

# THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI

## Encroachment By-law # 19-1485

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### Being a by-law for the Enforcement of Encroachments on Municipally Owned Lands.

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**WHEREAS** the *Municipal Act, 2001*, S.O. 2001, c.25 (hereinafter the “Municipal Act, 2001”) provides that a municipality may pass by-laws within the following spheres of jurisdiction: Highways, including parking and traffic on highways at section 11(1) 1; Culture, parks, recreation and heritage at section 11(1) 5 and Structures, including fences and signs at section 11(1) 7;

**AND WHEREAS** section 8 of the Municipal Act, 2001 provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Municipal Act;

**AND WHEREAS** section 9(1) of the Municipal Act, 2001 provides that sections 8 and 11 shall be interpreted broadly so as to confer broad authority on municipalities to (a) enable them to govern their affairs as they consider appropriate, and (b) enhance their ability to respond to municipal issues;

**AND WHEREAS** section 391(c) of the Municipal Act, 2001 provides that a municipality may pass by-laws imposing fees or charges on any class of persons for the use of its property including property under its control;

**AND WHEREAS** section 427(1) of the Municipal Act, 2001 provides that a municipality may proceed to do things at a person's expense which that person is otherwise required to do under a by-law or otherwise but has failed to do;

**AND WHEREAS** section 427(3) of the Municipal Act, 2001 provides that the costs incurred by a municipality in doing a thing or matter under section 427(1) may be recovered by adding the costs to the tax roll and collecting them in the same manner as taxes;

**NOW THEREFORE** the Council of The Corporation of the Municipality of Temagami enacts as follows:

#### **SHORT TITLE**

1. This by-law shall be known and may be cited as the “Encroachment By-law”.

#### **DEFINITIONS**

2. In this by-law,
  - (a) “Municipality” means The Corporation of the Municipality of Temagami;
  - (b) “easement” means an interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose, but does not include an interest created by a licence;

- (c) “encroachment” means any type of vegetation, man-made object or item of personal property of a person which exists wholly upon, or extends from a person's premises onto, public lands and shall include any aerial, surface or subsurface encroachments;
- (d) “aerial encroachment” means an encroachment that is located at least .304 meters (12 inches) above the surface of public lands;
- (e) “surface encroachment” means an encroachment that is located anywhere between the following: the surface of public lands to a height less than 304 centimetres (12 inches) and beneath the surface of public lands to a depth of not more than 2.54 centimetres (1 inch).
- (f) “sub-surface encroachment” means an encroachment that is located beneath the surface of public lands to a depth exceeding 2.54 centimetres (1 inch);
- (g) “encroachment agreement” means a document prepared by the Municipality allowing an encroachment on municipally owned/operated lands and shall take the following
- (h) “expenses” means any and all sums of money actually spent or required to be spent by the Municipality, and shall include but not be limited to all charges, costs, administrative fees, HST, outlays, legal fees and losses;
- (i) “highway” means a common and public highway and includes any street, sidewalk, bridge, trestle, viaduct or other structure forming part of the highway and, except as otherwise provided, includes a portion of a highway;
- (j) “owner” means the registered owner of a parcel of property as such person is described in the records of the land registry office;
- (k) “person” means an individual, partnership, association, firm or corporation, business entity or club, incorporated group or organization, federal or provincial government, crown agents and school boards, to whom the context can apply in accordance with the Interpretation Act of Ontario, as amended, but specifically excludes the Municipality;
- (l) “personal property” means any object or item of property other than real property;
- (m) “premises” means a parcel of real property under registered ownership and includes all buildings and structures thereon;
- (n) “public lands” means lands owned by, leased, licensed to or under the management of the Municipality, and shall include but not be limited to any public highway, road, street, avenue, lane, place, viaduct or trestle, water, thoroughfare way or bridge, park, woodland, greenbelt, storm water management facility, open space, and all parts thereof, including any surface, grassed area, boulevard, ditch, curb and sidewalk;

- (o) “right-of-way” means a person's legal right, established by usage or by contract, to pass through grounds or property owned by another person;
- (p) “Unauthorized encroachment” means any encroachment not authorized by this by-law.
- (q) an agreement for all other types of encroachments, each of which shall be signed by the applicable Commissioner or his/her authorized delegate;

### **ENCROACHMENTS PROHIBITED**

- 3. (1) No person shall erect, place or maintain, or cause to be erected, placed or maintained, an encroachment of any kind on public lands, any right-of-way or easement in owned by the Municipality, except where permitted to do so in accordance with this by-law;
- (2) Notwithstanding subsection 3(1), the provisions of this by-law do not apply to encroachments permitted as a result of a written and signed agreement with the Municipality;
- (3)The Municipality shall not bear any responsibility for any form of damage or deterioration occurring to personal property named in the encroachment agreement, howsoever or whenever caused and the personal property shall be personal property owner’s sole responsibility, cost and expense.

### **APPLICATION FOR ENCROACHMENT**

- 4. (1) Any person requesting authorization to erect, install or maintain an encroachment on public lands shall be required to submit an application to the Municipality seeking permission to do so, along with payment of the non-refundable application fee;
- (2) The application will include all details of the encroachment including but not limited to details of all portable and stationary objects which may be ice huts, trailers, vehicles, boats, barges, equipment and various other materials, permitted placement on a property with details of how it will be stored;
- (3) The encroachment agreements will be valid for a period of one year from the date of approval and shall be renewed each year on the anniversary date of the application;
- (4) Where an applicant fails to pay the applicable fees for an encroachment agreement, within the thirty (30) calendar days as prescribed in subsection 4(3), the applicant shall be deemed to have abandoned his application.

### **AUTHORITY OF MUNICIPAL LAW ENFORCEMENT OFFICER**

- 5. The Municipal Law Enforcement Officer shall have delegated authority to:
  - (a) approve or reject any application submitted for an encroachment agreement; and
  - (b) impose such terms and conditions to any application and/or encroachment agreement as the Municipal Law Enforcement Officer may deem appropriate; and

- c) Determine whether any encroachment agreement expiring on a date after the date of enactment and passage of this by-law shall be renewed and/or extended.

### **REVOCATION**

6. The execution of an encroachment agreement in respect of an encroachment does not create any vested right in the owner or occupant of the premises to which the encroachment is appurtenant, or in any other person, and the encroachment agreement may be revoked in accordance with the terms set out therein.

### **ACCESS TO ENCROACHMENTS**

7. No person shall obstruct, hinder or interfere with the free access to any encroachment by an employee, officer or agent of the Municipality.

### **DISCONTINUANCE OF ENCROACHMENTS**

8. (1) If the owner of any personal property to which an encroachment is appurtenant desires to permanently discontinue the encroachment, he/she shall notify the Municipal Law Enforcement Officer in writing and the Municipal Law Enforcement Officer shall issue a notice to be sent to the owner advising that the encroachment shall be removed public lands;

(2) If the Municipal Law Enforcement Officer is at any time of the opinion that a breach of the terms and conditions attached to an encroachment agreement has occurred and that the encroachment should be discontinued, or where an encroachment agreement has expired, the Municipal Law Enforcement Officer may cause a notice to be sent to the owner advising that the encroachment be removed and the public lands be restored to their former condition by the owner at his own expense.

(3) Where an owner fails to comply with the notice described in subsection 8(1) and/or 8(2) within thirty (30) days of receipt of same, the encroachment may be removed by the Municipality, and the public lands restored to their former condition at the expense of the owner, such expense to be recovered in full in the manner provided in section 11 below, and until the encroachment is so removed or filled in and closed up and the public lands restored to their former condition, all expenses incurred by the Municipality in respect thereto shall continue to be paid by the owner.

### **EMERGENCY SITUATIONS**

9. (1) If the Municipal Law Enforcement Officer deems that an emergency exists or may exist as a result of any encroachment being or about to become a source of danger to the health and safety of the public, the Municipal Law Enforcement Officer may,
- (a) notify in writing the owner of the personal property to which the encroachment is appurtenant of the required repairs or removal of the encroachment and restoration of the public lands to their former condition at the expense of the owner, so that the encroachment is no longer deemed to be a source of danger or potential danger to the public by the Municipal Law Enforcement Officer, and/or

- (b) take such measures on behalf of the owner, without notice to the owner, as the Municipal Law Enforcement Officer may deem necessary to remove the danger or potential danger created by the encroachment.
- (2) Where the notice described in subsection 9(1)(a) is not complied with within the time period stipulated therein, the Municipality may repair or remove the encroachment and restore the public lands to their former condition, at the expense of the owner, such expense to be recovered in full in the manner provided in section 11 below.
- (3) Where the Municipal Law Enforcement Officer elects to take any action under subsection 10(1)(b), the expenses incurred by the Municipality in so doing shall be recovered in full in the manner provided in section 11 below.

### **REMOVAL OF UNAUTHORIZED ENCROACHMENTS**

- 10. (1) Where the Municipality becomes aware of an unauthorized encroachment, the Municipality may give notice in writing to the owner of the premises to which an unauthorized encroachment is appurtenant, to forthwith remove the encroachment and to restore the public lands to their former condition at the expense of the owner.
  - (2) Where the notice in subsection 10(1) is not complied with within thirty (30) days of the date of the notice, the Municipality may, on behalf of the owner, remove the unauthorized encroachment and restore the public lands to their former condition at the expense of the owner, such expense to be recovered in full in the manner provided in section 11 below.
  - (3) Any materials or structures forming part of or attached to the encroachment and removed by the Municipality may, at the discretion of the Municipal Law Enforcement Officer, either be deposited at the owner's premises or be stored for thirty (30) days at the owner's expense, such expense to be recovered in full in the manner provided in section 11 below. Any item so stored and not claimed by the owner within the said thirty (30) day period shall be disposed of by the Municipality in such manner as it deems appropriate.

### **RECOVERY OF EXPENSES**

- 11. (1) All expenses incurred by the Municipality in connection with the enforcement of this by-law shall be paid within thirty (30) days of their billing date, and in the event of failure to pay the entire amount due within the said thirty (30) days, at the discretion of the Municipality, the outstanding balance of the invoice may thereafter be added to the tax roll as of the year in which the expenses were billed.
  - (2) The Municipality may also recover all expenses owing under this by-law by a court action as a debt due to the Municipality.

**INFRACTIONS AND PENALTIES**

12. Every person who contravenes any of the provisions of this by-law is guilty of an offence and on conviction is liable to pay a fine, exclusive of costs, as provided for in the *Provincial Offences Act* of Ontario, as amended.

**PROHIBITION ORDER**

13. When a person has been convicted of an offence under this by-law, the Superior Court of Justice, or any other court of competent jurisdiction, may, in addition to any other penalty imposed on the person convicted, issue an order prohibiting the continuation or repetition of the offence or the doing of any act or thing by the person convicted toward the continuation or repetition of the offence.

**ENFORCEMENT**

14. A Municipal Law Enforcement Officer acting under this by-law may enter and inspect all buildings, structures or parts thereof that are subject to this by-law at any reasonable time for the purposes of determining whether there is compliance with this by-law.

**DELEGATION OF AUTHORITY**

15. The Municipal Law Enforcement Officer and the Municipal Clerk or there delegates are authorized to execute all encroachment agreements.

**GENERAL**

16. In this by-law, unless the context otherwise requires, words imparting the singular number shall include the plural, and words imparting gender shall include both masculine and feminine.

**GRANDEATHERING**

17. This by-law shall apply to all encroachments which existed or were created before this by-law was enacted and passed.

**SEVERABILITY**

18. (1) Where a court of competent jurisdiction declares any section or part of a section of this by-law to be invalid, or to be of no force and effect, it is the intention of Council in enacting this by-law that the remainder of this by-law shall continue in force and be applied and enforced in accordance with its terms to the fullest extent possible according to law.

(2) That the Clerk of the Municipality of Temagami is hereby authorized to make minor modifications or corrections of a grammatical or typographical nature to this by-law, after the passage of the by-law, where such modifications or corrections do not alter the intent of the by-law.

TAKEN AS READ A FIRST time on this 7 day of November, 2019.

READ A SECOND AND THIRD time and finally passed XX day of XXXXX, 2019.

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Mayor

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Clerk