


# POLICY

	Policy:	<b>Encroachment</b>		
	Department:	Office of the CAO		
	Division:	Licensing & Enforcement	By-Law No.:	2023-061
	Administered By:	Manager, Licensing & Enforcement	Approval Date:	May 23, 2023
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	Attachment(s):	N/A		

## 1. POLICY STATEMENT

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

## 2. PURPOSE

- 2.1. The 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 powers and duties policy.

## 4. DEFINITIONS

- 4.1. **Chief Administrative Officer (CAO)** is the Chief Administrative Officer for the Corporation of the Town of Amherstburg, which includes the roles and responsibilities as laid out in Section 229 of the Municipal Act, 2001.
- 4.2. **Clerk** is the Municipal Clerk for the Corporation of the Town of Amherstburg, which includes the roles and responsibilities as laid out in Section 228 of the Municipal Act, 2001.
- 4.3. **Council** refers to the current elected Council for the Corporation of the Town of Amherstburg. This includes, as an entirety, the Mayor, Deputy Mayor and Councillors.
- 4.4. **Director** is the person responsible for direction and operational control of a division as defined on the Town's organizational structure.

- 4.5. **Manager** reports directly to a Director (or the CAO in some instances) and who is responsible for a department within a division of the Corporation, as defined on the Town's organizational structure.
- 4.6. **Senior Management Team (SMT)** is comprised of the Chief Administrative Officer and the Directors. If a Director is unavailable, a delegate may be assigned.
- 4.7. **Staff** is any person (or group thereof) who supplies services to the Corporation for wages including any union or non-union, regular or temporary, full-time, part-time, seasonal or casual staff member, including but not limited to permanent staff, temporary staff, committee members, students, recreation staff, contract employees, paid work placements, and adult crossing guards.
- 4.8. **Town** is the Corporation of the Town of Amherstburg.

## 5. **INTERPRETATIONS**

- 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. **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 Town of Amherstburg. 5.3.1 Partially Exempt will be deemed to be any Public Authority, charitable organization, non-profit charities, churches and similar facilities.
- 5.3. **Encroachment Agreement**, refers to a legal and binding agreement between the Corporation of the Town of Amherstburg 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.
- 5.4. **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 Town of Amherstburg for road widening purposes.
- 5.5. **Hedge, Planting Ground Cover**, includes but limited to plants, shrubs, flowers, ornamental grasses, and hedges.
- 5.6. **A frame signs or 'Sandwich Board Signs'**, are signs not permanently anchored to the ground.
- 5.7. **Permanent**, lasting or intended to last or remain unchanged indefinitely.
- 5.8. **Temporary**, lasting for only a limited period of time; not permanent; less than one (1) year.

- 5.9. **Exception**, a person or thing that is excluded from a general statement or does not follow a rule.
- 5.10. **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 Town Council.
- 5.11. **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 Town of Amherstburg.

## **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.

## **7. Approvals**

- 7.1 Approval may be granted by the Town Administrator on the recommendation of the Town Director of Engineering and Infrastructure.
- 7.2 Denials are referred to CAO for decision. In addition, encroachments of concern to the Director of Engineering and Infrastructure or Chief Administrative Officer that may require a broader consultation, may be referred to Town Council for decision.

## **8. Encroachment Application**

- 8.1. One (1) application per property identified by an assessment roll number.
- 8.2. Multiple encroachments may exist on a single property, if approved.
- 8.3. A new encroachment application is required to amend existing agreements if one (1) or more encroachments are removed, or added or altered.
- 8.4. A new encroachment application is required for succeeding property owners.
- 8.5. The property owner is required to give ten (10) days notice to the Corporation of the Town of Amherstburg before any sale.
- 8.6. The applicant agrees to remove the encroachment and restore the area within sixty (60) days to the condition of the surrounding area upon receipt of written notice by the Town to do so.

## **9. Encroachment Agreement**

- 9.1. General encroachment agreements are attached with standard legal requirements of the annual encroachments and multiple encroachments.

## **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 consent to the Town's Licensing & Enforcement Dept.
  - 10.1.1. Residential Properties – A Certificate of Insurance with proof of general liability insurance for \$2,000,000 per occurrence, containing an endorsement naming **“The Corporation of The Town of Amherstburg”** as an additional insured, and containing a 30-day cancellation notice requirement.
  - 10.1.2. Commercial Properties – A Certificate of Insurance with proof of same coverage as Residential Properties (See 11.1.1) but must also include a proof of a cross-liability clause.
- 10.2. The insurance requirements may increase or change from the basic requirements as set out in 10.1 at the outset of the encroachment or throughout the Encroachment term, at the discretion of the Town.

## **11. Encroachment Exemptions/Special Exceptions Circumstances**

### **11.1. Sign (wall or fascia)**

- 11.1.1. 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

### **11.2. Re-facing or similar feature of Building (Veneer, Building Cladding)**

- 11.2.1. 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.

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

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

### **11.4. Temporary Encroachments (Door swings and “A” Frame Signs)**

- 11.4.1. No encroachment agreement is required for any door that is encroaching into the public right-of-way only when the door is open.

- 11.4.2. "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.
- 11.4.3. Any other encroachment the Director of Engineering & Infrastructure and/or CAO deem temporary.
- 11.4.4. Any other terms deemed appropriate by the Director of Engineering, CBO or CAO.
- 11.4.5. That the CAO and Town Clerk BE AUTHORIZED to sign the agreement satisfactory in technical content to the Director of Engineering and form satisfactory to the Town's legal counsel.

11.5. Hedges, Plantings, Ground Cover

- 11.5.1. Hedges/plantings located within the right-of-way that does not comply with our Fence By-law 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.
- 11.5.2. Right-of-way permit fee will be required as per current fee schedule.
- 11.5.3. Permit will be cancelled and all objects will have to be removed from the right-of-way at the discretion of the Director of Engineering.
- 11.5.4. Any hedges, planting, ground cover that the Director of Engineering and/or CAO deem acceptable.

11.6. Additional Exemptions/Special Exceptions

- 11.6.1. Any additional approved by Town Council.