

**THE CORPORATION OF THE CITY OF WINDSOR**

**POLICY**

Service Area:	<b>Office of the Commissioner of Infrastructure Services</b>	Policy No.:	
Department:	<b>Engineering</b>	Approval Date:	<b>February 17, 2015</b>
Division:	Development, Projects, Right-of-Way	Approved By:	<b>CR 230/2023</b>
		Revised Date:	<b>May 29, 2023</b>
		Effective Date:	<b>February 17, 2015</b>
Subject:	<b>Encroachment Policy</b>	Procedure Ref.:	User Fee Schedule
		Pages:	Replaces:
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**1. POLICY**

1.1 The encroachment policy governs the computation of encroachment fees and requirements as defined within this Policy.

**2. PURPOSE**

2.1 The revised encroachment policy would simplify, provide direction to Administrative staff for processing the encroachment application and streamline the encroachment process, ensuring the exposure to risk and liability is mitigated. Therefore this Policy specifically:

2.1.1 Defines an encroachment;

2.1.2 Provides a process for approvals, requirements, exemptions; and

2.1.3 Establishes simplified computation of encroachment fees.

**3. SCOPE**

3.1 This Policy applies to all encroachments on the public right-of-way including properties with encroachment agreements that have changed ownership since the agreement was executed as defined herein.

**4. RESPONSIBILITY**

The responsibilities related to use of this Policy are outlined below:

**4.1 The Mayor and City Council are responsible for:**

4.1.1 Approving, supporting and enforcing the Policy;

4.1.2 Make determination of the Policy and resolve any exceptions or disagreements.

**4.2 The Chief Administrative Officer is responsible for:**

4.2.1 Enforcing and supporting the Policy;

4.2.2 Execute Encroachment Agreements.

**4.3 The City Clerk is responsible for:**

4.3.1 Execute Encroachment Agreements.

**4.4 The Office of the Commissioner of Legal & Legislative Services:**

4.4.1 Enforcing the Encroachment Policy;

4.4.2 Ensuring the Encroachment Agreement is satisfactory in form.

- 4.5 The Office of the Commissioner of Infrastructure Services:**
- 4.5.1** Approving, administering, enforcing and supporting the Policy;
  - 4.5.2** Ensuring the Encroachment Agreement is Satisfactory in technical content;
  - 4.5.3** Ensures staff process the application and follow the Policy.
- 4.6 The Office of the Commissioner of Corporate Services:**
- 4.6.1** Ensuring the Encroachment Agreement is Satisfactory in financial content;
  - 4.6.2** Ensures staff process the encroachment agreement fees and follow the Policy.

## **5. DEFINITIONS**

- 5.1 A-Frame Signs or ‘Sandwich Board Signs’**, are signs not permanently anchored to the ground.
- 5.2 Area of Encroachment**, the square footage of the personal property of any description that is placed, occupied or maintained upon any highway.
- 5.3 Bus Bays (lay-by)**, road widening to permit temporary parking/stopping etc.
- 5.4 City**, means The Corporation of the City of Windsor.
- 5.5 Downtown Land Value**, the value of property (\$ per square foot) used for non-residential encroachment located within the Downtown Windsor Business Improvement Area, and collected in accordance with the User Fee Schedule.
- 5.6 Encroachment**, any personal property of any description that is placed, occupied or maintained upon any municipal right-of-way including but not limited to signs, fences, sheds, porches, footings, canopies, parking areas, decorative or landscape rocks or boulders, logs, curbing, vaults, structures (in whole or part), private sewers.
- 5.7 Encroachment Agreement**, refers to a legal and binding agreement between the City and the property owner having permission to occupy the right-of-way. The Council Resolution requires the owner to enter into a legal and binding agreement as a condition of approval to use the public right-of-way.
- 5.8 Encroachment caused by gratuitously conveyed lands**, is an encroachment caused as a result of a property owner gratuitously conveying lands to the City for road widening purposes (reference 5.16 - No Fee Encroachment).
- 5.9 Encroachment Term**, 20 years from the agreement execution date or change of zoning or change in ownership, whichever occurs first.
- 5.10 Exception**, a person or thing that is excluded from a general statement or does not follow a rule.
- 5.11 Good Standing**, the property owner(s) tax account payments are up-to-date, there are no outstanding fees and the tax account is not subject to any form of sanction, suspension or payment plans.
- 5.12 Hedge, Plantings, Ground Cover**, includes but is not limited to plants, shrubs, flowers, ornamental grasses, and hedges.
- 5.13 Heritage Encroachments**, the heritage features of a property on the Windsor Municipal Heritage Register, that are integral to the cultural heritage value or interest of the property as determined by the City Planner, and which if removed would otherwise trigger an *Ontario Heritage Act* process.
- 5.14 Land Value**, the value of property (\$ per square foot) as per the User Fee Schedule as determined by the Commissioner of Legal & Legislative Services.
- 5.15 Long Term Hoarding**, for properties that have hoarding on City rights-of-ways for two (2) or more years with no intention of construction (no Building Permit application submitted) and repair is not proceeding or ongoing.
- 5.16 No Fee Encroachment**, the application fee, agreement preparation fee, and the annual or one-time encroachment fees are waived. The Right-of-Way Permit fee is applicable

as well as the annual inspection and billing fee (applies to properties not zoned R.1 or R.2 only), including a Certificate of Insurance.

- 5.17 Non Residential Encroachment**, being defined as an encroachment located on the public right-of-way abutting area not zoned R.1, R.2 or partially exempt in the City of Windsor.
- 5.18 Parking Space Encroachment**, being defined as an encroachment with an area used for parking on any type of hard surface that is approximately 18.5 square metres (200 square feet).
- 5.19 Partially Exempt Encroachment**, being defined as an encroachment located on the public right-of-way abutting lands owned by a partially exempt organization (Public Authority, charitable organization, non-profit charities, churches and similar facilities) independent of zoning in the City of Windsor.
- 5.20 Permanent**, lasting or intended to last or remain unchanged indefinitely.
- 5.21 Public Authority**, means a School Board, Public Library Board, Board of Health, Board of Commissioners of Police or any other board or commission or committee or authority established or exercising any power or authority under any general or special statute of Ontario with respect to the affairs or purposes of the City of Windsor.
- 5.22 Residential Encroachment**, being defined as an encroachment located on the public right-of-way abutting land zoned R.1, R.2 in the City of Windsor.
- 5.23 Temporary**, lasting for only a limited period of time; not Permanent; less than one (1) year.
- 5.24 User Fee Schedule**, the City's current encroachment user fee schedule, which may be amended from time to time.

## **6. ENCROACHMENT FEES**

- 6.1** All encroachment fees are based on the User Fee Schedule, including a minimum annual or one-time encroachment fee.
- 6.2** Multiple encroachments may exist on a single property, if approved.
- 6.3** The **Residential Encroachment fee** is based on the Encroachment Term, and is computed in accordance with the User Fee Schedule.
  - 6.3.1** One-time fees payable to the City upon demand (invoice).
  - 6.3.2** Any residential property with a one-time encroachment fee of \$2,000.00 or greater, may elect to add the costs to their tax roll and will be collected in the same manner as taxes, under the following conditions:
    - 6.3.2.1** The property owner(s) statement of account with the City is in Good Standing.
    - 6.3.2.2** Paying in full by way of 5 equal annual installments, the Owner's cost of encroachment plus interest calculated at the rate of prime rate plus 1%, established as of the invoice date is determined by the City, to be calculated annually in advance, plus registration costs.
    - 6.3.2.3** The Owner's agreement that the Owner's amortized cost of encroachment constitutes a lien against the Owner's real property until such time as the Owner's amortized cost of encroachment has been paid in full.
    - 6.3.2.4** That the agreement may be registered against the title of the Owner's property.
    - 6.3.2.5** Subject to the provisions of this policy and encroachment agreement, as amended, the Chief Administrative Officer and the City Clerk are hereby authorized and directed to execute, from time to time,

agreements with the Owners for the payment, by the Owners to the City, of the costs of the one-time encroachment fee.

**6.4** The **Partially Exempt Encroachment fee** is based on the Encroachment Term, and is computed in accordance with the User Fee Schedule.

**6.4.1** One time fees payable to the City upon demand (invoice).

**6.5** The **Non Residential Encroachment fee** is based on the Encroachment Term, and is computed in accordance with the User Fee Schedule.

**6.5.1** Annual Non Residential Encroachment and Billing/Inspection fees are added to property taxes.

**6.6** The **Parking Space Encroachment fee** is based on the Encroachment Term, and is computed in accordance with the User Fee Schedule.

**6.6.1** One time fees payable to the City in accordance with Section 6.3.1 or 6.3.2, as applicable, if determined Residential Encroachment.

**6.6.2** One time fees payable to the City in accordance with Section 6.4.1 if determined Partially Exempt Encroachment.

**6.6.3** Annual fees payable to the City in accordance with Section 6.5.1 if determined Non Residential Encroachment.

## **7. LAND VALUES**

**7.1** Land Values are based on zoning designation of the property, not use of the property and are collected in accordance with the User Fee Schedule, save and except for Downtown Land Values.

## **8. APPROVALS**

**8.1** Approval may be granted by the Commissioner of Infrastructure Services or delegate.

**8.2** Any encroachments of concern or not supported by the Commissioner of Infrastructure Services are referred to City Council for decision.

## **9. ENCROACHMENT APPLICATION**

**9.1** One (1) application per property identified by the Assessment Roll Number

**9.2** Multiple encroachments may exist on a single property, if approved.

**9.3** A new encroachment application is required to amend existing agreements if one (1) or more encroachments are removed, or added or altered.

**9.4** A new encroachment application is required for succeeding property owners, at the discretion of the Commissioner of Infrastructure Services or designate.

**9.5** The property owner is required to give ten (10) days notice to the City's Engineering Department before any sale.

**9.6** The applicant agrees to remove the encroachment and restore the area within 60 days to the condition of the surrounding area upon receipt of written notice by the Commissioner of Infrastructure Services to do so.

## **10. INSURANCE REQUIREMENTS**

**10.1** For the life of the encroachment agreement, the Licensee will provide a Certificate of Insurance in its legal name confirming the Licensee has in force insurance coverage. The Certificate of Insurance must be satisfactory in form and content to the City's Risk Management Department.

- 10.1.1 Residential Properties** – A Certificate of Insurance with proof of General Liability Insurance in the amount of at least \$2,000,000.00 per occurrence, containing an endorsement naming **“The Corporation Of The City Of Windsor”** as an additional insured, and containing a 30-day cancellation notice requirement.
- 10.1.2 Commercial Properties** – A Certificate of Insurance with proof of same coverage as Residential Properties (See 10.1.1) but must also include proof of a cross-liability clause.
- 10.2** The insurance requirements may increase or change from the basic requirements set out in 10.1 at the outset of the encroachment or throughout the Encroachment Term, at the discretion of the Commissioner of Legal & Legislative Services or designate.

## **11. ENCROACHMENT EXEMPTIONS/SPECIAL EXCEPTIONS CIRCUMSTANCES**

### **11.1 Encroachments over 8'-0”**

Any overhead object that projects less than 0.3m (1 foot) into the Public right-of-way allowance, in whole or in part and is a minimum of 8'-0” above grade.

### **11.2 Encroachments from grade to 8'-0”**

Any object that projects less than 100mm (4 inches) into the Public right-of-way allowance, in whole or in part and exists from grade to a maximum of 8'-0”.

### **11.3 Bus Bays (lay-by)**

Notwithstanding the City contributions to bus bays; an encroachment agreement is required for bus bays (lay-by) in the right-of-way, to mitigate the risk of liabilities.

### **11.4 Encroachment caused by gratuitously conveyed lands**

An encroachment is caused as a result of a property owner gratuitously conveying lands to the City for road widening purposes. The property owner may either remove said encroachment(s) or apply for a No Fee Encroachment (the application, agreement preparation, annual or one-time encroachment fees are waived) with the City if recommended by the Commissioner of Legal & Legislative Services and approved by the Commissioner of Infrastructure Services or City Council. The Right-of-Way Permit fee and Annual Inspection and Billing fee (if zoned other than R.1 or R.2) will still apply.

### **11.5 Temporary Encroachments**

**11.5.1** An encroachment agreement is not required for any door that encroaches into the public right-of-way while open.

**11.5.2** A-Frame Signs removed from the right of way daily, do not require an encroachment agreement; however, will require a Right-of-Way permit, as per the User Fee Schedule.

**11.5.3** Any other encroachment that is deemed temporary by the Commissioner of Infrastructure Services and/or Commissioner of Legal & Legislative Services.

### **11.6 Long Term Hoarding**

**11.6.1** An Encroachment Agreement will be required and the fee for use of City right-of-ways will be calculated based on the following formula:

$$\text{Annual Encroachment Fee} = \text{Area of Encroachment} \times \text{Land Value} \times \text{Encroachment Factor (1.25)}$$

- 11.6.2** The encroachment agreement shall contain the following terms;
- 11.6.2.1** The encroachment agreement must be approved yearly by City Council;
  - 11.6.2.2** Proper Insurance must be submitted, to the satisfaction of the City's Risk Management Division;
  - 11.6.2.3** The Commissioner of Infrastructure Services and Chief Building Official (CBO), upon concurrence by the Chief Administrative Officer, can extend the temporary hoarding to a period beyond two (2) years if construction is ongoing and the construction schedule is presented; and
  - 11.6.2.4** Any other terms deemed appropriate by the Commissioner of Legal & Legislative Services or the Commissioner of Infrastructure Services.
  - 11.6.2.5** That the Chief Administrative Officer and City Clerk BE AUTHORIZED to sign the agreement satisfactory in technical content to the Commissioner of Infrastructure Services and form satisfactory to the Commissioner of Legal & Legislative Services and financial content to the CFO/City Treasurer.

**11.7** Hedges, Plantings, Ground Cover

- 11.7.1** Hedges/plantings located within the right-of-way that does not comply with Engineering Best Practice BP-3.2.2 and drawing 4M-157 as amended from time to time, must be removed from the right-of-way or obtain permission via a permit, as per the User Fee Schedule.
- 11.7.2** Right-of-way permit fee will be required as per the User Fee Schedule.
- 11.7.3** Permit will be cancelled and all objects shall be removed from the right-of-way at the discretion of the Commissioner of Infrastructure Services.
- 11.7.4** Any hedges, plantings, ground cover that the Commissioner of Infrastructure Services and/or the Commissioner of Legal & Legislative Services deem acceptable.

**11.8** Heritage Encroachments – An encroachment agreement is required for any heritage feature located in the right-of-way as defined under section 5.13.

- 11.8.1** The following fees will apply, based on the type of encroaching items:
  - 11.8.1.1** Only heritage items encroach at the subject property: All fees associated with obtaining an encroachment agreement and permit are waived.
  - 11.8.1.2** Non-heritage and heritage items encroach at the subject property: All fees related to applying for and obtaining an encroachment agreement and permit will apply, with the exception of the one-time or annual fees associated with the heritage features only.
- 11.8.2** Insurance requirements remain consistent with section 10 of this document.
- 11.8.3** Prado Place Heritage Conservation District
  - 11.8.3.1** Exempt due to the Character Defining Elements cited under By-Law Number 293-2005
  - 11.8.3.2** Any future changes to the right-of-way shall proceed through the Heritage Permit Process for any further encroachment approvals

**11.9** Additional Exemptions/Special Exceptions

- 11.9.1** Any additional approved by City Council.