAS it is the wish of the Council of The Corporation of the Town of Amherstburg to pass a by-law that reflects the needs of its communities by promoting through regulation the responsible use of the public boulevard, while protecting the broader public interest by ensuring the safety and accessibility of its property, including property under its control;

NOW THEREFORE the Council of The Corporation of the Town of Amherstburg ENACTS AS FOLLOWS:

Short Title

1. This by-law shall be known and may be cited as the “Town’s Encroachment By-law”

Definitions

2. In this by-law,

- (a) "Building" shall include, but not limited to, such things as porches, steps, staircases, awnings, and decks;
- (b) "Commercial patio" means any encroachment onto Town owned land that is not a permanent building or structure, but primarily consists of tables, chairs or other furniture established or used for the purpose of extending retail business operations for the serving area of a restaurant or tavern;
- (c) "By-law Enforcement Officer" means any person authorized by the Town from time to time to enforce this By-law;
- (d) "Designated Staff Person" means a person employed by the Town of Amherstburg and holding the position of Director of any Town department, the Manager of Licensing and Enforcement, the Manager of Roads/Fleet, or their designates;
- (e) "Easement" or "right-of-way" means an interest in land owned by another person, consisting of the right to use or control that land, or an area above or below it, for a specific limited purpose and expressly or by implication may preclude certain encroachments, but does not include an interest created by a license;
- (f) "Encroachment" means any type of vegetation, structure, building, man-made object or item of personal property of a person which exists wholly upon, or extends from that person's premises onto, Town-owned lands and shall include any aerial, surface, or subsurface encroachments;
- (g) "Alteration" means any activity that results in a removal, addition, alteration, or material change to the Town-owned Lands including, but not limited to, the removal, addition, or alteration of, or material change to grading, vegetation or trees, structures, or any other natural or human made features located therein or thereon;
- (h) "Encroachment agreement" means an agreement prepared by the Town for execution by the Town and a person by which such person is granted authorization to erect, place, or maintain an encroachment on Town owned Lands;
- (i) "Expenses" means any and all sums of money actually spent or required to be spent by the Town, and shall include but not be limited to all charges, costs, administrative fees, taxes, GST, outlays, legal fees, and losses;
- (j) "Highway" includes a common and public highway, street, avenue, parkway, laneway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof;
- (k) "Municipal Act" means the Municipal Act 2001 or any successor thereto;

- (l) "Owner" means the registered owner of a parcel of real property from which an encroachment emanates as such person is described in the records of the land registry office;
- (m) "Person" means an individual, partnership, association, firm, corporation, business entity, club, incorporated group or organization, federal or provincial government, crown agent, school board and regional or other municipality;
- (n) "Personal property" means any object or item of property other than real property;
- (o) "Premises" means a parcel of real property under registered ownership and includes all buildings and structures thereon;
- (p) "site improvements" shall include, but not be limited to, retaining walls, curbs, and sprinkler systems;
- (q) "Town" means The Corporation of the Town of Amherstburg;
- (r) "Town Council" means the council of the Town of Amherstburg; and
- (s) "Unauthorized encroachment" means any encroachment not authorized by this by-law, any other by-law, statute, regulation, policy, or resolution of the Town.

Encroachments and alterations prohibited

3. No person shall:

- (a) Erect, place, maintain, or carry on, or cause to be erected, placed, maintained, or carried on an encroachment of any kind on Town-owned Lands except as may be permitted under any by-law, statute, regulation, policy, resolution of the Town, or agreement, or where permitted to do so by way of a current encroachment agreement or otherwise in accordance with this Bylaw; or
- (b) Undertake or carry on any alteration of any kind on or to Town-owned Lands except as may be permitted under any by-law, statute, regulation, policy, resolution of the Town, or agreement, or otherwise in accordance with this Bylaw

Application for Encroachment

- 4. Any person who wishes to erect, install, maintain, or carry on an encroachment on, or encroach upon, Town-owned Lands shall be required to submit an application to the Town seeking permission to do so, together with a sketch from a licensed surveyor to show the encroachment, to the Town's satisfaction, and payment of the applicable non-refundable encroachment application fee as set by the Town's User Fee by-law and amended from time to time.
- 5. The form, content, and information requirements of the application and of all applicable fees, including annual fees, shall be as prescribed by the Town's User Fee By-law which is amended from

time to time. Encroachment agreements may include encroachment agreement annual fees and which will be established at the commencement of a term of an encroachment agreement in accordance with the Town's User Fee by-law and amended from time to time.

Review of Applications

6. Town departments shall review the application and may object to the erection, installation, and maintenance of an encroachment on, or encroachment onto Town-owned Lands, or require that specific conditions be imposed in an encroachment agreement, on the basis that:
 - (a) the encroachment interferes with the Town's intent and purpose in holding the Town-owned Land;
 - (b) the encroachment creates an unsafe condition;
 - (c) the encroachment creates liabilities for which the Town cannot assign full responsibility to the owner of said encroachment;
 - (d) the encroachment creates a situation that is contrary to the any Town bylaw, Town policy or resolution, or any provincial or federal regulation or legislation;
 - (e) the encroachment interferes with work, plans, efforts, or initiatives of the Town to maintain Town-owned Lands;
 - (f) the encroachment interferes with any utility or other similar installation located on Town-owned Lands; or
 - (g) the applicant is unable to reasonably demonstrate a need for the encroachment
7. When there are objections from any Town department to the erection, installation, maintenance, or carrying on of an encroachment on any basis set out in Section 6, the application shall be denied by staff and the Town shall notify the applicant in writing that the application has been denied and the reason therefor.
8. In the event that there are no objections from any Town department to the encroachment being applied for:
 - (a) the applicant shall be required to execute an encroachment agreement and to pay the applicable encroachment agreement fee and first encroachment agreement annual fee, as established by the Town from time to time, and registration costs. The form and content of encroachment agreement shall be as established by the Town and revised from time to time and may include additional conditions that are deemed to be appropriate to protect the Town's interests. In the event that the applicant is not the registered owner of the real property to which the encroachment is appurtenant, the Town requires that the registered owner of said real property also be a party to the encroachment agreement; and

(b) subject to the completion of the requirements under Subsection (a), the CAO and Clerk are hereby authorized to execute encroachment agreements on behalf of the Town subject to the prior approval. In the event that an agreement is not fully executed, all monies deposited by the applicant with the Town save and except encroachment application fees and encroachment agreement fees shall be returned to the applicant without interest.

9. An applicant who wishes to appeal an application that has been denied under Section 7 of this By-law may apply file an appeal with the CAO. The decision of the CAO is final and binding.

10. Encroachment agreements exclusively related to buildings or site improvements shall be for a perpetual term. Encroachment agreements for all other purposes shall be for a term of one (1) year. All applicants can extend their Encroachment agreement by paying the annual fee and submitting their certificate of insurance annually. All encroachments agreements shall be terminable by the Town upon ten (10) days written notice.

Registration of Agreements

11. Encroachment agreements shall be registered in the land registry office against title to the real property from which the encroachment emanates and all expenses in doing so shall be paid for in advance by the applicant to the Town. Encroachment agreements under this By-law shall not be assignable or transferable except for those relating to buildings or site improvements where the applicant demonstrates to the satisfaction of the Town's Manager of Licensing and Enforcement that the building or site improvement has been encroaching on Town owned Lands for more than ten (10) years as at the time this By-law is passed.

No Vested Rights

12. The execution of an encroachment agreement in respect of an encroachment does not create any vested right in the owner or occupant of the premises to which the encroachment is appurtenant, or in any other person, and the encroachment agreement may be terminated or suspended in accordance with the terms set out in this By-law and in the encroachment agreement.

Access to Encroachments

13. No person shall obstruct, hinder, or interfere with the free access to any encroachment on Town-owned Lands by a Designated Staff Person, a By-law Enforcement Officer, an employee, officer, or agent of the Town.

Removal and Restoration

14. Where the Town becomes aware of an unauthorized encroachment on Town owned Lands, and:
 - (a) the encroachment, in the opinion of any Designated Staff Person, poses an imminent safety hazard, the Designated Staff Person may, using Town employees or independent contractors, at his or her discretion, remove, fill in, close up, and secure the unauthorized encroachment and restore the Town-owned Lands to their former condition at the expense of the owner, such expense to be recovered in full in the manner provided in Section 18. The owner of any encroachment so removed shall be notified in writing by a Designated Staff Person of said removal and the rationale therefor and, by way of invoice, the cost in relation thereto claimed by the Town, as soon as reasonably practicable following said removal.
 - (b) the encroachment, in the opinion of a Designated Staff Person, does not pose an imminent safety hazard, a Designated Staff Person may give notice in writing to the owner to forthwith remove, fill in or close up the encroachment, and to restore the Town-owned Lands to their former condition at the expense of said owner.
 - (c) Where the notice in section 14(b) is not complied with within thirty (30) days of the date on the notice, a Designated Staff Person may and in addition to any other remedies available to the Town at law, use Town employees or independent contractors, at his or her discretion, remove, fill in, close up, and secure the unauthorized encroachment and restore the Town-owned Lands to their former condition at the expense of the owner, such expense may be recovered in full in the manner provided in Section 18 provided, however, that:
 - (d) if an application is made for an encroachment agreement within thirty (30) days of the date on the notice, a Designated Staff Person shall not proceed to take such action until the application has been fully disposed of and in accordance with Section 14(e) and Section 15; or
 - (e) if a request for appeal is made under Section 10 within thirty (30) days of the date on the notice advising that an application has been denied, a Designated Staff Person shall not proceed to take such action until the appellant has had an opportunity to be heard by CAO or withdraws his or her request for appeal and in accordance with Section 15.
15. Where an application has not been approved and has not been appealed in accordance with Section 14(e) of this By-law, or where the CAO has refused an appeal, and where written notice of such decision has been delivered to an applicant, the applicant shall within thirty (30) days of the date of such notice remove or cause to be removed such encroachment and restore the Town-owned Lands to

their former condition at no cost to the Town and cease encroaching upon the Town-owned Lands. Where the encroachment has not been removed within thirty (30) days of the notice, a Designated Staff Person may, when authorized by the CAO, using Town employees or independent contractors, at his or her discretion, remove, fill in, close up, and secure the unauthorized encroachment and restore the Town-owned Lands to their former condition at the expense of the owner and the expenses associated therewith may be recovered in full in the manner provided in Section 18.

16. Any materials or structures forming part of or attached to the encroachment and removed by or on behalf of the Town may, at the discretion of the Designated Staff Person, either be deposited at the owner's premises, with consent of the owner, or be stored for sixty (60) days at the owner's expense, such encroachment storage fee to be recovered in full in the manner provided in Section 18. Any item so stored and not claimed by the owner within the sixty (60) day period shall become the property of the Town without compensation to the prior owner and may be disposed of in a manner at the discretion of a Designated Staff Person.
17. The Town shall not be responsible for any damage to materials or structures forming part of or attached to the encroachment, arising from the removal of any encroachment by or on behalf of the Town, its employees or its agents. Without limiting the foregoing, a Designated Staff Person and any contractors hired to undertake work under this By-law together with any person under their direction may, in carrying out work authorized by this By-law take all reasonable steps required to secure any remaining portion of the materials and structure following removal of the portions thereof which encroach on Town-owned Lands.
- 18.

Recovery of Expenses

19. All expenses incurred by the Town in connection with the removal of an encroachment, restoration of Town-owned Lands, and all other expenses in carrying out the actions authorized under this By-law shall be paid by the owner and shall be due within thirty (30) days of the billing date set out on the invoice and, in the event of failure to pay the entire amount due within the said thirty (30) days, interest may be applied at the rate of 1.25% per month and:
 - (a) at the discretion of the Town and subject to applicable legislation, the outstanding balance of the invoice plus interest may thereafter be added to the tax roll of the property from which the unauthorized encroachment

- emanates for the year in which the expenses were billed and collected in the same manner as taxes; or
- (b) the Town may also recover all expenses and interest owing under this By-law by a court action as a debt due to the Town.

Infractions and Penalties

20. Every person who contravenes any of the provisions of this By-Law is guilty of an offence and on conviction is liable to a penalty as provided for in the Provincial Offences Act.
21. Where any person is directed or required by this By-Law to do any matter or thing, such matter or thing may be done in default of its being done by the person directed or required to do it, at that person's expense, and such expense may be recovered by action or as municipal taxes in the manner prescribed by the Municipal Act, 2001.
22. Nothing in this By-law shall limit any rights or remedies the Town may otherwise have available at law.

Exceptions – Post Boxes, Mail Boxes, Newspaper Boxes

23. This By-law shall not apply to post boxes and mail boxes used for or by Canada Post collection or delivery services which are located on Town-owned Lands.
24. This By-law shall not apply to newspaper, magazine, or other similar boxes located on Town-owned Lands.

General

25. A Designated Staff Person or a By-law Enforcement Officer under this By-law, accompanied by any person under his or her direction, may enter onto any land from which an encroachment emanates and into any encroaching building, structure, or parts thereof except for any room or place actually being used as a dwelling which may only be entered in accordance with Section 430 of the Municipal Act, at any reasonable time for the purposes of determining whether there is compliance with this By-law including, but not limited to, confirming and determining property limit. A Designated Staff Person or By-law Enforcement Officer acting under this Section shall produce proper identification upon request.
26. Where work is authorized to be undertaken by or on behalf of the Town pursuant to this By-law, the Town may enter upon land and into structures for that purpose at any reasonable time in accordance

with Section 427(2) of the Municipal Act. For this purpose, Designated Staff Persons, By-law Enforcement Officers and contractors hired to undertake work under this By-law accompanied by any person under their direction, may enter onto the land from which the encroachment emanates and into any encroaching building, structure, or parts thereof except for any room or place actually being used as a dwelling which may only be entered in accordance with Section 430 of the Municipal Act at any reasonable time for the purpose of undertaking work authorized under this Bylaw. A Designated Staff Person or By-law Enforcement Officer or contractor hired to undertake work under this By-law and acting under this Section shall produce proper identification upon request.

27. A Designated Staff Person may suspend or terminate an encroachment agreement on behalf of the Town for: (a) breach of any of the terms of an encroachment agreement or of this By-law or any other Town By-law; and (b) on such other terms as may be set out in an encroachment agreement. Further, a Designated Staff Person may suspend an encroachment agreement in the event that the Town is undertaking or has authorized others including any utility or other occupant of the Town-owned Lands to undertake work on the Town-owned Lands and in which case no Encroachment Reinstatement Fee shall be applicable and the owner shall remove the encroachment if so requested by the Town during the suspension. In the event of such suspension or termination, the owner shall, upon deemed delivery of notice of such suspension or termination, immediately discontinue the use of the encroachment and remove the encroachment from the Town- owned lands. If the owner of the encroachment fails to complete the removal within twenty-four (24) hours of said notice of suspension or termination, a Designated Staff Person may, using the Town's forces or independent contractors, at his or her discretion, remove, fill-in, close-up, and secure the unauthorized encroachment and restore the Town- owned lands to their former condition at the expense of the owner and the expenses therewith may be recovered in full in accordance with Section 18.
28. A suspension under Section 26 shall be in writing from a Designated Staff Person and shall be in effect for a minimum of twenty-four (24) hours from the date and time of deemed delivery of such notice. An encroachment agreement that has been suspended under Section 27, may be reinstated by payment of the applicable Reinstatement Fee as established by the Town from time to time, and the provision of evidence, when reasonably possible, to the satisfaction of a Designated Staff Person that the reason for the suspension has been remedied.
29. The Manager of Licensing and Enforcement or his or her designate is authorized to release and discharge from title registration, an encroachment agreement when so requested, subject

to the encroachment being discontinued and the requestor paying in advance any applicable fees and costs associated with the release of agreement and registration of same.

30. Notices under this By-law shall be deemed sufficient if delivered in person, by regular mail, by facsimile, or by registered mail to the address of the property from which the encroachment emanates and the last known address of the registered owner of the property from which the encroachment emanates, if different. Any such notice shall be conclusively deemed to have been given and received upon the same day if personally delivered or sent by facsimile or, if mailed, three (3) business days after the same is mailed.
31. In this By-law, unless the context otherwise requires, words imparting the singular number shall include the plural, and words imparting the masculine gender shall include the feminine, and further, the converse of the foregoing also applies where the context so requires.
32. In addition to the provisions of this By-law, the Town may at any time apply to a court of competent jurisdiction to require compliance with this By-law.
33. Notwithstanding any provision of this By-law, the application of this By-law is not intended to, nor shall it, expand the existing contractual rights of the Town in its easements, rights-of-way, or any other partial interests in real property held by the Town.

Severability

34. Where a court of competent jurisdiction declares any section or part of a section of this By-law to be invalid, or to be of no force and effect, it is the intention of the Town in enacting this By-law that the remainder of this By-law shall continue in force and be applied and enforced in accordance with its terms to the fullest extent possible according to law.
35. This By-law shall not exempt any person from the requirement to comply with any other Town By-law. In the event of conflict between the provisions of this Bylaw, of any encroachment agreement approved after the passing of this By-law, and of any other Town By-law, the more restrictive provisions shall apply.

Enactment

36. This By-law comes into force and effect on the day it is passed.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY
PASSED THIS DAY OF MAY 23, 2023.

MAYOR – Michael Prue

CLERK – Kevin Fox

Schedule “A” to Town Lands Encroachment By-law

Planting

1. No person shall cause or permit the planting of any material on any part of a Boulevard

Hard Landscaping

2. No person shall install or maintain or cause to be installed or maintained any Hard Landscaping within any Boulevard, except Hard Landscaping which is installed and maintained in accordance with the following:
 - a) The height of the Hard Landscaping shall not exceed the existing ground elevation at the location of the Hard Landscaping.
 - b) No Hard Landscaping shall be placed in a Ditch

Islands and Centre Medians

3. No person shall plant or install any material or item in an island or centre median on any Highway without the prior approval of Town Council and Town Council may require a written agreement as a condition of such approval.

4. For the purpose of this Schedule “A”, the following provisions shall apply:

Maintenance

- a) Notwithstanding any other Town By-law, except where the landscaping has been done by the Town or under an Agreement in accordance with Section 5, where any portion of a Highway is landscaped with any plant, hedge, shrub, Hard Landscaping or other material in accordance with this By-law, the registered owner of the property adjacent to the portion of the Boulevard on which such items are placed, shall at all times maintain such items in a good and tidy condition;

Removal

- b) The Town may at any time remove any plant, hedge, shrub, Hard Landscaping, tree or other material located on any part of the Boulevard or Highway, either in whole or in part, without compensation, restoration, or replacement;
- c) Any landscaping on any part of a Boulevard which is not consistent with this Schedule “A” and this By-law shall be subject to removal in accordance with the provisions of Sections 14, 15, 16, 17, and 18 of this By-law;

Exemptions

- d) This Schedule “A” shall not apply to landscaping carried out by or on behalf of the Town;
- e) Notwithstanding any provision, herein and for greater clarity, the planting, maintenance and removal of trees on a Boulevard or Highway may also be governed by any applicable Town By-law in effect from time to time.

