

THE CORPORATION OF THE TOWN OF SMITHS FALLS

BY-LAW NO. 7103-95

A By-law to establish a fee for the privilege of maintaining encroachments on municipal lands and to authorize the routine execution of minor encroachment agreements.

WHEREAS pursuant to section 210(107) of the Municipal Act, Chapter M.45, R.S.O. 1990 by-laws may be passed by the councils of local municipalities for allowing any person owning or occupying any building or other erection that by inadvertence has been wholly or partially erected upon any highway to maintain and use such erection thereon and for fixing such annual fee or charge as the council considers reasonable for such owner or occupant to pay for such privilege. Such fee or charge forms a charge upon the land used in connection therewith and is payable and payment of it may be enforced in like manner as taxes are payable and the payment of them may be enforced, but nothing therein affects or limits the liability of the municipality for all damages sustained by any person by reason of any such erection upon a highway.

AND WHEREAS it is deemed expedient to provide authority to the Mayor and Clerk to execute encroachment agreements on behalf of the Town subject to certain conditions;

NOW THEREFORE the Council of the Corporation of the Town of Smiths Falls enacts as follows:

1. The fee for the privilege of continuing any existing encroachment on municipal lands shall be seventy-five dollars (\$75.00) payable upon submission of the application to the Clerk.
2. On behalf of the Corporation, the Mayor and Clerk hereby authorized to execute minor encroachment agreements with the owners of any building which encroaches upon municipal property thus permitting the encroachment to continue until such time as the land encroached upon is required for public purposes, subject to the following criteria:
 - (i) The form of encroachment agreement shall be as set out in Schedule "A" to this by-law forming part thereof;
 - (ii) The maximum measurement of any encroachment in any direction is three (3) feet; and
 - (iii) The owner has executed the encroachment agreement and has submitted the applicable fee.
3. By-law No. 5817-92 is hereby rescinded.
4. The provisions of this by-law shall come into force and take effect upon the passing thereof.

Read a first and second time this 18th day of December, 1995

Read a third time and passed this 18th day of December, 1995.


Mayor


Clerk

SCHEDULE "A" TO BY-LAW NO. 7103-95

THIS AGREEMENT made in triplicate as of the ____ day of _____, 19__.

BETWEEN:

THE CORPORATION OF THE TOWN OF SMITHS FALLS
(herein called the "Town" of the first part)

AND

(NAME OF PROPERTY OWNER(S))
(herein called the "Owner" of the second part)

WHEREAS (*name of the owner(s)*) is the owner of the property known municipally as (*municipal address*) and as more particularly described as (*legal description*) in the said Town of Smiths Falls;

AND WHEREAS the Town is the owner of (*street name*) as shown on Plan 13884 of the Town of Smiths Falls;

AND WHEREAS (*surname of owner*) is desirous of maintaining an extension of a portion of the (*general description of building including all portions thereof which encroach ie. verandah, eaves, steps, etc.*) in a (*direction*) direction onto (*street name*);

AND WHEREAS (*surname of the owner*) has requested the Town to permit the said encroachment to remain insofar as the (*description of building including all portions thereof which encroach*) is required by (*surname of owner*) or until such time as the land encroached upon is required for public purposes.

AND WHEREAS the Town has authorized the execution of this Agreement by the Mayor and Clerk by By-law No. _____ duly read and passed by the Town on the ____ day of _____, 19__.

NOW THEREFORE THIS INDENTURE WITNESSES that in consideration of the sum of Seventy-five Dollars (\$75.00) paid by (*surname of owner*), the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Town will and by this Agreement does grant unto (*surname of owner*) permission to maintain the encroachment of the (*description of the building including all portions thereof which encroach*) in a (*direction*) direction onto (*street name*) until such time as the land encroached upon is required for public purposes.
2. (*Surname of owner*) agrees that no repair, improvement, replacement or alteration shall be made to that portion of the (*description of the building including all portions thereof which encroach*) such that would create a greater encroachment than that permitted by this Agreement.
3. No encroachment, whether authorized by the Corporation or by the Mayor and Clerk on behalf of the Corporation shall create in (*surname of owner*) any interest, right or title to the lands of the Corporation encroached upon.
4. When the land encroached upon is required for public purposes, the Clerk shall, in writing and by registered mail, notify the owner of the subject property as shown on and as at the address appearing in the last revised assessment role advising, as a minimum, that:
 - i) the land encroached upon is required for public purposes;
 - ii) the purpose for which the land is required;
 - iii) the encroachment agreement is now null and void;

iv) all encroaching buildings, structures, improvements and materials pertinent thereto shall be removed by the owner at the owner's expense by a specific date being no earlier than 90 days from the date of notice; and

v) failure to remove such encroaching buildings, structures, improvements and materials pertinent thereto by the date specified in the notice shall result in the Town undertaking all works required to remove the encroachment at the owner's expense and that the Town will recover all costs incurred in doing so in a like manner as taxes, in accordance with Section 326 of the Municipal Act R.S.O. 1990.

5. This Agreement shall enure to the benefit of and be binding upon the respective parties hereto, their heirs, executors, administrators and assigns.

IN WITNESS WHEREOF the Corporation of the Town of Smiths Falls has affixed its Corporate Seal under the hands of its proper officers in that behalf and the parties of the second part have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERED
in the presence of

**CORPORATION OF THE
TOWN OF SMITHS FALLS**

MAYOR

CLERK

OWNER(S)

Witness

(name)

Witness

(name)