

BY-LAW NO. 21-04
A BY-LAW RESPECTING ENCROACHMENT UPON PUBLIC SPACES
IN THE TOWN OF SAINT ANDREWS

BE IT ENACTED by the Council of the Town of Saint Andrews as follows:

1. This By-Law shall be known as By-Law 21-04 and may be cited as the “Street Encroachment By-Law”.

2. DEFINITIONS

2.1. In this By-Law:

- 2.1.1. “CAO” means the Chief Administrative Officer for the Town of Saint Andrews.
- 2.1.2. “Council” means the Council of the Town of Saint Andrews.
- 2.1.3. “Encroach” means to construct, erect, or maintain in, over, or under any public places, right-of-way or easement, roadway, parking strip, and/or sidewalk and including the airspace over the area beneath the surface of the ‘public spaces’.
- 2.1.4. “Encroachment” means the use of any portion of the ‘public spaces’ and includes the airspace over such street and the area beneath the surface of the street.
- 2.1.5. “Engineering” means the Engineer for the Town of Saint Andrews and includes a person acting under the supervision and direction of the Engineer.
- 2.1.6. “Facility” means any pile, pile line (including braces and anchors), aerial cables, manholes, conduits, underground cables, pipes for the carriage of gases or liquids, and associated apparatus for the provisions of services, including amplifiers, connection panels, transformers, valves, and other fittings and equipment.
- 2.1.7. “Object” includes but is not limited to chairs, tables, stanchions, planters, benches, or artwork.
- 2.1.8. “Person” includes a Corporation.
- 2.1.9. “Public Spaces” means and includes a public alley, boulevard, bridge, court, footway, wharf, roadway, lane, park, place, sidewalk, square, easement, or right-of-way and any part thereof, owned by the Town.
- 2.1.10. “Structure” includes any building, balcony, bay window, culvert, curb, driveway, fence, foundation wall, grating, hatch, hatchway, loading platform, manhole, parking lot, porch, railing, retaining wall, sidewalk patio, step, verandas, newsstands, kiosks, or any part thereof.
- 2.1.11. “Supervisor of Public Works” means the Asset/Operations Manager for the Town.

3. PERMISSION REQUIRED

- 3.1. No person shall construct or maintain any encroachment, place any structure, or object in a street or make use of a street for construction and/or restoration purposes in the Town unless an Encroachment Agreement or a Public Right-of-Way Alteration Application has been approved by the Town of Saint Andrews.

4. APPROVAL REQUIRED

- 4.1. An Encroachment Licence or Alteration to a Public Right-of-Way Approval shall not be issued unless Council authorizes such encroachment.

- 4.1.1. The following types of encroachments may be licenced by the CAO for renewable periods of five (5) years:

- 4.1.1.1. Canopies: for commercial and institutional buildings only and to be restricted to the width of not more than the entrance width plus six feet.

- 4.1.1.2. Awnings: for commercial and institutional buildings only and to 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 both facades of the building.

- 4.1.1.3. Steps, Foundations, and Other Structures: for buildings where steps, foundations, and other building features must approach, or where an encroachment already exists, the area of encroachment may be increased provided there is no additional encroachment towards the curb.

- 4.1.1.4. The use of any portion of a street in association with a construction or restoration project where the use of the portion of the street is required, in the opinion of the Supervisor of Public Works.

- 4.1.1.5. Objects including areas for resting and recreation, product display stands, projecting signs, and sandwich board signs.

- 4.1.1.6. Electric Vehicle Charging Stations: provided the free flow of pedestrians is not impeded, a traffic hazard is not created, and the location is acceptable to the Department of Public Works using the property.

- 4.1.1.7. Underground communication conduits and manholes to service conduits, provided that the installation and use of the telecommunications cable will not interfere with the property operation and maintenance of existing underground utilities, nor interfere with planned street work.

- 4.2. The following types of encroachments may be approved by the Supervisor of Public Works, subject to the Town's Zoning, Subdivision, or Controlled Access By-Laws, and in the opinion of the Supervisor of Public Works and/or the Engineer, is safe movement of all traffic:

- 4.2.1. Driveways.

- 4.2.2. Curb-Cuts.

4.2.3. Culverts

- 4.3. All applications are to be reviewed and approved by the Town of Saint Andrews and the Southwest New Brunswick Service Commission for driveway and encroachment applications.

5. LICENCES

- 5.1. A licence shall be issued to an applicant upon the signing by the applicant and the Chief Administrative Officer of an Encroachment Agreement, which shall indicate:

5.1.1. The type of encroachment authorized.

5.1.2. The civic address where such encroachment is authorized.

5.1.3. The length of time for which such encroachment is authorized (or a maximum of five (5) years).

5.1.4. Such terms and conditions may be necessary in the opinion of the CAO.

5.2. Application and Rental Fees

5.2.1. Each application for an Encroachment Licence shall be accompanied by a \$100.00 application fee.

5.2.2. Rental fees for encroaching structures shall be applied by the CAO as part of the terms and conditions for a minimum of \$100.00 per year.

5.2.3. Applications or rental fees are non-refundable.

5.3. Term

5.3.1. The calendar year is adopted as the licence year for the Town and all licence agreements issued pursuant to this By-Law shall be annual, unless otherwise expressly provided for as part of the licence. Regardless of length of the term provided for as part of the licence, the applicant shall pay the full licence fee as identified in Section 5.2 of this By-Law.

5.4. Licence Holders Requirements

5.4.1. Continually maintain, during the term of the permit, a Certificate of Liability Insurance of at least one million dollars (\$1,000,000.00) with the Town of Saint Andrews named as an additional insured party.

5.4.2. Provide the Municipality with a copy of the Certificate of Liability Insurance.

5.4.3. Adhere to the release and indemnification provisions of the Encroachment Agreement to indemnify and hold harmless the Town of Saint Andrews, its Officials, Employees, and Contractors, from any and all manner of claims, damages, loss, and/or costs arising from the use of Municipal Property.

5.5. Revocation or Refusal to Issue a Licence or Approval

- 5.5.1. Licences or approvals under this By-Law shall vest no permanent right, and may be revoked by Council, at its sole discretion, at any time, without notice.
- 5.5.2. If any encroachment shall become dangerous, unsafe, a public nuisance, or not used in accordance with the provisions of this By-Law or signed agreement, the licence or approval may be revoked with or without notice by the CAO.
- 5.5.3. If any encroachment is not discontinued upon notice to do so by the CAO, and within the prescribed time period, the CAO may order a Public Works crew to remove any structure, object or obstruction, or make such repairs upon the structure, object or obstruction as may be necessary to render it safe for the public. Costs of materials and work conducted will be at the expense of the Licence Holder and may be recorded as a lien and otherwise collected in a manner provided for by law.
- 5.5.4. Without restricting the generality of Subsection (4), persons may be refused a licence renewal by the Town due to a past breach of any term or condition that was subject to the Encroachment Agreement.
- 5.5.5. The Town may refuse to enter into an Encroachment Agreement or Approval where the CAO is of the opinion that authorizing such a proposed encroachment would be against the public interest of Saint Andrews or not compatible with other applicable By-Laws or regulations.

6. EXEMPTIONS TO THIS BY-LAW

- 6.1. Where the provisions for encroachment authorization or fees are made by the Provincial or Federal statutes, the applicable provisions of this By-Law shall not apply.
- 6.2. Any encroaching structure which is permanently affixed to the ground that existed on the effective date of this By-Law, or to any repair or replacement of such encroaching structure that does not increase the area of the encroachment, Section 3, 4, and 5 of this By-Law shall not apply. All other Sections of this By-Law still apply to such pre-existing encroachments.
- 6.3. This By-Law shall not apply to street furniture installed, or street trees/shrubs/flowers planted, by the Town or in an agreement with the Town.
- 6.4. Public Right-of-Way alterations such as driveways, culvers, or curb-cuts, that have a Public Right-of-Way Application (see "Appendix B") approved by the Supervisor of Public Works are exempt from Section 5 of this By-Law. Public Right-of-Way Applications which are rejected may appeal to Council under Section 7.

7. APPEALS

- 7.1. Any person who has been refused an Encroachment Licence may appeal such refusal to Council.
- 7.2. Such appeal shall be in writing, in the form of a notice, and filed with the Town Clerk within 15 days of such refusal and shall clearly state the grounds for such appeal.
- 7.3. The Council shall determine such appeal at such time and place as it determines and may confirm such refusal by the CAO or the Supervisor of Public Works, as applicable, or direct the CAO or Supervisor of Public Works as applicable, to issue such approval.
- 7.4. If the Council directs the CAO or Supervisor of Public Works, as applicable, to issue such approval, the same shall be issued immediately.

8. PENALTIES

- 8.1. Any encroachment which is not authorized under this By-Law shall be removed by the owner within 7 days after notice to remove the encroachment has been given to such owner by the By-Law Enforcement Officer.
- 8.2. If any owner fails to remove the encroachment within such 7-day period, the CAO or duly appointed staff member may remove the encroachment, and the cost of the removal may be recovered from such owner by action in any court of competent jurisdiction.
- 8.3. Anyone who fails to remove the encroachment within such 7-day period shall be liable to a penalty not less than One Hundred Dollars (\$100.00) not exceeding Two Thousand Dollars (\$2,000.00).

9. ENCROACHMENT AGREEMENTS

- 9.1. Notwithstanding any provision of this By-Law, Council may:
 - 9.1.1. Enter into an agreement putting any person to construct or maintain an encroachment upon such terms and conditions as Council may deem appropriate, and the provisions of the By-Law shall not apply to such encroachments provided that consideration for such agreements shall not be less than the fee payable by a licensee for a similar structure pursuant to Subsection 4 of this By-Law.
 - 9.1.2. Enter into an agreement with a gas distribution company which has been approved by the New Brunswick Energy and Utilities Board to distribute gas within the Town, or communications company licenced by the Canadian Radio-Television Telecommunications Commission, permitting the construction or maintenance of an encroachment upon such terms and conditions that Council may deem appropriate. The provisions of this By-Law shall not apply to such encroachments, and the fees payable shall be determined by Council.

10. GENERAL PROVISIONS

- 10.1. The Town shall not be responsible for repairing or replacing any encroachment damage because of clearing or removing litter, graffiti, posters, snow, or ice, or as a result of street repairs or reconstruction.
- 10.2. No advertising is allowed on any street furniture, planter boxes, or bicycle stand, except for the donor names on park benches, or as otherwise authorized by Council.
- 10.3. The CAO or Supervisor of Public Works may, without giving notice to the owner or occupier of land adjoining a street, remove or modify any encroachment, driveway, curb-cut, or parking area located on the street, or trim any vegetation growing or standing on the street where, in the CAO and Supervisor of Public Works opinions, the safety of traveling public so requires, or where any such street work or vegetation may damage the street or interfere with existing or future utility services and street improvements.
- 10.4. The CAO and/or Supervisor of Public Works may be given notice to the owners or the occupier of land adjoining a street require them to:
 - 10.4.1. Accommodate work that the Town is undertaking by removing or modifying any encroachment, parking area, driveway, vegetation, or landscaping located in a street for which the owner or the occupier of land is responsible.
 - 10.4.2. Remove or modify any additions to the street Right-of-Way that have been made by the adjoining property owner or the occupier of the adjoining land.
 - 10.4.3. Where the owner or occupier fails to undertake the work as required under this Section, the CAO may undertake and restore or repair the street, and recovery of costs may be recovered from such owner by action in any court of competent jurisdiction.

READ FOR THE FIRST TIME ON THIS 8th DAY OF September 2021

READ FOR THE SECOND TIME ON THIS ____ DAY OF _____ 20____

READ FOR THE THIRD AND
FINAL TIME AND ENACTED ON THIS ____ DAY OF _____ 20____

Brad Henderson, Mayor

Paul Nopper, Clerk – Senior Administrator