

CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT
ENGINEERING SERVICES DIVISION
PROCEDURE

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

1. Process Overview

An Owner may apply to the Public Works Department, Engineering Services Division, to request an Encroachment Agreement. The Owner is required to pay the applicable fees set out in the City of Hamilton User Fees and Charges By-Law.

Upon receipt of a completed application form, the Public Works Department will circulate notice of the completed application to relevant Commenting Agencies for their review and comment. The Public Works Department will assess the application together with the comments received to determine whether the requested Encroachment should be approved within the guidelines set out below.

The Owner may be required to submit a Registered Plan (R-Plan) to the satisfaction of the Senior Project Manager - Surveys, Geomatics and Corridor Management Section.

If approval is granted, the Owner will execute the Encroachment Agreement and the Mayor and City Clerk will execute the Encroachment Agreement on behalf of the City. The Encroachment Agreement is then registered on title to the Owner's property by the Owner's solicitor and is not discharged until the Encroachment is removed, no longer exists or has been brought to an end, as determined by the Public Works Department, regardless of any change in ownership.

2. Encroachment Agreement Application Procedure

- i) The Owner must submit the following required documentation via email, mail, or in person to the Public Works Department:
 - a. A completed Encroachment Agreement Application Form along with the required fee; and
 - b. Site Survey, Surveyor Sketch, or R-Plan showing the extent of all Encroachments prepared by an Ontario Land Surveyor (O.L.S.).

- ii) Upon receipt of the required documentation, the appropriate Public Works staff ("Staff") will take the required steps to open a file and process the application.
- iii) A site visit by Staff will be conducted when considered necessary.
- iv) A memo is prepared by Staff (which may include maps, drawings and/or photos) and is circulated to the appropriate Commenting Agencies for comments.
- v) Comments are received from the Commenting Agencies and additional investigation may be undertaken as a result, including the request for an R-Plan from the Owner if one has not already been provided.
- vi) Staff recommendations are made based on whether the proposed Encroachment, during the evaluation process, meet the following evaluation criteria:

Encroachment Application Evaluation Criteria	
Approve	Refuse
<ul style="list-style-type: none">• Conforms with Encroachment Policy• Meets Public Works guidelines• Approval from Commenting Agencies• Pre-Approved Council direction (non-routine matters)	<ul style="list-style-type: none">• The health and safety of the public is in jeopardy• It is not in the public's best interest• It is not minor in nature• Negative internal or external feedback that cannot be resolved• Where concerns are identified by City staff or Commenting Agencies, those concerns may be presented to Public Works Committee for direction

- vii) If the Encroachment Agreement Application is denied:
 - a. Staff will notify the Owner by letter via mail and/or email; and
 - b. Inform Municipal Law Enforcement for potential enforcement.
- viii) If the Encroachment Agreement Application is approved:
 - a. A draft Encroachment Agreement is prepared by Public Works Staff.

- b. If Staff have concerns with the contents of the Encroachment Agreement, they will digitally send the draft Encroachment Agreement, via email, to Legal Services for review and comment.
- c. Upon Staff's completion of the drafting of the Encroachment Agreement, the Encroachment Agreement is forwarded to the Owner for execution.
- d. Three (3) original copies of the signed Encroachment Agreements are returned to Staff.
- e. Staff complete memos to both Legal Services and the City Clerk and forward the three (3) signed copies for Legal sign off and then for execution by the Mayor and City Clerk.
- f. The fully executed Encroachment Agreement is to be returned to the attention of Public Works Staff.
- g. Staff scan and save a copy of the fully executed Encroachment Agreement and return two (2) hard copies to the Owner's solicitor for registration on title to the Owner's property.
- h. Owner's solicitor registers the Encroachment Agreement on title to the Owner's property via Teraview, and a copy of the registered Notice is forwarded to the attention of Public Works Staff to be saved in the file.
- i. A copy of the registered Notice and original signed Encroachment Agreement is then forwarded to Clerks for record keeping purposes.
- j. The registered Notice and a copy of the Encroachment Agreement are also forwarded to the Property Clerk to be added to the City's Encroachment Database GIS, who will import all the appropriate information into the GIS system for record keeping and annual billing purposes.
- k. If the Encroachment Agreement is a condition of approval by another City Department (e.g. Building, Site Plan Approval, Committee of Adjustment) Staff will notify the Department that the Encroachment Agreement was registered on title and that the condition has been met.
- l. The completed file is retained in accordance with By-law No. 06-333, To Establish Retention Periods for Records of the City of Hamilton.

3. Encroachment Agreement Discharge Process Procedure

- i) Staff receives written notice from an Owner or the Owner's solicitor, requesting discharge of the Encroachment from their property and provides a copy of the original Encroachment Agreement.
- ii) Upon receiving the request to discharge the Encroachment Agreement, Staff will take the required steps to open the file and process the request.
- iii) Staff will conduct a site visit and/or review photos taken by the Owner, as required, to ensure the Encroachment has been removed.

- iv) A Discharge Agreement is drafted by Public Works Staff and forwarded via email to Legal Services for review as to form.
- v) Once Legal Services confirms that the form of the draft Discharge Agreement is correct, Staff forwards a copy of the Discharge Agreement to the Owner for execution.
- vi) Three (3) original copies of the signed Discharge Agreement are returned to Staff.
- vii) Staff complete memos to both Legal Services and the City Clerk and forward three (3) signed copies for Legal sign off to form. Legal Services forwards the Discharge Agreement to the Mayor and City Clerk for execution. The Discharge Agreements are returned to the attention of Public Works Staff.
- viii) Staff retains one (1) copy of the fully executed Discharge Agreement and returns the two (2) remaining original copies of the Discharge Agreement to the Owner or their solicitor for registration.
- ix) The Owner's solicitor registers the Discharge Agreement on title via Teraview and a copy of the registered Notice is forwarded to the attention of Public Works Staff to be saved in the file.
- x) A copy of the registered Notice and an original signed Discharge Agreement is then forwarded to Clerks for record keeping purposes.
- xi) The registered Notice and a copy of the Discharge Agreement are also forwarded to the Property Clerk to be added to the City's Encroachment Database GIS, who will import all the appropriate information into the GIS system for record keeping and annual billing purposes.
- xii) The completed file is retained in accordance with By-law No. 06-333, To Establish Retention Periods for Records of the City of Hamilton.

4. Outdoor Boulevard Café Agreement Application Process Procedure

- i) If the proposed Outdoor Boulevard Café requires a Building Permit the Owner must obtain Minor Site Plan approval from Planning and Economic Development before an Encroachment Application for an Outdoor Boulevard Café will be processed.

- ii) The Owner submits a complete Encroachment Agreement Application for Outdoor Boulevard Café to the Public Works Department via e-mail, mail or in person, which includes the following documents:
 - a. If required, a Minor Site Plan approval if the Outdoor Boulevard Café requires a Building Permit. The Minor Site Plan must include the comments from Planning and Economic Development's Minor Site Plan Circulation, which can be forwarded to Public Works Staff by Planning and Economic Development Staff;
 - b. Site Survey, Surveyor Sketch or R-Plan showing the extent of the proposed Outdoor Boulevard Café encroachment completed by an Ontario Land Surveyor (O.L.S.);
 - c. Completed application form with the required fee;
 - d. Proof of Zoning Compliance; and
 - e. If required, proof of Liquor License Approval.
- iii) Upon receipt of the required documentation, Staff will take the appropriate steps to open the file and begin processing the application.
- iv) A site visit by Staff will be conducted when considered necessary.
- v) If a Minor Site Plan was not required, a memo is prepared by Staff which may include maps, drawings or photos, Survey, Surveyor Sketch or R-Plan, and application information -is circulated to the appropriate Commenting Agencies for comments.
- vi) After comments are received an additional investigation may be undertaken, which could include the request of an R-Plan if not already provided.
- vii) Staff recommendations are made based on whether the proposed Encroachment, during the evaluation process meet the following evaluation criteria:

Encroachment Application Evaluation Criteria	
Approve	Refuse
<ul style="list-style-type: none">• Conforms with Encroachment Policy• Meets Public Works guidelines• Approval from Commenting Agencies	<ul style="list-style-type: none">• The health and safety of the public is in jeopardy• It is not in the public's best interest• It is not minor in nature• Negative internal or external feedback that cannot be resolved

<ul style="list-style-type: none"> • Pre-Approved Council direction (non-routine matters) 	<ul style="list-style-type: none"> • Where concerns are identified by City staff or Commenting Agencies, those concerns may be presented to Public Works Committee for direction
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- viii) If the Encroachment Agreement Application for an Outdoor Boulevard Café is denied:
- a. Staff will notify the Owner by letter via mail and/or email; and
 - b. Inform Municipal Law Enforcement for potential enforcement.
- ix) If the Encroachment Agreement Application for an Outdoor Boulevard Café is approved:
- a. A draft Encroachment Agreement is prepared by Public Works Staff.
 - b. If Staff have concerns with the contents of the Encroachment Agreement, they will digitally send the draft Encroachment Agreement, via email, to Legal Services for review and comment.
 - c. Upon Staff's completion of the drafting of the Encroachment Agreement, the Encroachment Agreement is forwarded to the Owner for execution.
 - d. Three (3) original copies of the signed Encroachment Agreements are returned to Staff.
 - e. Staff complete memos to both Legal Services and the City Clerk and forward the three (3) signed copies for Legal sign off and then for execution by the Mayor and City Clerk.
 - f. Two (2) fully executed Encroachment Agreements will be returned to the attention of Public Works Staff.
 - g. Staff scan and save a copy of the fully executed Encroachment Agreement and return two (2) hard copies to the Owner and the Owner's solicitor for registration.
 - h. The Owner's solicitor registers the Encroachment Agreement on title to the Owner's property via Teraview, and a copy of the registered Notice is forwarded to the attention of Public Works Staff to be saved in the file.
 - i. A copy of the registered Notice and an original signed Encroachment Agreement is then forwarded to Clerks for record keeping purposes.
 - j. The registered Notice and a copy of the Encroachment Agreement are also forwarded to the Property Clerk to be added to the City's Encroachment Database GIS, who will import all the appropriate information into the GIS system for record keeping and annual billing purposes.
 - k. Staff notifies the Alcohol and Gaming Commission of Ontario (AGCO) that the Encroachment Agreement for the Outdoor Boulevard Café has been registered if a liquor license is requested.

- l. Staff provides the Owner with a metal plaque to be fastened on the outside of the building authorizing use of City Property.
- m. If the Encroachment Agreement is a condition of approval by another City Department (e.g. Building, Site Plan Approval, Committee of Adjustment) Staff will notify the Department that the Encroachment Agreement was registered on title and that the condition has been met.
- n. The completed file is retained in accordance with By-law No. 06-333, To Establish Retention Periods for Records of the City of Hamilton.

5. Outdoor Boulevard Café Agreement Discharge Process Procedure

- i) Same process as outlined in Section 3 with the additional step of:
 - a. Staff notifies the Alcohol and Gaming Commission of Ontario (AGCO) that the Encroachment Agreement for the Outdoor Boulevard Café has been discharged, if applicable.