

Being a by-law to regulate encroachments on City-owned property and on easements in favour of the City.

**Whereas:**

- (a) On December 19, 2016, Report DS-16-215 dated December 8, 2016 containing recommendations and management responses to the KPMG internal audit of the City's real estate function was endorsed by City Council as the general basis for improving the City's real estate function.
- (b) The KPMG Internal Audit Report for the City's Real Estate Function dated November 2016 included four recommendations relating specifically to the City's encroachment procedure.
- (c) The Municipal Act, 2001, S.O. 2001, c.25 ("Municipal Act, 2001") provides that a municipality may pass by-laws within the following spheres of jurisdiction: Highways, including parking and traffic on highways, pursuant to clause 1 of subsection 11(3); Culture, parks, recreation and heritage pursuant to clause 5 of subsection 11(3); and Structures, including fences and signs, pursuant to clause 7 of subsection 11(3), and any other provisions relating to the City owned property, whether land or buildings.
- (d) Subsection 8(1) of the Municipal Act, 2001 provides that sections 8 and 11 shall be interpreted broadly 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.
- (e) Clause (c) of subsection 391(1) 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, which includes property under its control.
- (f) Subsection 446(1) of the Municipal Act, 2001 provides that a municipality, in default of a person doing things that they are required to do under by-law, may do such things at the person's expense.
- (g) Subsection 446(2) of the Municipal Act, 2001 provides that for purposes of subsection 446(1) the municipality may enter upon land at any reasonable time.
- (h) Subsection 446(3) of the Municipal Act, 2001 provides that the costs incurred by a municipality in doing things under subsection 446(1) may be recovered by adding the costs to the tax roll and collecting them in the same manner as taxes.
- (i) It is the intent of the Council of The Corporation of the City of Oshawa to pass a by-law that reflects the needs of the City by promoting through regulation the responsible use of City-owned property, while protecting the broader public interest by ensuring the safety and accessibility of its property, including property under its control.

**Now, therefore,** it is enacted as a by-law of The Corporation of the City of Oshawa by the Council thereof as follows:

**1.0 Short Title**

- 1.1 This By-law shall be known and may be cited as the "Encroachment By-law".

**2.0 Definitions**

- 2.1 In this By law, where words or acronyms appear with all letters in upper-case, the words and acronyms are intended to have the meanings set out for them in the lettered clauses of this section:
  - (a) "Absolute Land Titles" means property registered pursuant to the Land Titles Absolute method, which involves submitting a 40-year search of title to the province for approval and preparing a new survey for the property, which is then

sent to every adjoining landowner. If there are no objections, then the land is registered into Land Titles and the owner is granted full protection. This means that no adjoining owner can later bring a claim for ownership by possession or easement by prescription, even if they prove 10 years of continuous possession of the land or 20 years of use of any easement.

- (b) “Alter”, “Altered” and “Alteration” mean a change in grading form or substance from its original state.
- (c) “Applicant” means an Owner of land or the Owner’s agent duly authorized in writing who has submitted a planning application or application for a licence or permit.
- (d) “Boulevard” means that part of a Highway (whether assumed or unassumed by the City) between a Street Line and the edge of the curb or, where there is no curb, that portion of the Highway which is travelled or designed to be travelled by vehicles. A Boulevard may or may not contain a sidewalk.
- (e) “City” means The Corporation of the City of Oshawa and, where the context so implies, its employees, officers, servants, agents and its council members.
- (f) “City-Owned Lands” means real property owned by the City, and shall include but not be limited to any Highway (including any Boulevard), lane, alley, square, place, viaduct or trestle, water, way or bridge, park, woodland, open space, stormwater management facility, landscape strip, municipal golf course or cemetery, and all parts thereof, including any building, structure, surface, grassed area, ditch, curb, gutter and sidewalk. For the purposes of this By-law, the City-Owned Lands subject to potential Encroachment are categorized as follows:
  - (i) Cemetery: The City owns and operates Union Cemetery and maintains eight other inactive cemeteries.
  - (ii) Fire: The City owns and operates six fire stations as well as a training site.
  - (iii) Walkway: The City owns various walkway blocks located throughout the municipality, typically acquired to provide active transportation connections between adjacent land uses and the road network.
  - (iv) Landscape Strip: The City owns various landscape strips located throughout the municipality, often acquired to provide a buffer.
  - (v) Parks: The City owns various parks located throughout the municipality, serving active and/or passive recreational purposes.
  - (vi) Open Space: The City owns various open space lands, predominantly used for conservation, reforestation and recreation, and which form an integral part of the City’s Natural Heritage System.
  - (vii) Municipally Programmed: The City owns certain lands in addition to City-owned road rights-of-way and those identified in articles (i) to (vi) directly above, which contain structures and buildings and providing one or more core City services or functions. Such properties include City Hall, libraries, recreation complexes, seniors’ centres, works depots, and arts and cultural facilities.
  - (viii) General Holdings: The City owns certain lands aside from City-owned road rights-of-way and lands categorized under articles (i) to (vii) directly above, which do not serve a municipal need or purpose. These include lands that have been declared potentially surplus or surplus and lands that are available for disposition.
  - (ix) City-owned road rights-of-way: The City owns all Highways in the City not under Provincial or Regional jurisdiction as well as unopened and closed road allowances.

- (g) “City Infrastructure” means any City asset, whether located below, on, or above grade.
- (h) “City Solicitor” means the head of the City’s Legal Services Branch and shall include their designate.
- (i) “Commissioner” means the Commissioner of Economic and Development Services and shall include their designate.
- (j) “Crest” means the City’s Corporate Real Estate Strategy Team.
- (k) “Director” means the Director of Planning Services in the Economic and Development Services Department and shall include their designate.
- (l) “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.
- (m) “Emergency” means any condition, matter or thing that poses an immediate danger to the health or safety of any Person.
- (n) “Encroachment” means any type of landscaping or vegetation, natural or artificial object, item of Personal Property, building or structure (including Fences and in-ground pools), or combination thereof that generally is associated with a Private Property but is located wholly or partially on City-Owned Lands, or on lands subject to an Easement in favour of the City, that are adjacent to the Private Property. For clarity, an encroachment may include a condition where the encroaching features are not appurtenant to a Private Property in the vicinity of the encroachment, such as a stand-alone installation of an item(s) or a memorial.
- (o) “Encroachment Agreement” means an agreement that was executed between the City and an Owner, granting the Owner authority to erect, place, Alter or continue an Encroachment.
- (p) “Expenses” means any and all sums of money actually spent or required to be spent by the City, and shall include but not be limited to all charges, costs, application fees, administration fees, dispute resolution/mediation fees, survey fees, taxes, outlays, legal fees and losses.
- (q) “Fence” means a barrier or any structure, except a structural part of a building, that wholly or partly screens from view, encloses or divides a yard or other land, or marks or substantially marks the boundary between adjoining lands, and includes any shrubbery or other plantings that have the same effect.
- (r) “Highway” means a common and public Highway, street, avenue, or parkway under the jurisdiction of the City, any part of which is intended for use by the general public for the passage of vehicles and includes the area between the lateral property lines including any Boulevard.
- (s) “Land Titles Conversion Qualified” means property that was registered pursuant to the Land Titles Conversion Qualified method, which involved submitting a 40-year search of title to the province for approval but, unlike property registered under Absolute Land Titles, no up-to-date surveys were prepared. As such, the title to these lands are “qualified,” such that if there were any matured claims for adverse possession or easements by prescription which were in existence at the time that the land was transferred into Land Titles, these claims would continue to apply today.
- (t) “MLELS” means Municipal Law Enforcement and Licensing Services.
- (u) “Notice” means any Notice required to be given by the City to the Owner with respect to this By-law. A Notice includes an Order issued by MLELS and Orders issued under sections 444 and 445 of the Municipal Act, 2001, as amended.
- (v) “Officer” means a Municipal Law Enforcement Officer appointed to enforce the By-laws of the City.

- (w) “Owner” means the registered Owner of a Private Property but also includes a lessee, tenant, mortgagee in possession, the Person or directors of a corporation acting as the Owner’s authorized agent, or occupant who appears to have care and control of the Private Property.
- (x) “Person” means an individual, association, firm, partnership, corporation, trust, organization, trustee, or agent, and their heirs, executors, or legal representatives of the Person to whom the context can apply according to law, but excludes the City unless the context specifically requires such application.
- (y) “Personal Property” means any object or item of property other than real property, that is owned by a Person.
- (z) “Planning Services R.E. Staff” means those planners in the City’s Planning Services Branch tasked with administering the City’s Real Estate function and shall include their designates.
- (aa) “Private Property” means a parcel of real property, as it is described in the records of the Land Registry Office, that is owned by a Person, and includes all buildings and structures thereon.
- (bb) “Region” means The Regional Corporation also known as the Regional Municipality of Durham.
- (cc) “Service Oshawa” means the customer service centre provided by the City to residents, businesses and visitors.
- (dd) “Sign Encroachment” means any type of sign as defined under Sign By-law 72-96, as amended, that is associated with a Private Property but is located wholly or partially on City-Owned Lands, or on lands subject to an Easement in favour of the City.
- (ee) “Street Line” means the boundary between a lot and the Highway or Highways upon which the lot abuts provided that, where a lot abuts a 0.3 metre reserve, the Street Line shall be deemed to be the boundary between the 0.3 metre reserve and the Highway or Highways upon which the 0.3 metre reserve abuts.
- (ff) “Temporary Permit” means a Road Occupancy Permit or other City permit to manage the activities on or adjacent to City-Owned Lands.
- (gg) “Unauthorized Encroachment” means any Encroachment not authorized by this By-law, and shall include any Encroachment that is the subject of an Encroachment Agreement that has been invalidated as a result of a breach of the terms and conditions of said agreement by the Owner, or as a result of the term of said Agreement having expired.

### **3.0 Prohibitions and Restrictions on Encroachments**

- 3.1 In the absence of an Encroachment Agreement and apart from certain exceptions as outlined in subsection 3.6 below, any Encroachment caused by a Person on City-Owned Lands or an Easement in favour of the City shall be considered to be an Unauthorized Encroachment. It is the legal position of the City that there shall be no Unauthorized Encroachments onto City-Owned Lands or Easements in favour of the City.
- 3.2 Whether deliberately or inadvertently, no Person shall erect, place, Alter or continue, or cause to be erected, placed or continued, an Encroachment of any kind on City-Owned Lands, or Easement in favour of the City, except as permitted by this By-law.
- 3.3 Encroachments, subject to the conditions and requirements of this By-law, are only permitted under the authority of an Encroachment Agreement.
- 3.4 No opportunity to enter into a potential Encroachment Agreement will be offered by the City in the event that the Encroachment creates a condition(s) which includes, but is not necessarily limited to, the following:
  - (a) Creates an unsafe condition or a hazard;

- (b) Modifies or interferes with City Infrastructure, including access thereto;
- (c) Impairs the reasonable use of the City-Owned Lands or Easement in favour of the City affected by the Encroachment;
- (d) Creates an impediment to work being undertaken prior to or during the course of performing maintenance, repairs, regular City operations or any other works on City-Owned Lands or an Easement in favour of the City;
- (e) Extends onto the grounds of a cemetery, whether active or inactive, or the grounds of any City-Owned Lands used for Fire Services' purposes; or,
- (f) Contravenes this or any other City or Region by-laws.

3.5 Notwithstanding any other sections in this By-law, where an Encroachment creates an unsafe condition or a hazard, the City may take appropriate measures to abate the hazard in accordance with subsection 11.2.

3.6 Notwithstanding any other sections in this By-law, this By-law does not apply in all situations, including, but not necessarily limited to, the following matters:

- (a) Signs, as authorized through the City's Sign By-law (By-law 72-96), as amended, or its successor by-law;
- (b) Election signs, as authorized through the City's Election Signs By-law (By-law 42-2014), as amended, or its successor by-law;
- (c) Improvements by the Owner of a Private Property to that portion of a Boulevard under the jurisdiction of the City abutting their Private Property, subject to the regulations of the City's Boulevard By-law (By-law 136-2006), as amended, or its successor by-law;
- (d) Activities as authorized through the City's Highway Vending By-law (By-law 33-92), as amended, or its successor by-law;
- (e) Activities as authorized through the City's Road Occupancy By-law (By-law 37-2007), as amended, or its successor by-law;
- (f) Collectible Waste, as defined and provided for through the City's Waste Collection By-law (By-law 113-2008), as amended, or its successor by-law;
- (g) Authorized outdoor cafés participating in the Downtown Oshawa Outdoor Café Program;
- (h) Maintenance and occupancy of property, as authorized through the City's Property Standards By-law (By-law 1-2002), as amended, or its successor by-law;
- (i) Newspaper boxes within a City-owned road right-of-way;
- (j) Mailboxes belonging to the Canada Post Corporation or any of its agents;
- (k) Infrastructure, such as utility equipment, as authorized pursuant to the City's Boulevard By-law 136-2006, as amended, and/or as negotiated by the City with a utility provider or a public authority;
- (l) An Encroachment that is a feature of cultural heritage value or interest designated by City By-law pursuant to the Ontario Heritage Act, R.S.O. 1990, c. 0.18, as amended;
- (m) A Fence that defines a lot line where the lot line traverses an Easement in favour of the City, and which structurally complies with the relevant provisions of the City's Fence and Sight Triangle By-law (By-law 23-2014), as amended, or its successor by-law;
- (n) A temporary Encroachment arising as a result of construction, maintenance or other activity as authorized under a valid Temporary Permit issued by the City;

- (o) An Encroachment permitted as a result of a written and signed agreement with the City, other than through an Encroachment Agreement; and,
- (p) An Encroachment that is permitted under any other City By-law.

#### **4.0 Implementation and Content of Encroachment Agreements**

4.1 Any Owner requesting to enter into an Encroachment Agreement shall, as a pre-requisite to execution of the agreement by the Commissioner:

- (a) Pay the prescribed fee(s), as per the City's General Fees and Charges By-law (By-law 13-2003), as amended, or its successor by-law;
- (b) Be required to pay any property taxes for the subject Private Property that are in arrears;
- (c) Provide a certificate of general liability insurance satisfactory to the Commissioner; and,
- (d) Unless directed otherwise by the Commissioner or the Director, make arrangements for the preparation and submission, at the Owner's sole expense, of an Ontario Legal Survey or professional quality copy of a detail drawing showing the following, to the satisfaction of the City:
  - (i) The relevant boundaries of the subject Private Property;
  - (ii) The relevant boundaries of the City-Owned Lands or Easement in favour of the City;
  - (iii) The type, size and location of the encroaching features (including dimensions);
  - (iv) A demarcation limit showing the extent of the Encroachment; and,
  - (v) An area value in square metres for the extent of the Encroachment, based on the demarcation limit and the relevant property boundaries.

4.2 All Encroachment Agreements must be in a form and content acceptable to the Commissioner and City Solicitor and shall include, but not necessarily be limited to, the following provisions:

- (a) A term which does not exceed the expected useful life of the encroaching feature, as applicable and as may be determined by the Commissioner in consultation with the City's Chief Building Official;
- (b) Provision for the assignment of the agreement in the event the Private Property to which the Encroachment is appurtenant is sold to a new Owner who is not a party to the agreement;
- (c) Provision for the termination of the agreement due to the default of the Owner in adhering to the terms and conditions of the Encroachment Agreement or the provisions of this By-law;
- (d) Provision for the termination of the Encroachment Agreement in the event that the City deems a hazard or an Emergency to exist or could exist in relation to the Encroachment;
- (e) Provision for the termination of the Encroachment Agreement by the City in the event that over the course of planning or performing maintenance, repairs or any other works on City-Owned Lands or an Easement in favour of the City, the Encroachment is identified as an impediment to the City's work;
- (f) Provision for the termination of the Encroachment Agreement by the City in the event that the City determines that the Encroachment interferes, or will interfere with the reasonable use of the City-Owned Lands or Easement in favour of the City, or interferes with City Infrastructure, including access thereto;

- (g) Provision for removal of the Encroachment and restoration of the affected lands at the sole expense of the Owner who is a party to the Encroachment Agreement, upon termination of the agreement;
- (h) Payment of a one-time administrative fee to prepare the Encroachment Agreement and/or register the Encroachment Agreement on title, and an annual fee (subject to an annual inflation adjustment) In accordance with the City's General Fees and Charges By-law (By-law 13-2003), as amended, or its successor by-law;
- (i) Provision to indemnify the City in accordance with section 6.0 of this By-law;
- (j) A requirement for liability insurance at the expense of the Owner in accordance with subsection 6.2 of this By-law; and,
- (k) Provision to indicate that the City shall not be liable for any damages, losses or injuries caused by or to an Encroachment, in accordance with subsection 5.2 of this By-law.

4.3 An Encroachment Agreement between the City and the Owner of the Private Property to which the Encroachment is appurtenant may be assigned to a new Owner in the event that the current Owner sells the subject Private Property and the new Owner seeks to continue the Encroachment.

4.4 Where there is an existing Encroachment Agreement at the time this By-law comes into force, such Encroachment Agreement shall be allowed to continue under the provisions of this By-law.

## **5.0 Liability**

- 5.1 The provisions of this By-law shall not be construed as relieving or limiting the responsibility or liability of any Person who has lawfully or unlawfully erected, placed, Altered or continued an Encroachment from any personal injury, including injury resulting in death or property damage resulting from such Encroachment, or from acts or omissions of such Person, or their agents, employees or contractors, in the erection, placement, Alteration, continuation or removal of the Encroachment, or the restoration of lands affected by the Encroachment. Likewise, provisions of this By-law shall not be construed as acceptance by the City of any responsibility or liability whatsoever by reason of allowing an Encroachment, executing an Encroachment Agreement, or removing an Unauthorized Encroachment and restoring the affected lands.
- 5.2 The City is not responsible for any damages, losses or injuries caused by or to an Encroachment. For further clarity, the City is not responsible for any damages caused to an Encroachment as a result of the City's reasonable use of its lands or lands subject to an Easement in favour of the City or as a result of its operations, including, but not limited to, ploughing, grass cutting, Boulevard tree maintenance, or the repair and maintenance of the City's Infrastructure.

## **6.0 Indemnification**

- 6.1 An Owner who is party to an Encroachment Agreement with the City shall be jointly and severally responsible to indemnify the City from all losses, damages, costs, expenses, claims, demands, actions, lawsuits, or other proceedings of every nature and kind arising from, and in consequence of, the erection, placement, Alteration, continuation or removal of an Encroachment, or the restoration of lands affected by an Encroachment.
- 6.2 An Owner who is party to an Encroachment Agreement with the City shall:
  - (a) If they are a residential Owner, file annually with the City a certificate of general liability insurance for the Private Property to which the Encroachment is appurtenant, that is satisfactory to the Durham Municipal Insurance Pool; or,
  - (b) If they are a non-residential Owner, file annually with the City a certificate of general liability insurance for the Private Property to which the Encroachment is appurtenant and showing the City as an additional insured, that is satisfactory to the Durham Municipal Insurance Pool.

## **7.0 Registration**

- 7.1 Where the Commissioner and/or the City Solicitor deems it appropriate, an Encroachment Agreement may be registered with the Land Registry Office against title to the Private Property to which the Encroachment is appurtenant, and all expenses in doing so shall be paid in advance by the Owner of the Private Property to which the Encroachment is appurtenant. Such expenses shall be collected by the City from the Owner as a component of the one-time administrative fee for an Encroachment Agreement required under article 4.2(h).

## **8.0 Delegation of Authority**

- 8.1 Subject to the applicable delegation restrictions in the City's Delegation of Authority By-law (By-law 29-2009), as amended, or its successor by-law, the Commissioner shall have delegated authority to:
- (a) Establish fees and charges for Encroachment Agreements pursuant to the City's General Fees and Charges By-law (By-law 13-2003), as amended, or its successor by-law, on a case-by-case basis, in circumstances where:
    - (i) The City-Owned Lands affected by an Encroachment are registered under Land Titles Conversion Qualified, provided that the amount of fees and charges do not exceed those which would otherwise apply had the City-Owned Lands in question been registered under Absolute Land Titles; or,
    - (ii) The Encroachment is caused by the Central Lake Ontario Conservation Authority, a Public Authority as defined under Zoning By-law 60-94, as amended, any School Board created by the Province of Ontario, or any utility provider for purposes related to infrastructure, services and/or equipment, provided that the amount of fees and charges do not exceed those based on the scale to be applied pursuant to the City's General Fees and Charges By-law (By-law 13-2003), as amended, or its successor by-law, in instances where the City-Owned Lands affected by the Encroachment are registered under Absolute Land Titles or where the Encroachment is on Private Property in an area subject to an Easement in favour of the City;
  - (b) Offer or decline to offer an Owner of a Private Property to which an Unauthorized Encroachment is appurtenant, or, where there is no appurtenant property, the Person responsible for causing the Unauthorized Encroachment, the opportunity to enter into discussions to advance a potential Encroachment Agreement, with discretion given to the Commissioner to forward, at their choosing, controversial or Encroachments proposed to be refused/removed to Council for its consideration;
  - (c) Order City staff to remove an Unauthorized Encroachment that is an impediment to work being undertaken by the City, with no Notice given to the Owner of the Private Property to which the Encroachment is appurtenant, or, where there is no appurtenant property, the Person responsible for causing the Unauthorized Encroachment;
  - (d) Order City staff to remove a valid Encroachment that is an impediment to work being undertaken by the City, provided Notice is first given to the Owner of the Private Property to which the Encroachment is appurtenant, or, where there is no appurtenant property, the Person responsible for causing the Encroachment, to remove the Encroachment;
  - (e) Order City staff to remove an Unauthorized Encroachment that is not an impediment to work being undertaken by the City, provided Notice is first given to the Owner of the Private Property to which the Encroachment is appurtenant, or, where there is no appurtenant property, the Person responsible for causing the Unauthorized Encroachment, to remove the Encroachment;
  - (f) Revoke an Encroachment Agreement that has been issued in error or if, in the opinion of the Commissioner, a breach of the terms and conditions of an



Encroachment Agreement has occurred, or that the term of said agreement has expired, and that the Encroachment should be discontinued; and,

- (g) Rescind any offer made to enter into discussions to advance a potential Encroachment Agreement, in the event the City and the Owner are unable to negotiate requirements, terms and/or conditions agreeable to both prospective parties to implement an Encroachment Agreement.

8.2 Subject to the applicable delegation restrictions in the City's Delegation of Authority By-law (By-law 29-2009), as amended, or its successor by-law, the Commissioner and the Director shall have delegated authority to:

- (a) Negotiate and impose requirements to be addressed as a pre-requisite to the City's execution of an Encroachment Agreement, including the removal of encroaching features that, in the opinion of the Commissioner or Director, can be readily removed;
- (b) Negotiate and impose terms and conditions to be implemented through an Encroachment Agreement as deemed appropriate under this By-law;
- (c) Approve the transfer of an existing Encroachment Agreement to a different party; and,
- (d) Determine whether any Encroachment Agreement expiring on a date after the date of enactment and passage of this By-law shall be renewed, extended, or amended.

8.3 Authority to deem a hazard or an Emergency to exist or could exist as a result of an existing Encroachment, and to authorize appropriate action under subsection 11.2 of this By-law, resides with City staff as follows:

- (a) The Director, MLELS or their designate, or the Commissioner, for any type of Encroachment involving City-Owned Lands or an Easement in favour of the City;
- (b) The Commissioner of Community and Operations Services or their designate, for any type of Encroachment involving City-Owned Lands or an Easement in favour of the City relating to cemeteries, sites operated by Fire Services, walkways, landscape strips, parkland, open space or municipally programmed lands;
- (c) The Commissioner of Corporate and Finance Services or their designate, for any type of Encroachment involving City-Owned Lands or an Easement in favour of the City relating to municipally programmed lands;
- (d) The Director, for any type of Encroachment or an Easement in favour of the City relating to City-owned general holdings;
- (e) The Director of Engineering Services (Economic and Development Services Department) or their designate, for any type of Encroachment or an Easement in favour of the City relating to City-owned Highways;
- (f) The Director of Operations Services (Community and Operations Services Department) or their designate, for any type of Encroachment or an Easement in favour of the City relating to City-owned cemeteries, walkways, landscape strips, parkland, open space or municipally programmed lands; and,
- (g) The Director of Facilities Management Services (Safety and Facilities Services Department) or their designate, for any type of Encroachment or an Easement in favour of the City relating to City-Owned Lands consisting of parkland containing buildings or municipally programmed sites.

8.4 Notwithstanding any other sections in this By-law, authority exercised by a City staff member under subsection 8.1, 8.2 or 8.3 of this By-law shall only occur after first consulting with the Airport Manager, in the event that the Encroachment involves City-Owned Lands forming part of the Oshawa Executive Airport.

## **9.0 No Vested Right**

- 9.1 Nothing in this By-law, including the execution of an Encroachment Agreement, creates a vested right in the Owner of the Private Property to which an Encroachment is appurtenant, or in any other Person, and therefore any Encroachment Agreement may be revoked in accordance with the provisions of this By-law or the conditions of an Encroachment Agreement issued under this or a previous By-law. There shall be no adverse possession of the City-Owned Lands on which the Encroachment is located.

## **10.0 Discontinuance of an Encroachment Subject to an Encroachment Agreement**

- 10.1 If an Owner intends to permanently discontinue an Encroachment that is the subject of a valid Encroachment Agreement, they shall notify the Director in writing and the Director shall thereafter arrange for Planning Services R.E. Staff to have a Notice sent to the Owner confirming action will be undertaken to terminate the Encroachment Agreement and advising of the Owner's obligation to immediately remove the Encroachment and restore the City-Owned Lands or lands subject to an Easement in favour of the City back to their former condition at the Owner's expense.
- 10.2 If the term of an Encroachment Agreement has expired, or if a City staff member is of the opinion that a breach of the terms and conditions of an Encroachment Agreement has occurred and that the Encroachment should be discontinued, and the Commissioner concurs, the Commissioner shall have a Notice sent to the Owner advising of their obligation to immediately remove the Encroachment and restore the City-Owned Lands or lands subject to an Easement in favour of the City back to their former condition at the Owner's expense.
- 10.3 In the event that an Encroachment that is the subject of a valid Encroachment Agreement is affected by an emergency situation as identified by the City, or is or will be affected as a result of the City planning or performing maintenance, repairs or any other works on the subject City-Owned Lands or Easement in favour of the City, the provisions of Section 11.0, as appropriate, shall apply.
- 10.4 Where an Owner fails to comply with a Notice issued under subsection 10.1, or 10.2, MLELS staff may issue a Work Order pursuant to Section 14.0 of this By-law.

## **11.0 City Work and Emergency Situations**

- 11.1 Where in the course of planning or performing maintenance, repairs or any other works on City-Owned Lands or an Easement in favour of the City, the Commissioner deems it appropriate to have an existing Encroachment removed either in whole or in part, based on the extent of the City's work, the action under whichever of the following circumstances is applicable shall be undertaken:
- (a) In the case of an Encroachment for which there is a valid Encroachment Agreement, the Commissioner shall provide the Owner of the Private Property to which the Encroachment is appurtenant, or, where there is no appurtenant property, the Person responsible for causing the Encroachment, a Notice advising of the work to be conducted, the approximate starting date for that work, and the need for the Owner to remove the encroaching features that impede the City's work prior to the starting date; or,
  - (b) In the case of any other Encroachment, after consulting with the Commissioner as to the appropriateness of issuing a Work Order, MLELS staff may issue a Work Order pursuant to Section 14.0 of this By-law. For clarity, the issuance of a Work Order is not necessary in the event that the Encroachment likely would or does cause an impediment to work planned or being conducted by the City and the Commissioner determines it appropriate to undertake its removal without delaying to let the Owner address the Encroachment pursuant to a Work Order issued under Section 14.0 of this By-law.
- 11.2 In the event a City staff member having authority pursuant to subsection 8.3 of this By-law deems a hazard or an Emergency to exist or could exist, the City staff member may cause, without Notice, any action required to abate the hazard or Emergency including, but not limited to, removing any Encroachment and having the City remediate the affected lands pursuant to subsection 15.1 of this By-law at the expense

of the Owner, and such Expense may be recovered in the manner provided in subsections 16.1 and 16.2, and until the subject Encroachment is removed, any Expenses incurred by the City with respect to the Encroachment shall continue to be paid by the Owner.

- 11.3 Where an Owner fails to comply with a Notice issued under article 11.1(a), MLELS staff may issue a Work Order pursuant to Section 14.0 of this By-law.

## **12.0 Failing to Maintain an Encroachment**

- 12.1 Where the Owner fails to maintain an Encroachment in accordance with the provisions of this By-law or an Encroachment Agreement, the Commissioner or Director, MLELS or their designate may send a Notice to the Owner advising them of the deficiency resulting in non-compliance and of the period of time provided to the Owner to bring the Encroachment into compliance.
- 12.2 Where an Owner fails to comply with a Notice issued under subsection 12.1, MLELS staff may issue a Work Order pursuant to Section 14.0 of this By-law.

## **13.0 Removal of Unauthorized Encroachments**

- 13.1 Where City staff becomes aware of an Unauthorized Encroachment in any manner other than over the course of planning or performing maintenance, repairs, regular City operations or any other works on City-Owned Lands or an Easement in favour of the City, Notice may be given to the Owner of the Private Property to which the Unauthorized Encroachment is appurtenant, or, where there is no appurtenant property, the Person responsible for causing the Unauthorized Encroachment, according to one of the following approaches, as determined by the Commissioner:
- (a) Request the Director, MLELS or their designate to issue a Work Order pursuant to Section 14.0 of this By-law to remove the Unauthorized Encroachment and restore the affected lands to their former condition at the Owner's or Person's expense, in the event that the Commissioner or Council has determined [pursuant to article 8.1(b)] that it is not appropriate to offer the Owner or Person the opportunity to enter into discussions to advance a potential Encroachment Agreement; or,
  - (b) Request the Director, MLELS or their designate to issue a Notice to either remove the Unauthorized Encroachment and restore the affected lands to their former condition at the Owner's or Person's expense or accept the City's offer to enter into discussions to advance a potential Encroachment Agreement, in the event that the Commissioner or Council has determined [pursuant to article 8.1(b)] that it is appropriate to offer the Owner or Person the opportunity to enter into discussions to advance a potential Encroachment Agreement.
- 13.2 Where City staff becomes aware of an Unauthorized Encroachment over the course of planning or performing maintenance, repairs, regular City operations or any other works:
- (a) The Commissioner may determine it appropriate that no Work Order be given to the Owner and instead authorize removal of the Encroachment by City staff, pursuant to article 11.1(b); or,
  - (b) The Commissioner may direct that a Work Order or a Notice be given to the Owner of the Private Property to which the Unauthorized Encroachment is appurtenant, or, where there is no appurtenant property, the Person responsible for causing the Unauthorized Encroachment, to undertake appropriate action in the manner outlined in either article 13.1(a) or (b), as determined by the Commissioner.
- 13.3 Where an Owner fails to comply with a Notice issued under article 13.1(b), including via article 13.2(b), MLELS staff may issue a Work Order pursuant to Section 14.0 of this By-law.
- 13.4 Any material or structure forming part of or attached to the Encroachment removed by the City under article 11.1(b), subsection 11.2 or article 13.2(a), or pursuant to non-compliance with a Work Order issued under Section 14.0, may, at the discretion of the Commissioner, the Director or, in circumstances where a hazard or Emergency

condition has been identified pursuant to subsection 11.2, the City staff member having authority under subsection 8.3, be relocated onto City-Owned Lands without compensation to the Owner or may be deposited at the Owner's Private Property or be stored for 30 days at the Owner's expense, and such Expense shall be recovered in full in a manner provided in subsections 16.1 and 16.2. Any items stored and not claimed by the Owner within the said 30-day period shall be disposed of by the City in such manner as it deems appropriate and without any compensation to the Owner.

#### **14.0 Work Orders**

- 14.1 Without limiting remedies otherwise available at law, an Officer may give to an Owner a Work Order where the Officer has reason to believe that the Owner has not complied with this By-law.
- 14.2 A Work Order may require the Owner to do at the Owner's expense each of the following as the Officer considers appropriate:
- (a) To give to the Director, MLELS, forthwith upon the Director's requests from time to time such information and documents that those that the Director, MLELS, determines relevant to the Work Order; and,
  - (b) To do work to correct the contravention.
- 14.3 A Work Order shall include the following information:
- (a) Particulars of the reasons for which the Work Order was given; and,
  - (b) Particulars of the things the Owner is required to do.
- 14.4 An Owner to whom or to which a Work Order is given shall forthwith comply with it.
- 14.5 A Work Order issued by the City under this By-law is final and is not subject to review including review by any Hearings Officer or Court.
- 14.6 Despite any other provision of this By-law, the Director, MLELS, may rescind a Work Order at any time.

#### **15.0 Remedial Work**

- 15.1 In the event an Encroachment is removed by the City pursuant to article 11.1(b), subsection 11.2 or article 13.2(a) of this By-law, the City shall be responsible only for returning the City-Owned Lands or lands subject to an Easement in favour of the City to a standard acceptable to the City, and such standard may include returning the lands to their condition prior to the Encroachment.
- 15.2 Where an Owner fails to comply with a Work Order issued under Section 14.0, the Encroachment may be removed by the City and the City-Owned Lands or lands subject to an Easement in favour of the City restored to their former condition at the expense of the Owner, and such Expense may be recovered in the manner provided in subsections 16.1 and 16.2 below, and until the subject Encroachment is removed, any Expenses incurred by the City with respect to the Encroachment shall continue to be paid by the Owner.

#### **16.0 Recovery of Expenses**

- 16.1 Each Owner is jointly and severally liable to the City for all costs incurred in any way related to the work done for the purposes of subsection 13.4 and Section 15.0 including, without limitation, interest calculated at the rate of 15 per cent (15%) for the period commencing on the day that the cost was incurred and ending on the day that all costs, including the interest, are paid in full.
- 16.2 The costs and the interest may be added to the tax roll and collected in the same manner as property taxes.

#### **17.0 Penalty**

- 17.1 Each Person who contravenes any provision of this By-law is guilty of an offence.

- 17.2 Any Person who contravenes a provision of this By-law is guilty of an offence and upon conviction is liable to a fine as provided for by the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended.
- 17.3 No Person shall fail to comply with any provision or standard of this By-law.
- 17.4 No Person shall fail to comply with an Order issued pursuant to this By-law.
- 17.5 Each Person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law 63-2013, be liable to pay to the City an administrative penalty. If a Person receives a penalty notice in accordance with the CITY's Administrative Penalty Process By-law for a contravention of this By-law, and the Person has not received a penalty notice for the same contravention within one (1) calendar year or less, the Person shall be liable to pay to the City a tier one (1) administrative penalty amount for that contravention in the amount of \$250. If a Person receives an additional penalty notice for the same contravention of the By-law within one (1) calendar year or less from the date of the penalty notice containing a tier one (1) administrative penalty amount, the Person shall be liable to pay to the City a tier two (2) administrative penalty amount for that contravention in the amount of \$350. If the Person receives a subsequent penalty notice for the same contravention of the By-law within one (1) calendar year or less from the date of the penalty notice containing a tier two (2) administrative penalty amount, the Person shall be liable to pay to the City a tier three (3) administrative penalty amount for that contravention in the amount of \$500. If the Person receives any subsequent penalty notices for the same contravention of the By-law within one (1) calendar year or less from the date of the penalty notice containing a tier three (3) administrative penalty amount, the Person shall be liable to pay to the City a tier three (3) administrative penalty amount for that offence in the amount of \$500.

## **18.0 Notice**

- 18.1 Any Notice or document respecting this By-law may be given in writing in any of the following ways and is effective:
- (a) On the date a copy is personally delivered to the Person to whom it is addressed;
  - (b) On the third (3rd) day after a copy is sent by regular mail or by registered mail to the Person's last known address;
  - (c) Upon confirmation of the successful transmission of a copy by facsimile transmission to the Person's last known facsimile transmission number;
  - (d) Upon sending a copy by e-mail transmission to the Person's last known e-mail address; or
  - (e) Upon a copy being posted on the door of any building or structure on the Person's Lot or, where no building or structure exists, on a stake erected by the Officer on the Person's Lot.

## **19.0 General**

- 19.1 In this By-law, unless the context otherwise requires, wording imparting the singular Number shall include the plural, and vice versa.

## **20.0 Transition**

- 20.1 Any Encroachment Agreement valid and binding at the date of enactment of this By-law shall not require further authorization pursuant to this By-law until the Encroachment Agreement expires or is otherwise terminated.
- 20.2 Subject to subsection 20.1, this By-law shall apply to all Encroachments that existed or were created before this By-law was enacted and passed.

## **21.0 Severability**

- 21.1 Where a court of competent jurisdiction declares any section of this By-law to be invalid, or to be not in force, or without effect, it is the intention of City 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.

## **22.0 Conflict with Other By-laws and Compliance with Other Restrictions**

- 22.1 Where there is a conflict or contradiction between this By-law and any other by-law of the City, the provisions establishing the higher standard shall prevail.
- 22.2 This By-law shall not be construed so as to reduce or mitigate any restrictions or regulations lawfully imposed by the City or by any other governmental authority having jurisdiction to make applicable restrictions or regulations.

## **23.0 Headings and Parentheses**

- 23.1 The headings of sections and subsections in this By-law are inserted for ease of reference only and do not form a part of nor affect the interpretation of this By-law. Language within parentheses forms a part of this By-law.

## **24.0 Numbering System Explanation**

- 24.1 The numbering system for sections, subsections and articles for this By-law is explained as follows: Each “section” is numbered with an Arabic numeral. The second Arabic numeral following the first (separated by a decimal) describes the “subsection”. Clauses, lists of items, provisions or requirements within subsections or articles are defined by alphabetic characters enclosed by parentheses, and are referred to as the “article”.

## **25.0 Repeal of Other By-laws**

- 25.1 By-law 106-98, being a by-law to provide for a procedure for processing requests for the maintenance of minor Encroachments in parks and open space lands, is hereby repealed.
- 25.2 Section 5.08 of Parks and Facilities By-law 83-2000, as amended, is hereby repealed, and in its place added the words “Repealed by By-law 177-2022.”

## **26.0 Force and Effect**

- 26.1 This By-law shall come into force and effect on the date it is enacted.

By-law passed this twelfth day of December, 2022.