

**TOWN OF AMHERST  
BY-LAW D-21**

**RESPECTING ENCROACHMENTS  
UPON PUBLIC STREETS**

**BE IT ENACTED** by the Council of the Town of Amherst as follows:

**1. Number and Short Title**

1. This bylaw shall be known as By-law D-21 and may be cited as the “Street Encroachment By-law”.

**2. Definitions**

1. In this bylaw:

- (a) “Council” means the Council of the Town of Amherst;
- (b) “Encroachment” means the use of any portion of the street and includes the airspace over such street and any area beneath the surface of the street;
- (c) “Engineer” means the Engineer for the Town of Amherst and includes a person acting under the supervision and direction of the Engineer;
- (d) “Facility” means any pole, pole lines (including braces and anchors), aerial cables, manholes, conduits, underground cables, pipes for the carriage of gas or liquids, and associated apparatus for the provisions of services, including amplifiers, connection panels, transformers, valves, and other fittings and equipment;
- (e) “Inspector” means the Building Inspector for the Town;
- (f) “Landowner” includes an occupier, tenant, a person in control of property, and the person shown as the owner of the property on the Land Title for that property;
- (g) “Person” includes a corporation;
- (h) “Street” includes a public alley, boulevard, bridge, court, footway, highway, lane, park, place, sidewalk, square and any part thereof, owned by the Town;
- (i) “Structure” includes any building, balcony, bay window, fence, foundation wall, grating, hatch, hatchway, loading platform, manhole, parking lot, porch, railing, retaining wall, sidewalk patio, step, verandas, or any part thereof.

### **3. License Required**

No person shall construct or maintain any encroachment or make use of a street for construction or restoration purposes in the town unless an encroachment license has been issued by the Town.

### **4. Approval Required**

An encroachment license shall not be issued unless the Council authorizes such encroachment

1. except for the following, which may be issued by the Building Inspector without the authorization of Council:
  - (a) canopies – for commercial, industrial and institutional buildings only and to be restricted in width to not more than the entrance width plus six feet for a period of five (5) years, renewable after inspection;
  - (b) awnings – for commercial, industrial and institutional buildings only and to be restricted to not more than the width of the building, or in the case of a corner installation, not more than the width of the building plus the width of the awning only issued for a period of five (5) years, renewable after inspection;
  - (c) steps, foundations and other structures – for buildings where steps, foundations and other building features must encroach, or where an encroachment already exists, the area of encroachment may be increased provided there is no additional encroachment toward the curb for a period of five (5) years, renewable after inspection;
  - (d) the use of any portion of a street in association with a construction or restoration project where the use of the portion of the street is required, in the opinion of the Inspector or the Engineer, for public safety.
2. except for the following, which may be issued by the Engineer without the authorization of Council:
  - (a) telephone booths – provided the free flow of pedestrians is not impeded, a traffic hazard is not created, and the location is acceptable to the municipal department using the property for a period of five (5) years, renewable after inspection.
  - (b) Underground communications conduit, and manholes to service the conduit, provided that the installation and use of the telecommunications cable will not interfere with the proper operation and maintenance of existing underground utilities, nor interfere with planned street works.

## **5. Encroachment License**

1. Every encroachment license shall indicate:
  - a. the type of encroachment authorized;
  - b. the civic address where such encroachment is authorized;
  - c. the length of time for which such encroachment is authorized; and
  - d. such terms and conditions as may be necessary in the opinion of Council, the Inspector or the Engineer.
2. The fee for an encroachment license shall be \$100.00.
3. No license fee shall be payable for the renewal of a license.
4. The Council may, in its sole discretion, cancel an encroachment license at any time, without notice.
5. Without restricting the generality of Subsection (4), those licenses listed in paragraphs 1 (a) to (d) inclusive, may be cancelled by the Town upon breach of any term or condition subject to which the license is issued, at any time, without notice.

## **6. Exceptions**

1. Where the provision for payment of an encroachment fee is made by special statute as in the case Nova Scotia Power Inc. and the Maritime Telegraph and Telephone Company, the provisions of Sections 4 (2) shall not apply.
2. License fees or rental fees shall not be payable in respect of any encroaching structure which existed on the effective date of this bylaw, or to any repair or replacement of the encroaching structure that does not increase the amount of the encroachment.

## **7. Appeals**

1. Any person who has been refused an encroachment license by the Inspector or the Engineer may appeal such refusal.
2. Such appeal shall be in writing, in the form of a notice, and filed with the municipal clerk within 15 days of such refusal, and shall clearly state the grounds for such appeal.
3. Council shall determine such appeal at such time and place as it determines and may confirm such refusal by the Inspector or Engineer, as applicable, or direct the Inspector or Engineer, as applicable, to issue such license.

4. If the Council directs the Inspector or Engineer, as applicable, to issue such license, the same shall be issued immediately.

## **8. Penalties**

1. Any encroachment which is not authorized by a current encroachment license shall be removed by the owner within 30 days after notice to remove the encroachment has been given to such owner by the Inspector or Engineer.
2. If any owner fails to remove the encroachment within such 30 day period, the Inspector or Engineer may remove the encroachment, and the cost of the removal may be recovered from such owner by action in any court of competent jurisdiction.
3. Any owner who fails to remove the encroachment within such 30 day period shall be liable to a penalty not less than \$100 not exceeding \$2,000 and, in default of payment thereof, to imprisonment for a period not exceeding 60 days.

## **9. Encroachment Agreements**

Notwithstanding the provision of the bylaw, Council may

- (a) enter into an agreement permitting any person to construct or maintain an encroachment upon such terms and conditions as Council may deem appropriate, and the provisions of the bylaw shall not apply to such encroachments provided that consideration for such agreement shall not be less than the fees payable by a licensee for a similar structure pursuant to subsection 4(2) of this bylaw.
- (b) Waive all or any of the fees otherwise payable pursuant to any provisions of this bylaw in respect of overhead pedways or underground pedestrian tunnels, if in the opinion of Council, the pedways or tunnels provide a public benefit.
- (c) enter into an agreement with a gas distribution company which has been approved by the Nova Scotia Utility and Review board to distribute gas within the town, or communications company licensed by the Canadian Radio-television Telecommunications Commission, permitting the construction or maintenance of an encroachment upon such terms and conditions that Council may deem appropriate. The provisions of this by-law shall not apply to such encroachments, and the fees payable shall be determined by Council.

Done and passed in Council this       <sup>th</sup> day of       , 2005

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Jerry Hallee, Mayor  
Town of Amherst

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Ed Childs, C.A., Town Manager  
Town of Amherst

I, Ed Childs, Town Manager for the Town of Amherst, hereby certify tat the above-noted  
By-law was passed at a meeting of Amherst Town Council held on

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