

THE CORPORATION OF THE CITY OF WINDSOR
POLICY

Service Area:	Office of the Commissioner of Infrastructure Services	Policy No.:	
Department:	Engineering	Approval Date:	February 17, 2015
		Approved By:	CR 213/2025
Division:	Right-of-Way	Revised Date:	May 26, 2025;
		Effective Date:	February 17, 2015
Subject:	Encroachment Policy	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 Approving amendments from time to time based on recommendations from Administration;

4.1.3 Approving exceptions to the Policy as necessary.

4.2 The Chief Administrative Officer is responsible for:

4.2.1 Enforcing and supporting the Policy;

4.2.2 Approving and executing legal Encroachment Agreements within the terms of the Policy in accordance with Delegation of Authority By-law 208-2008 section 3.2.

4.3 The City Clerk is responsible for:

4.3.1 Execute Encroachment Agreements.

4.4 The City Solicitor or designate:

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 and Right-of-Way permit is satisfactory in technical content;

4.5.3 Providing recommendations for approval of legal encroachments to the Chief Administrator Officer;

4.5.4 Ensures staff process the application and follow the Policy.

4.6 The Chief Financial Officer or designate:

4.6.1 Ensuring the Encroachment Agreement is satisfactory in financial content;

4.6.2 Ensuring 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 any 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.

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 for any items listed as a Major Residential Encroachment, Partially Exempt Encroachment or Non-Residential Encroachment.

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 5.19 - No Fee Encroachment).

5.9 Encroachment Term, The term shall commence as of the execution date and be in force for a 20 year period, unless terminated early by the City in accordance with the terms of the Encroachment Agreement.

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 Landscaping**, includes but is not limited to plants (flowers, plants, bushes, shrubs, boxwood and hedges), loose stone, pebbles, decorative stone, mulch, artificial turf and underground sprinkler systems.
- 5.15 Land Value**, the value of property (\$ per square foot), in accordance with the User Fee Schedule.
- 5.16 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.
- 5.17 Major Residential Encroachment**, any Encroachment other than Landscaping or a Minor Encroachment that is placed, occupied or maintained upon any municipal right-of-way abutting land zoned R.1 or R.2, including but not limited to signs, fences, sheds, porches, footings, canopies, parking areas, curbing, vaults, structures (in whole or part) and private sewers.
- 5.18 Minor Residential Encroachment**, any Encroachment that is placed, occupied or maintained upon any municipal right-of-way abutting land zoned R.1 or R.2, including but not limited to single steps as part of a leadwalk, decorative rocks or boulders, landscape logs, picket fences with no foundations, plastic landscape borders, lawn ornaments, or any other personal property as determined by the City Engineer in its sole discretion.
- 5.19 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.
- 5.20 Non-Residential Encroachment**, any Encroachment other than Landscaping that is placed, occupied or maintained upon any municipal right-of-way abutting land not zoned R.1, R.2 or 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, 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) and private sewers.
- 5.21 Parking Space Encroachment**, being defined as an Encroachment with an area used for parking on any type of hard surface where one (1) parking space is approximately 18.5 square metres (200 square feet).
- 5.22 Partially Exempt Encroachment**, any Encroachment other than Landscaping that is placed, occupied or maintained upon any municipal 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 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) and private sewers.
- 5.23 Permanent**, lasting or intended to last or remain unchanged indefinitely.
- 5.24 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.
- 5.25 Temporary**, lasting for only a limited period of time; not Permanent; less than one (1) year.
- 5.26 User Fee Schedule**, the City's current user fee schedule, as approved by Council from year to year.

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 There are no fees for **Minor Residential Encroachments**; however, permits are required in accordance with the User Fee Schedule.
 - 6.3.1 Right-of-Way permit and Indemnity fees payable to the City upon demand.
- 6.4 The **Major Residential 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).
 - 6.4.2 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:
 - 6.4.2.1 The property owner(s) statement of account with the City is in Good Standing.
 - 6.4.2.2 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.
 - 6.4.2.3 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.
 - 6.4.2.4 That the agreement may be registered against the title of the Owner's property.
 - 6.4.2.5 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.
- 6.5 The **Partially Exempt Encroachment fee** is based on the Encroachment Term, and is computed in accordance with the User Fee Schedule.
 - 6.5.1 One-time fees payable to the City upon demand (invoice).
- 6.6 The **Non-Residential Encroachment fee** is based on the Encroachment Term, and is computed in accordance with the User Fee Schedule.
 - 6.6.1 Annual Non-Residential Encroachment and Billing/Inspection fees are added to property taxes.
- 6.7 The **Parking Space Encroachment fee** is based on the Encroachment Term, and is computed in accordance with the User Fee Schedule.
 - 6.7.1 One-time fees payable to the City in accordance with Section 6.4., as applicable, if determined Major Residential Encroachment.
 - 6.7.2 One-time fees payable to the City in accordance with Section 6.5 if determined Partially Exempt Encroachment.
 - 6.7.3 Annual fees payable to the City in accordance with Section 6.6 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 City Engineer.
- 8.2** Council may otherwise provide direction regarding exemptions to the Policy or provide approvals at their discretion that are contrary to the decision of the City Engineer.

9. APPLICATION PROCESS

- 9.1** Applications for any Minor Residential Encroachment are subject to the following terms and conditions:
 - 9.1.1** One (1) right-of-way permit application per property identified by the Assessment Roll Number
 - 9.1.2** Multiple Minor Residential Encroachments may exist on a single property, if approved; however, if both of at least one (1) Major Residential Encroachment and one (1) Minor Residential Encroachment are present, all items within the right-of-way must be processed through an encroachment agreement (see 9.2 below).
 - 9.1.3** A new right-of-way permit application is required to add or alter any existing Minor Residential Encroachments.
 - 9.1.4** The property owner is required to give ten (10) days notice to the City's Engineering Department before any sale of the subject property.
 - 9.1.5** The applicant agrees to remove all Minor Residential Encroachments 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.
- 9.2** Applications for Major Residential Encroachments, Partially Exempt Encroachments and Non-Residential Encroachments are subject to the following terms and conditions:
 - 9.2.1** One (1) encroachment application per property identified by the Assessment Roll Number.
 - 9.2.2** Multiple encroachments may exist on a single property, if approved.
 - 9.2.3** A new encroachment application is required to amend existing agreements if one (1) or more encroachments are removed, or added or altered.
 - 9.2.4** A new encroachment application is required for succeeding property owners, at the discretion of the Commissioner of Infrastructure Services or designate.
 - 9.2.5** The property owner is required to give ten (10) days' notice to the City's Engineering Department before any sale.
 - 9.2.6** 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** Partially Exempt, Minor and Major Residential Encroachment Properties – A Certificate of Insurance with proof of General Liability Insurance in the amount of at least \$2,000,000.00 per occurrence, to be primary and non-contributing,

containing an endorsement naming **“The Corporation of the City of Windsor”** as an additional insured, and containing a 30-day notice of cancellation provision and a cross-liability/separation of insured clause.

10.1.2 Non-Residential Encroachment Properties – A Certificate of Insurance with proof of General Liability Insurance in the amount of at least \$5,000,000.00 per occurrence, to be primary and non-contributing, containing an endorsement naming **“The Corporation of the City of Windsor”** as an additional insured, containing a 30-day notice of cancellation provisions and a cross-liability/separation of insured 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 2.44m (8'-0")

Any overhead object that projects less than 305mm (1'-0") into the Public right-of-way allowance, in whole or in part and is a minimum of 2.44m (8'-0") above grade.

11.2 Encroachments from grade to 2.44m (8'-0")

Any object that projects less than 101.5mm (4") into the Public right-of-way allowance, in whole or in part and exists from grade to a maximum of 2.44m (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 City Solicitor and approved by the City Engineer 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 City Engineer and/or City Solicitor.

11.6 Long Term Hoarding

11.6.1 An Encroachment Agreement will be required and the fee for use of City rights-of-way 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 City Engineer 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 City Engineer or the City Solicitor.
- 11.6.2.5** That the Chief Administrative Officer and City Clerk BE AUTHORIZED to sign the agreement satisfactory in technical content to the City Engineer and form satisfactory to the City solicitor 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 do 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, if deemed acceptable by the City Engineer and/or City Solicitor, obtain permission via a permit.
- 11.7.2** Right-of-way permit fee will be required as per the User Fee Schedule.
- 11.7.3** Permit may be cancelled, and all objects shall be removed from the right-of-way at the discretion of the City Engineer.

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.