



**THE CORPORATION OF THE CITY OF MISSISSAUGA
ENCROACHMENT BY-LAW 57-04**

(Amended by 108-11)

WHEREAS the *Municipal Act, 2001*, S.O. 2001, c.25 (hereinafter the “Municipal Act, 2001”) provides that a municipality may pass by-laws within the following spheres of jurisdiction: Highways, including parking and traffic on highways at section 11(1) 1; Culture, parks, recreation and heritage at section 11(1) 5 and Structures, including fences and signs at section 11(1) 7;

AND WHEREAS section 8 of the Municipal Act, 2001 provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Municipal Act;

AND WHEREAS section 9(1) of the Municipal Act, 2001 provides that sections 8 and 11 shall be interpreted broadly so as to confer broad authority on municipalities to (a) enable them to govern their affairs as they consider appropriate, and (b) enhance their ability to respond to municipal issues;

AND WHEREAS section 391(c) 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 section 427(1) of the Municipal Act, 2001 provides that a municipality may proceed to do things at a person's expense which that person is otherwise required to do under a by-law or otherwise but has failed to do;

AND WHEREAS section 427(3) of the Municipal Act, 2001 provides that the costs incurred by a municipality in doing a thing or matter under section 427(1) may be recovered by adding the costs to the tax roll and collecting them in the same manner as taxes;

NOW THEREFORE the Council of The Corporation of the City of Mississauga 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) “**City**” means The Corporation of the City of Mississauga;
 - (b) “**City Solicitor**” means the head of the City's Legal Services Division and shall include his or her designate;
 - (c) “**Commissioner means**” (108-11)
 - (i) for lands under the jurisdiction of the Community Services Department, the Commissioner of Community Services;
 - (ii) for lands under the jurisdiction of the Transportation & Works Department, the Commissioner of Transportation & Works; and
 - (iii) in all instances other than those listed in 2(c)(i) and (ii) above, the Commissioner of Corporate Services
 - (d) “**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;

- (e) **“encroachment”** means any type of vegetation, man-made object or item of personal property of a person which exists wholly upon, or extends from a person's premises onto, public lands and shall include any aerial, surface or subsurface encroachments;
 - (i) **“aerial encroachment”** means an encroachment that is located at least .304 meters (12 inches) above the surface of public lands;
 - (ii) **“surface encroachment”** means an encroachment that is located anywhere between the following: the surface of public lands to a height less than .304 metres (12 inches) and beneath the surface of public lands to a depth of not more than 2.54 centimetres (1 inch).
 - (iii) **“sub-surface encroachment”** means an encroachment that is located beneath the surface of public lands to a depth exceeding 2.54 centimetres (1 inch);
- (f) **“encroachment agreement”** means a document prepared by the City allowing an encroachment on public lands and shall take either of the following two forms: (108-11)
 - (i) a permit for all minor encroachments on highway land and
 - (ii) an agreement for all other types of encroachments, each of which shall be signed by the applicable Commissioner or his/her authorized delegate;
- (g) **“expenses”** means any and all sums of money actually spent or required to be spent by the City, and shall include but not be limited to all charges, costs, administrative fees, HST, outlays, legal fees and losses; (108-11)
- (h) **“highway”** means a common and public highway and includes any street, sidewalk, bridge, trestle, viaduct or other structure forming part of the highway and, except as otherwise provided, includes a portion of a highway;
- (i) **“minor encroachment”** means an encroachment on a public highway deemed by the Commissioner to be of minor size and significance; (108-11)
- (j) **“owner”** means the registered owner of a parcel of property as such person is described in the records of the land registry office; (108-11)
- (k) **“person”** means an individual, partnership, association, firm or corporation, business entity or club, incorporated group or organization, federal or provincial government, crown agents, school boards and regional municipalities, to whom the context can apply in accordance with the *Interpretation Act* of Ontario, as amended, but specifically excludes the City; (108-11)
- (l) **“personal property”** means any object or item of property other than real property; (108-11)
- (m) **“premises”** means a parcel of real property under registered ownership and includes all buildings and structures thereon; (108-11)
- (n) **“public lands”** means lands owned by, leased, licensed to or under the management of the City, and shall include but not be limited to any public highway, road, street, avenue, parkway, lane, alley, square, place, viaduct or trestle, water, thoroughfare, way or bridge, park, woodland, greenbelt, storm water management facility, open space, municipal golf course or cemetery, and all parts thereof, including any surface, grassed area, boulevard, ditch, curb, gutter and sidewalk; (108-11)
- (o) **“right-of-way”** means a person's legal right, established by usage or by contract, to pass through grounds or property owned by another person; (108-11)
- (p) **“unauthorized encroachment”** means any encroachment not authorized by this by-law. (108-11)

ENCROACHMENTS PROHIBITED

3. (1) No person shall erect, place or maintain, or cause to be erected, placed or maintained, an encroachment of any kind on public lands, or on any right-of-way or easement in favour of the City, except where permitted to do so in accordance with this by-law.
- (2) Notwithstanding subsection 3(1), the provisions of this by-law do not apply to the following classes of encroachments:
 - (a) signs, as authorized through By-law Number 54-02, as amended, (the “Sign By-Law”);
 - (b) properties which are designated by by-law of the City as being of historic or architectural value or interest pursuant to the *Ontario Heritage Act*, as amended;
 - (c) a temporary encroachment arising as a result of construction, maintenance or other activity as authorized under a valid temporary permit issued by the City;
 - (d) encroachments permitted as a result of a written and signed agreement with the City, other than an encroachment agreement;
 - (e) encroachments arising as a result of a Committee of Adjustment decision permitting the owner of residential premises to widen his or her driveway, provided a curb cut permit from the City is also issued to the owner; and
 - (f) encroachments arising from surface changes made in connection with residential driveways, provided such encroachments do not breach any other municipal by-law or regulation;

APPLICATION FOR ENCROACHMENT

4. (1) Any person requesting authorization to erect, install or maintain an encroachment on public lands shall be required to submit an application to the City seeking permission to do so, along with payment of the non-refundable application fee.
- (2) The form and content of the application shall be as prescribed by the Commissioner from time to time, and a copy may be obtained from the City's Realty Services section.
- (3) Where an application to erect, install or maintain an encroachment has been approved, the City Solicitor shall prepare an encroachment agreement, and once the applicant has been notified in writing that the encroachment agreement is ready for execution, the applicant shall have thirty (30) calendar days to execute same and pay the applicable fees.
- (4) Where an applicant fails to pay the applicable fees or fails to execute an encroachment agreement, within the thirty (30) calendar days as prescribed in subsection 4(3), the applicant shall be deemed to have abandoned his application.

REGISTRATION OF AGREEMENT

5. Where the Commissioner deems it appropriate, an encroachment agreement may be registered against title to the applicant's property with the land registry office and all expenses in doing so shall be paid for in advance by the applicant.

AUTHORITY OF COMMISSIONER

6. The Commissioner shall have delegated authority to:
 - (a) approve or reject any application submitted for an encroachment agreement; and
 - (b) impose such terms and conditions to any application and/or encroachment agreement as the Commissioner may deem appropriate; and

- c) determine whether any encroachment agreement expiring on a date after the date of enactment and passage of this by-law shall be renewed and/or extended.

REVOCATION

- 7. The execution of an encroachment agreement 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 encroachment agreement may be revoked in accordance with the terms set out therein.

ACCESS TO ENCROACHMENTS

- 8. No person shall obstruct, hinder or interfere with the free access to any encroachment by an employee, officer or agent of the City.

DISCONTINUANCE OF ENCROACHMENTS

- 9.
 - (1) If the owner of any premises to which an encroachment is appurtenant desires to permanently discontinue the encroachment, he shall notify the Commissioner in writing and the Commissioner shall thereafter cause a notice to be sent to the owner advising that the encroachment shall be removed or filled in and closed up, and the public lands shall be restored to their former condition by the owner at his own expense.
 - (2) If the Commissioner is at any time of the opinion that a breach of the terms and conditions attached to an encroachment agreement has occurred and that the encroachment should be discontinued, or where an encroachment agreement has expired, the Commissioner may cause a notice to be sent to the owner advising that the encroachment be removed or filled in and closed up, and the public lands be restored to their former condition by the owner at his own expense.
 - (3) Where an owner fails to comply with the notice described in subsection 9(1) and/or 9(2) within thirty (30) days of receipt of same, the encroachment may be removed or filled in and closed up by the City, and the public lands restored to their former condition at the expense of the owner, such expense to be recovered in full in the manner provided in section 12 below, and until the encroachment is so removed or filled in and closed up and the public lands restored to their former condition, all expenses incurred by the City in respect thereto shall continue to be paid by the owner.

EMERGENCY SITUATIONS

- 10.
 - (1) If the Commissioner deems that an emergency exists or may exist as a result of any encroachment being or about to become a source of danger to the health and safety of the public, the Commissioner may,
 - (a) notify in writing the owner of the premises to which the encroachment is appurtenant, requiring the repair, removal, filling in or closing up of the encroachment and restoration of the public lands to their former condition at the expense of the owner, so that the encroachment is no longer deemed to be a source of danger or potential danger to the public by the Commissioner, and/or
 - (b) take such measures on behalf of the owner, without notice to the owner, as the Commissioner may deem necessary to remove the danger or potential danger created by the encroachment.
 - (2) Where the notice described in subsection 10(1)(a) is not complied with within the time period stipulated therein, the City may repair, remove, fill in or close up the encroachment and restore the public lands to their former condition, at the expense of the owner, such expense to be recovered in full in the manner provided in section 12 below.

- (3) Where the Commissioner elects to take any action under subsection 10(1)(b), the expenses incurred by the City in so doing shall be recovered in full in the manner provided in section 12 below.

REMOVAL OF UNAUTHORIZED ENCROACHMENTS

11. (1) Where the City becomes aware of an unauthorized encroachment, the City may 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 public lands to their former condition at the expense of the owner.
- (2) Where the notice in subsection 11(1) is not complied with within thirty (30) days of the date of the notice, the City may, on behalf of the owner, remove, fill in or close up the unauthorized encroachment and restore the public lands to their former condition at the expense of the owner, such expense to be recovered in full in the manner provided in section 12 below.
- (3) Any materials or structures forming part of or attached to the encroachment and removed by the City may, at the discretion of the Commissioner, either be deposited at the owner's premises or be stored for thirty (30) days at the owner's expense, such expense to be recovered in full in the manner provided in section 12 below. Any item so stored and not claimed by the owner within the said thirty (30) day period shall be disposed of by the City in such manner as it deems appropriate.

RECOVERY OF EXPENSES

12. (1) All expenses incurred by the City in connection with the enforcement of this by-law shall be paid within thirty (30) days of their billing date, and in the event of failure to pay the entire amount due within the said thirty (30) days, at the discretion of the City, the outstanding balance of the invoice may thereafter be added to the tax roll as of the year in which the expenses were billed.
- (2) The City may also recover all expenses owing under this by-law by a court action as a debt due to the City.

INFRACTIONS AND PENALTIES

13. Every person who contravenes any of the provisions of this by-law is guilty of an offence and on conviction is liable to pay a fine, exclusive of costs, as provided for in the *Provincial Offences Act* of Ontario, as amended.

PROHIBITION ORDER

14. When a person has been convicted of an offence under this by-law,
 - (a) the Superior Court of Justice, or
 - (b) any other court of competent jurisdiction,

may, in addition to any other penalty imposed on the person convicted, issue an order prohibiting the continuation or repetition of the offence or the doing of any act or thing by the person convicted directed toward the continuation or repetition of the offence.

ENFORCEMENT

15. A municipal by-law enforcement officer acting under this by-law may enter and inspect all buildings, structures or parts thereof that are subject to this by-law at any reasonable time for the purposes of determining whether there is compliance with this by-law.

DELEGATION OF AUTHORITY

16. The Commissioner and the City Clerk are authorized to execute and affix the Corporate Seal of the City to all encroachment agreements.

GENERAL

17. In this by-law, unless the context otherwise requires, words imparting the singular number shall include the plural, and words imparting the masculine gender shall include the feminine, and further, the converse of the foregoing also applies where the context so requires.

DELETIONS TO OTHER BY-LAWS

18. Section 10 of By-Law Number 277-96 is hereby deleted.

EXCEPTIONS AND GRANDFATHERING

19. (1) Sections 2 and 3 of By-Law 23-79 shall not apply to those persons who have a valid and binding encroachment agreement with the City with respect to encroachments occurring on highways.
- (2) Notwithstanding subsection 3(1), any encroachment authorized under an encroachment agreement determined by the City Solicitor to be valid and binding at the date of enactment of this by-law, shall not require further authorization pursuant to this by-law until the encroachment agreement has expired or is terminated.
- (3) Subject to subsection 19(2), this by-law shall apply to all encroachments which existed or were created before this by-law was enacted and passed.

SEVERABILITY

20. 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.

ENACTED AND PASSED this 11th day of February, 2004.

Signed by: Hazel McCallion, Mayor Crystal Greer, City Clerk