

**THE CORPORATION OF THE
TOWNSHIP OF WAINFLEET**

BYLAW NO. 027-2017

Being a bylaw to adopt a policy for encroachments on Township owned lands and to repeal Bylaw 039-2015.

WHEREAS Section 8(1) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

AND WHEREAS Section 9 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS Item 1 under Table 2 to Section 11 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides a lower tier municipality and an upper tier municipality may pass by-laws respecting matters within the sphere of jurisdiction for highways;

AND WHEREAS Section 391 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, authorizes the Council of a local municipality to pass by-laws imposing fees or charges on persons or services or activities provided or done by or on behalf of the municipality, and for the use of its property including property under its control;

AND WHEREAS Section 446(1) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that if a municipality has the authority under this or any other Act or under a by-law under this or any other Act to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense;

AND WHEREAS Section 446(2) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that for the purposes of subsection (1), the municipality may enter upon land at any reasonable time;

AND WHEREAS Section 446(3) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that the municipality may recover the costs of doing a matter or thing under subsection (1) from the person directed or required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes;

AND WHEREAS Section 446(5) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides the costs include interest calculated at a rate of 15 percents or such lesser rate as may be determined by the municipality, calculated for the period of commencing on the day the municipality incurs the costs and ending on the day the costs, including the interest, are paid in full;

AND WHEREAS Section 446(6) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides the amount of the costs, including interest, constitutes a lien on the land upon the registration in the proper land registry office of a notice of lien;

AND WHEREAS the Township of Wainfleet has encountered encroachments on municipal road allowances and municipal property;

AND WHEREAS Council for the Corporation of the Township of Wainfleet has deemed it desirable to adopt a policy for encroachments on municipal property;

NOW THEREFORE the Council of the Corporation of the Township of Wainfleet **HEREBY ENACTS AS FOLLOWS:**

1. **THAT** Bylaw 039-2015 is hereby repealed;
2. **AND THAT** the Encroachment Policy as set out in Schedule "A" attached hereto and forming part of this bylaw is hereby adopted;
3. **AND THAT** the Encroachment Policy shall come into force and take effect on the day of its passage.

BYLAW READ A FIRST TIME THIS 20TH DAY OF JUNE, 2017.

BYLAW READ A SECOND TIME THIS 20TH DAY OF JUNE, 2017.

BYLAW READ A THIRD TIME AND FINALLY PASSED THIS 20TH DAY OF JUNE, 2017.

Original signed by

A. Jeffs, MAYOR

Original signed by

M. Ciuffetelli, DEPUTY CLERK

SCHEDULE "A" TO BYLAW NO. 027-2017



**TOWNSHIP OF WAINFLEET
ENCROACHMENT POLICY**



ENCROACHMENT POLICY

June 20, 2017

Policy Type: Planning

Effective Date: June 20, 2017

Department: Corporate Services

Approval Level: Council

1.0 POLICY STATEMENT

The Township of Wainfleet (“Township”, “Municipality”) realizes private encroachments on Township property and easements exist and will continue to be discovered, and has established this policy as a result. The Township of Wainfleet must ensure that encroachments do not adversely affect these properties or the Township’s ability to maintain effective services or restrict public access and enjoyment of land for public use.

Encroachments are required to be removed unless authorized by a consent letter, encroachment agreement or expressly permitted by this policy.

2.0 PURPOSE

This policy will assist the public and enable the Municipality to manage encroachments effectively. It is intended to provide a more consistent approach in processing applications, enforcing the policy, and protecting and indemnifying the Municipality wherever encroachments have been identified.

3.0 DEFINITIONS

- 3.01 “Applicant” means any party who has encroached onto lands in which the Township holds an interest or is subject to the direction, control, and management of the Township.
- 3.02 “Authorized Encroachment” means an encroachment that is authorized by a valid Consent Letter or Encroachment Agreement.
- 3.03 “Bylaw Enforcement Officer” means the Bylaw Enforcement Officer for the Township of Wainfleet or his/her delegate.
- 3.04 “Council” means the Council of the Corporation of the Township of Wainfleet.
- 3.05 “Consent Letter” means the Township’s standard form of letter, as amended from time to time, for situations in which the Manager of Operations determines, at his/her sole discretion, whether an encroachment is minor of nature such that an Encroachment Agreement is not required.

- 3.06 "Encroachment" means anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground that extends on, over or under Township lands.
- 3.07 "Encroachment, Minor" means an encroachment that is minor in nature and may include, but is not limited to the following:
- projections from buildings (including eaves, cantilevers, etc.)
 - sheds 10m² or smaller
 - shrubs, trees or other natural landscape materials
 - hard landscaping (including asphalt, concrete, brick sidewalks and walkways, curbs, parking pads, aprons or driveways).
- 3.08 "Encroachment, Major" means an encroachment that is large in scale, difficult to move, secured by a footing and may include, but is not limited to the following:
- buildings (including dwellings, garages, sheds larger than 10m²);
 - structures (including retaining walls, decks, stairs and patios);
 - fences
- 3.09 "Encroachment Agreement" means a legal and binding agreement between the Corporation of the Township of Wainfleet and the Owner having permission to occupy the Township land.
- 3.10 "Manager of Operations" means the Manager of Operations for the Township of Wainfleet or his/her designate.
- 3.11 "Owner" means the registered owner of land abutting Township lands.
- 3.12 "Planner" means the Planner for the Township of Wainfleet or his/her designate.
- 3.13 "Surveyor" means a member of the Association of Ontario Land Surveyors who is authorized under the *Surveyors Act* to engage in the practice of professional lands surveying in Ontario.
- 3.14 "Township" means the Corporation of the Township of Wainfleet.
- 3.15 "Township Lands" means any lands owned by, leased, licensed to or under the management of the Township, 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, cemetery, and all parts thereof, including any surface, grassed area, boulevard, ditch, curb, gutter and sidewalk.

4.0 APPLICATION

- 4.01 This policy applies to encroachments on Township lands.

5.0 ADMINISTRATION

- 5.01 The Planner is responsible for the administration of this policy on behalf of the Township.

- 5.02 The Manager of Operations is responsible for determining whether an encroachment is minor or major and whether an encroachment is permitted to stay.
- 5.03 The Bylaw Enforcement Officer, in consultation with the Manager of Operations, is responsible for the enforcement of the provisions of this policy.

6.0 GENERAL PROVISIONS

- 6.01 An encroachment occurs when objects are placed on, in, or under the ground space or in the air space of Township lands, either deliberately or inadvertently. Encroachments may be man-made or natural features and include, but are not limited to:
 - i. "structural" ie. construction of fences, gates, decks, buildings, pools, wells, septic systems, docks, retaining walls, parking lots and appurtenances;
 - ii. "non-structural" ie. pool drainage, waste dumping etc.
 - iii. "vegetative" ie. planting of floral or vegetable gardens, decorative landscaping including shrubs, trees, stones etc.
- 6.02 Encroachments are of concern because they:
 - i. May restrict or limit the use and enjoyment of Township lands which are for the benefit of all abutting property owners, residents, tourists and visitors;
 - ii. May pose a safety hazard to the public and give rise to potential liability claims from resultant injuries;
 - iii. May damage the natural environment and undermine the Township's stewardship role in protecting natural features;
 - iv. May destabilize public lands with resultant damage to adjacent private lands;
 - v. May result in ratepayers absorbing costs to restore degraded Township lands;
 - vi. May interfere with existing or future municipal infrastructure (ie. drainage, highway improvements, water and/or sewer lines).
- 6.03 New encroachments, established on or after June 20, 2017, shall not be permitted.
- 6.04 All existing encroachment agreements in force on the date of passing of this policy shall remain in force until the encroachment is removed or until the property changes ownership.

7.0 IDENTIFYING ENCROACHMENTS

- 7.01 Encroachments may be identified by any of the following means:
 - i. Through inspections and patrols as may be deemed necessary from time to time by the Manager of Operations;
 - ii. Through the performance of regular duties by Township staff;
 - iii. Through information or plans provided to the Township;
 - iv. Through boundary surveys, title searches, or other functions completed by the Township, its consultants, contractors or agents;
 - v. Through written complaints.
- 7.02 Once an encroachment is identified, the Manager of Operations shall determine if the encroachment is a minor encroachment or major encroachment, as defined in Section 3.0, and whether the encroachment is permitted to stay. The Manager of Operations shall use the guidelines presented in Section 8.0 to evaluate the encroachment.

8.0 GUIDELINES FOR CONSIDERING ENCROACHMENTS

The following guidelines shall be applied when considering encroachments on all Township lands:

- 8.01 Determine whether that part of the Township land so encroached upon is required for municipal purposes.
- 8.02 Determine whether the encroachment:
- i. has been constructed inadvertently;
 - ii. has existed for a long period of time;
 - iii. is maintained in good repair, used or abandoned;
 - iv. poses a safety hazard to the public and gives rise to potential liability claims from resultant injuries;
 - v. destabilizes public lands with resultant damage to adjacent private lands;
 - vi. damages the natural environment and undermines the Township's stewardship role in protecting natural features;
 - vii. is a natural feature which should be preserved or protected – i.e. mature trees and sensitive flora or fauna;
 - viii. conflicts with the Township's Official Plan, Zoning Bylaw or other applicable bylaws;
 - ix. interferes with any existing, planned proposed or possible future municipal improvements;
 - x. comprises drainage or interferes with existing or proposed drainage works;
 - xi. is minor in nature;
 - xii. takes into consideration the surrounding neighbourhood.
- 8.03 In the case of a structure, determine also whether the encroachment:
- i. is constructed on a permanent foundation;
 - ii. is being maintained in good condition.
- 8.04 Notwithstanding anything contained in this policy to the contrary:
- i. mature trees, which do not hinder or discourage public access to or on Township lands, shall be deemed permitted encroachments. Encroachment agreements shall not be required for such mature trees.
 - ii. Notwithstanding Subsection 8.04 i) above, the Manager of Operations may, at his/her sole discretion, require the removal of such mature trees in order to facilitate the completion of present or future municipal works or improvements on or to Township lands.
- 8.05 These guidelines set out above are not exhaustive. The intent of this policy is to consider each encroachment on a case-by-case basis, while having regard to the guidelines set out herein and the unique features of particular encroachments.

9.0 REMOVAL OF ENCROACHMENTS

- 9.01 If an Owner is required by the Township to remove an encroachment, the Owner shall do so at the Owner's sole expense.
- 9.02 The Township shall provide the Owner with written notice to remove the encroachment; or to make mutually agreed upon arrangements for removal, by a specified date and failing which the Township will be at liberty to enter upon the Owner's lands, where necessary, to

undertake the removal of the encroachment in accordance with the *Municipal Act, 2001*, as amended from time to time. Such date shall be a minimum of thirty (days) notice from the date of mailing of the notice, and may be for such longer period as deemed appropriate based upon weather conditions, the scope of the work to be undertaken, and whether the Owner is a seasonal resident.

- 9.03 Where the removal of an encroachment is required and it is not removed within the specified time, in addition to any other remedies available to it by law, the Township may, upon reasonable notice to the Owner, enter upon the Owner's lands where necessary, and through its agents, employees, contractors or otherwise, remove the encroachment without any liability and add the costs of doing so to the municipal tax roll of the Owner and collect the same in the manner and with the same priorities as municipal taxes. The Owner shall not be entitled to any compensation of any kind for removal of the encroachment.
- 9.04 Notwithstanding the foregoing, the provisions of the *Municipal Act, 2001*, as amended from time to time, shall at all times govern.

10.0 LETTER OF CONSENT

- 10.01 A consent letter shall be required for all permitted minor encroachments.
- 10.02 A consent letter formally recognizes the encroachment by both the Township and the Owner, and clearly establishes the terms and conditions specific to the permission being granted, including but not limited to the provisions that permission for the encroachment is being granted until such a time as it is required to be removed by the Township, in its sole discretion.
- 10.03 A drawing shall be provided by the Owner, in a form satisfactory to the Manager of Operations, clearly indentifying the extent of the encroachment, and serves to assist in eliminating subsequent enlargements of the encroachment without permission.
- 10.04 The Owner shall submit the appropriate fee for a consent letter, as outlined in Schedule "A".
- 10.05 The Owner shall submit maintain a liability insurance policy for the encroachment in the amount of one million dollars naming the Township as third party insured.
- 10.06 The Owner shall provide proof of the insurance policy to the Township on an annual basis.

11.0 ENCROACHMENT AGREEMENTS

- 11.01 An Encroachment Agreement shall be required for all permitted major encroachments and shall be approved by Council.
- 11.02 An Encroachment Agreement formally recognizes the encroachment by both the Township and the Owner, and clearly establishes the terms and conditions specific to the permission being granted, including but not limited to the provisions that permission for the encroachment is being granted until such a time as it is required to be removed by the Township, in its sole discretion.
- 11.03 A Reference Plan, prepare by a qualified Surveyor, shall be deposited on title clearly

identifying the extent of the encroachment, and serves to assist in eliminating subsequent enlargements of the encroachment without permission.

- 11.04 Registration of the Agreement on the Owner's property and the subject portion of the Township lands shall occur. Registration is effective notice to subsequent Owners, and provides an enforceable, clear recourse to the Township in the event of default by the Owner of any of the provisions, including provisions for removal of the encroachment.
- 11.05 The Owner shall submit the appropriate fee for an encroachment agreement, as outlined in Schedule "A".
- 11.06 The Owner shall be responsible for the costs associated with the preparation and registration of a reference plan and the registration of the encroachment agreement on title.
- 11.07 The Owner shall submit maintain a liability insurance policy for the encroachment in the amount of one million dollars naming the Township as third party insured.
- 11.08 The Owner shall provide proof of the insurance policy to the Township on an annual basis.

12.0 EXEMPTIONS

- 12.01 The activities, infrastructure and equipment of the Township and its agents are exempt from the provisions of this policy.
- 12.02 The activities of Canada Post Corporation and its agents with respect to the placement of receptacles or devices upon highways for the collection, delivery or storage of mail are exempt from the provisions of this policy.
- 12.03 The activities, infrastructure and equipment of companies and agencies that provide public utilities, electricity and telecommunications services upon highways are exempt from the provisions of this policy provided they are carried out in compliance with any bylaws and policies applicable to the installation or maintenance of such infrastructure.
- 12.04 Every private entrance upon a highway that complies with the requirements of the applicable bylaw regulating private entrances is exempt from the provisions of this policy.
- 12.05 Every rural mail box upon a highway that is erected and maintained in compliance with the requirements of the Mail Receptacles Regulations under the Canada Post Corporation Act is exempt from the provisions of this policy.

13.0 AMENDMENTS/REVIEWS

Next Review Date:

Date:

Section Amended:

Comments:

ENCROACHMENT POLICY
SCHEDULE "A"
FEES

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|------------------------|----------|
| Consent Letter | \$150.00 |
| Encroachment Agreement | \$500.00 |

ENCROACHMENT POLICY
SCHEDULE "B"
ENCROACHMENT PROCESS

