

Corporation of The Town of Parry Sound

10.2.21

Passing of By-law No: 2021 – 7201

7th Day of December 2021

Moved by Councillor

Paul Bon

Seconded by Councillor

[Signature]

That By-law No: 2021 – 7201

A by-law to regulate encroachments on public lands in the Town of Parry Sound

Be considered as read a first time.

- Carried - ✓

[Signature]

Are all members in favour of having the second and third readings? ✓

Moved by Councillor

B. Keenan

Seconded by Councillor

Roger Burdick

That the By-law Above Mentioned Be Considered as Read A Second, And Third Time, Passed, Signed and Sealed.

- Carried - ✓

[Signature]

Entered as Part of The Minutes of the Meeting Held this 7th day of December 2021.

[Signature]
Mayor Jamie McGarvey

[Signature]
Clerk Rebecca Johnson

- Postponed to: _____
- Amends By-law: _____
- Repeals By-law: _____
- By-law Amended: _____
- By-law Repealed: _____

The Corporation of the Town of Parry Sound

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A by-law to regulate encroachments on public lands in the Town of Parry Sound

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(1) 1; Culture, parks, recreation and heritage at section 11(1) 5 and Structures, including fences and signs at section 11(1) 7; and

Whereas section 8 of the Municipal Act, 2001 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; and

Whereas section 9(1) of the Municipal Act, 2001 provides that sections 8 and 11 shall be interpreted broadly so 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 may proceed to do things at a person's expense which that person is otherwise required to do under a by-law or otherwise but has failed to do; and

Whereas section 446(3) of the Municipal Act, 2001 provides that the costs incurred by a municipality in doing a thing or matter 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

Now therefore the Council of the Corporation of the Town of Parry Sound enacts as follows:

Definitions

1. In this by-law,

- (a) “***boulevard***” means that part of a Highway that is not used, or intend to be used, for vehicular travel by the general public, and is situated between the travelled portion of the road and the adjoining property line;
- (b) “***easement***” means an interest in land owned by another person, consisting in

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- the right to use or control the land, or an area above or below it, for a specific limited purpose, but does not include an interest created by a licence;
- (c) “**encroachment**” means any structure, building, personal property or improvement of or upon land and without limiting the generality of the foregoing includes landscaping, vegetation, walkways and driveways;
 - (d) “**encroachment agreement**” means a written agreement entered into by the Town with a person allowing an encroachment on public lands;
 - (e) “**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, HST, outlays, legal fees and losses;
 - (f) “**highway**” means a common and public highway, street, avenue, parkway, 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;
 - (g) “**notice**” means any notice required to be given by the Town to the owner with respect to this by-law, such Notice shall either be delivered or sent by registered mail to the owner’s address. A Notice includes an order issued under sections 444 and 445 of the Municipal Act 2001, as amended. In the event such Notice is mailed, it is deemed delivered on the third business day after mailing;
 - (h) “**owner**” means the registered owner of a parcel of property as such person is described in the records of the land registry office;
 - (i) “**person**” means an individual, partnership, association, firm or corporation, business entity or club, incorporated group or organization, federal or provincial government, crown agents, school boards and regional municipalities, to whom the context can apply in accordance with the *Interpretation Act* of Ontario, as amended, but specifically excludes the Town;
 - (j) “**personal property**” means any object or item of property other than real property;
 - (k) “**premises**” means a parcel of real property under registered ownership and includes all buildings and structures thereon;
 - (l) “**property**” means a building or structure or part of a building or structure and includes the lands and premises appurtenant thereto and all mobile structures, outbuildings, fences and erections thereon and includes vacant property;
 - (m) “**public lands**” means lands owned by, leased, licensed to or under the management of the Town, and shall include but not be limited to any public highway, road, street, avenue, parkway, lane, alley, square, place, viaduct or trestle, water, thoroughfare, way or bridge, park, woodland, greenbelt, storm water management facility, open space, municipal golf course or cemetery, and all parts thereof, including any surface, grassed area, boulevard, ditch, curb, gutter and sidewalk;
 - (n) “**right-of-way**” means a person’s legal right, established by usage or by contract, to pass through grounds or property owned by another person;

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- (o) “**unauthorized encroachment**” means any encroachment not authorized by this bylaw, any other by-law, statute, regulation, policy, resolution of the Town, or by an encroachment agreement;
- (p) “**Town**” means The Corporation of the Town of Parry Sound.

Encroachments Prohibited

- 2. No person shall erect, place, install, maintain or carry on, or cause to be erected, placed, installed, maintained, or carried on an encroachment of any kind on public lands, or on any right-of-way or easement in favour of the Town, except as permitted by this by-law or the express terms of the easement.
- 3. Notwithstanding section 2, the provisions of this by-law do not apply to the following classes of encroachments:
 - a. Signs, as authorized by the Town of Parry Sound Sign By-law;
 - b. Mailboxes belonging to the Canada Post Corporation or any of its agents;
 - c. Encroachments permitted as a result of a written and signed agreement with the Town, other than an encroachment agreement;
 - d. Encroachments arising from surface changes made in connection with residential driveways, provided such encroachments do not:
 - i. Alter the established elevation of the public lands or public highway lands leading to the residential driveway; or
 - ii. Results in the breach of any other municipal by-law or regulation.

The Town shall not bear any responsibility for any form of damage or deterioration occurring to these encroachments, howsoever or whenever caused, and the current property owner using the residential driveway shall cause such repairs to be made to the encroachments as may be necessary, at the property owner’s sole cost and expense.

Application for Encroachment

- 4. (a) Any person requesting authorization to erect, place, install, maintain or carry on an encroachment on public lands shall be required to submit an application to the Town seeking permission to do so, along with payment of the non-refundable application fee.
- (b) Where an application to erect, place, install, maintain, or carry on an encroachment has been approved then the applicant must complete an encroachment agreement with the Town.
- (c) Where an applicant fails to pay the applicable fees or fails to execute an encroachment agreement within 60 calendar days of submitting the application then the applicant shall be deemed to have abandoned his or her application.

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Liability

5. The provisions of this by-law shall not be construed as relieving or limiting the responsibility or liability of any person who has lawfully or unlawfully erected, placed, installed, maintained or continued an encroachment from any personal injury, including injury resulting in death or property damage resulting from such encroachment, or from acts or omissions of such person, or his or her agents, employees or contractors, in the erection, placement, installation, maintenance, continuation or removal of the encroachment. Likewise, provisions of this by-law shall not be construed as acceptance by the Town, its officers, employees, or agents of any responsibility or liability whatsoever by reason of allowing an encroachment, approving the request for an encroachment agreement, or removing an unauthorized encroachment.
6. The Town is not responsible for any damages, losses or injuries caused by or to an encroachment. For further clarity, the Town is not responsible for any damages caused to an encroachment as a result of the Town's operations, including but not limited to ploughing, grass cutting, boulevard tree maintenance, or the repair and maintenance of the Town's infrastructure.

Indemnification

7. In addition to any obligations under an encroachment agreement the holder of such agreement shall be jointly and severally responsible to indemnify the Town, its officers, employees, and agents from all losses, damages, costs, expenses, claims, demands, actions, lawsuits, or other proceedings of every nature and kind arising from, and in consequence of, the erection, placement, installation, maintenance, continuation, or removal of an unauthorized encroachment.

Registration

8. Where deemed appropriate by Town staff, an encroachment agreement may be registered against title to the applicant's property with the land registry office and all expense in doing so shall be paid in advance by the owner applying for the agreement.

No Vested Right

9. The execution of an encroachment agreement in respect of an encroachment does not create any vested right in the public lands on behalf of the owner or occupant of the property 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 or in the encroachment agreement.

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Access to Encroachments

10. No person shall obstruct, hinder, or interfere with the free access to any encroachment by an employee, officer, or agent of the Town.

Removal and Restoration

11. Where the Town becomes aware of an unauthorized encroachment on Town property, notice may be given in writing to the owner of the property to which an unauthorized encroachment is appurtenant and/or to any person who constructed, installed, maintains and/or uses such encroachment, to forthwith remove, fill in or close up the encroachment and to restore the public lands to their former condition at the expense of the owner and in addition to any other remedies, such expenses may be recovered in full in the manner provided in Section 17.
12. Where the Town becomes aware of an unauthorized encroachment on Town property that, in the opinion of Town staff poses an imminent safety hazard, without notice to the owner, using their own forces or independent contractors may remove, fill in, close up and secure the unauthorized encroachment and restore the public lands to their former condition at the expense of the owner and/or any person who constructed, installed, maintains, and/or uses such encroachment and such expense to be recovered in full in the manner provided in Section 17.
13. Where the notice referenced in section 11 or 12 is not complied with the Town may on behalf of the owner and/or any person who constructed, installed, maintains and/or uses such encroachment, remove, fill in or close up the unauthorized encroachment and restore the public lands to their former condition at the expense of the owner and/or any person who constructed, installed, maintains, and/or uses such encroachment and such expense to be recovered in full in the manner provided in Section 17.
14. Any materials or structures forming part of or attached to the encroachment and removed by the Town may either be deposited at the owner's premises (if applicable) or be stored for thirty (30) days at the owner's expense and/or at the expense of any person who constructed, installed, maintains and/or uses such encroachment, such expense to be recovered in full. Any item so stored and not claimed within the said thirty (30) day period shall be disposed of by the Town in such manner as it deems appropriate.

Failing to Maintain an Encroachment

15. Where the owner fails to maintain an encroachment in accordance with the provisions of this by-law or an encroachment agreement the Town may send

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Notice to the owner advising of the deficiency resulting in non-compliance and of the period of time provided to the owner to bring the encroachment into compliance.

16. Where the owner fails to bring an encroachment into compliance in accordance with the Notice issued the Town may on behalf of the owner remove the encroachment and bring the public lands to a standard acceptable to the Town at the expense of the owner and such expense to be recovered in full in the manner provided in Section 17.

Recovery of Expenses

17. All expenses incurred by the Town in connection with the enforcement of this by-law shall be paid within thirty (30) days of their billing date, and in the event of failure to pay the entire amount due within the said thirty (30) days the outstanding balance of the invoice may thereafter be added to the tax roll as of the year in which the expenses were billed.

Penalty

18. Every person who contravenes any of the provisions of this by-law is guilty of an offence and on conviction is liable to pay a fine, exclusive of costs, as provided for in the *Provincial Offences Act, R.S.O. 1990, c P.33*, as amended.

Enforcement

19. A municipal by-law enforcement officer acting under this by-law may enter and inspect all buildings, structures or parts thereof that are subject to this by-law at any reasonable time for the purposes of determining whether there is compliance with this by-law.

Severability

20. If any section or sections of this By-law or parts thereof are found in any court of law to be illegal or beyond the power of Council to enact, such section or sections or parts of this By-law shall be deemed to be separate and independent there from and to be enacted as such.

Conflict with Other By-laws

21. If a provision of this by-law conflicts with an Act or regulation or another by-law the provision that is the most restrictive shall prevail.

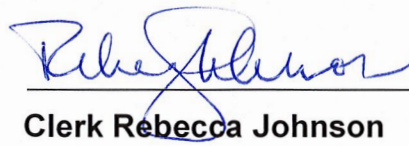
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Read a **First** time this 7th day of December 2021.



Mayor Jamie McGarvey



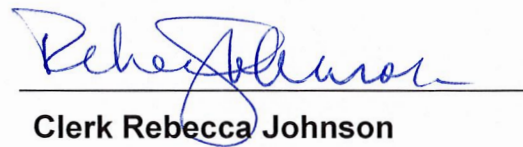
Clerk Rebecca Johnson

Read a **Second** and **Third** time, **Passed, Signed** and **Sealed**

This 7th day of December 2021.



Mayor Jamie McGarvey



Clerk Rebecca Johnson



Application for Encroachment Agreement

Date: _____

Applicant

Applicant Name: _____

Business Name: _____

Street Address: _____ Apt/Unit #: _____

Town: _____ Postal Code: _____

Phone Number: _____

E-mail Address: _____

If the applicant is not the owner, please provide owner information below:

A letter of authorization will be required from the owner for the applicant to proceed with the application.

Encroachment Location

Encroachment Location: _____

Roll Number: _____ PIN: _____

Legal Description: _____

Please describe the type of encroachment.

_____ _____ _____ _____ _____ _____ _____



An encroachment agreement will only be entered into when the Town of Parry Sound has determined that it is absolutely necessary and unavoidable and does not pose any danger or unsafe condition or interfere with municipal operations or diminishes the public's right of usage of public lands, as public property is not for the exclusive use of any one individual.

Any encroachment agreement shall require the applicant:

- a) To keep and maintain said encroachment in good and proper repair and condition;
- b) To obtain and maintain public liability (personal injury and property damage) insurance covering the erection and maintenance of the encroachment in the amount of at least Two Million Dollars (\$2,000,000.00) for residential and Five Million Dollars (\$5,000,000.00) for commercial naming "The Corporation of the Town of Parry Sound" as an additional named insured and containing a cross-liability endorsement;
- c) To provide the town with an annual certificate of above-mentioned insurance in perpetuity;
- d) Provide a current survey of the property that the encroachment will be appurtenant to;
- e) Pay the encroachment application fee and all fees associated with the execution of the encroachment agreement and to register the agreement on title if required.

I acknowledge and agree that the owner of the property in the event this application is approved, will be required to enter into an Encroachment Agreement with the Town and that I will be required to retain a solicitor to complete the encroachment agreement and register the encroachment agreement against the title to the owner's property, all of which will be at the owner's/applicant's expense.

I further agree and acknowledge that the information contained in this application and any documentation, including agreements, reports, studies and drawings, provided in support of the application, by myself, my agents, consultants and solicitors, constitutes public information and will become part of the public record. As such, and in accordance with the provisions of the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, I hereby consent to allow the Town of Parry Sound to make this application and its supporting documentation available to the general public, including copying and disclosing the application and its supporting documentation to any third party upon their request.

Applicant Signature: _____