

CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT
OPERATIONS & WASTE MANAGEMENT DIVISION
POLICY

POLICY NO:
SUBJECT: Encroachments on City Property Policy
ELIGIBILITY:

1. Introduction

The purpose of this policy is to establish a written process for the consideration of requests for encroachments in, on, above or under City Property and subsequent approval and management of encroachment agreements ("Encroachment Agreements") approved under the Policy.

2. Definitions

"Areaway" means an open subsurface space adjacent to a building used to admit light and air or as a means of access to underground storage space.

"City " means the City of Hamilton.

"City Authority" means the Public Works Department, Operations and Waste Management Division or such other City department, division, group, section, official or person(s) designated from time to time by Council to act on the City's behalf.

"City Property" means a road allowance, park, cemetery, open space or any property owned or managed by the City.

"Commenting Agency" means an agency (either internal and external) that is circulated for comments on Encroachment applications. This may include but is not limited to: Bell Canada, Building, Development Engineering, Downtown and Community Renewal, Horizon Utilities, Hydro One, Municipal Law Enforcement, Planning, Police Services, Risk Management, Roads Operations, Surveys and Technical Services Section, Traffic Engineering, Union Gas, and the Ward Councillor.

"Encroachment" means an improvement, such as a building, structure, planted area or outdoor boulevard café, made to City Property that is located entirely or partly in, on, under or above the City's Property authorized by an Encroachment Agreement.

"Fence" means:

- a) a railing, wall, line of posts, wire, gate, boards, pickets, latticework, or any combination thereof, or other similar erection for the purposes of enclosing or providing privacy; and,
- b) a hedge or grouping of shrubs used for the purposes listed in subsection (a).

"Landscaping" means a natural vegetation area, garden, constructed area such as a pathway, retaining wall, and decorative rock (save and except Fences and Trees).

"Owner" means the legal registered owner of property that abuts City Property.

"Refreshment Vehicle" means any vehicle from which refreshments are sold for consumption by the public and includes, without limiting the generality of the foregoing, carts, wagons, trailers, trucks, and bicycles, irrespective of the type of power employed to move the refreshment vehicle from point to point.

"Sign" means any surface, structure and other component parts, which are used or capable of being used as a visual medium or display to attract attention to a specific subject matter for identification, information or advertising purposes and includes an advertising device.

"Street Furniture" means elements and amenities installed in the public right of way for the use and convenience of the public. This may include but is not limited to a bench, waste/recycling bin, transit shelter, telephone booth, publication box, bike rack and cigarette receptacle.

"Temporary Encumbrance" means a moveable object located within the City's road allowance. This may include but is not limited to, temporary signs, fruit and vegetable stands, planters, soft drink machines and ice machines.

3. Background

The City is authorized to enter into Encroachment Agreements pursuant to Sections 8, 9 and 10 of the Municipal Act, 2001 which further authorizes the City, amongst other things, to delegate its authority and to impose fees or charges on persons for services or activities provided or done by or on behalf of it.

Pursuant to Item 21 of the Committee of the Whole Report 01-029, approved by Council on September 18, 2001, as amended by Item 9 of the Corporate Administration Committee Report 05-011, adopted by Council on June 29, 2005, the City is authorized to enter into agreements with abutting owners to permit, among other things, Encroachments onto City Property. The authority to approve and to release or discharge such agreements is delegated to the department responsible for the subject City Property.

The Public Works Department is responsible for, amongst other things, administration and care of City Property. This policy establishes the terms and conditions upon which Public Works may enter into agreements to permit certain Encroachments in, on, under or above City Property. Terms and conditions of the encroachment will be set out in the Encroachment Agreement or, where temporary in nature, a permit allowing temporary access.

4. Policy

The City does not encourage Encroachments on City Property. Applicants must satisfy to the City that the need for an encroachment is reasonable/feasible as no other alternative exists, the health and safety of the public is not in jeopardy, it is in the public's best interest and is minor in nature.

When satisfied, the City may, at its discretion, enter into agreements with abutting property owners for Encroachments, such as a building, structure, or outdoor boulevard café located partially or wholly on City Property, subject to the criteria set out within this policy and accompanying procedures.

4.1 Guidelines for Considering Encroachments

The following guidelines are used to facilitate requests for Encroachment Agreements for various situations.

1. Property owners may submit a request for an encroachment in, on, under or above City property, for consideration by the City. Requests must be made in writing and accompanied by the appropriate fee set out in the Encroachment Procedure, as amended from time to time.
2. The City may enter into an Encroachment Agreement where it has been determined that the health and safety of the public is not in jeopardy, where it is in the public's best interest and where it is minor in nature, including but not limited to such instances as:
 - i) awnings
 - ii) Landscaping
 - iii) outdoor boulevard café
 - iv) out swinging door
 - v) paving to replace Landscaping to minimize maintenance purposes only and where no vehicular movement is permitted
 - vi) porch or deck
 - vii) sign (where not otherwise prohibited)
 - viii) steps
 - ix) Street Furniture (where not otherwise authorized)
 - xi) wheelchair ramps and other accessibility features
3. The City generally will not enter into an Encroachment Agreement where it has been determined that the health and safety risk of the public is in jeopardy, where it is not in the public's best interest, where it is not minor in nature or other non-permitted instances including but not limited to such instances as:
 - i) Areaway
 - ii) Fences
 - iii) open spaces
 - iv) public unassumed alleys
 - v) Refreshment Vehicle
 - vi) Temporary Encumbrances
4. Applicants will be advised in writing of the City's decision. Requests for reconsideration of a decision may be submitted in writing to the General Manager of Public Works or his/her designate and must be received within 60 days of the original decision. Such requests shall include any additional information supporting the request for reconsideration.

Where concerns are identified by City staff or commenting agencies, those concerns may be presented to Public Works Committee for direction.

COUNCIL APPROVAL: _____
APPROVED DATE: _____
REVISED DATE: _____