

Bill No. 58
2016

By-law No. S.-_____

A by-law to govern the application and approval procedure for the authorization of encroachments onto municipal streets and road allowances.

WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS subsection 8 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that the powers of a municipality under that Act shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their own affairs as they consider appropriate and enhance their ability to respond to municipal issues;

AND WHEREAS subsection 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;

AND WHEREAS the *Municipal Act, 2001*, S.O. 2001, c. 25, provides that a municipality may pass by-laws within the following spheres of jurisdiction respecting: Highways at subsection 11(3)(1) and Structures, including fences and signs at subsection 11(3)(7);

AND WHEREAS subsection 23.2(1)(c) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may delegate legislative and quasi-judicial powers under any Act only to an individual who is an officer, employee or agent of the municipality;

AND WHEREAS subsection 23.2(4) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may delegate legislative and quasi-judicial powers under any Act only to an individual who is an officer, employee or agent of the municipality if the power being delegated is of a minor nature, with Council having regard to the number of people, the size of geographic area and the time period affected by an exercise of the power;

AND WHEREAS it is deemed expedient for the Municipal Council to adopt a policy with respect to encroachments onto municipal streets and road allowances;

AND WHEREAS this policy is intended to:

- (a) provide clear guidelines for members of Civic Administration with respect to the procedure for granting and terminating encroachments onto City streets and road allowances; and
- (b) facilitate a streamlined and transparent process for property owners in the City of London; and
- (c) mitigate exposure to risk and liability for Corporation of the City of London;

NOW THEREFORE The Council of the Corporation of the City of London hereby enacts as follows:

1. The attached Encroachment Policy (Schedule 'A') to govern the application and approval procedure for the authorization of encroachments onto municipal streets and road allowances is hereby adopted.

2. The City Engineer is delegated the authority to approve or reject applications, authorize encroachments, execute Encroachment Agreements on behalf of the Municipality, and terminate existing Encroachment Agreements on streets and road allowances within the City of London.

3. This by-law comes into force and effect on the day it is passed.

PASSED in Open Council on January 12, 2016.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First reading – January 12, 2016
Second reading – January 12, 2016
Third Reading - January 12, 2016

‘Schedule A’
Encroachment Policy

POLICY STATEMENT

All existing and proposed privately owned encroachments onto streets and road allowances under the jurisdiction of the City of London shall be subject to this Street Encroachment Policy.

The City’s Encroachment Policy governs the application and approval procedure for the authorization of encroachments onto municipal streets and road allowances. If approved, the property owner and The Corporation of the City of London shall enter into an Encroachment Agreement.

The Encroachment Policy establishes the process for terminating an existing Encroachment Agreement with the City.

PURPOSE

The Encroachment Policy is designed to act as a companion document to By-law S.-3775-94 (‘Sign & Canopy By-law’), By-law S-1 (‘Streets By-law’) and By-law PS-6 (‘Fence By-law’).

The purpose of the Encroachment Policy is to formalize and clarify the procedure for granting encroachments onto City streets and road allowances. A codified policy mitigates the City’s exposure to risk and liability and protects the City’s rights and obligations with respect to the subject highway. Outlining the City’s process for granting and terminating encroachments also serves to provide standards and guidelines for members of Civic Administration and transparency and simplicity for property owners.

DEFINITIONS

“**City Engineer**” means the employee of the Corporation of the City of London holding the title of City Engineer, or his or her designate.

“**City Solicitor**” means the employee of the Corporation of the City of London holding the title of City Solicitor.

“**City Treasurer**” means the employee of the Corporation of the City of London holding the title of City Treasurer.

“**City**” means The Corporation of the City of London.

“**Council**” means the Municipal Council of the Corporation/means the Council of the City.

“**Encroachment**” means any type of vegetation, man-made feature or object or item of personal property of a person which exists wholly or partly upon, or extends from a property owner’s premises onto streets or road allowances and shall include any aerial, surface or subsurface encroachments;

“**Encroachment Agreement**” means a binding agreement between the City and the property owner, prepared by the City, granting authorization for a property owner to erect and maintain an encroachment on a City street or road allowance.

“**Property Owner**” means the registered owner of the property.

STANDARDS FOR ASSESSING ENCROACHMENTS ON STREETS AND ROAD ALLOWANCES

The general nature of encroachments to be considered under this policy are that they are of a permanent or semi-permanent nature, not easily removable and that do not involve an area enclosed for exclusive use. Temporary encroachments, fence encroachments, area occupations and encroachments involving Condominium Corporations are to be processed as applications for licence agreement by Realty Services and are not covered under this policy.

The City of London considers the following non-exhaustive list of factors when considering the appropriateness of an encroachment:

- The encroachment interferes with the City's use, enjoyment or purpose in holding the City-owned highway;
- The creation of unsafe or hazardous conditions if the encroachment is permitted;
- The encroachment provides valuable commercial benefit;
- The encroachment interferes with any current or future plans, initiatives or works of the City to the subject highway;
- The encroachment interferes with a utility or similar installation located on the subject highway;
- The encroachment diminishes the right of public usage;
- The encroachment is deemed incompatible with established neighbourhood esthetics, particularly in designated heritage districts;
- The encroachment creates liabilities for which the City cannot assign sufficient responsibility to the owner of said encroachment or threatens to nullify the City's blanket insurance coverage;
- Encroachments onto City owned lanes and walkways will generally not be approved due to the limited space available.
- Special consideration will be given to encroachments over the 40m wide road allowances on Crown Plan 30.

It should be noted that encroachments already under construction or recently constructed prior to receiving approval will not increase the likelihood of an approval being granted.

APPROVAL PROCESS

Prior to making a formal application for permission to encroach onto a street or road allowance, property owners shall contact the City Engineer who shall determine if the encroachment can be approved. The proposed encroachment will be reviewed and assessed using the standards listed in "Standards for Assessing Encroachments on Streets and Road Allowances" and any other relevant criteria that may apply. Requests for encroachment agreements are carefully scrutinized and there are many situations where the City will not approve the requested encroachment. Encroachments may be allowed in some areas but prohibited in others due to local circumstances. The refusal to approve an existing encroachment may result in the owner having to remove the encroachment from the road allowance.

The City Engineer, at his or her complete discretion, may circulate the request to other members of Civic Administration including, but not limited to, the Chief Surveyor, the City Planner and the City Solicitor, where the City Engineer deems it necessary for the purposes of consultation and approval.

There are three possible outcomes:

1. Acceptable Encroachments that comply with City standards. The property owner will be advised that the proposed encroachment complies with City standards and that a formal application for encroachment agreement will be accepted subject to any applicable conditions.

2. Unacceptable Encroachments that do not comply with City Standards. Encroachments that create an unacceptable risk or otherwise interfere with the use of the street or road allowance by either the public, the City or utility company operations, now or in the future, will not be permitted and, if existing, must be removed by the owner forthwith. Examples include sight obstructions, any obstacle that creates a trip or fall or snow plough hazard near the publically travelled portion of the street, and anything that unduly interferes with access to or has the potential to damage existing or proposed City services or utility infrastructure.

3. Minor Encroachments that do not comply with City Standards. Encroachments that do not comply with City Standards that otherwise do not create a significant

risk to the public or City or utility companies will not be considered for an encroachment agreement but may remain temporarily at the City's sole and absolute discretion, it being understood that the property owner is fully responsible for the encroachment and that neither the City nor utility companies will be responsible for damage caused thereto or for the complete loss of the encroachment no matter how caused. Examples of minor encroachments include irrigation systems, hedges, shrubbery and simple landscaping at grade.

Submitting a Formal Application

Formal applications for encroachment agreements are to be made in writing to the Clerk's Office and include the following:

- A plan drawn to scale deemed acceptable by the Chief Surveyor that adequately depicts the extent of the encroachment onto the City road allowance fully dimensioned in both plan and profile including heights and underground footings and utility locations, if applicable.
- PIN (Property Identifier Number) printout for the property which will benefit from the agreement.
- Full name, address, telephone number and email address of the owner and owner's Solicitor.
- Application fee plus any one-time amount as determined by Realty Services. (Annual charges will be added to property taxes).

Property owners may make one application per proposed encroachment. Completed applications accompanied by the application fee should be delivered to:

City Clerk's Office
City Hall, 3rd Floor
300 Dufferin Avenue
P.O. Box 5035
London, ON N6A 4L9

Approved Applications and Encroachment Agreements

The City Engineer is responsible for reviewing street encroachment applications and granting approvals. Before approving an application for an encroachment onto a street or road allowance, the City Engineer shall be satisfied that the encroachment meets City standards.

Upon approval by the City Engineer, the application will be forwarded to the City's Legal Department where the Encroachment Agreement will be drafted and sent to the applicant's lawyer for execution. Pending building permits or development approvals will not be issued until the executed agreement is returned from the applicant's lawyer complete with proof of insurance and payment for any charges owing.

The executed agreement is registered against the applicant's adjoining property after it is returned to the City. Registration fees are the responsibility of the City and are included in the application fee. Encroachment Agreements may be subject to an annual rental or one-time fee to be updated from time to time and listed in the Fees and Charges By-law.

Where the City Engineer deems it appropriate to approve an encroachment and depending upon the nature of the encroachment the agreement may contain a "removal clause" that requires the property owner remove the encroachment and restore the road allowance to its original condition upon written notice being given by the City Engineer.

DENIED APPLICATIONS

If the City Engineer denies an application, the property owner can request a report explaining the application and reasons for denial be submitted to the appropriate standing committee and ultimately City Council for review.

DELEGATED AUTHORITY FOR APPROVING ENCROACHMENTS

The City Engineer shall have delegated authority to approve or reject applications, authorize encroachments, execute on behalf of the City Encroachment Agreements and terminate existing Encroachment Agreements, whether City initiated or upon property owner request, on streets and road allowances pursuant to Section 23.2(1)(c) and Section 23.2(4) of the *Municipal Act, 2001* SO 2001, c.25.

INSURANCE AND INDEMNITY

The encroacher must be capable of holding adequate insurance in perpetuity and indemnifying the City from all claims that may result by reason of the existence of the encroachment.

The applicant shall provide proof of insurance in a form and amount satisfactory to the Manager of Risk Management in the minimum amount of \$2 million or such other higher amount as determined by the Manager of Risk Management, naming The Corporation of the City of London as an additional insured. The Certificate of Insurance shall be submitted to the City at the time the executed Encroachment Agreement is returned to the City. The Certificate of Insurance must be satisfactory in form and content to the Manager of Risk Management. The onus is on the landowner to carry the insurance in perpetuity and to provide the City with proof of insurance at each renewal of coverage.

The applicant agrees to indemnify and hold harmless The Corporation of the City of London from and against all liability in respect to all claims that may arise or be made against the City resulting from the encroachment.

All approved encroachments are considered to be placed at the property owner's own risk. The City is not responsible for repairing or replacing an encroachment or providing damages arising as a result of clearing and removing litter, graffiti, posters, snow or ice, or as a result of repairs or reconstruction.

TERMINATION OF EXISTING ENCROACHMENT AGREEMENT

To terminate an existing Encroachment Agreement with the City the property owner must have their lawyer submit the appropriate Discharge of Agreement document along with proof that the encroachment no longer exists, to the City Engineer.

Where a property owner has removed the encroachment to the satisfaction of the City Engineer, the discharge document will be executed and returned to the property owner's lawyer for registration. Proof of registration must be provided to the City to delete any ongoing charges from the property's tax register. Charges relating to the agreement will continue until the City is formally advised. Any rental fees paid will not be refunded in whole or in part as the result of the termination of the agreement.

Where an existing encroachment agreement approved by by-law has been grandparented into this policy, the City Engineer will request the Clerks Office arrange to have the necessary rescinding by-law submitted directly to Council.

FORM OF AGREEMENT

Attached as Exhibit 'A' to this policy is the Form of Agreement to be used in cases where an encroachment has been approved. Minor deviations not impacting the nature of the agreement shall be allowed at the City Engineer's discretion.

GRANDPARENTING

Any approved outstanding non-registered agreements as of the date this policy is adopted will be accepted as-is and registered under the provisions of this policy. For termination purposes, all existing agreements are grandparented under this policy. Otherwise, the Encroachment Policy *does not* apply to encroachments approved before the date that the Encroachment Policy is adopted, provided that such encroachments continue to comply with the terms of their original approvals and agreements.

EXHIBIT 'A'

THIS AGREEMENT made in duplicate this day of .

B E T W E E N:

THE CORPORATION OF THE CITY OF LONDON

(hereinafter called the "City")

OF THE FIRST PART

A N D

(hereinafter called the "Owner")

OF THE SECOND PART

WHEREAS the Owner represent that they are the registered owner of certain lands and premises in the City of London, in the County of Middlesex, which abut on the side of [STREET], known municipally as [ADDRESS], in the City of London, County of Middlesex, and being more particularly described in Appendix "A" attached hereto;

AND WHEREAS [DESCRIBE ENCROACHMENT], hereinafter referred to as "Encroachment", has been wholly or partly constructed on the [STREET] road allowance by the Owner in the City of London;

AND WHEREAS the Owner has petitioned the Municipal Council of The Corporation of the City of London that they be allowed to maintain and use the said encroachment;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the sum of TWO DOLLARS (\$2.00) of lawful money of Canada, now paid by the Owner to the City, the receipt whereof is hereby acknowledged, the Owner covenants and agrees with the City as follows:

1. The Owner, his executors, administrators, successors and assigns, are hereby allowed to use and maintain the Encroachment, for so long as the Encroachment shall remain in its present location.
2. Upon demolition or removal of the Encroachment, all parts of the Encroachment upon the road allowance for [ADDRESS] shall be removed by the Owner to the satisfaction of the City at the expense of the Owner.
3. In the event of failure by the Owner to remove the encroachment as required by Clause 2 hereof, the same may be removed by the forces of the City and the cost of said removal shall be a first lien upon the Owner's lands abutting on the side of and may be recovered in a like manner as taxes.
4. The Owner shall pay to the City Treasurer, so long as the said encroachment is used and maintained upon the road allowance the sum of [\$\$SUM] as an [ANNUAL CHARGE OR ONE TIME FEE] for such privilege and such fee or charge shall form a charge upon the lands of the Owner of the said lands, his executors, administrators, successors and assigns, and upon default of payment after reasonable notice may be recovered as a lien upon the said lands in a like manner as taxes.
5. **[optional clause]** If, during the term of this Agreement, the City requires the use of part or all of the Encroachment lands for any municipal purpose, the City may terminate this Agreement and require the Owner to remove the Encroachment at the Owner's expense upon 90 days written notice being given to the Owner by the City Engineer. The Owner shall not make any claim against the City on account of such removal and will restore the Encroachment lands to a safe and proper condition

satisfactory to the City Engineer. Provided that if the Owner neglects, refuses or fails so to do within the time specified, the City Engineer may remove the Encroachment and restore the lands to a safe and proper condition and may charge the cost thereof to the Owner of which cost the certificate of the City Engineer shall be final and the City may recover such cost from the Owner in any court of competent jurisdiction as a debt due by the Owner to the City. In addition, any fees due and any costs incurred upon termination of this Agreement shall be a first lien upon the said lands herein described and may be recovered in like manner as municipal taxes. No remedy conferred upon or reserved to the City is intended to be exclusive of any other remedy whether given herein or not, but every such remedy shall be cumulative and shall be in addition to every other remedy.

6. for companies

The Owner shall at their own expense obtain and maintain during the term of this Agreement, and provide the City with evidence of comprehensive general liability insurance for an amount not less than Five Million (\$5,000,000.00) Dollars and shall include the City as an additional insured with respect to the Owners' use and operations on the property described in this Agreement; such policy to include non-owned automobile liability, personal injury, broad form property damage, contractual liability, owners' and contractors' protective, completed operations, contingent employers liability, cross liability and severability of interest clauses. The aforementioned policy will not be cancelled or permitted to lapse unless the insurer notifies the City in writing at least thirty (30) days prior to the date of cancellation or expiry. The Owner will provide that evidence of such insurance shall be delivered to the City promptly at inception of this Agreement and thereafter on the insurance renewal date.

for homeowners

The Owner shall at their own expense obtain and maintain during the term of this Agreement, and provide the City with evidence of general liability insurance (homeowners) for an amount not less than Two Million (\$2,000,000.00) Dollars and shall include the City as an additional insured with respect to the Owners' use and operations on the property described in this Agreement. The aforementioned policy will not be cancelled or permitted to lapse unless the insurer notifies the City in writing at least thirty (30) days prior to the date of cancellation or expiry. The Owner will provide that evidence of such insurance shall be delivered to the City promptly at inception of this Agreement and thereafter on the insurance renewal date.

7. The Owner, their heirs, executors, administrators, successors and assigns, as Owner and occupiers from time to time of the said lands described in Appendix "A" attached hereto, will at all times indemnify and save harmless the City of and from all loss, costs and damages which the City may suffer, be at or be put to, for or by reason of or on account of the existence of, use, maintenance or repair, or lack of repair of the said encroachment or anything done or purported to be done pursuant to this Agreement, or any act or neglect in carrying out anything to be done pursuant to this Agreement.

8. Such sums as may become due or for which the Owner may be obligated under this Agreement respecting the said encroachment shall be a first lien and charge upon the said lands and premises described in Appendix "A" attached hereto in priority to all other claims, liens, mortgages or charges.

9. The Owner covenants and agrees that this Agreement shall cover the encroachment upon the road allowance for of the adjacent to the said lands described in Appendix "A" attached hereto, and shall not grant any permission to erect any part of any new building on the said encroachment, or enlarge or extend the said encroachment.

10. This agreement shall be binding upon the Owner, their heirs, executors, administrators, successors and assigns, as Owner and occupier from time to time of the lands and premises described in Appendix "A" attached hereto and the covenants herein contained shall be deemed to run with the lands and premises and bind the owners and occupiers thereof from time to time.

IN WITNESS WHEREOF the Owner hereto has hereunto set their hand and seal.

THE CORPORATION OF THE CITY
OF LONDON

Name:
Title:
I have authority to bind the corporation

(OWNER)

Name:
Title:
I have authority to bind the corporation