

THE CORPORATION OF THE CITY OF WINDSOR

POLICY

Service Area:	Office of the City Engineer	Policy No.:	
Department:	Engineering	Approval Date:	February 17, 2015
Division:	Development, Projects, Right-of-Way	Approved By:	M67-2015
		Effective Date:	February 17, 2015
Subject:	Encroachment Policy	Procedure Ref.:	Schedule 'A'
		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, streamline the encroachment process, ensuring the exposure to risk and liability is mitigated. Therefore this Policy specifically:
- 2.1.1 Defines an encroachment; and
 - 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 that fall under the delegation of authority under By-Law Number 208-2008, Section 3.2.

4. RESPONSIBILITY

The responsibilities related to use of this policy are detailed as follow;

- 4.1 The Mayor and City Council are responsible for:
- Approving, supporting and enforcing the Encroachment Policy;
 - Make determination of Encroachment Policy and resolve any exceptions or disagreements.

- 4.2 The Chief Administrative Officer is responsible for:
 - Approving , enforcing and supporting the Encroachment Policy
- 4.3 The Office of the City Solicitor:
 - Enforcing the Encroachment Policy
 - Ensuring the Encroachment Agreement is Satisfactory in form.
- 4.4 The Office of the City Engineer:
 - Administer the Encroachment Policy
 - Enforcing the Encroachment Policy
 - Ensuring the Encroachment Agreement is Satisfactory in technical content.
 - Ensures staff process the application and follow the policy.

5. Definitions

- 5.1 **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.
- 5.2 **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.
- 5.3 **Partially Exempt Encroachment**, being defined as an encroachment located on the public right-of-way abutting lands owned by a partially exempt organization independent of zoning in the City of Windsor.
 - 5.3.1 **Partially Exempt** will be deemed to be any Public Authority, charitable organization, non-profit charities, churches and similar facilities.
- 5.4 **Bus Bays (lay-by)**, road widening to permit temporary parking/stopping etc.
- 5.5 **Non Residential Encroachments**, 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.
- 5.6 **Encroachment Term**, 20 years from the agreement execution date or change of zoning or change in ownership, whichever occurs first.
- 5.7 **Encroachment Agreement**, refers to a legal and binding agreement between the Corporation of the City of Windsor and the property owner having permission to occupy the right-of-way. The Council Resolution or Chief Administrative Officer approval 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 Corporation of the City of Windsor for road widening purposes.
- 5.9 **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.

- 5.10 **Land Value**, the value of property (\$ per square foot) as per the current User Fee Schedule as determined by the City Solicitor, based on zoning designation and not use of the property.
- 5.11 **Area of Encroachment**, the square footage of the personal property of any description that is placed, occupied or maintained upon any highway.
- 5.12 **Downtown Land Value**, the value of property (\$ per square foot) as per the current User Fee Schedule as determined by the City Solicitor used for non residential encroachment located within the Downtown Windsor Business Improvement Area.
- 5.13 **No Fee Encroachment**, the application fee and agreement preparation fee are waived. The right of way permit fee, inspection and billing fee, and the annual or one-time encroachment fee are applicable including a certificate of insurance.
- 5.14 **Hedge, Planting Ground Cover**, includes but limited to plants, shrubs, flowers, ornamental grasses, and hedges.
- 5.15 **Parking Space**, an area used for parking on any type of surface with an area of approximately 13.75 square metres (144 square feet).
- 5.16 **A frame signs or ‘Sandwich Board Signs’**, are signs not permanently anchored to the ground.
- 5.17 **Permanent**, lasting or intended to last or remain unchanged indefinitely.
- 5.18 **Temporary**, lasting for only a limited period of time; not permanent; less than one (1) year.
- 5.19 **Exception**, a person or thing that is excluded from a general statement or does not follow a rule.
- 5.20 **Sidewalk Cafe**, is an outdoor seating area located within a public right-of-way pursuant to a valid Sidewalk Cafe Permit, which functions as an outdoor seasonal extension of the primary business of food and/or beverage service and may include other outdoor seating areas as approved by City Council.
- 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.

6. **Encroachment fees**

- 6.1 Multiple encroachments may exist on a single property, if approved.
- 6.2 Encroachment application fees are based on the current User Fee Schedule; the User Fee Schedule should be referenced for the current rates.
- 6.3 Minimum (Annual or One Time) Encroachment Fees
- The Residential fee is based on the encroachment term, with the fee computed in accordance Schedule ‘A’ hereafter.
 - One time fees payable to City Engineer upon demand (invoice).
 - The Partial Exempt fee is based on the encroachment term, with the fee computed in accordance Schedule ‘A’ hereafter.
 - One time fees payable to City Engineer upon demand (invoice).

- The Non Residential fee is based on an encroachment term, with the fee computed in accordance Schedule 'A' hereafter.
 - Annual Non Residential fee is added to property taxes.

7. Land Values

- 7.1 Land Values are based on zoning designation of the property, not use of the property.
- 7.2 Land values are based on the current User Fee Schedule; the User Fee Schedule should be referenced for the current rates.

8. Approvals

- 8.1 Approval may be granted by the City Administrator on the recommendation of the City Engineer.
- 8.2 Denials are referred to City Council for decision. Also encroachments of concern to City Engineer or Chief Administrative Officer that may require a broader consultation may be referred to City Council for decision.

9. Encroachment Application

- 9.1 One (1) application per property identified by Assessment Roll Number, see Appendix 'G'.
- 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.
- 9.5 The property owner is required to give ten (10) days notice to the Corporation of The City of Windsor Risk Management 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 City Engineer to do so.

10. Encroachment Agreement

- 10.1 General encroachment agreements are attached with standard legal requirements of the one-time encroachments (Appendix E) and annual encroachments (Appendix F).

11. Insurance requirements

- 11.1 For the life of the encroachment agreement, the Licencee will provide a Certificate of Insurance in its legal name confirming the Licencee has in

force insurance coverage. The Certificate of Insurance must be satisfactory in form and content to the City's Risk Management Division.

11.1.1 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.

11.1.2 Commercial Properties – A Certificate of Insurance with proof of same coverage as Residential Properties (See 11.1.1) but must also include proof of a cross-liability clause.

11.2 The insurance requirements may increase or change from the basic requirements set out in 11.1 at the outset of the encroachment or throughout the Encroachment Term, at the discretion of the City's Solicitor or designate.

12. Encroachment Exemptions/Special Exceptions Circumstances

12.1 Sign (wall or fascia)

- Any overhead /fascia wall sign that projects less than 0.3m (1 foot) into the Public right-of-way allowance, in whole or in part and is a minimum 8 feet above grade.

12.2 Re-facing or similar feature of Building (Veneer, Building Cladding)

- Permitting existing to encroach or further encroach upon a right-of-way to such extent, not exceeding 100mm (4 inches), as may be necessary to provide for re-facing any such building.

12.3 Bus Bays (lay-by),

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

12.4 Encroachment caused by gratuitously conveyed lands

- An encroachment is caused as a result of a property owner gratuitously conveying lands to the Corporation of the City of Windsor for road widening purposes. The property owner may either remove the said encroachment or apply for a no-fee encroachment agreement (no application or agreement preparation fee) with the Corporation if recommended by the City Solicitor or City Engineer and approved by CAO or Council.

- Encroachment fee and annual inspection and billing fee will apply.

12.5 Temporary Encroachments (Door Swings and A Frame Signs)

- No encroachment agreement is required for any door that is encroaching into the public right-of-way only when the door is open.
- A frame signs removed daily from the right of way do not require an agreement, however will require a right of way permit as per the current user fee schedule.

12.5.1. Any other encroachment the City Engineer and/or City Solicitor deem temporary.

12.6 Long Term Hoarding

- A Encroachment Agreement will be required and that the fee for use of City right-of-ways will be calculated on the following formula;

**Annual Encroachment Fee =
Area of Encroachment x Land Value x Encroachment Factor (1.25)**

12.6.1 The encroachment agreement shall contain the following terms;

12.6.2 The encroachment agreement must be approved yearly by City Council;

12.6.3 Proper Insurance must be submitted, to the satisfaction of the City Solicitor;

12.6.4 The City Engineer and Chief Building Official (CBO), upon concurrence by the CAO, can extend the temporary hoarding to a period beyond two (2) years if construction is ongoing and the construction schedule is presented;

12.6.5 Any other terms deemed appropriate by the City Solicitor or City Engineer.

12.6.6 That the CAO and City Clerk BE AUTHORIZED to sign the agreement satisfactory in technical content to the City Engineer and form satisfactory to the City Solicitor.

12.7 Hedges, Plantings, Ground Cover

- Hedges/plantings located within the right-of-way that does not comply with Engineering Best Practice BP-3.2.2 and drawing 4M-157 (attached) as amended from time to time, must be removed from the right-of-way or obtain permission via permit as per the current user fee schedule.

12.7.1 Right-of-way permit fee will be required as per current fee schedule.

12.7.2 Permit will be cancelled and all objects will have to be removed from the right-of-way at the discretion of the City Engineer.

12.7.3 Any hedges, plantings, ground cover that the City Engineer and/or City Solicitor deem acceptable.

12.8 Sidewalk Cafe

- As per Council Resolution CR133/2011.

12.9 Additional Exemptions/Special Exceptions

- Any additional approved by Council.