



**THE CORPORATION OF THE
TOWN OF COBALT**

BY-LAW NO. 2023-21

Being a By-Law to Adopt an Encroachment Policy for the Town of Cobalt

WHEREAS the Municipal Act, 2001, S.O. 2001, c.25, as amended provides that the powers of a municipality shall be interpreted broadly to enable a municipality to govern its affairs as it considers appropriate and enhance its ability to respond to municipal issues;

AND WHEREAS section 11.3 of 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; culture, parks, recreation and heritage; structures; including fences and sign;

AND WHEREAS sections 23.1 and 23.2 of the Municipal Act, 2001 authorizes a municipality to delegate certain powers and duties including the delegation of legislative or quasi-judicial powers to officers, employees or agents of the municipality where Council is of the opinion the power being delegated is minor having regard to, in addition to any other factors it wishes to consider, the number of people, the size of the geographic area and the time period affected by the exercise of power;

AND WHEREAS it is the opinion of the Council of the Corporation of the Town of Cobalt that the powers delegated through these amendments, having regard to the number of people, the size of geographical area and the time period affected by an exercise of the powers, of a minor nature;

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 446(1) of the Municipal Act, 2001 provides that a municipality, in default a person doing things that he or she is required to do under By-Law, may do such thing at the person's expense;

AND WHEREAS section 446(2) of the Municipal Act, 2001 provides that for the purpose of section 446(1) the municipality may enter upon land at any reasonable time;

AND WHEREAS section 446(3) of the Municipal Act, 2001 provides that the costs incurred by a municipality in doing matters or things under section 446(1) may be recovered by adding the costs to the tax roll and collecting them in the same manners as taxes;

AND WHEREAS the Council of The Corporation of the Town of Cobalt considers it necessary and desirable to pass a By-Law to address the needs of its community by regulating the responsible use of the public realm, while protecting the broader public interest by ensuring the safety and accessibility of its property, including property under its control;

NOW THEREFORE BE IT RESOLVED that Council for the Corporation of the Town of Cobalt directs:

1. That Council adopts an “*Encroachment Policy*” By-Law identified as Schedule “A”, hereto attached and forming part of this By-Law.
2. That the Clerk of the Town of Cobalt is hereby authorized to make any minor modifications or corrections of an administrative, numerical, grammatical, semantically or descriptive nature of kind to the By-Law and Schedule as may be deemed necessary after the passage of this By-Law, where such modifications or corrections do not alter the intent of the By-Law.
3. That this By-Law shall take force and effect upon final passage hereof.

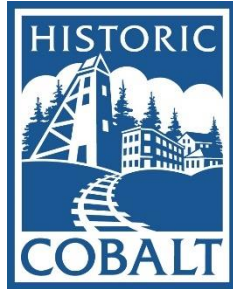
READ a first and second time on July 18th 2023;

BE READ a third time and finally time and passed this 19th day of September 2023;

AND FURTHER THAT the said By-Law be signed and sealed by the Mayor and Clerk.

Mayor

Clerk



Schedule "A" to

By-Law No. 2023-21

Encroachment Policy

**PART 1
TITLE**

1.1 This By-Law shall be cited as the "Encroachment Policy".

**PART II
DEFINITIONS AND INTERPRETATIONS**

2.1 For purposes of this By-Law, the following definitions shall apply:

- a) "Adjacent Boulevard" means the boulevard immediately adjacent to the front, side, rear or exterior side of a property;
- b) "Adjacent sidewalk" means the sidewalk immediately adjacent to the front, side, rear or exterior side of a property;
- c) "Boulevard" means the portion of a highway which may be paved, unpaved, grassed or landscaped with other materials, and is situated between the curb or edge of the roadway and the adjacent property line on both sides of a highway;
- d) "Boulevard garden" means plants, flowers, hedges, shrubs or vegetation, or combination thereof, that is planted in an adjacent boulevard, but does not include noxious weeds or invasive plant species;
- e) "Curb" means the lateral boundary of the roadway, whether such lateral boundary is physically marked or not;
- f) "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;
- g) "Encroachment Agreement" means a document prepared by the Town allowing an encroachment on public lands and shall take either of the following three forms:
- h) "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;
- i) "Minor encroachment" means an encroachment on a public highway deemed by the Municipal Administrator to be of minor size and significance;
- j) "Municipal Administrator" shall mean the Town Manager for the Town of Cobalt, or their designate;

- k) "Owner" means the registered owner of a parcel of property as such person is described in the records of the land registry office;
- l) "Person" means an individual, partnership, association, firm or corporation, business entity or club, incorporated group or organization, federal or provincial government, crown agents, school boards and regional municipalities, to whom the context can apply in accordance with the Interpretation Act of Ontario, as amended, but specifically excludes the Town;
- m) "Personal property" means any object or item of property other than real property;
- n) "Premises" means a parcel of real property under registered ownership and includes all buildings and structures thereon;
- o) "Public lands" means lands owned by, leased, licensed to or under the management of the Town, and shall include but not be limited to any public highway, road, street, avenue, parkway, lane, alley, square, place, viaduct or trestle, water, thoroughfare, way or bridge, park, woodland, greenbelt, storm water management facility, open space, municipal golf course or cemetery, and all parts thereof, including any surface, grassed area, boulevard, ditch, curb, gutter and sidewalk;
- p) "Roadway" means part of a highway used or intended to be used for vehicular travel by the general public;
- q) "Sidewalk" means an improved portion of a highway between the roadway and the adjacent property line intended for the use of pedestrians and includes a multi-use trail or path;
- r) "Shoulder" means the area adjacent to the roadway where there is no curb, but does not include a sidewalk and may have an asphalt or granular surface;
- s) "Soft landscaping" means a boulevard garden, grass or wood chips;
- t) "Town" means The Corporation of the Town of Cobalt;
- u) "Unauthorized encroachment" means any encroachment not authorized by this By-Law.
- v) "Utility" means any utility infrastructure including, but limited to, streetlight poles and conduit, natural gas lines and associated appurtenances, communication boxes and conduit, or cable TV boxes and Hydro power boxes and conduit.

**PART 3
GENERAL PROVISIONS – ENCROACHMENTS PROHIBITED**

- 3.1 No person shall erect, place or maintain, or cause to be erected, placed or maintained, or continued an encroachment on public land except where permitted to do so in accordance with this By-Law.
- 3.2 Notwithstanding Section 3.1, an owner may, without any further approval from the Town erect, plant, place or continue a minor encroachment on an adjacent boulevard directly abutting their private property in accordance with Section 4 of this By-Law.
- 3.3 Notwithstanding Section 3.1, the provisions of this By-Law do not apply to the following classes of encroachments:
- a) signs,
 - b) properties which are designated by By-Law of the Town as being of historic or architectural value or interest pursuant to the Ontario Heritage Act, as amended;
 - c) a temporary encroachment arising as a result of construction, maintenance or other activity as authorized by the Town;
 - d) encroachments permitted as a result of a written and signed agreement with the Town, other than an encroachment agreement;
 - e) encroachments arising as a result of a Committee of Adjustment decision permitting the owner of residential premises to widen his or her driveway; and
 - f) encroachments arising from surface changes made in connection with residential driveways, provided such encroachments do not:
 - I. alter the established elevation of the public lands or public highway lands leading to the residential driveway; or
 - II. results in the breach of any other municipal By-Law or regulation. The Town shall not bear any responsibility for any form of damage or deterioration occurring to these encroachments, howsoever or whenever caused, and the current property owner using the residential driveway shall cause such repairs to be made to the encroachments as may be necessary, at the property owner's sole cost and expense.

**PART 4
GENERAL PROVISIONS – MINOR ENCROACHMENTS**

Soft Landscaping

- 4.1 Every owner shall be permitted to plant a boulevard garden in accordance with the following:

- (1) shall not be planted in, or overhang a shoulder, sidewalk or roadway;
 - (2) shall be maintained so as to not exceed one hundred (100) centimetres (approximately thirty-nine (39) inches) in height;
 - (3) shall be at grade with any adjacent sidewalk; and
 - (4) shall not be planted within thirty (30) centimetres (approximately twelve (12) inches) of a sidewalk.
- 4.2 Every owner shall be permitted to place sod, seed or otherwise grow grass on an adjacent boulevard in accordance with the following:
- (1) shall not be grown on the shoulder or sidewalk; and
 - (2) shall not exceed twenty (20) centimetres (approximately eight (8) inches) in height.
- 4.3 Every owner shall be permitted to place wood chips around the base of a boulevard tree and the wood chips shall not exceed ten (10) centimetres (approximately four (4) inches) in height.

Tree Rings

- 4.4 Every owner shall be permitted to erect tree rings around the base of a boulevard tree in accordance with the following:
- (1) shall not exceed fifteen (15) centimetres (approximately six (6) inches) in height;
 - (2) shall have a minimum radius of sixty (60) centimetres (approximately twenty-four (24) inches) from the base of the tree;
 - (3) shall have a minimum setback of thirty (30) centimetres (approximately twelve (12) inches) from a sidewalk;
 - (4) shall be kept in good repair; and
 - (5) shall be modular and not rely on a fixed foundation for its support.

General Prohibitions

- 4.5 No owner shall erect, plant, place or continue, or cause to be erected, planted, placed or continued a minor encroachment:
- (1) that is sharp or dangerous in any way, or which may cause damage or injury to a person or thing;
 - (2) that obstructs the visibility of motorists or pedestrians, traffic sightlines or which obstructs or detracts from the visibility or effectiveness of any traffic sign or control device;
 - (3) that extends onto the boulevard fronting any neighbouring property when the common lot line is projected perpendicular to the roadway;
 - (4) that inhibits or obstructs Town operations including but not limited to snow plowing, maintenance of Town trees or the repair and maintenance of Town infrastructure;

(5) that inhibits or obstructs access to fire hydrants, post office boxes, or any installations belonging to the Town or utility provider; or

(6) in a ditch, swale or any other Town infrastructure which is designed or exists for the purpose of storing or carrying storm water.

Removal

- 4.6 The Municipal Administrator may at any time remove any minor encroachment located on a boulevard without compensation, restoration or replacement.

PART 5 APPLICATION FOR ENCROACHMENT

- 5.1 Any person requesting authorization to maintain an encroachment on public lands shall be required to submit the application found in Appendix "1" to the Town prior to the commencement of the encroachment and shall include:
- a) plans, surveys and other information as required;
 - b) location and description of the proposed encroachment;
 - c) payment of application fee in the amount as described in the Town of Cobalt User Fees By-Law;
 - d) an indemnity agreement in the form, provided by the Municipal Administrator, signed by the applicant or, where the applicant is a contractor of an owner, signed by the owner, whereby the signatory agrees to indemnify and save harmless the Corporation of the Town of Cobalt;
 - e) such further and other information as the Municipal Administrator may require.
- 5.2 Where a request to erect, install or maintain an encroachment has been approved, the Municipal Administrator shall prepare an encroachment agreement, and once the applicant has been notified in writing that the encroachment agreement is ready for execution, the applicant shall have thirty (30) calendar days to execute.
- 5.3 Where an applicant fails to pay the applicable fees or fails to execute an encroachment agreement, within the thirty (30) calendar days as prescribed in subsection 5.2, the applicant shall be deemed to have abandoned their application.
- 5.4 Where the Municipal Administrator deems it appropriate, an encroachment agreement may be registered against title to the applicant's property with the land registry office and all expenses to do so shall be paid in advance by the applicant.

PART 6 AUTHORITY OF MUNICIPAL ADMINISTRATOR

- 6.1 The Municipal Administrator 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 Administrator 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.
- 6.2 The Municipal Administrator is authorized to execute and affix the Corporate Seal of the Town to all encroachment agreements.

PART 7 OWNER'S RESPONSIBILITY

- 7.1 The owner is solely responsible for all claims related to an encroachment. This includes but is not limited to, property damage, bodily injury, work, enhancement of property on the Town's right of way.
- 7.2 The Town is not liable for any damages, losses or injury caused by or to an encroachment.
- 7.3 For further clarity, the Town is not liable for any damages caused to an encroachment as a result of the Town's operations including but not limited to, snow plowing, tree maintenance or the repair and maintenance of Town infrastructure.

PART 8 ACCESS TO ENCROACHMENT AND ENFORCEMENT

- 8.1 This By-Law shall be enforced by The Municipal Administrator, their designate or any agent acting on behalf of the Town. They may enter and inspect all buildings, structures parts thereof that are subject to this By-Law at any reasonable time for the purpose of determining whether there is compliance with this By-Law.
- 8.2 No person shall obstruct, hinder or interfere with the free access to any encroachment by an employee, officer or agent of the Town.

PART 9 REVOCAION

- 9.1 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 terms set out therein.

PART 10 DISCONTIUAANCE OF ENCROACHMENTS

- 10.1 If the owner of any premises to which an encroachment intends to permanently discontinue the encroachment, the owner shall notify the Municipal Administrator in writing and shall thereafter remove the encroachment and restore the public land to its former condition at the owner's expense.

- 10.2 If the Municipal Administrator determines that a breach of the terms and conditions of an encroachment agreement has occurred, or that the term of said encroachment agreement has expired, that the encroachment should be discontinued. An Officer may issue a notice requiring the owner to remove the encroachment and restore the public land to its former condition at the owner's expense.
- 10.3 Where the owner fails to comply with Sections 10.1 and 10.2 within thirty (30) days or receipt of same, the encroachment may be removed and the public lands restored to their former condition by the Town at the expense of the owner, such expenses to be recovered in full in the manner described in in Section 13 and until the encroachment is so removed or restored to their former condition, all expenses incurred by the Town in respect thereto shall continue to be paid by the owner.

PART 11 EMERGENCY SITUATIONS

- 11.1 If the Municipal Administrator 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 or safety of the public, the Municipal Administrator may,
- a) notify in writing the owner of the premises to which the encroachment is appurtenant, requiring the repair, removal, filling in or closing up 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 Administrator; and/or
 - b) take such measures on behalf of the owner, without notice to the owner, as the Municipal Administrator may deem necessary to remove the danger or potential danger created by the encroachment, The expenses incurred by the Town in so doing shall be recovered in full in the manner provided in Section 13 below.
- 11.2 Where the notice described in Section 11.1 a) is not complied with within the time period stipulated therein, the Town may repair, remove, fill in or close up the encroachment and restore the public lands to their former condition, at the expense of the owner, such expenses to be recovered in Section 13 below.

PART 12 REMOVAL OF UNAUTHORIZED ENCROACHMENTS

- 12.1 Where the Town becomes aware of an unauthorized encroachment, the Town may give notice in writing to the owner of the premises to which the unauthorized encroachment is appurtenant, to forthwith remove, fill in or close up the encroachment and to restore the public lands to their former condition at the expense of the owner.
- 12.2 Where the notice in Section 12.1 is not complied with within thirty (30) days of the date of the notice, the Town may, on behalf of the owner, remove, fill in or close up 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 13 below.

- 12.3 Any material or structures forming part of or attached to the encroachment and removed by the Town may, at the discretion of the Municipal Administrator, 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 13 below. Any item stored and not claimed by the owner within the said thirty (30) day period shall be disposed of by the Town in such manner as it deems appropriate.

PART 13 RECOVERY OF EXPENSE

- 13.1 All expenses incurred by the Town 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, the outstanding balance of the invoice shall be added to the tax roll as of the year in which the expenses were billed as per the Town of Cobalt Accounts Receivable Policy.
- 13.2 The Town may also recover all expenses owing under this By-Law by a court action as a debt due to the Town.

PART 14 OFFENCES

- 14.1 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.

PART 15 SEVERABILITY

- 15.1 Where a court of competent jurisdiction declares any section or part of a section of this By-Law to be invalid, to be of no force and effect, it is the intention of Council 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.



**THE CORPORATION OF THE TOWN OF COBALT
APPENDIX "1" OF SCHEDULE "A" TO
ENCROACHMENT POLICY BY-LAW NO. 2023-21**



ENCROACHMENT APPLICATION

The personal information on this form is collected under authority of the Municipal Act, 2001, S.O. 2001, c. 25 and is protected under the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990 c. M.56. The information will only be used to evaluate applications for Encroachment Agreements. Questions about the collection of personal information should be directed to the Municipal Office.

Date of Application:	Permit Request: <input type="checkbox"/> Simple <input type="checkbox"/> Complex
Last Name of Owner:	First Name of Owner:
Municipal Address of Property:	
Mailing Address:	
Telephone No.	Email Address:
Description of Encroachment(s):	
Reason/Need of Encroachment: (Example: slope stability, recreational, etc.) if required, attach letter	
Applicant's General Comments: (explain any extenuating circumstances & attach any other notices, etc.) if required, attach letter	

Warranties by Applicant:

All the information submitted with this application is complete, accurate and without omission.

Acknowledgement by the Applicant:

1. The Applicant accepts all liability resulting from inaccuracies or omissions made herein;
2. The Applicant is familiar with the Town's Encroachment By-Law;
3. The Applicant is responsible for all expenses associated with the application;
4. If the inspection requires removal, all unauthorized encroachments must be removed immediately;
5. The Applicant accepts responsibility for any other necessary applications/approvals with the Town of Cobalt or other governing agencies or bodies;
6. The Town of Cobalt does not make any assurances regarding the length of time necessary to process this application;
7. Acceptance of this application shall not fetter the Town's authority under the Municipal Act or the Planning Act;
8. Survey quality sketch illustrating the encroachment must be submitted;
9. The Town of Cobalt may revoke any Encroachment Agreement that has been issued as a result of a false or misleading statement, or undertaking, in the application, or has failed to submit an updated insurance certificate, or has been issued in error;
10. All incomplete applications will be returned unprocessed.

Applicant's Signature:	Date:
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