



## Encroachment Policy

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**Authority:** Resolution 8026/07

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**Department Responsible:** Administration - Legal

**Revision Dates:** Click or tap here to enter text.

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### 1. Policy Statement

- 1.1 The objective of this Policy is to provide procedural guidance to Administration on granting and terminating Encroachments.
- 1.2 A standardized Policy mitigates risk and liability while protecting the Town's interests through proper implementation and management of Encroachments.

### 2. Scope

- 2.1 This Policy regulates the process to enter Authorized Encroachments for vehicular driveways, recognizes existing Authorized Encroachments, and governs enforcement measures.
- 2.2 The Policy governs all current and future Authorized Encroachments within the Municipality, as well as Encroachments in existence without Town approval.
- 2.3 The Encroachment agreement between the Town and Owner will formally recognize the use of Town-owned Land, while outlining the requirements necessary to maintain a valid agreement.

### 3. Definitions

- 3.1 "Administration" shall mean Town employees implementing the Policy;
- 3.2 "Authorized Encroachment" means an Encroachment that is authorized by the Town through a valid agreement;
- 3.3 "Council" means the Council of the Corporation of the Town of LaSalle;
- 3.4 "Encroachment" means any item that is placed, erected, or built on Town-owned Land or use of Town-owned Land.

- 3.5 “Owner” shall mean the registered Owner of the land abutting Town-owned Land;
- 3.6 “Policy” shall mean the Encroachment Policy;
- 3.7 “Council Meeting” shall mean a meeting of Council held in accordance with the *Municipal Act, 2001, c.25* and the Town’s Procedural By-law in effect at the time;
- 3.8 “Town” shall mean the Corporation of the Town of LaSalle;
- 3.9 “Town-owned Land” shall mean any real property owned by the Town.

## **4. Policy**

### **4.1 Guidelines**

4.1.1 The intent of this Policy is for the Legal Department, and other Administration as required, to review each current or proposed Encroachment on a case-by-case basis. The guidelines set out herein are not meant to be exhaustive. Administration shall have discretion in evaluating Encroachments and Authorized Encroachments to ensure the safety of residents and the best interest of the Town.

### **4.2 Encroachment Application and Implementation Process**

4.2.1 A written request shall be completed and supplied to the Town’s Legal Department.

4.2.2 The proposed request, including the legal description of land, ownership of property, as well as any additional relevant documents, shall be reviewed and assessed by the Legal Department. The request and additional information may be circulated to Administration for additional review as required.

4.2.3 In order for the Encroachment to be considered, the written request must include the application fee.

4.2.4 If there is a discrepancy between lot lines while the request for an Encroachment is being evaluated by the Legal Department, the Town may commission a survey at the Owner’s expense in consultation with the Owner. The Owner will be required to provide a deposit for the survey prior to proceeding.

4.2.5 The request for an Encroachment may be accepted or rejected at Administration’s discretion.

4.2.6 If the Encroachment request is accepted, Council will ratify the agreement by virtue of a By-law. A certificate of insurance must be provided to the Legal Department in accordance with Section 4.3 of the Policy. The Town Solicitor shall then register the Authorized Encroachment on the title of the property. Upon registration of the Encroachment, the Owner may begin using the Authorized Encroachment in accordance with the terms and conditions of the Encroachment Agreement.

4.2.7 An application may be approved in some areas and not others due to circumstances surrounding infrastructure, future Town needs, and the best interest of the public.

4.2.8 If an Owner does not agree with the decision of Administration, they may request a written explanation of the Legal Department's decision. If the resident is not satisfied, they may make a request to appear at a Council Meeting for review.

### **4.3 Insurance Requirements**

4.3.1 To continue use of an Authorized Encroachment, Owners shall supply an insurance certificate to the Town's Legal Department. The insurance certificate shall be supplied upon approval of the Encroachment, and each subsequent year prior to expiry. The certificate of insurance indemnifies and save harmless the Town against any and all damages or injury which may result from the Authorized Encroachment. The insurance certificate must:

- a. be to the satisfaction in form and content to the Town's Legal Department;
- b. include the start and end date of the insurance coverage, the address of the property, and the full names of the insured;
- c. contain proof of General Liability in the amount of no less than Two Million Dollars (\$2,000,000.00) for residential properties, and no less than Five Million Dollars (\$5,000,000.00) for commercial properties. Commercial properties must also contain a cross-liability clause;
- d. contain a thirty (30) day cancellation notice requirement;
- e. contain an endorsement naming "The Corporation of the Town of LaSalle" as an additional insured;
- f. be provided annually prior to the expiry of the current insurance certificate on file;
- g. be in the amount of no less than Two Million Dollars (\$2,000,000.00) for residential properties and no less than Five Million Dollars (\$5,000,000.00) for businesses;

4.3.2 Failure to supply the required insurance certificate may result in enforcement in accordance with Section 4.5 of this Policy.

4.3.3 Insurance requirements may be altered or increased from the requirements listed in section 4.3.1 at the outset of the Authorized Encroachment or throughout the term of the Authorized Encroachment at the discretion of Administration.

#### **4.4 Town Initiated Encroachment**

4.4.1 Identification of Encroachments may be done through:

- a. performance of regular duties of Administration;
- b. plans provided to the Town; or
- c. through inspections or patrols of surrounding areas as may be deemed necessary from time to time.

4.4.2 Upon discovery of an Encroachment that has not been approved by Administration, the Owner will be notified. Upon notification the Town will:

- a. advise the Owner that they must enter into an Authorized Encroachment agreement, and adhere to the terms in the Authorized Encroachment agreement and Policy; or
- b. advise the Owner that they must cease use of Town-owned Land and that the Town-owned Land must be returned to the original state at the expense of the Owner.

4.4.3 If Administration grants the Owner permission to continue use of Town-owned Land, and the Owner will not enter into an Authorized Encroachment by virtue of a By-law and valid agreement, the Owner must cease use. The Town-owned Land must be restored to the original state at the Owner's expense. Refusal to cease use and restore the land to its original state will result in enforcement by Administration under Section 4.6 of this Policy.

#### **4.5 General**

4.5.1 Execution of an Encroachment agreement does not create any vested right of the owner or occupant for the premises to which the encroachment is infringing. The encroachment agreement may be terminated in accordance with the terms set out in this Policy and the encroachment agreement.

4.5.2 Existing Authorized Encroachments that comply with the terms set out in the Encroachment Agreement and this Policy will be permitted to continue use of Town-owned Land.

4.5.3 Owners will be required to give the Town ten (10) days' notice before the sale of property. Succeeding Owners will require a new Encroachment agreement.

#### **4.6 Enforcement and Termination**

4.6.1 If an Owner is required to remove an Encroachment, it shall be at the sole expense of the Owner.

4.6.2 Removal or suspension of an Encroachment may be due to discovery of an Encroachment that is not authorized by Administration, or failure to comply with the terms of the Policy or Encroachment Agreement. An Encroachment agreement may be reinstated at the discretion of administration upon adherence to the Policy or Encroachment agreement and payment of the reinstatement fee

4.6.3 Formal written notice by the Legal Department shall be provided to inform the Owner that the use of Town-owned Land must be ceased. The time frame for removal shall be at Administration's discretion, on a case-by-case basis. Factors such as risks associated with the Encroachment and complexity of the removal will be considered.

4.6.4 Failing to remove the Encroachment by the specified time, in addition to any other remedies available by law, may result in the Town undertaking the performance of the work to remove the Encroachment.

4.6.5 The costs associated with removal of the Encroachment by the Town shall be added to the municipal tax roll associated with the property, in accordance with the *Municipal Act*, 2001 Section 434.2.

4.6.6 Administration or their delegate may enter onto any land from which an encroachment is located and into any encroaching building, structure, or part thereof at any reasonable time to determine whether the encroachment is in compliance with this Policy or the encroachment agreement.

#### **4.7 Encroachment Fees**

4.7.1 Encroachment fees will be listed in the Town's current User Fee By-law.

4.7.2 Fees will include:

- a. Application process, a one-time payment per Encroachment;
- b. Encroachment fee, a one-time payment upon approval of the Encroachment;
- c. Reinstatement fee, a payment for the reinstatement of a suspended Encroachment agreement;

- d. termination and release of the Authorized Encroachment, a one-time fee for each Encroachment terminated and released.

## **5. Roles and Responsibilities**

### **5.1 Managers and Supervisors**

- 5.1.1 Town Solicitor – Application review and decision.

### **5.2 Employees, Volunteers, etc.**

- 5.2.1 Paralegal – management of Encroachments and Policy.
- 5.2.2 Legal Department staff, Public Works Department staff, and Department of Planning & Development staff to assist as needed.

## **6. References and Related Documents**

N/A

## **7. Attachments**

N/A