

BY-LAW NUMBER 2000-36

BEING a by-law of The Corporation of The Township of Champlain regulating encroachments on streets,

WHEREAS under Section 210 (107) of the *Municipal Act, R.S.O. 1990, c. M.45*, a by-law may be passed by the council of a municipality to allow any person, owning or occupying any building or other erection that by inadvertence has been wholly or partially erected upon any highway, to maintain and use such erection thereon, and for fixing such annual fee or charge as the council considers reasonable for such owner or occupant to pay for such privilege, such fee or charge forming a charge upon the land used in connection therewith and being payable and payment of it to be enforced in like manner as taxes are payable and the payment of them enforced, but nothing herein affects or limits the liability of the municipality for all damages sustained by any person by reason of any such erection upon a highway;

AND WHEREAS Section 210 (108) of the *Municipal Act, R.S.O. 1990, c. M.45* permits the use of a portion of any highway by the owner or occupant of land adjoining such highway during building operations upon such land for the storage of materials for such building or for the erection of hoardings; for fixing and collecting a fee or charge for such use according to the area occupied and the length of time of such occupation, and for regulating the placing of such materials or hoardings, the restoration of such highway to its original condition, the payment of such fee or charge, and giving of permits for such privilege;

AND WHEREAS Section 210 (109) of the *Municipal Act, R.S.O. 1990, c. M-45* permits window air-conditioners, cornices, eaves, awning containers, awning covers, sills, brackets and other similar projections beyond the main walls of buildings to encroach upon a highway at such height above the grade thereof as established by Council as the Council may provide in this By-law;

AND WHEREAS Section 210 (110) of the *Municipal Act, R.S.O. 1990, c. M-45* permits existing buildings to encroach or further encroach upon a highway to such extent as may be necessary to provide for refacing any such building;

NOW THEREFORE the Council of The Corporation of the Township of Champlain hereby enacts as follows:

SHORT TITLE

1. This By-law shall be known and may be cited as the "Encroachment By-law".

DEFINITIONS

2. In this By-law,
 - a) "**By-law Enforcement Officer**" means the person whose duty it is to enforce the Encroachment By-law of the Corporation or his/her authorized subordinates or assistants;
 - b) "**Corporation**" means The Corporation of the Township of Champlain;
 - c) "**encroachment**" means anything man-made that encroaches on a street, whether below, at, or above the street surface;

- (i) **“aerial encroachment”** means an encroachment that is located above a street at a height of ten (10) feet or more above the street surface immediately below it;
 - (a) **“temporary aerial encroachment”** means an aerial encroachment that is withdrawn for at least eight (8) hours in every twenty-four (24) hour period so that it no longer extends over the street, and includes the following, which are provided for illustration only and not so as to limit the generality of the foregoing: awning, display shelf, swings scaffold and crane; and
 - (b) **“permanent aerial encroachment”** means an aerial encroachment other than a temporary aerial encroachment, and includes the following, which are provided for illustration only and not so as to limit the generality of the foregoing: canopy, fire escape, cornice, chimney corbel and balcony;
- (ii) **“sub-surface encroachment”** means an encroachment that is located under a street surface and includes the following, which are provided for illustration only and not so as to limit the generality of the foregoing: areaway, coal chute, tunnel, vault and pipe; for the purpose of this By-law, a sub-surface encroachment is a permanent encroachment;
 - (a) **“temporary sub-surface encroachment”** means an encroachment that is used to facilitate the construction, repair, renovation or alteration of a building or is erected in order to comply with the provisions of this or any other by-law and includes tie backs, rock anchors and other types of supports placed under the street to support the walls of excavations;
- (iii) **“surface encroachment”** means an encroachment that is located upon the surface of a street, and also means that part of anything located above a street which is less than ten (10) feet above the surface of the street immediately below it;
 - (a) **“temporary surface encroachment”** means a surface encroachment that is used only to facilitate the construction, repair, renovation, alteration or demolition of a building, or is erected in order to comply with the provisions of this or any other by-law, and includes vehicles and equipment that are used in connection with the foregoing purposes and that occupy an area on the street for more than three (3) consecutive hours in any twenty-four (24) hour period; and
 - (b) **“permanent surface encroachment”** means a surface encroachment other than a temporary surface encroachment, and includes the following, which are provided for illustration only and not so as to limit the generality of the foregoing: bay window, wall, foundation, entrance shelter, fire escape, chimney corbel, fence, hedge, ornamental rock garden and flowerbed;
- d) **“street”** means any public highway, road, street, lane, alley, square, place, thoroughfare or way within the Corporation and all parts thereof, including any surface, grassed area, boulevard, ditch, curb, gutter and sidewalk, and further includes all other land and easements belonging to, or subject to the jurisdiction of the Corporation.

3. The provisions of this By-law do not apply to the following:
- a) works and equipment of the Corporation;
 - b) works and equipment of any person, to the extent that such works are lawfully authorized by any statute, charter, franchise or municipal by-laws;
 - c) cornices that encroach by not more than fifteen (15) inches at a height in excess of ten (10) feet above the surface of the street;
 - d) cornices and other permanent projections that have been heretofore constructed under the authority of any by-law of the Corporation;
 - e) signs;
 - f) lawns, private entrance walk-ways or private driveways;
 - g) trees that are planted under the authority of any by-law of the Corporation;
 - h) flags and flag-poles located at a height in excess of ten (10) feet above the surface of the street and that are not used for advertising purposes; or
 - i) footings that have been heretofore constructed and that
 - (i) do not encroach on a street by more than twelve (12) inches, and
 - (ii) are at least eight (8) feet below the street surface; and
 - (iii) do not interfere with public utility installations.

NECESSITY FOR PERMIT

4. No person shall construct, erect or alter any encroachment without first obtaining a permit to do so, but in no circumstances shall an encroachment permit be granted for a hedge, fence or wall.

CONTINUANCE OF EXISTING ENCROACHMENTS

5. Notwithstanding any provisions of this By-law, any previous agreement with or permission from the former Town of Vankleek Hill, the Village of L'Orignal and the Townships of Longueuil and West Hawkesbury that was in existence prior to January 1st, 1998, shall continue to be in effect.

PROHIBITION AS TO SURFACE ENCROACHMENTS

6. No person shall hereafter erect any permanent surface encroachment.

OVERRUNNING TIME LIMIT

7. No person shall occupy with a temporary surface encroachment any part of a street for a longer period of time than that specified in the permit therefor, unless and until the original permit has been renewed or a new permit obtained.

COMPLIANCE WITH REGULATIONS, ETC.

8. The construction, erection, alteration and continuance of any encroachment shall be done in compliance with the regulations set out in Schedule "A" hereto, the permit in respect thereof, and the plans and specifications submitted with the application for the permit.

REVOCACTION OF PERMIT

9. (1) The granting of a permit in respect of an encroachment does not create any vested right in the owner or occupant of the premises to which the encroachment is appurtenant, or in any other person, and the permit may be revoked at any time as hereinafter provided.
- (2) The granting of a license in respect of an encroachment does not create any vested right in the owner or occupant of the premises to which the encroachment is appurtenant, or in any other person, and the license is always subject to termination by either party at one month's notice in writing.

EASEMENTS FOR UTILITIES

10. The granting of a permit for a sub-surface encroachment is deemed to be subject to an easement for the construction, maintenance, repair and removal of public utilities' facilities.

LIMITED PERMIT

11. A permit for a temporary surface encroachment may limit the existence of an encroachment to a portion of the day only, with respect to any or all of the days that the permit is in force.

DISCONTINUANCE OF ENCROACHMENTS

12. If the owner of any premises to which the encroachment is appurtenant desires to permanently discontinue the encroachment, he shall so notify the By-law Enforcement Officer in writing. If the Council of the Corporation is at any time of the opinion that the privilege of continuing an encroachment should be terminated, it shall instruct the By-law Enforcement Officer to notify in writing the owner of the premises to which the encroachment is appurtenant, and the encroachment shall be removed or filled in and closed up, and the street shall be restored to its former condition by the owner at his own expense. If the owner fails to discontinue such use within ten (10) days following the sending of a notice, or within ten (10) days of the expiry of the time limited in any permit therefor, the encroachment may be removed or filled in and closed up, and the street restored to its former condition by the Corporation at the expense of the owner, such expense to be recovered in the manner hereinafter provided.

REMOVAL OF UNAUTHORIZED ENCROACHMENTS

13. The By-law Enforcement Officer shall give notice in writing to the owner of the premises to which an unauthorized encroachment is appurtenant, to forthwith remove, fill in or close up the encroachment and to restore the adjacent street surface to its former condition at his own expense. The Council may by resolution direct the removal of an unauthorized encroachment which continues after the service of notice by the By-law Enforcement Officer. The expenses of such removal shall be recovered in the manner hereinafter provided.

SUB-SURFACE ENCROACHMENTS - DUTY TO REPAIR

14. The owner of the premises to which a sub-surface encroachment is appurtenant shall at all times maintain and keep in proper repair at his/her own expense, the encroachment and the adjacent street surface, which in the case of a sidewalk includes the entire section thereof, in a proper and safe condition for the traffic thereon, and at the same standard as the street surface is now constructed or as it may hereafter from time to time be constructed and maintained by the Corporation.

RESPONSIBILITY FOR DAMAGES

15. The applicant, in whose name a permit for an encroachment is issued, and the owner of the premises, to which any encroachment is appurtenant, are jointly and severally responsible for all damages, costs and expenses which the Corporation may incur or pay or be rendered liable for by reason of any accident or other damage sustained by any person or property as a result of the construction, alteration or continuance of, or failure to maintain the encroachment.

PROCEDURES FOR APPLICATION

16. In the case of permanent encroachments, where an application for a building permit discloses an encroachment, the application will also be treated as an application for an encroachment permit, and no further application will be required. In all other cases, the application shall be made by way of a letter from the owner addressed to the By-law Enforcement Officer, and accompanied by:
 - a) information as to the materials out of which the encroachment has been or will be constructed, and the method and extent of its illumination, if any;
 - b) a plan in triplicate, certified by an Ontario Land Surveyor, a professional Engineer of the Province of Ontario or an Architect of the Province of Ontario, showing the location and dimensions of the encroachment and of the adjacent part of the premises to which it is or will be appurtenant, and the location of the lot line;
 - c) a registrable description of the premises to which the encroachment is or will be appurtenant; and
 - d) the sum of fifty (\$50.00) dollars to cover the cost of processing the application.
17. In the case of temporary encroachments, the application shall be made on Form "A", filed with the By-law Enforcement Officer.
18. A single application may be made in respect of two or more separate encroachments appurtenant to the same premises, if the supporting information submitted with the application covers all the encroachments concerned.
19. The amount paid to cover the cost of processing an application for an encroachment permit shall be refunded to the applicant if his application is not granted.
20. All permits are subject to revocation by the Corporation as provided in Section 12.

APPROVAL OF APPLICATION

21. (1) If the proposed encroachment is a temporary encroachment and conforms in all respects with the provisions of this By-law, the By-law Enforcement Officer shall approve the application.
- (2) No application for a temporary surface encroachment shall be approved unless,
 - (a) the applicant has obtained any building permit which may be required for the structure concerned.
22. If the By-law Enforcement Officer does not approve the application, or if the proposed encroachment is a permanent encroachment, the By-law Enforcement Officer shall report thereon to the applicant and to the Council of the Corporation.
23. The Council shall then consider the application and either approve or reject the application.

ISSUANCE OF PERMIT

24. The approval of the By-law Enforcement Officer or of the Council shall be endorsed by the By-law Enforcement Officer on one copy of the application form (Form "A" hereto), and the application so endorsed shall constitute the permit.
25. The charges payable to the Corporation for an encroachment permit is \$25.00 and shall remain in effect until modified or revoked by the Corporation.

RECOVERY OF CHARGES AND EXPENSES

26. (1) All charges provided for under this By-law shall be paid within thirty (30) days of their billing, and in the event of failure to pay within thirty (30) days of billing, interest shall be added on the amount(s) outstanding at the same rate charged for taxes.
- (2) All charges together with interest and expenses provided for in this By-law shall form a charge upon the land to which the encroachment is appurtenant until fully discharged by payment thereof.
- (3) The Corporation may recover all charges together with interest and expenses due under this By-law by action as a debt due to the Corporation or may recover them in the same manner and with the same penalties as municipal taxes on real property.
- (4) A copy of an invoice for any charges, together with interest and expenses, and a certificate by the Clerk-Treasurer, that:
 - (i) the invoice has been sent to the person liable to pay the same;
 - (ii) no payment or insufficient payment has been received in respect of the invoice, and interest charges if any, and
 - (iii) payment of the invoice is overdue,are sufficient authority to enter the amount of the outstanding balance of the invoice on the Collector's Roll, as of December 31st of the year in which the charges were billed.

INFRACTIONS AND PENALTIES

27. Every person who contravenes any of the provisions of this By-law or Schedule "A" is guilty of an offense and, on summary conviction, is liable to a fine pursuant to the provisions of the Provincial Offenses Act.

SEVERABILITY SECTION

28. If a court of competent jurisdiction should declare any paragraph or part of a paragraph of this By-law to be invalid or ultra vires, such paragraph or part of a paragraph shall not be construed as having persuaded or influenced Council to pass the remainder of this By-law and it is hereby declared that the remainder of this By-law shall be valid and shall remain in force.

REPEALING SECTION

29. All By-laws and/or resolutions of the former Municipal Councils of the Corporation of the Town of Vankleek Hill, of the Corporation of the Village of L'Original, including the Corporations of the Townships of Longueuil and West Hawkesbury, inconsistent with the foregoing be and they are hereby repealed.

APPROVAL

30. This By-law shall come into force and effect on the date of its final passing.

Read a first, second and third time and duly adopted on the 28th day of March, 2000.



JOHN WILSON, MAYOR



ROBERT LEFEBVRE, CLERK



SCHEDULE "A" TO BY-LAW NUMBER 2000-36

Regulations governing the construction, alteration, and continuance of encroachments:

OBSTRUCTION OF DANGER

1. No person shall construct, alter or continue any encroachment so that it is a source of obstruction or danger to the public or to traffic.

ACCESS TO ENCROACHMENTS

2. No person shall hinder the free access at all times of the Corporation to any encroachment.

AERIAL ENCROACHMENTS

3. No person shall construct or alter any aerial encroachment with supports resting on the sidewalk.
4. No person shall construct, alter or continue any part of an aerial encroachment nearer than ten (10) feet to the street surface directly below it.
5. No person shall construct or alter an aerial encroachment or temporary aerial encroachment, other than a bridge, any part of which is closer than two (2) feet from the outside limit of the part of the street intended for vehicular traffic.
6. No person shall construct, alter or continue a permanent aerial encroachment which permits rain or water to drop therefrom onto the street.
7. No person shall construct, alter or continue any part of a temporary aerial encroachment lower than ten (10) feet above the sidewalk.
8. No person shall permit a temporary aerial encroachment to encroach for more than sixteen (16) hours in any twenty-four (24) hour period.

SUB-SURFACE ENCROACHMENTS

9. No person using an opening in the roof of a sub-surface encroachment or permitting it to remain open shall do so unless he/she protects the public against accidents, by barricades or otherwise.
10. No person shall construct, alter or continue a sub-surface encroachment except in conformity with the following specifications:
 - (a) the walls shall be constructed of masonry or reinforced concrete and the roof, other than the openings therein, shall be constructed of reinforced concrete;
 - (b) openings in the roof shall be provided with substantial covers of incombustible materials flush with the adjacent surface of the street and constructed to prevent persons from slipping thereon;

- (c) wire mesh, gratings or other covers of open construction shall not be used in covering openings in the roof; and
- (d) glass used in lights in openings in the roof shall not exceed sixteen (16) square inches for one (1) light.

TEMPORARY SURFACE ENCROACHMENTS

11. The following regulations apply in respect of temporary surface encroachments:

- (a) the interior of all covered walks must at all times be lit, either naturally or artificially, to ensure safety for pedestrians;
- (b) no person shall, during the hours between sunset and sunrise, occupy any portion of the street with a temporary surface encroachment any part of which is closer than one (1) foot from the outside limit of the part of the street intended for vehicular traffic, unless he has placed and maintained at each end and corner during such hours, flashing amber lights of six (6) inches minimum diameter and of sufficient intensity to be visible at a distance of five hundred (500) feet under normal atmospheric conditions, and unless, when such temporary surface encroachment exceeds twenty (20) feet in length, there is an additional light for each twenty (20) feet or fraction thereof, and unless all lights are placed and maintained so as to give ample warning of danger to pedestrians and drivers of all vehicles;
- (c) no person shall place building material near a catch basin unless he/she has first provided a suitable stop or diversion so as to prevent any of the material from entering the sewer;
- (d) no person shall construct, alter or continue an encroachment so as to obstruct the sight of, the free approach to, the installation of, or the use of, any fire hydrant, sprinkler connection, fire alarm box, police call box, traffic control device or equipment, street light, manhole, catch basin, waterworks valve chamber or valve box, water service post, water metre chamber, utility pole or emergency exit from a building, or so as to obstruct the sight of any traffic signal or sign from any point from which it is intended that it should be seen.

TOWNSHIP OF CHAMPLAIN

APPLICATION FOR AN ENCROACHMENT PERMIT

(FORM "A" TO BY-LAW NUMBER 2000-36)

Roll No.: _____

Permit No. _____

Date: _____

Permit Fee: _____

I, _____ being the owner or authorized agent for

name of person

the owner of the property described as: _____

Lot and/or Part Lot No.

Conc.

Plan

on the _____ side of _____ street,

between _____ street and _____ street,

hereby apply for a permit to occupy the following portion(s) of the said street : _____

_____ being in front and/or at the side of the described property.

1. For a period from _____ a.m. / p.m., _____

date

to _____ a.m. / p.m., _____, as a temporary

date

encroachment in accordance with the following requirements: _____

I agree to comply strictly with the conditions of By-law No. 2000-36, entitled "A By-law of the Corporation of the Township of Champlain Regulating Encroachments on Streets" and amendments thereto.

2. i) As a permanent encroachment from the building appurtenant thereto:

(attached hereto in triplicate are plans showing the encroachment)

ii) The legal description of the lands and premises appurtenant to the encroachment is:

In consideration of the above permit being granted, I hereby agree to indemnify and save harmless The Corporation of the Township of Champlain, its officers, servants and agents, of and from all claims and demands in any way arising out of the execution of the work above referred to or the granting of the said permit.

Application approved

_____ Applicant

Application rejected

Explanation for refusal:

_____ By-law Enforcement Officer

_____ Council (if applicable)

Date issued: _____

ENCROACHMENT BY-LAW NUMBER 2000-36

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SCHEDULE "A" TO BY-LAW NUMBER 2000-36

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