

## Municipality of Strathroy-Caradoc By-Law 20xx-XX

### **Being a by-law of the Corporation of the Municipality of Strathroy-Caradoc to permit encroaching upon public highways and lands through agreement**

**WHEREAS** section 8 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended (hereinafter the “Act”) provides that the powers of a municipality under the 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 9 of the Act, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Act;

**AND WHEREAS** section 11 of the Act provides that a lower-tier municipality may pass by-laws within the following spheres of jurisdiction: Highways, including parking and traffic on highways; Culture, parks, recreation and heritage and Structures, including fences and signs ;

**AND WHEREAS** sections 23.1 and 23.2 of the Act authorizes a municipality to delegate certain powers and duties including the delegation of legislative or quasi-judicial powers to officers, employees or agents of the municipality where Council is of the opinion that the power being delegated is minor having regard to, in addition to any other factors it wishes to consider, the number of people, the size of the geographic area and the time period affected by the exercise of the power;

**AND WHEREAS** section 391 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** subsection 436(1) of the Act grant the municipality the authority to enter properties for inspection purposes, ensuring compliance with a by-law passed under the Act, a direction or order of a municipality made under the Act or a by-law of a municipality made under the Act, a condition of a licence issued under a by-law of a municipality made under the Act or an order made under section 431 of the Act;

**AND WHEREAS** subsection 436(2) of the Act provides that a by-law passed under subsection 436(1) of the Act may provide for the powers of inspection of the municipality that can be exercised for the purposes of an inspection;

**AND WHEREAS** section 444 of the Act provides that a municipality may issue an order to discontinue a contravention of a by-law passed under the Act;

**AND WHEREAS** section 445 of the Act provides that a municipality that is satisfied that a contravention of a by-law of the municipality passed under the Act has occurred, the municipality may make an order requiring the person who contravened the by-law or who caused or permitted the contravention, or the owner or occupier of land on which the contravention occurred to do work to correct the contravention;

**AND WHEREAS** section 446 of the Act provides that if a municipality has the authority under the Act or under a by-law made under the Act to direct or require a person to do a matter or thing, the municipality may also provide that, in default of being done by the person directed or required to do it, the matter or thing may be done by the municipality at the person’s expense, that the municipality may enter upon land at any reasonable time to do the matter or thing, and the costs incurred by the municipality of doing the matter or thing may be recovered by adding the costs to the tax roll and collecting them in the same manner as property taxes;

**AND WHEREAS** the Corporation of the Municipality of Strathroy-Caradoc is the registered owner of certain parcels of land located within the Municipality including road

allowances and other tracts / parcels of lands situated within the Municipality;

**AND WHEREAS** it is the opinion of the Council of the Corporation of the Municipality of Strathroy-Caradoc that the powers delegated through this by-law are of a minor nature;

**NOW THEREFORE** the Council of the Corporation of the Municipality of Strathroy-Caradoc **ENACTS AS FOLLOWS:**

## 1. PURPOSE

1.1 The purpose of this Encroachment By-Law is to formalize the application procedure for Encroachments on Municipal Lands and outline the process for granting and revoking Encroachments.

## 2. SCOPE & SHORT TITLE

2.1 This By-Law applies to all Municipal Lands and Encroachments on Municipal Lands.

2.2 The short title of this by-law is the "Encroachment By-law."

## 3. DEFINITIONS

3.1 For the purposes of this by-law,

- (a) "**Act**" means the *Municipal Act, 2001*, S.O. 2001, c.25, as amended;
- (b) "**Boulevard**" means the portion of a Highway which may be paved, unpaved, grassed or landscaped with other materials, and is situated between the Curb or edge of the roadway and the adjacent property line on both sides of a Highway;
- (c) "**Curb**" means the lateral boundary of the roadway, whether such lateral boundary is physically marked or not;
- (d) "**Council**", means the Council for the Corporation of the Municipality of Strathroy-Caradoc;
- (e) "**Director**", means the Director of Community and Development Services or the Director of Engineering and Public Works acting either individually or together, or such other persons as they may designate to carry out their duties and, in the event of organizational changes in the Municipality, includes the successor position or positions;
- (f) "**Easement**" means an interest in land owned by another person, consisting in 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;
- (g) "**Emergency Situation**" means any condition, matter or thing that poses an immediate danger to the health or safety of any Person;
- (h) "**Encroachment**", means any aerial, surface, or sub-surface structure or other obstruction, existing on any Municipal Land in part or in whole and includes but is not limited to: buildings, fences, shelters, patios, concrete pillars, planters, posts, poles, newspaper boxes, vending machines, Curbs, tree plantings, crops, gardens, landscaping, retaining works, drainage works, satellite dishes, supporting structures, signs, towers, antennae, guide wires, cables, pipes, benches, vehicles, tables and chairs whether permanent or temporary. An Encroachment shall also include but not be limited to the unauthorized removal or destruction of any tree, rock or other thing whether

occurring naturally or not;

(i) “**Encroachment Agreement**” means a binding agreement between the Municipality and a Property Owner or Person in which the Municipality grants an Encroachment upon Municipal Lands to a Property Owner;

(j) “**Fees and Charges By-law**” means the Corporation of the Municipality of Strathroy-Caradoc By-law No. 131-25, as amended;

(k) “**Highway**” includes 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;

(l) “**Land Registry Office**” has the same meaning as it does in the *Land Titles Act*, R.S.O. 1990, c. L.5, as amended;

(m) “**Municipal Lands**”, means lands owned by or leased or licensed to or under the management of the Municipality, Municipal Easements, and shall include but not be limited to any road, lane, public Highway, right of way, park, woodland, greenbelt, storm water management facility, open space, municipal cemetery and lands in which the Municipality holds any real property interest, and all parts thereof, including any surface, grassed area, Boulevard, ditch, Curb, gutter, and sidewalk;

(n) “**Municipality**”, means the Corporation of the Municipality of Strathroy-Caradoc;

(o) “**Officer**”, means a Municipal By-Law Enforcement Officer appointed by Council to administer and enforce this by-law;

(p) “**Person**”, means an individual, partnership, corporation, association, club, business entity, incorporated group or organization, federal or provincial government, crown agent, school board or regional or local municipality, to whom the context can apply in accordance with the *Interpretation Act* of Ontario, as amended but specifically excludes the Municipality;

(q) “**PIN**” or “**Property Identifier Number**” means the property identifier as referred to in the *Land Titles Act*, R.S.O., 1990, c. L.5, as amended;

(r) “**Private Property**” means a parcel of land as it is described in the records of the Land Registry Office that is owned by a Person and includes all buildings and structures thereon;

(s) “**Property Owner**” means the registered owner of a parcel of land as such Person is described in the records of the Land Registry Office;

(t) “**Right-of-Way**” means a Person’s legal right, established by usage or contract, to pass through grounds or property owned by another Person;

(u) “**Roadway**” means the part of the Highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the shoulder, and, where a Highway includes two or more separate roadways, the term “roadway” refers to any one roadway separately and not to all of the roadways collectively;

(v) “**Sign By-law**” means the Corporation of the Municipality of Strathroy-Caradoc By-law No. XXX-XX, as amended;

(w) “**Temporary Permit**” means a permit issued by the Municipality pursuant to a by-law of the Municipality to authorize activities on Private Property adjacent to Municipal Lands;

(x) “**Unauthorized Encroachment**” means any Encroachment not authorized by this by-law;

(y) “**Utility**” means any utility infrastructure including, but not limited to, streetlight poles and conduit, natural gas lines and associated appurtenances, Bell Canada boxes and conduits, cable TV boxes and hydro-electric power boxes, conduits and poles that are erected and maintained by Entegrus Powerlines Inc. or any successor company providing the same service; and

(z) “**Zoning By-law**” means the Corporation of the Municipality of Strathroy-Caradoc By-law No. 43-08, as amended.

#### 4. ROLES & RESPONSIBILITIES

4.1 The Director is responsible for receiving and reviewing applications for an Encroachment Agreement and bringing forth a completed application for an Encroachment Agreement and a recommendation to either approve, deny or approve with modifications to Council.

OR

4.1 The Director is responsible for approving, revoking, or denying applications for Encroachment Agreements.

OR

4.1 The Director is responsible for approving, revoking, or rejecting Encroachment Agreements but may at the discretion of the Director, forward any application for an Encroachment Agreement to Council for its consideration.

4.2 An Officer may administer and enforce the provisions of this by-law.

#### 5. ENCROACHMENTS PROHIBITED

5.1 No Person shall erect, place or maintain, or cause or permit to be erected, placed or maintained, an Encroachment of any kind on Municipal Lands, or on any Right-of-Way or Easement in favor of the Municipality, except where permitted to do so in accordance with this by-law.

5.2 Notwithstanding section 5.1, the provisions of this by-law do not apply to the following:

- (a) signs, as authorized by the Municipality in accordance with the Sign By-law;
- (b) a temporary Encroachment arising as a result of construction, maintenance or other activity as authorized under a valid Temporary Permit issued by the Municipality under a by-law of the Municipality;
- (c) Encroachments permitted as a result of a written and signed agreement with the Municipality, other than an Encroachment Agreement;
- (d) Encroachments arising as a result of a Committee of Adjustment decision permitting the Property Owner of residential premises to widen a Property Owner’s driveway which includes widening the driveway that extends over a Boulevard, provided that a Curb cut permit from the Municipality is also issued to the owner;
- (e) Canada Post community mailboxes erected on a Boulevard and maintained in compliance with the requirements of the Mail Receptacles Regulations, S.O.R./83-743, as amended, made under the *Canada Post Corporation Act*, R.S.C., 1985, c. C-10, as amended;

(f) roadside memorials so long as they are erected in accordance with the following:

- (i) does not create a public safety hazard;
- (ii) does not interfere with or obstruct Municipal operations; and
- (iii) does not interfere with or obstruct access to fire hydrants, Canada Post mailboxes, or any installations belonging to the Municipality, the Corporation of the County of Middlesex or a utility provider;

(g) those Persons who have a valid and binding Encroachment Agreement or other similar instrument with the Municipality that predates the passage of this by-law; and

(h) those Persons who have a prior valid and binding Encroachment Agreement or other similar instrument with the Municipality with respect to Encroachments occurring on Highways.

## **6. APPLICATION FOR AN ENCROACHMENT AGREEMENT**

6.1 The (**Council OR Director** depending on section 4) upon receipt of an application for an Encroachment Agreement under the provisions of this by-law may take into consideration the following factors, among other appropriate factors in the Municipality's discretion, in deciding whether to approve or deny the application or to approve the application with conditions:

- (a) interference with the Municipality's use, enjoyment or purpose;
- (b) creation of unsafe or hazardous conditions if the Encroachment is permitted;
- (c) interference with any current or future plans, initiatives or works of the Municipality;
- (d) interference with a utility or similar installation located on the subject street or Right-of-Way;
- (e) any impact or diminishment of the public right of use;
- (f) incompatibility with the character and nature of the surrounding neighborhood; and
- (g) the size of the Municipally owned lanes, streets, rights of way and walkways.

## **7. ENCROACHMENT AGREEMENT PROCESS**

7.1 Every Person seeking an Encroachment on Municipal Lands shall file, in writing, an application for an Encroachment Agreement to the (**Council OR Director** depending on section 4). The application shall include the following information:

- (a) A plan drawn to scale acceptable by the Director that adequately depicts the extent of the Encroachment onto the Municipal Lands that is fully dimensioned in both plan and profile including heights and underground footings and utility locations, if applicable;

- (b) PIN (Property Identifier Number) printout for the property that is the subject of the Encroachment Agreement from the Land Registry Office;
- (c) Full name, address, telephone number and email address of the Person applying for the Encroachment and the Person's lawyer, if applicable;
- (d) The signature of the Person applying for the Encroachment or the signature of the Person's lawyer, if applicable; and
- (e) Payment of the Application fee and a one-time registration fee as per the Fees and Charges By-law.

7.2 A Person may make one application per proposed Encroachment. Completed applications accompanied by the application fee and a one-time registration fee should be delivered to:

Municipality of Strathroy-Caradoc

c/o Planning Department

52 Frank Street, Strathroy, ON N7G 2R4

7.3 An application for an Encroachment Agreement that is incomplete or if the fees outlined in subsection 7.1(d) of this by-law are not paid in full, the application shall be deemed to have been abandoned by the applicant and any fees that have been paid to the Municipality shall be forfeited.

**(PROCESS IF DIRECTOR IS ABLE TO APPROVE/REFUSE APPLICATION)**

7.4 An application for an Encroachment Agreement shall be reviewed by the Director and:

(a) if the application is approved by the Director, with or without conditions, the application and supporting materials that were filed pursuant to subsection 7.1 of this by-law shall be forwarded to the Municipality's legal counsel to draft the Encroachment Agreement. The Encroachment Agreement shall be signed by the Municipality's legal counsel on behalf of and as instructed by Council and served upon the applicant.

(i) Upon the applicant receiving the Encroachment Agreement from the Municipality's legal counsel, the applicant shall cause the Encroachment Agreement to be executed. The executed Encroachment Agreement shall be returned to the Municipality with proof of insurance as required pursuant to section 8 of this bylaw and proof of payment of all applicable fees including a \$175.00 registration fee within thirty (30) days of being executed;

(a) If the Encroachment Agreement is not executed and returned to the Municipality by the applicant, or the applicant fails to provide proof of insurance or proof of payment of all applicable fees as per subsection 7.4(a)(i) of this by-law within thirty (30) days of its being executed, the Encroachment Agreement shall be deemed to have been abandoned by the applicant and all fees paid to the Municipality shall be forfeited; and

(ii) Upon receipt of the executed Encroachment Agreement from the applicant as per the requirements of subsection 7.4(a)(i), the Municipality shall register the executed Encroachment Agreement against the Municipal Land referred to in the Encroachment Agreement; or

(b) if the application is denied by the Director, all fees paid to the Municipality shall be forfeited and the Director shall notify the applicant of the denial in writing within thirty (30) days of making the decision and the applicant may

request a written explanation for the reasons why the application was denied; or

(c) the Director may, at their discretion, refer the application for the Encroachment Agreement to Council with a recommendation as to whether to approve or deny the application. Council will have the authority to approve, deny or approve with conditions any applications referred to it by the Director and subsections 7.4(a) and 7.4(b) of this by-law apply with necessary modifications.

### **(PROCESS IF COUNCIL APPROVES/REFUSES APPLICATION)**

7.4 An application for an Encroachment Agreement shall be reviewed by the Director for completeness and the Director shall forward any complete application to Council with a recommendation as to whether to approve or deny the application.

7.5 Upon receiving the application for an Encroachment Agreement from the Director along with the Director's recommendation as per subsection 7.4 of this by-law, Council will:

(a) Upon the application being approved by Council, with or without conditions, the application and supporting materials that were filed pursuant to subsection 7.1 of this by-law shall be forwarded to the Municipality's legal counsel to draft the Encroachment Agreement. The Encroachment Agreement shall be signed by the Municipality's legal counsel on behalf of and on the instruction of Council and served upon the applicant.

(i) Upon the applicant receiving the Encroachment Agreement from the Municipality's legal counsel, the applicant shall cause the Encroachment Agreement to be executed. The executed Encroachment Agreement shall be returned to the Municipality with proof of insurance as required pursuant to section 10 of this bylaw and proof of payment of all applicable fees including a \$175.00 registration fee within thirty (30) days of being executed;

(a) If the Encroachment Agreement is not executed and returned to the Municipality by the applicant, or the applicant fails to provide proof of insurance or proof of payment of all applicable fees as per subsection 7.5(a)(i) of this by-law within thirty (30) days of its being executed, the Encroachment Agreement shall be deemed to have been abandoned and all fees paid to the Municipality shall be forfeited; and

(ii) Upon receipt of the executed Encroachment Agreement from the applicant as per the requirements of subsection 7.5(a)(i), the Municipality shall register the executed Encroachment Agreement against the Municipal Land referred to in the Encroachment Agreement; or

(b) if the application is denied by Council, all fees paid to the Municipality shall be forfeited and Council shall notify the applicant or cause the applicant to be notified of the denial in writing within thirty (30) days of making the decision and the applicant may request a written explanation for the reasons why the application was denied.

## **8. INSURANCE REQUIREMENTS & IDEMNIFICATION**

8.1 Every Person seeking an Encroachment Agreement must be capable of holding adequate insurance in the form and type required by the Municipality and indemnifying the Municipality from all claims that may result by reason of the existence of the Encroachment. The applicant for the Encroachment Agreement shall provide proof of insurance in a form and amount satisfactory to the Municipality in the minimum amount of \$2 million or such other higher amount as may be

determined by the Director in the Director's own discretion and shall name The Corporation of the Municipality of Strathroy-Caradoc as an additional insured. The Certificate of Insurance shall be submitted to the Municipality at the time the executed Encroachment Agreement is returned to the Municipality. The Certificate of Insurance must be satisfactory in form and content to the Municipality. The applicant agrees to indemnify and hold harmless the Municipality from and against all liability in respect for any and all claims, demands, expenses, costs, judgments, orders, actions that may arise or be made against the Municipality resulting from the Encroachment. All approved Encroachments are, at all times, considered to be placed and used at the Property Owner's own risk. The Municipality at no time shall be considered or held responsible for repairing and/or replacing an Encroachment or for any damages arising as a result of clearing and removing litter, graffiti, posters, snow or ice, or as a result of repairs or reconstruction.

8.2 Every Person to whom an Encroachment Agreement has been issued shall:

(a) If their Private Property appurtenant to the Encroachment is zoned residential as per the Zoning By-law, the Property Owner shall file annually with the Municipality a certificate of general liability insurance for the Property to which the Encroachment relates that is satisfactory to the Director; or

(b) If their Private Property appurtenant to the Encroachment is zoned commercial as per the Zoning By-law, the Property Owner shall file annually with the Municipality a certificate of general liability insurance for the Property to which the Encroachment relates and showing the Municipality as an additional insured, that is satisfactory to the Director.

## 9. UNAUTHORIZED ENCROACHMENTS

9.1 Where the Director or an Officer becomes aware of an Unauthorized Encroachment, the Director or Officer may issue a Work Order to the Property Owner of the Private Property appurtenant to the Unauthorized Encroachment or to the Person who erected or caused to be erected the Unauthorized Encroachment to forthwith remove, fill in or close up the Unauthorized Encroachment and to restore the Municipal Lands to their former condition at the expense of the Property Owner.

(a) If the Director or an Officer deems that the Unauthorized Encroachment represents an Emergency Situation, the Director or Officer may forego the provisions of subsection 9.1 of this by-law and subsection 17.2 of this by-law shall apply with necessary modifications.

9.2 Where the Work Order issued pursuant to subsection 9.1 of this by-law is not complied with by the date specified in the Work Order, the Municipality may remove, fill in or close up the Unauthorized Encroachment and restore the Municipal Lands to their former condition at the expense of the Person or Persons named in the Work Order and, such expense shall be recovered in full in the manner as set out under section 10 of this by-law.

9.3 Any materials, things or structures forming part of or attached to the Unauthorized Encroachment and removed by the Municipality pursuant to subsection 9.2 of this by-law may, at the discretion of the Director, either:

(a) be deposited on the Private Property of the Person or Persons named in the Work Order; or

(b) be stored at a location determined by the Director to be suitable for the storage and the materials, things or structures shall be stored for no more than thirty (30) days at the Property Owner's expense.

(i) If the Director should decide to store the materials, things or structures referred to under subsection 9.3 of this by-law, the

Director shall serve or cause to be served upon the Person or Persons named in the Work Order, as soon as is practicable, a notice of said storage and that the materials, things or structures must be claimed within thirty (30) days of the storage commencing after which the materials, things or structures shall be disposed of by the Municipality at its discretion and without further notice.

- (ii) Any materials, things or structures not claimed within the said thirty (30) day period shall be disposed of by the Municipality in such manner as it deems appropriate.
- (iii) Any expense incurred by the Municipality for the storage of any materials, things or structures shall be recovered in full in the manner set out under section 10 of this by-law.

## **10. RECOVERY OF EXPENSES**

10.1 Prior to adding any costs or expenses incurred by the Municipality in connection with the administration or enforcement of this by-law to the tax roll of a Property Owner, the Municipality may send an invoice to the Property Owner whose Private Property is appurtenant to an Encroachment or Unauthorized Encroachment seeking voluntary payment in full within thirty (30) days of the billing date.

10.2 In the event that the Property Owner fails to pay the amount owing on the invoice issued pursuant to subsection 10.1 of this by-law, at the discretion of the Municipality, the outstanding balance of the invoice plus interest at a rate of 1.25% per month and any penalties may thereafter be added to the tax roll as of the year in which the expenses were billed and collected in a manner like taxes.

10.3 The Municipality may, at its discretion, recover all expenses owing under this by-law by a court action as a debt due to the Municipality.

## **11. ENFORCEMENT**

11.1 An Officer conducting an inspection under this by-law may enter and inspect all buildings that are not being used, in whole or in part, as a dwelling, and structures or parts thereof that are subject to this by-law at any reasonable time, without a warrant, for the purposes of determining whether there is compliance with:

- (a) this by-law;
- (b) any direction, notice or order made pursuant to this by-law;
- (c) any condition of an Encroachment Agreement issued under this by-law; or
- (d) an order issued pursuant to section 431 of the Act.

## **12. DISCONTINUANCE OF ENCROACHMENT**

12.1 Every Person who intends to permanently discontinue an Encroachment shall notify the Director in writing and the Director shall thereafter issue and serve or cause to be served a Work Order upon the Person directing the Person to remove the Encroachment and restore the Municipal Lands to their former condition at the Person's expense and to the Director's satisfaction.

12.2 If the Director or an Officer has reasonable grounds to believe that a breach of an Encroachment Agreement has occurred, the Director or Officer may issue and serve or cause to be served a Work Order directing the Person who executed or caused to be executed the Encroachment Agreement to remove the Encroachment and to restore the Municipal Lands to their former condition at the Person's expense and to the satisfaction of the Director or Officer, as the case may be.

12.3 If the Director or an Officer has reasonable grounds to believe that a

Person has failed to maintain an Encroachment pursuant to the provisions of this by-law or the applicable Encroachment Agreement, the Director or Officer may issue and serve or cause to be served a Work Order outlining the deficiency resulting in non-compliance and directing the Person to rectify the deficiency and the date on which compliance is to be achieved.

12.4 Where a Person or Property Owner fails to comply with a Work Order issued under subsections 12.1, 12.2 or 12.3 of this by-law, the Encroachment may be removed by the Municipality and the Municipal Lands restored to their former condition and such expense shall be recovered in the manner provided for in section 10 of this by-law and subsection 9.3 of this by-law applies with necessary modifications.

12.5 If it is the case that a Property Owner decides to permanently discontinue an Encroachment, the Director or an Officer has reasonable grounds to believe that a breach of an Encroachment Agreement has occurred or the Director or an Officer has reasonable grounds to believe that a Person has failed to maintain an Encroachment pursuant to the provisions of this by-law or the applicable Encroachment Agreement, the applicable Encroachment Agreement shall be deemed to be revoked.

### **13. WORK ORDER**

13.1 A Work Order issued under this by-law shall set out:

- (a) Reasonable particulars of the contravention adequate to identify the contravention of this by-law or an Encroachment Agreement;
- (b) The location of the land on which the contravention occurred;
- (c) The work to be done to rectify the contravention;
- (d) The date by which the work must be done; and
- (e) The name of the Person or Persons who are required to carry out the work.

### **14. SERVICE**

14.1 An order or notice issued under this by-law may be served personally or served by sending it by regular mail to the last known address of:

- (a) the Person to whom the order or notice is directed;
- (b) the Property Owner of the Property identified in the order or notice; and
- (c) any other Person that, in the opinion of the Person issuing the order or notice, may be affected by the Order or notice.

14.2 Where service of an order or notice is made by regular mail, the service shall be deemed to have been effected on the fifth day after the order or notice was mailed.

14.3 In addition to serving an order or notice as per subsection 14.1 of this by-law, the Person issuing the order or notice may also place a placard containing the terms of the order or notice in a conspicuous place on the property.

14.4 Where service cannot be carried out under subsection 14.1 of this by-law, the Person who issued the order or notice shall place a placard containing the terms of the order or notice in a conspicuous place on the Property and the placing of the placard shall be deemed to be sufficient service of the order or notice on the Person or Persons to whom the order or notice is directed.

14.5 A Director or Officer or a Person acting under the direction of the Director

or an Officer may enter upon any land at any reasonable time for the purpose of serving an order or notice issued pursuant to this by-law.

## 15. PENALTIES & OFFENCES

15.1 Any Person who contravenes a provision of this by-law or fails to comply with an order or notice issued under this by-law, or fails to comply with an order of a court is guilty of an offence and, on conviction, is liable to a penalty, as provided for in the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended.

15.2 No Person shall obstruct, hinder, interfere or attempt to obstruct, hinder or interfere with the free access to any Encroachment by an employee, Officer or agent of the Municipality.

15.3 No Person shall obstruct, hinder, interfere or attempt to obstruct, hinder or interfere with an employee, Officer or agent of the Municipality who is exercising a power or performing a duty under this By-law, including, but not limited to, carrying out an inspection.

15.4 Every Person who is guilty of an offence under this by-law shall be subject to the following penalties:

- (a) Upon a first conviction, to a fine not less than \$100 and not more than \$50,000;
- (b) Upon a second or subsequent conviction for the same offence, to a fine of not less than \$400 and not more than \$100,000;
- (c) Upon conviction for a continuing offence, to a fine of not less than \$100 and not more than \$10,000 for each day or part of a day that the offence continues. The total of the daily fines may exceed \$100,000.

15.5 If the Person who is guilty of an offence under this by-law is a corporation, the following penalties apply:

- (a) Upon a first conviction, to a fine not less than \$200 and not more than \$60,000;
- (b) Upon a second or subsequent conviction for the same offence, to a fine of not less than \$500 and not more than \$100,000;
- (c) Upon conviction for a continuing offence, to a fine of not less than \$100 and not more than \$10,000 for each day or part of a day that the offence continues. The total of the daily fines may exceed \$100,000.

15.6 For the purposes of this by-law, an offence is a second or subsequent offence if the act giving rise to the offence occurred after a conviction has been entered at an earlier date for the same offence.

15.7 If an order or notice has been issued under this by-law or there has been an order of the court, and the order or notice issued under this by-law or order of the court has not been complied with, the contravention of the order or notice issued under this by-law or order of the court shall be deemed to be a continuing offence for each day or part of a day that the order or order of the court is not complied with.

15.8 When a Person has been convicted of an offence under this by-law, in addition to any other penalty provided by law, the court in which the conviction was entered, and any court of competent jurisdiction, thereafter, may make an order prohibiting the continuation or repetition of the offence by the Person convicted of the offence.

## **16. GENERAL PROVISIONS**

16.1. Every Encroachment Agreement shall contain a clause that requires the payment of an annual fee as outlined in the Fees and Charges By-law which shall be processed on or before April 30th of each year so that the annual fee can be applied to the property tax bill of the Private Property.

16.2. The Municipality is not responsible for any damages, losses or injuries caused by or to an Encroachment whether subject to an Encroachment Agreement or not. For further clarity, the Municipality is not responsible for any damages caused to an Encroachment as a result of the Municipality's operations including, but not limited to, snow ploughing, grass cutting, Boulevard maintenance or the repair and maintenance of the Municipality's infrastructure.

16.3. Every holder of an Encroachment Agreement shall indemnify the Municipality, its Officers, employees, and agents from all losses, damages, loss, expenses, claims, demands, actions, lawsuits, or other proceedings of every nature and kind arising from, and in consequence of, the erection, placement, alteration, continuation or removal of an Encroachment.

16.4. The requirements of and the obligations imposed by this by-law are in addition to the requirements and obligations contained in any other applicable by-laws of the Municipality or applicable provincial or federal statutes or regulations.

16.5. If there is a conflict between a provision of this by-law and any other by-law of the Municipality or a provincial or federal statute or regulation, the most restrictive in relation to an Encroachment shall prevail.

## **17. MUNICIPAL WORK & EMERGENCY SITUATIONS**

17.1 Where in the course of performing maintenance, repairs or any other public works, the Director deems it appropriate to remove an Encroachment for which an Encroachment Agreement was issued, the Director shall:

- (a) Provide notice, as soon as is practicable, to the Property Owner to whom the Encroachment Agreement was issued advising of the work to be conducted and the approximate starting date for that work; and
- (b) Upon completion of the Municipal Work, the Municipality will be responsible only for returning the Municipal Lands back to their condition prior to the Encroachment.

17.2 Notwithstanding subsection 17.1 of this by-law, if the Director deems an Emergency Situation to exist or could exist, the Director may cause, without notice, any action required to abate the Emergency Situation including, but not limited to, removing any Encroachment and in such case, the Municipality shall only be responsible for returning the Municipal Lands to a condition that is acceptable to the Director.

- (a) Upon completion of the action necessary to abate the Emergency Situation referred to in subsection 17.2 of this by-law, the Director shall serve or cause to have served upon the Person with whom the Encroachment Agreement was entered into, as soon as is practicable, a notice indicating the nature of the Emergency Situation and the actions taken to abate the Emergency Situation.

## **18. REBUTTABLE PRESUMPTION**

18.1 The Property Owner shall be deemed to have erected, placed or maintained, or caused or permitted to be erected, placed or maintained, an

Encroachment located on Municipal Lands appurtenant to the Property Owner's Private Property and the Property Owner shall be deemed to have committed any violations in relation to this by-law as it relates to their Private Property and the Encroachment and such presumption may be rebutted by evidence to the contrary on a balance of probabilities.

**19. NO VESTED RIGHT**

19.1 Nothing in this by-law, including the execution of an Encroachment Agreement under this by-law, creates a vested right in the Person to whom the Encroachment Agreement was issued or in any other Person and thus any Encroachment may be revoked in accordance with the provisions of this by-law. There shall be no adverse possession of Municipal Lands on which the Encroachment is located.

19.2 Notwithstanding any other provision of this by-law, any valid Encroachment Agreement or similar instrument that was issued prior to the passing of this by-law, subsections 12.2, 12.3 and 12.4 shall apply to said Encroachment Agreement or similar instrument including the ability for the Encroachment Agreement or similar instrument to be revoked pursuant to the provisions of this by-law.

**20. SEVERABILITY**

20.1 Where a court of competent jurisdiction declares any section or part of a section of this by-law to be invalid, or to be of no force and effect, it is the intention of Council in enacting this by-law that the remainder of this by-law shall continue in force and be applied and enforced in accordance with its terms to the fullest extent possible according to law.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED IN OPEN COUNCIL this XXth day of MONTH, 202X.**

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**Mayor**

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**Clerk**