

INDEX TO
THE ENCROACHMENT BY-LAW No. 947

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BY-LAW NO. 947

A By-law of The Town of Steinbach to regulate the construction and maintenance of certain encroachments in streets.

WHEREAS the Town may prevent, control or permit the placing or maintaining of anything in a street and may prescribe regulations and charges in respect thereof.

NOW, THEREFORE, THE TOWN OF STEINBACH, in Council assembled, enacts as follows:

SHORT TITLE

1 This By-law shall be referred to as "The Encroachment By-law".

INTERPRETATION

- 2
- (a) "Town" means The Town of Steinbach.
 - (b) "Town Solicitor", "Development Officer", "Town Engineer", "Secretary Treasurer" mean the persons holding such offices respectively in the service of The Town of Steinbach for the time being, or such other person as may from time to time be authorized by Council to discharge any of their duties.
 - (c) "Council" means the Council of the Town.
 - (d) "Encroachment" means all structures of any form on, above or below ground level which extend into or are constructed or located on a street.
 - (e) "Space occupied" means the maximum horizontal projected area within which the encroachment or encroachments are contained.
 - (f) "Street" means any public highway, lane, park, square, bridge, wharf, thoroughfare or public way, or any part thereof under the jurisdiction of the Town.

- (g) "Subject property" means the land upon which is situated the structure of which an encroachment forms part or to which it is attached, or which the encroachment serves or the land otherwise adjoining or connected with an encroachment.

EXCEPTIONS

- 3 This By-law does not apply to private approaches.

GENERAL REGULATIONS

- 4 (1) Except as otherwise permitted in this Section, no encroachment shall be constructed or maintained without permission of the Development Officer, who shall prescribe the form of application, permits and licenses, subject to the following:

- (a) The Development Officer shall obtain a recommendation from the Town Engineer, on all proposed or existing underground encroachments which extend within the street more than 1 foot;
- (b) Any applicant for an encroachment having the right to appeal to Council within 14 days from any decision made by the Development Officer;
- (c) Where the encroachment is of an unusual or commercial nature that it be referred to the Secretary Treasurer for the purpose of negotiating a reasonable rental and making recommendation to the Council.

(2) Subject to Sections 6 to 12 inclusive and to Sub-section (3) of this Section, encroachments constructed or maintained in pursuance of permission of Council of the Town of Steinbach heretofore granted may be maintained in accordance with the terms and conditions attaching to such permission, in each case subject to the following provisions:

(a) Such encroachment may not be enlarged or altered in any manner except in conformity with this By-law for the whole encroachment provided however that the changing of moveable parts of signs or other encroachments that are designed for changes or the re-painting shall not be deemed to be alterations within the meaning of this Section.

(b) Should such encroachment be destroyed by any means to an extent of more than fifty per cent (50%) of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this By-law.

(c) Should such encroachment be moved for any reason, any distance whatever, it shall thereafter conform with the provisions of this By-law for the new location.

(d) Should such encroachment be required to be altered as the result of the provisions of Section 9, such alterations shall be made in accordance with the terms set forth therein.

(3) All permitted encroachments shall:

(a) Remain at the pleasure of Council, except those of an unusual or commercial nature, which shall be subject to negotiation as set out in Clause (c) of Sub-section 1 of Section 4.

- (b) Subject to paragraph (c) of this Sub-section, be constructed and/or maintained to the satisfaction of the Building Inspector.
- (c) Conform to the structural requirements of the By-laws in force governing building standards.
- (d) Be subject to an annual charge based on the space occupied by the encroachment with the exception of signs and those of any unusual or commercial nature.
- (e) Be constructed so that the removal of the encroachment may be made without causing the building to become structurally unsafe.

(4) No person shall maintain or permit to be maintained, an encroachment if it interferes with any light, power, telephone or telegraph pole or wire, or any apparatus or appliance connected therewith, or with any utility as provided in The Steinbach Planning Scheme 1962.

(5) Where, in the judgment of the Development Officer, the age of the building or type of encroachment requires certification, as a condition precedent to the issuance of a license, or the renewal of same, the owner or his authorized agent or the person responsible for the building encroachment, may be required to supply the Town with a certificate by a Registered Architect or Professional Engineer of the Province of Manitoba stating that such encroachment is structurally sound.

(6) The Development Officer may refuse to issue a permit,

(i) to erect an encroachment, if the erection of such encroachment interferes with traffic or with the effectiveness of a traffic control device.

(ii) to re-erect an encroachment if the encroachment has been altered to such an extent that it interferes, by reason of such alteration, with traffic or with the effectiveness of a traffic control device.

DUTIES OF OWNERS

5 Every application for permission to erect, re-erect or alter, or for the maintenance of an encroachment shall be made by the registered owner or his authorized agent of the subject property, or of the land intended to be used as such, who shall:

(a) file an application for such permission with the Development Officer in a form satisfactory to him, together with drawings and specifications of the existing or proposed structure and where the encroachment already exists a certificate prepared by a Manitoba Land Surveyor giving details of the encroachment, except in the case of signs a certificate will be required at the discretion of the Development Officer.

(b) pay to the Secretary Treasurer an annual license fee as provided in Section 6.

- (c) complete such agreement as may be required by the Town Solicitor for the purpose of giving effect to the terms and conditions upon which such permission may be granted in the case of an encroachment of an unusual or commercial nature.

ANNUAL LICENSE FEE

6. (1) The owner of the subject property shall pay to the Town the applicable annual license fee hereinafter specified, namely:

- (a) for warning signs, all other signs, and all other types of encroachments:
 - up to 3 square meters (32 sq. ft.) \$ 30.00
 - 3 to 6 square meters (32 to 64 sq. ft.) \$ 50.00
 - 6 to 9 square meters (64 to 96.9 sq.ft.) \$ 70.00
 - 9 to 18 square meters (96.9 to 193.7 sq. ft.) \$ 100.00
 - over 18 square meters (over 193.7 sq. ft.) \$ 150.00

provided however that the annual renewal fee for such signs and other types of encroachments be \$25.00.

(b) for every encroachment of an unusual or commercial nature, such special amount as may be fixed by Council.

(c) The annual license fee herein specified shall be payable in respect of each calendar year, or part of a calendar year, during which the encroachment has been maintained.

(2) License fees for signs shall be paid within thirty days of the due date. License fees not paid within the thirty day period shall have an additional amount added to the fee at the rate of \$10.00 per month or a portion thereof.

(3) Notwithstanding subsection (2), failure to pay the license fee within the period of thirty days shall constitute a violation of this By-Law.

(4) (a) Licenses for encroachments are transferable throughout the year in which the license is valid.

(b) In the case of the death of the licensee, or the disposal by the licensee of the business or premises including the encroachment, during the currency of the license issued therefor, the license shall expire, unless the new owner or the legal representative of the previous owner applies to the Development Officer and obtains a transfer of the license within the year that the license is valid.

(c) When an encroachment is removed from one location and re-located in another location, the licensee shall apply to the Development Officer for a transfer of the license to the new address prior to the transfer.

(d) Upon cancellation of the license, there shall be no refund of any portion of the license fee.

INDEMNITY

7. (1) The owner of a subject property shall make or be liable for the cost of any adjustment or alteration to the encroachment as may be required by reason of any street widening or other usage of the street by the Town, and shall assume all risk of damage to any encroachment attaching thereto by reason of any use whatsoever made of the street. In no way shall the Town be held liable for any damages, costs or expenses in connection with an encroachment which may in any way arise from such widening or usage.

(2) The owner of a subject property shall indemnify the Town against all damages, costs, and expenses which the Town may suffer, incur or be put to by reason of the existence, maintenance or use of any encroachment attaching thereto, and if required, will deliver to the Town a Bond of Indemnity in an amount satisfactory to the Secretary-Treasurer, and in form satisfactory to the Town Solicitor.

INSURANCE

8 The payment of the annual license fee herein provided in respect of any permitted encroachment shall entitle the licensee to the benefit of a third party liability policy of insurance for not less than \$250,000.00, all inclusive, to be placed by the Town and be in force during the currency of the license, insuring the Town and such licensee against loss by reason of liability (if any) imposed upon the Town and the licensee by law or damages on account of bodily injury accidentally sustained, including death at any time resulting therefrom, which whether wholly or partially may be caused by or arise out of or be in any way attributable to the erection, construction, maintenance, continuance or use of the encroachment or any adjuncts or accessories thereto, or the reparation or want of reparation of the encroachment, adjuncts or accessories, or the Town's permitting and licensing the encroachment, and in addition thereto, against property damage, similarly caused, and for which a similar liability may exist.

REPAIRS AND ALTERATIONS

9 Should it be necessary at any time or from time to time in the opinion of the Development Officer to repair, alter, re-construct or remove an encroachment, or should the Council order the same to be removed, the Development Officer will give notice to the owner of the encroachment to so repair, alter, re-construct or remove the same within such time as may be provided in any agreement made between the owner and the Town in respect of such encroachment, or otherwise provided for in any By-law or resolution of the Town, or if not so provided, in such manner and within such time as the Development Officer shall deem necessary and if

the owner does not within the time set in such notice comply therewith, the Development Officer may cause the work to be done and the cost and expense of so doing as certified by him shall be paid forthwith by the owner; provided that in circumstances considered by him, in his sole discretion, to present any dangerous or hazardous condition requiring immediate remedy, the Development Officer may cause any such work to be done without prior notice to the owner, and the cost and expense of so doing as certified by him shall likewise be paid forthwith by the owner.

COLLECTION OF ANNUAL LICENSE FEES, COSTS AND EXPENSES

10 Any annual license fees, costs and expenses imposed by Section 6 and/or 9 in respect of an encroachment, may be added to the taxes of the subject property and collected in the same manner as ordinary municipal taxes.

INTERFERENCE PROHIBITED

11 No person shall interfere in any way with the Development Officer, or anyone acting under the authority of, or by the instructions of the Development Officer, in the performance of any of the duties imposed upon him by this By-law.

PENALTY

12 (1) Any person found guilty of a breach of any provision of this By-law shall be liable on conviction thereof to a fine not exceeding \$500.00 and costs.

(2) In addition to Subsection 12 (1) aforesaid, any person or corporation may be required to observe or perform such terms and conditions as a Judge may impose.

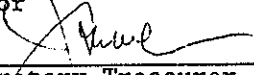
SCHEDULE

13. The Document attached hereto and marked Schedule "A" hereto, shall form part of this By-law and shall be identified by the signature of the Secretary Treasurer.

DONE AND PASSED, in Council assembled, this 4th day of July , A.D. 1988.



Mayor



Secretary-Treasurer

Read a first time this 2nd day of May, A.D., 1988.
Read a second time this 4th day of July, A.D., 1988.
Read a third time this 4th day of July, A.D., 1988.