

Bill No. 234
2019

By-law No. A.-_____ - ____

A By-law to approve and adopt the standard form Railway Overpass Sign Licence Agreement; and to authorize the Mayor and the City Clerk to execute the Agreement.

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 (1) of the *Municipal Act, 2001* provides that the powers a municipality under this or any other Act 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 10 of the *Municipal Act, 2001* provides that the City may provide any service or thing that the City considers necessary or desirable for the public, and may pass by-laws respecting same, and respecting economic, social and environmental well-being of the City, and respecting the health, safety and well-being of persons, and respecting protection of persons or property, and respecting structures, including fences and signs;

AND WHEREAS subsection 23.1(1) of the *Municipal Act* authorizes a municipality to delegate its powers and duties to a person or body, subject to certain restrictions set out in the *Municipal Act, 2001*;

AND WHEREAS the City's Sign By-law 2017 S.-5868-183 provides for Regulations for Permanent Third Party Railway Overpass Signs, including section 8.2.1 which provides "No railway overpass sign shall be permitted over the public road allowance unless the sign owner has entered into an agreement with the City and has also satisfied the City's requirement for liability insurance";

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

1. The standard form Railway Overpass Sign Licence Agreement to be entered into between the City, the Property Owner of the railway overpass, and corporations who wish to erect signs on railway overpasses, pursuant to the City's Sign By-law 2017 S.-5868-183, substantially in the form of Schedule 'A' attached to this by-law, is approved and adopted as the standard form for all such agreements.
2. The Chief Building Official or the Deputy Chief Building Official, or their respective written designate, are severally delegated authority to enter the details required to complete each agreement (e.g. date of agreement, name of Sign Owner, location of signs, etc.), and to approve the Railway Overpass Sign Licence Agreement for execution by the Mayor and City Clerk.
3. The Mayor and City Clerk are authorized to execute agreements approved in paragraph 2 above.

PASSED in Open Council on June 25, 2019.

Ed Holder
Mayor

Catharine Saunders
City Clerk

First reading – June 25, 2019
Second reading – June 25, 2019
Third reading – June 25, 2019

SCHEDULE 'A'

STANDARD LICENCE AGREEMENT FOR RAILWAY OVERPASS SIGNS

THIS LICENCE AGREEMENT with effect as of the [XX] day of [XXXXXXXX], 20__

B E T W E E N:

THE CORPORATION OF THE CITY OF LONDON

(the "City")
OF THE FIRST PART

-A N D-

[insert name of railway company]

(the "Property Owner")
OF THE SECOND PART

-A N D-

[insert name of Sign Owner]

(the "Sign Owner")
OF THE THIRD PART

WHEREAS the Property Owner represents that it is the registered owner of certain railway overpasses on lands in the City of London, in the County of Middlesex, which abut and cross various streets, in the City of London, County of Middlesex, and being more particularly described in attached Appendix "A";

AND WHEREAS the Sign Owner is desirous of encroaching over City property for the purposes of installing and maintaining railway overpass signs with [INSERT types of sign (e.g. fabric, electronic billboard, etc.)] at railway overpass locations that are more particularly described in Appendix "A" ("encroachments");

AND WHEREAS the Sign By-law 2017 provides that a sign permit is required for the erection, display, substantial alteration or repair of a railway overpass sign;

AND WHEREAS the Sign By-law 2017 provides for Regulations for Permanent Third Party Railway Overpass Signs, including section 8.2.1 which provides "No railway overpass sign shall be permitted over the public road allowance unless the sign owner has entered into an agreement with the City and has also satisfied the City's requirement for liability insurance";

AND WHEREAS the Sign Owner wishes to enter into an agreement with the City to satisfy the requirements of section 8.2.1 of the Sign By-law 2017;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the sum of TWO DOLLARS (\$2.00) of lawful money of Canada, now paid by the Sign Owner to the City and the Property Owner, the receipt of which is acknowledged, the City grants to the Property Owner and Sign Owner, or any of the Property Owner's and Sign Owner's agents or operators (insofar as the City can legally do so), permission, in the nature of a licence, to encroach upon the City's property in the manner and for the purpose set out above, and in the locations shown on Appendix "A" of this agreement, subject to the limitations and provisos set out as follows:

Sign Owner Responsible for Construction & Maintenance & Removal

1. (a) The Sign Owner shall be responsible for the erection and maintenance and removal of the signs constituting the encroachments. The Sign Owner shall maintain the signage in proper condition, including in a safe condition for potential users of the road over which the sign encroaches, and shall be responsible for any repairs or replacement should damage to the signage occur no matter how the damage occurred, and shall be responsible for removing the signs, all to the reasonable satisfaction of the

Chief Building Official and City Engineer. The Sign Owner represents, warrants and covenants that all signs comply with applicable Federal and Provincial laws and regulations, including but not limited to requirements of the *Electricity Act, 1998* and the Ontario Electrical Safety Authority, the *Occupational Health and Safety Act*, and the *Building Code Act*.

Indemnification

(b) The Sign Owner shall indemnify and save harmless the City, its officers, directors, employees, agents and Councillors and the Property Owner, its officers, directors, employees and agents, from and against all claims, actions, losses, expenses, costs or damages of every nature and kind that the City and/or Property Owner may suffer, caused or alleged to be caused by any act, omission or delay whatsoever on the part of the Sign Owner, or its officers, directors, employees, contractors or agents, in connection with this agreement. Notwithstanding any other provision of this agreement, this subsection shall survive termination of the agreement.

Encroachment Termination Notice

2. (1) For one or more of the signs, the City may give the Sign Owner notice of termination of the right of encroachment ("Encroachment Termination Notice") with a copy of such Encroachment Termination Notice to be delivered to the Property Owner, with respect to the signs set out in the Encroachment Termination Notice, for one or more of the following reasons:

- (i) the City in its sole discretion requires the removal of the encroachment for a municipal purpose;
- (ii) the City in its sole discretion requires the removal for the safety of users of the public road allowance;
- (iii) the City in its sole discretion determines that severe damage or destruction of the encroaching structure occurred which renders it reasonably necessary to remove such encroachment;
- (iv) the City in its sole discretion determines that the major renovation or alteration of the structure renders it reasonably necessary to remove such encroachment;
- (v) the City in its sole discretion determines that the Sign Owner no longer meet the requirements in section 5 (Insurance);
- (vi) no sign permit has been issued for the sign within 6 months of the date of this agreement, or the sign permit issued for the sign is revoked, suspended, terminates, or expires and is not renewed; or
- (vii) five years following the effective date of this agreement, Council resolves or passes a by-law indicating the City's intention to terminate the right of encroachment.

Removal of sign(s) upon receipt of Encroachment Termination Notice

(2) (a) The Sign Owner shall ensure that the sign or signs as set out in the Encroachment Termination Notice are removed within 30 days of the giving of the Encroachment Termination Notice, and shall deliver up possession of the encroachment. Such removal shall be at the Sign Owner cost and expense, and shall be done to the satisfaction of the City. In the event that the Sign Owner fails to comply with such obligation, the Property Owner shall undertake such removal within thirty (30) days of receipt of a further notice to remove such signs from the City, without prejudice to the rights of the Property Owner to claim reimbursement for all costs incurred and claim for all damages sustained by the Property Owner. The Property Owner and Sign Owner shall not be entitled to any compensation from the City for such removal.

City may remove sign(s)

(b) In the event the Property Owner or Sign Owner fails to remove the sign or signs as required by subparagraph (2)(a) above, the City may remove the sign or signs (provided it has first obtained any required Work Permit and flagging protection from the Property Owner, issuance of which shall not be unreasonably withheld by the Property Owner) and the cost of said removal shall be a debt owed by the Property Owner and Sign Owner to the City, and a lien upon the Property Owner's lands abutting the encroachment. Notwithstanding any other provision of this agreement, this subsection shall survive termination of the agreement.

Sign By-law – removal of signs

(c) Notwithstanding any other provision of this agreement, the Chief Building Official may order the Sign Owner to remove the sign or bring the sign into compliance with the applicable Sign By-law. The Parties acknowledge that the Sign By-law provisions with respect to sign removal by the Chief Building Official will be applicable.

Right of encroachment ceases 30 days after Encroachment Termination Notice

(3) Where the City gives an Encroachment Termination Notice under this section, the right of encroachment (with respect to the sign or signs as set out in the notice) shall cease 30 days after such notice is given.

Termination of Agreement – by City

(4) (a) Where the City gives an Encroachment Termination Notice under this section, and the sign or signs as set out in the Encroachment Termination Notice have been removed, this agreement shall terminate, subject to the survival of any terms of the agreement.

Termination of Encroachment or Agreement - By Property Owner or Sign Owner

(a) (i) Where the Sign Owner or the Property Owner gives to the City notice of termination of an encroachment of a sign or signs, the encroachment shall terminate when the sign or signs have been removed, subject to the survival of any terms of the agreement.

(ii) Where the Sign Owner or the Property Owner gives to the City notice of termination of the agreement, the agreement shall terminate when all the signs have been removed, subject to the survival of any terms of the agreement.

Content of Message on Signs

3. (a) The Sign Owner shall ensure that the message content of the signage is in compliance with the City's applicable policies and with the City's applicable by-laws regarding signs.

(b) The Sign Owner shall ensure that all advertising contained in the Fabric Signs or Electronic Billboards will not:

- (i) convey any religious messages;
- (ii) present demeaning or derogatory portrayals of individuals or groups;
- (iii) contain anything which, in the light of generally prevailing community standards, is likely to cause offence;
- (iv) advertise adult entertainment services;
- (v) convey any political message; or
- (vi) cover up nor detract from official signs (e.g. highway safety signs including vehicle height restrictions) located on the railway overpass.

(c) The City, in its absolute discretion, reserves the right to disallow signage if the City deems it not to be in the best interest of the community. If the City, in its sole discretion, considers any of the advertising contravenes the provisions of this section, the City shall notify the Sign Owner in writing and the Sign Owner shall ensure removal of the advertisement in question forthwith.

Municipal Reserve for Signage Space – [insert sign type e.g. Fabric Signs]

(d) The Sign Owner shall provide the City with 100% of the signage space for [insert sign type] at [insert location of railway overpass] (on the [insert cardinal direction N S W E] face of railway overpass), and at [insert location of railway overpass] (on the [insert cardinal direction N S W E] face of railway overpass).

Municipal Reserve for Privilege Space – Electronic Billboards

(e) For each Electronic Billboard installed, the Sign Owner shall provide the City, at no cost, with [insert percentage]% of the advertising space for at least [insert length of time] minutes of each hour (the "Privilege Space"), 24 hours per day, 7 days per week. The Sign Owner shall ensure that such Privilege Space is reserved for use by

the City, and that it may be used to promote municipal matters including City programs, municipal collaborators, community groups, events and display real-time public announcements such as Amber Alerts and emergency service messaging. Artwork and production on Privilege Space is the sole responsibility and cost of the City, however the Sign Owner shall assist the City to ensure the City utilizes the correct software and file formats compatible with the Electronic Billboard.

No rights beyond encroachment

4. Nothing in this agreement shall be construed as giving to the Property Owner or Sign Owner more than the permission (insofar as the City can give it) to maintain the encroachment on the said road allowance as provided herein. It is agreed that no length of time or of enjoyment by the Property Owner or Sign Owner shall enure to give a right to the Property Owner or Sign Owner to maintain the said encroachment so as to deprive the City by the operation of any limitation period or otherwise of any right to require the removal thereof.

Insurance

5. The Sign Owner shall take out and maintain with an insurer licensed to carry on business in Ontario, comprehensive general liability insurance acceptable to the City providing insurance coverage in an amount of not less than \$5,000,000.00, including personal liability, personal injury, broad form property damage, owners' and contractor's protective products and completed operations, contingent employers liability, cross liability and severability of interest clauses for any act or omission either in negligence or in nuisance whether wilful or otherwise on the part of the Sign Owner, its employees, guests, invitees and agents arising in any way howsoever from the construction, repair, maintenance or use of the subject encroachment which results in loss or damage arising from bodily injury to, or death of, one or more persons, and loss of or damage to property. Such policy shall protect the City and the Property Owner from all such claims or actions and shall name the City and the Property Owner as an additional insured thereunder. The Sign Owner shall forward a certificate of the said policy on the City's form: 0788, and a certificate of each subsequent renewal thereof, to the City and the Property Owner, upon request.

Notice

6. Any notice required to be given may be given:
(a) to the Property Owner by mail, postpaid to the following address of record:

XXXXXXXXXXXXXXXXXX
XXX XXXXXXXXXXX XX
XXXXXXXXXX
XXX XXX

Attention: XXXXXXXXXXXXX

(b) to the Sign Owner by mail, postpaid to the following address of record:

XXXXXXXXXXXXXXXXXX
XXX XXXXXXXXXXX XX
XXXXXXXXXX
XXX XXX

Attention: XXXXXXXXXXXXX

(c) to the City by mail, postpaid to the following address:

The Corporation of the City of London
300 Dufferin Avenue, P.O. Box 5035
London ON
N6A 4L9
Attention: City Clerk

Binding on Property Owner and Sign Owner, etc.

7. This agreement shall be binding upon the Sign Owner, its heirs, executors, administrators, successors and assigns, as occupier from time to time of the lands and premises described in Appendix "A".

The obligations of the Property Owner under section 2(2)(a) of this Agreement shall be binding upon the Property Owner, its successors and assigns, as owner of the lands and premises described in Appendix "A".

Headings

8. The headings in this agreement are for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer.

No Registration

9. The City and the Sign Owner covenant that neither this agreement nor any notice of this agreement may be registered upon title to the lands of the Property Owner.

IN WITNESS WHEREOF this agreement has been executed on behalf of the Property Owner and Sign Owner by their duly authorized representatives and on behalf of the City under the hands of its Mayor and Clerk.

SIGNED, SEALED AND DELIVERED

THE CORPORATION OF THE CITY OF LONDON
(the "City")

Name:
Title:

Name:
Title:

We have authority to bind the corporation

XXXXXXXXXXXXXXXXXXXX
(the "Property Owner")

Name:
Title:

Name:
Title:

I/We have authority to bind the corporation

XXXXXXXXXXXXXXXXXXXX
(the "Sign Owner")

Name:
Title:

Name:
Title:

I/We have authority to bind the corporation

APPENDIX "A"

1. [insert type of sign e.g. Fabric Sign]

Location:

[insert locations:]

[insert map for each location, and detailed drawings]

2. [insert type of sign e.g. Electronic Billboard Signs]

Location:

[insert locations:]

[insert map for each location, and detailed drawings]