

TOWN OF BERWICK BY-LAW

Encroachments Upon or Over a Street By-law

TITLE:

1. This By-law shall be known and may be cited as the “Street Encroachment By-law”.

DEFINITIONS:

2. In this by-law:
 - (a) “Building Inspector” means the person contracted by Council to carry out building inspection services for the Town;
 - (b) “CAO” means the Chief Administrative Officer for the Town of Berwick;
 - (c) “Council” means the Council of the Town of Berwick;
 - (d) “Development Officer” means the person appointed by Council under Section 191(d) of the *Municipal Government Act* to administer the Town’s Land Use By-law and Subdivision By-law;
 - (e) “encroachment” means a structure upon or over a street and also includes any portion of the street required by the encroachment, based on good engineering practice, as a clearance from other structures;
 - (f) “person” includes a corporation;
 - (g) “sidewalk café” means a group of tables and chairs, and other accessories belonging to the owner, situated and maintained upon a public sidewalk or pedestrian mall, for the use and consumption of food and beverages sold to the public, from or in, the owner’s adjoining food and beverage establishment;
 - (h) “street” includes a public alley, boulevard, bridge, court, footway, highway, lane, park, place, sidewalk, curb, square and any part thereof, owned by the Town;
 - (i) “structure” includes but is not limited to any awning, canopy, balcony, bay window, building, bridge, elevator, fence, foundation wall, grating, hatch, hatchway, loading platform, manhole, porch, veranda, portico, railing, retaining wall, sidewalk café, step, storage tank, tunnel, vault, or any part thereof;
 - (j) “Town” means the Town of Berwick;
 - (k) “Traffic Authority” means the person appointed by Council under Section 311(2) of the *Municipal Government Act*

PROHIBITION:

3. No person shall construct or maintain an encroachment upon or over a street in the Town unless a Street Encroachment License has been issued by the Development Officer in relation to such encroachment and said license is still in force.

APPLICATION –STREET ENCROACHMENT LICENSES:

4. Any person wishing to obtain a Street Encroachment License for any encroachment shall pay the applicable fee and provide a fully-completed application on a form provided by the Town.
5. Every such application shall be completed either by the owner of the lands abutting that portion of the street to which the permit relates or that person who provides written proof of authorization to act on behalf of said owner and the person completing the application shall be referred to, in this By-law, as "the applicant".
6. An application for a Street Encroachment License for any encroachment shall include the following information:
 - (a) the civic address of the property and lands abutting that portion of the street to which the permit relates;
 - (b) a concise but full and accurate description of the encroachment proposed;
 - (c) the name, address and phone number of the applicant;
 - (d) the name, address and phone number of the owner of the lands abutting that portion of the street to which the permit relates, if other than the applicant;
 - (e) where the applicant is not the owner of the lands, a letter from the owner of the lands granting the applicant permission for the encroachment as set out in the application to the Development Officer;
 - (f) the name, address, telephone number and proposed role of any professional Engineer whose assistance may be required at any stage of the proposed works;
 - (g) entrances to and exits from any existing building on the lands abutting that portion of the street to which the permit relates;
 - (h) a plan of survey which shows the outside boundaries and other significant measurements of the proposed encroachment;
 - (i) entrances to and exits from any Sidewalk Café as well as entrances to and exits from the establishment to which the Café relates;
 - (j) hours of operations for any Sidewalk Café;
 - (k) start-up and shut-down dates if encroachment only applicable on a seasonal basis (i.e. Sidewalk Café)
 - (l) such other information as the Development Officer may require to determine whether the application is complete and conforms to all Town By-laws.

FEES:

7. The fee to process a Street Encroachment License application shall be as set out in the Town's Development Control and Planning Services Fees By-law.

CONSULTATIONS BY DEVELOPMENT OFFICER:

8. The Development Officer may consult with the Town Engineer, the Superintendent of Public Works, Superintendent of Berwick Electric, the Building Inspector, the Town Traffic Authority, the CAO as well as any relevant Town Committee such as the Planning Advisory Committee or the Provincial Department of Environment in order to request input and advice as to any conditions that should, in the best interests of the public, be attached to, and form part of, any particular Street Encroachment License.

SPECIAL RESTRICTIONS:

9. Every Street Encroachment License issued after April 1st of any given year shall be valid until March 31st of the following year, or such shorter term as may be imposed by the Development Officer as a condition of said License, and the expiry date shall be indicated on said License.
10. Canopies may be permitted for commercial, industrial and institutional buildings only and shall be restricted in width to not more than the entrance width plus six (6) feet.
11. Awnings may be permitted for commercial, industrial and institutional buildings only and shall be restricted to not more than the width of the building or in the case of a corner installation, not more than the width of the building plus the width of the awning.
12. Telephone booths may be permitted provided the free flow of pedestrian traffic is not impeded and no pedestrian or vehicular traffic hazard is created as a result.

STREET ENCROACHMENT LICENSES:

13. Every Street Encroachment License shall indicate:
 - (a) the type of encroachment authorized;
 - (b) the civic address at which such encroachment is authorized;
 - (c) the length of time for which such encroachment is authorized;
 - (d) the exact date and time of expiry of said License and
 - (e) such terms and conditions as may be necessary in the opinion of the Development Officer.

CONDITIONS:

14. The Development Officer may impose terms and conditions, on the face of the license or attached to the license, relating to the following provided that no license shall be issued that will reduce the width of the public right of way to less than six (6) feet nor, in the case of an overhead encroachment, reduce the height of the public right of way to less than eight (8) feet :
 - (a) the period during which such license shall be in effect, such period not to exceed beyond the next March 31st after the license is issued;
 - (b) the specific use of the encroachment;

- (c) provision for, and a maximum period of time allotted for, the public right of way to be restored to the same condition as existed prior to the encroachment being put in place;

ISSUANCE OR REFUSAL:

15. The Development Officer shall notify the applicant that the application is complete or shall provide a list of information which is required in order to complete the application.
16. Once the Development Officer has all the information from the applicant and has the recommendations from any consulted persons or committees per this bylaw, the Development Officer shall then issue, or refuse to issue, the Street Encroachment License.
17. In the case of the refusal of a Street Encroachment License, the Development Officer shall provide written reasons for so doing.
18. Any Street Encroachment License, once issued, shall be forwarded to the applicant, with a copy to the owner if different than the applicant, and shall be binding upon the applicant and upon the owner.
19. The owner of any lands to which a Street Encroachment License relates shall have the right to transfer or assign such license after first advising the Development Officer of the name and address of the person to whom the license is being transferred or assigned.

APPEAL:

20. If the applicant is aggrieved by the refusal of the issuance of a Street Encroachment License or by the terms and conditions imposed by the Development Officer, the applicant may appeal to the Council by giving notice in writing filed with the CAO within thirty (30) days of the refusal, or the issuance on terms and conditions, of the Street Encroachment License, stating the grounds upon which the applicant appeals and a copy of such notice shall be delivered by the CAO to the Development Officer.
21. The Council may consult with the Development Officer, the Town Engineer, the Superintendent of Public Works, the Superintendent of Berwick Electric, the Building Inspector, the Town Traffic Authority, the CAO as well as any relevant Town Committee such as the Planning Advisory Committee or any relevant Provincial Department, in order to request input, advice and/or recommendation before hearing any such appeal.
22. The Council shall, within thirty (30) days after the filing of the notice by the applicant and the obtaining of input, advice and/or recommendation as noted, hear such appeal.
23. The Council shall provide to the appellant, a minimum of fourteen (14) days prior to the proposed appeal hearing date, both written notice of the proposed date, time and place of the hearing of the appeal and copies of any written input, advice and/or recommendation received by Council as a result of the above-noted consultation process.
24. At the appeal hearing, after considering all of the input, advice and/or recommendation received and after allowing, if requested to do so, the appellant a reasonable (10 minute maximum or whatever shorter period of time is decided upon by Council) opportunity to be heard, Council may dismiss the appeal or may allow the appeal and order the issuance of the Street Encroachment License upon such terms and conditions as are considered by the Council to be proper for the effective carrying out of this By-Law.

CANCELLATION OR SUSPENSION:

25. If the Development Officer is satisfied that a term or a condition of a Street Encroachment License has not been complied with, the Development Officer may suspend or cancel the License.
26. Written Notice of such suspension or cancellation shall be communicated to both the owner and applicant by registered mail which is deemed received even if refused.
27. In the case of cancellation of a License, the owner and/or applicant shall begin work on removal of the encroachment within seven (7) days of receipt of said Notice and shall complete said works within ten (10) days of receipt of said Notice.
28. In the event of cancellation of a License, if the encroachment is not removed within the required time as stated in the Notice, the Town may remove the encroachment and bill the owner of the lands.
29. In the case of suspension of a License, the owner and/or applicant shall immediately discontinue use of the subject encroachment.
30. The Development Officer shall not reinstate a License until the reasons for the cancellation or suspension have been remedied or unless ordered to do so by motion of Council.
31. The owner or applicant whose License has been cancelled or suspended may appeal, within seven (7) days of receipt of said Notice, the decision of the Development Officer to Council indicating in writing the reasons why it is felt that the action was not justified. Council, upon hearing the appeal, may re-instate the License, support the decision of the Development Officer or change from suspension to cancellation or vice versa.
32. Where an appeal has been launched, the time frame for removal is delayed starting from the date the appeal is filed, but is re-activated the day following the decision of Council should it be other than re-instating the License.

EXCEPTIONS:

33. The provisions of this by-law shall not apply to the Berwick Electric Commission.
34. Where the provision for payment of an encroachment fee is made by special statute as in the case of Aliant, the provisions of this by-law shall not apply.

LICENSE RENEWAL:

35. Upon the expiration of a Street Encroachment License, the applicant or the owner may apply to have the License renewed. The License renewal fee shall be as set out in the Town's Development Control and Planning Services Fees By-law.

SEVERABILITY:

36. If a court of competent jurisdiction should declare any Section, or part of a Section, of this By-law to be invalid, such Section, or part of a Section, shall not be construed as having persuaded or influenced Council to pass the remainder of the By-Law which shall remain in full force and effect.

VIOLATIONS:

37. Any person who contravenes any provision of this By-Law, or who fails to comply with the terms or conditions of any License issued under the authority of this By-Law, is guilty of an offence and shall be liable, upon conviction, to a penalty of not less than One Hundred Dollars (\$100.00) and not more than Ten Thousand Dollars (\$10,000.00) and, in default of payment, to imprisonment for a term of not more than two (2) months.
38. In the case of an alleged contravention of the provisions of this by-law, and in addition to any other legal remedy available, Council may direct the CAO to prepare a written Notice (which identifies the contravention and directs what must be done to remedy the contravention) and to serve such Notice on the owner, and the applicant if different than the owner, requiring that person or persons to remedy the contravention of the By-law within ten (10) days after the Notice has been served.
39. In default of the remedying of the contravention described in the Notice within the ten (10) day time period, every day during which the violation continues, after expiration of the ten (10) day time period, is deemed to be a fresh offence.

VOLUNTARY PAYMENT:

40. Any person who is charged with a contravention of any provision of this By-Law and is given Notice of the existence and availability of this section of the Bylaw, but has not been give written Notice to remedy by the Development Officer, may pay to the Town, at the place specified in the Voluntary Payment Notice, the sum of \$100.00 within fourteen (14) days of the date of the Notice and shall thereby avoid prosecution for that alleged contravention.

ENCROACHMENT AGREEMENTS:

41. Notwithstanding the provisions of this By-law, Council may enter into an agreement permitting any person to construct or maintain an encroachment upon such terms and conditions as Council may deem appropriate, and the provisions of this By-law shall not apply to such encroachments provided that consideration for such agreement shall be more than the fees payable by a license for a similar structure pursuant to this By-law.

History of this By-law:

Enacted – March 9, 2004

This is to certify that the foregoing is a true copy of a Bylaw passed at a duly convened meeting of the Council of the Town of Berwick, held the 9th day of March, 2004.

Given under the hand and seal of the CAO of the Town of Berwick this 22 day of March, 2004.

Linda Parker
Chief Administrative Officer