



TOWN OF SHELBURNE

ENCROACHMENT BYLAW

BE IT ENACTED by the Council of the Town of Shelburne as follows:

Title

1. This bylaw shall be known and may be cited as the Encroachment Bylaw.

Definitions

2. In this bylaw:
 - (a) "Appeals Committee" means review of an appeal by Town Council;
 - (b) "CAO" means Chief Administrative Officer of the Town of Shelburne;
 - (c) "encroachment" means a structure or facility upon, under or over a street and also includes any portion of the street required by the encroachment as a clearance from other structures by good engineering practice;
 - (d) "Engineer" means the a certified Engineer and includes a person acting under the supervision and direction of the Engineer;
 - (e) "facility" means any pole, pole lines (including braces and anchors), aerial cables, manholes, conduits, underground cables, pipes for the carriage of gas or liquids, and associated apparatus for the provisions of services, including amplifiers, connection panels, transformers, valves, and other fittings and equipment;
 - (f) "Town" means the Town of Shelburne;
 - (g) "owner" includes
 - (i) a part owner, joint owner, tenant in common or joint tenant of the whole or any part of land or a building, and;
 - (ii) in the absence of proof to the contrary, the person or persons assessed for the property;
 - (h) "person" means a natural person, corporation, partnership, an association, society, firm, agent, trustee, or registered Canadian charitable organization, and includes the heirs, executors or other legal representatives of a person, or owner;

(i)“street” includes a public alley, boulevard, bridge, court, footway, highway, lane, parking lot, place, sidewalk, square and any part thereof, owned by the Town;

(j)“structure” includes any building, bridge, pedway, balcony, bay window, elevator, fence, foundation wall, grating, hatch, hatchway, loading platform, manhole, porch, portico, railing, retaining wall, sign attached to a building, step, storage tank, tunnel, vault, veranda, or any part thereof;

(k) “utility” includes any person or corporation that provides water, wastewater services, stormwater services, electric power, telecommunications service, natural gas or other gas intended for use as fuel to the public.

License Application (Required)

3. The License may be assigned by the Licensee to a new purchaser or owner of the abutting property referred to in the License. A new purchaser or owner of the abutting property shall, within 120 days of the change in ownership, notify the Chief Administrative Officer, Development Officer or Engineer of the name and postal address of the new purchasers or owners, and provide to the Town a copy of the assignment and an executed indemnity in the form. If the new purchaser or owner fails to do so, the License shall be void.
4. No person shall construct or maintain any encroachment or make use of a street for construction or restoration purposes in the Town unless an encroachment license has been issued by the Town.
5. A report from a CAO/Engineer may be required to be submitted with an application (Appendix A) to authorize a temporary encroachment in association with construction, demolition or restoration of a structure abutting a street if the CAO/Engineer determine that it is necessary in the interest of public safety.
6. An encroachment license shall not be issued unless the encroachment is authorized by Council except for the following encroachments, which may be authorized by the CAO / Town Planner:
 - (a) For a period of 1 year for the temporary installation of beautification elements by a Business.
 - (b) For a permanent encroachment for:
 - i. for a permanent encroachment for a canopy for a commercial,

industrial or institutional building, restricted in width to not more than the width of the entrance plus six feet;

- ii. for an awning or sign attached to a commercial, industrial or institutional building, restricted to not more than the width of the building, or in the case of a corner installation, not more than the width of the building plus the width of the awning;
- iii. for steps, a foundation or other structure of a building where the steps, the foundation or other building structure must encroach, or where an encroachment already exists, encroachment may be permitted, or the area of encroachment may be increased, to facilitate access to the structure;
- iv. subject to permission granted by the owner of the pole, for infrastructure mounted on a pole located in the right of way for the installation of elements including banners, planters, and wreaths;
- v. for the installation of building mechanical equipment including HVAC and exhaust fans;
- vi. an underground communications conduit, and manholes to service the conduit, provided the installation and use of the telecommunications cable will not interfere with the proper operation and maintenance of existing underground utilities, nor interfere with planned street works;
- vii. the installation of facilities, owned by a party other than a utility;
- viii. the installation of infrastructure to facilitate the construction of a building, where the infrastructure is deemed by the Engineer/ CAO:
 - a. to be required for the construction of the building;
 - b. in the opinion of the Engineer/CAO would cause excessive disruption to remove;
- ix. the installation of a decorative building feature required by a by-law, including a land-use by-law;

Encroachment License

(See Appendix A)

7. (a) Every encroachment license shall indicate:
 - (i) the type of encroachment authorized;
 - (ii) the civic address where such encroachment is authorized;
 - (iii) the length of time for which such encroachment is authorized;
 - (iv) such terms and conditions as may be necessary in the opinion of Council or the CAO.

- (b) The fee for an encroachment license shall be as prescribed by the Town of Shelburne's Municipal User Fees Policy.

- (c) No license fee shall be payable for the renewal of a license.

- (d) The Council may, in its sole discretion, cancel an encroachment license at any time, without notice.

- (e) Without restricting the generality of subsection (d), licenses may be cancelled by the Town upon breach of any term or condition subject to which the license is issued, at any time, without notice.

- (f) It is the responsibility of the applicant to review the Town of Shelburne's planning bylaws prior to an application. These include:
 - (i) Building Code Bylaw
 - (ii) Commercial Development District Improvement Bylaw
 - (iii) Heritage Property Bylaw
 - (iv) Land Use Bylaw
 - (v) Noise Bylaw
 - (vi) Seasonal Sales Area Bylaw
 - (vii) Subdivision ByLaw

8. If an owner / contractor varies from the original encroachment plans and/or license description, the Town of Shelburne may issue a Stop Work Order (Appendix C) to remedy the work.

Inspection

9. (a) If after an inspection, if the Engineer/ CAO is satisfied that in some respect the encroachment is not constructed or maintained in compliance with the conditions of the encroachment license, the Engineer / CAO shall serve or cause to be served to the owner(s) of the encroachment license, an Order to Remedy.

(b) Every Order shall contain:

- (i) the standards to which the encroachment does not comply;
- (ii) the date after which the encroachment will be subject to a re-inspection to confirm compliance with the Order;
- (iii) the action that will be taken against the owner, should the encroachment not comply to the prescribed standards at the time of the re-inspection.

(c) Where an Order has been served upon an owner, and the owner provides the Engineer/CAO with a schedule outlining specific time frames within which the work specified in the Order will be completed, the Engineer may accept or amend the schedule at which time the schedule will become a part of the Order.

(d) Where an owner fails to comply with the requirements of an Order within the time specified in the Order, the Engineer / CAO may enter upon the property and carry out the work specified in the Order.

Appeals

10. (a) Any person who has been refused an Encroachment license by the CAO / Town Council may appeal such refusal.

(b)The appeal shall be to the Appeals Committee set as an Appeal Hearing prior to a regular Town Council Meeting. (See Appendix B).

(c)Such appeal shall be in writing, in the form of a notice, and filed with the municipal clerk within 15 days of such refusal, and shall clearly state the grounds for such appeal on the appropriate form. The Town Clerk will respond with the time and date of the appeal.

(d)Town Council shall determine such appeal at such time and place as it determines and may confirm such refusal by the Engineer/CAO, as applicable, or direct the Engineer / CAO to issue such license upon such terms and conditions that Council determines may be appropriate. The appellant will hear back from the CAO or Town Clerk with the results of the hearing if the appellant is not present in person.

Penalties

11. Any encroachment which is not authorized by a current encroachment license shall be removed by the owner within 30 days after notice to remove the encroachment has been given to such owner by the Engineer.

12. If any owner fails to remove the encroachment within such 30 day period, the

Engineer/ CAO may remove the encroachment and issue a lien against the property for the removal costs.

13. Any owner who fails to remove the encroachment within such 30 day period shall be liable to a minimum penalty of \$100. Each day beyond the 30 day period is a separate offense. If there are extenuating circumstances, the owner must make arrangements with the Town prior to the end of the 30 days.

Cost of Work

14. If the Council, the Town Planner, the Engineer, the CAO, or another employee of the Town of Shelburne causes work to be done, the owner shall be fully responsible for the cost of the work, with potential interest, from the date of the completion of the work until the date of payment.
15. Any Notice, Order, decision or other document required to be served under this By-law may be served personally, by mailing it to the person at the latest address shown on the assessment roll or the application for the license, by electronic mail or by facsimile.
16. A Notice, Order, decision or other document is deemed to have been served on the third day after it was sent.

Encroachment Agreements

17. Notwithstanding the provisions of this bylaw, Council may enter into an agreement permitting any person to construct or maintain an encroachment upon such terms and conditions as Council may deem appropriate, and the provisions of this bylaw shall not apply to such encroachments provided that consideration for such agreement shall not be less than the fees payable by a licensee for a similar structure pursuant to Section 6 of this bylaw.

1st Reading: October 7th, 2019
Public Hearing Advertised in Vanguard: November 6th, 2019 & December 25th, 2019.
Public Hearing: November 18th, 2019 & January 20th, 2020
2nd Reading: January 20th, 2020
Advertisement of Passage in Vanguard: January 29th, 2020
Mailed to Municipal Affairs: January 29th, 2020

Mayor, Karen Mattatall

Town Clerk, Julie Ferguson