

**THE CORPORATION OF THE TOWN OF GREATER NAPANEE
BY-LAW NO. 2025-0051**

Being a By-Law to Regulate Encroachments on Municipally Owned Lands

WHEREAS Sections 9(3) and 11(1) of the Municipal Act, 2001 (the “Act”) authorize municipalities to enact by-laws with respect to their highways, including by-laws to regulate or prohibit respecting matters, to require persons to do things, to provide for a system of permits, and to impose conditions as a requirement of obtaining, continuing to hold or renewing a permit;

AND WHEREAS Section 391(c) of the Act 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 Act provides that a municipality may proceed to do things at a person’s expense which that person is otherwise required to do under a by-law or otherwise but has failed to do so;

AND WHEREAS Section 446(2) of the Act 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 Act provides that the costs incurred by a municipality in doing a thing or matter under Section 446(1) may be recovered by adding the costs to the tax roll and collecting them in the same manner as taxes;

AND WHEREAS Council deems it desirable to regulate encroachments on public lands within the municipality in order to mitigate the Town’s exposure to risk and liability and to protect the Town’s rights and obligations with respect to public lands;

NOW THEREFORE the Council of the Corporation of the Town of Greater Napanee enacts as follows:

Part 1 – Introduction

Short Title

1. This By-law may be referred to as the Encroachments By-law.

Purpose

2. The purpose of this By-law is to provide guidelines for dealing with encroachments on municipal property, and if warranted, the processing of applications to recognize existing encroachments upon property owned by the Town of Greater Napanee.

Scope

3. This By-law applies to any alteration, including but not limited to features, structures, or plantings, encroaching within a municipal right of way under the jurisdiction of the Town of Greater Napanee.
4. This By-law shall not exempt property owners from the requirement to maintain the adjacent boulevard directly abutting private property in a condition of compliance with other Town by-laws and policies.
5. This By-law does not apply to the following:
 - a. Signs erected on behalf of the Town or any sign authorized under the Town's Sign By-law or Election Sign By-law as amended;
 - b. Waste collection receptacles or waste items set out on the boulevard for collection in compliance with the Town's by-laws to regulate waste;
 - c. Rural and Canada Post community mailboxes erected on the boulevard and maintained in compliance with the requirements of the Mail Receptacles Regulations under the *Canada Post Corporation Act*; or
 - d. Utility infrastructure.

Definitions

6. In this by-law:
 - a. "Applicant" means any party who has encroached, or intends to encroach, onto lands in which the Town holds an interest or is subject to the direction, control, and management of the Town.
 - b. "Boulevard" means the portion of a highway which may be paved or 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.
 - c. "Director of Capital Works" means the Town employee holding the position of Director of Capital Works or the employee responsible for the general oversight and direction of work on municipal roads.
 - d. "Encroachment" means any type of vegetation or natural object placed by a property owner, or man-made feature or object or item of personal property of a person which exists wholly or partly upon, or extends from a property owner's premises onto streets or road allowances and shall include any aerial, surface or subsurface encroachments, but does not include sod or topsoil and seed.

- e. “Encroachment Agreement” means a binding agreement between the Town and the property owner, prepared by the Town, granting authorization for a property owner to erect and maintain an encroachment on a Town street or road allowance.
- f. “Encroachment Consent” means a written form or letter provided to an applicant where the Director of Capital Works, or their designate, deems an encroachment minor in nature and permissible to continue under the terms of this by-law.
- g. “Encroachment, Minor” means an encroachment that the Town has determined may be permitted to continue without an encroachment agreement because is minor in nature, as further defined within this by-law and may include, but is not limited to soft landscaping.
- h. “Hard Landscape Feature” means any non-vegetative, solid, structural or element, aesthetic element that can include garden walls, retaining walls, decorative rocks or boulders, pavers, concrete, bricks, stones, statues, or any other constructed or manufactured material that alters the natural grade or composition of the landscaped area;
- i. “Officer” means a person appointed by Council as a municipal By-law Enforcement Officer, Provincial Offences Officer, Municipal Law Enforcement Officer, or any other individual duly appointed to enforce this By-law.
- j. “Public Land” means any land owned by the Town, made available to the Town by lease, agreement or otherwise, or under the management of the Town.
- k. “Town” or “Municipality” shall mean the Corporation of the Town of Greater Napanee.

Part 2 –General

Encroachments Prohibited Generally

- 7. No person shall encroach upon or take possession of any public lands by any means whatsoever, including the construction, installation or maintenance of any fence or structure, hard landscaping feature, the dumping or storage of any materials or plantings, or planting, cultivating, grooming or landscaping thereon except where explicitly permitted in accordance with this By-law or an Encroachment Agreement authorized by Council.
- 8. No person shall permit an encroachment on public lands to be maintained or continued except where explicitly permitted in accordance with this By-law or an Encroachment Agreement authorized by Council.
- 9. It is the general policy of the Town of Greater Napanee that municipal lands are for

municipal purposes and/or for the public's use and are to remain free and clear of private encroachments.

10. If an encroachment has been identified it must be removed and the lands returned to their original state to the satisfaction of the Town, unless an Encroachment Agreement is authorized by Council. All related costs shall be at the expense of the encroaching party.
11. Nothing in this By-law shall preclude the Town from entering into an easement or servicing agreement with a private landowner to authorize the installation and maintenance of a privately owned conduit, pipe or line installed under a road allowance or municipal land for purposes such as, but not limited to, drainage or servicing.

Municipality Not Liable

12. The Town shall bear no responsibility for the loss, damage, or replacement of any Encroachment, whether authorized or not, which is removed, disturbed, or damaged as a result of operations, maintenance, or repairs performed by the Town, its contractors, or any person working under the authority or direction of the Town or the County of Lennox and Addington, including but not limited to tree stump removal, tree planting, snow removal, utility repairs, or other municipal maintenance activities.
13. Where municipal operations, maintenance or repairs occur, the Town shall only be responsible for the replacement and, or installation of sod or seed.
14. Every person who installs or maintains an Encroachment shall do so at their sole risk and expense and shall indemnify, save harmless, and defend the Town, its elected officials, officers, employees, agents, and any other person for whom it is in law responsible, from and against any and all claims, demands, suits, actions, proceedings, fines, losses, costs, damages, charges, or expenses, including legal fees, in any way connected with the existence of the Encroachment.
15. The Town shall not be responsible for any damage to the Encroachment or any costs or damages directly or indirectly incurred by any person, arising from the requirement to remove, or the removal of, any Encroachment at the direction of, or by, the Town. The owner shall not be entitled to any compensation for lost revenue or profit arising from the requirement to remove an Encroachment.

Part 3 – Minor Encroachments

Authority to Determine Minor Encroachments

16. All determinations of whether an encroachment is minor or major shall be made by the Director of Capital Works or designate in consultation with a minimum of the Clerk, or their designate, and other staff that have been involved in the preliminary

review of the application.

17. In cases where it is uncertain whether an encroachment is minor or major, or a consensus cannot be reached by Town staff, the encroachment will be deemed major and referred to Council.

Permitted Minor Encroachments, Landscaping

18. Every owner or occupant shall be permitted to plant and maintain soft landscaping as a Minor Encroachment without a written permit from the Town, subject to the following conditions:

- a. It shall not be planted in, or overhang a ditch, shoulder, stormwater management facility, sidewalk or highway;
- b. It shall be maintained so as to not exceed ninety centimetres (approximately 36 inches) in height;
- c. It shall be at grade with any adjacent sidewalk;
- d. It shall not be planted within thirty centimetres (approximately 12 inches) from any adjacent sidewalk, curb, or shoulder;
- e. It shall not contain a garden wall or any hard landscape features;
- f. It shall only be dressed with soil, topsoil or mulch;
- g. It shall not cause damage or injury to a person or thing;
- h. It shall not obstruct 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;
- i. It shall not inhibit or obstructs access to fire hydrants, post office boxes, or any installations belonging to the Town, County, or utility provider
- j. It shall not inhibit or obstruct Town operations including but not limited to snow ploughing, maintenance of Town trees or the repair and maintenance of Town infrastructure; and
- k. It shall not be located in a ditch, swale or any other Town infrastructure which is designed or exists for the purpose of storing or carrying stormwater.

19. Any landscaping within a municipal Boulevard which does not conform with the requirements of Section 18 shall be deemed not to be a permitted minor encroachment and the owner shall be responsible for its removal and restoration to

the satisfaction of the Town at their sole expense.

20. Notwithstanding anything contained in this By-law to the contrary, mature trees which do not hinder or discourage public access to or on Town lands shall be deemed permitted minor encroachments. Nevertheless, the Director of Capital Works may require, at their sole discretion, the removal of such mature trees from public lands in order to facilitate the completion of present or future municipal works.

Other Minor Encroachments

21. Other Minor Encroachments for which an Encroachment Consent may be issued subject to conditions deemed appropriate by the Director of Capital Works include, but are not limited to, awnings, canopies and other projections from buildings and temporary encroachments arising as a result of construction, maintenance or other activities as authorized under a permit from the Town.

Part 4 – Encroachment Agreements

Application

22. Any owner who wishes to encroach upon Public Land, or wishes to obtain municipal consent for the continuation of an existing encroachment shall submit an Application for Encroachment Agreement.

23. The Application shall include:

- a. A complete Application Form as established by the Town;
- b. The applicable non-refundable application fee as established in the current Fees and Charges By-law;
- c. A copy of the deed of the encroaching party's lands which abut the subject municipal lands;
- d. A plan or sketch of the subject lands with details of the encroachment clearly marked;
- e. If applicable, verification of consultation with neighbouring property owners in the form of written comments and where required by the Town, proof of public consultation;
- f. In the case of an existing encroachment, any pertinent history of the encroachment such as the estimated length of time said encroachment has been in place, purpose, need to extend, or any other relevant information.

24. Completed applications will be submitted to the Clerk's Office and circulated to the

appropriate departments for review, comment and recommendation, with a staff report to be presented to Council for consideration.

25. The decision of whether to approve or deny an Application for Encroachment shall be made on a case by case basis at Council's sole discretion, and Council's decision shall be final.

26. When determining whether to approve an Application for Encroachment in full or in part, Council shall consider whether the encroachment:

- a. Has been constructed inadvertently;
- b. Has been constructed prior to the issuance of the required permit(s) from the Town;
- c. Has existed for a long period of time;
- d. Is maintained in good repair, used or abandoned;
- e. Poses a safety hazard to the public and gives rise to potential liability claims from resultant injuries;
- f. Destabilizes public lands with resultant damage to adjacent private lands;
- g. Is a natural feature which should be preserved or protected – i.e. mature trees and sensitive flora or fauna;
- h. Conflicts with the Town's Official Plan, Zoning By-law or other applicable by-laws or legislation;
- i. Interferes with any existing, planned proposed or possible future municipal improvements;
- j. Interferes with any municipal operations, including road maintenance or snow removal;
- k. Compromises drainage or interferes with existing or proposed drainage works;
or
- l. Interferes with any public right of access to or use of public lands.

27. Council may refuse all or part of an Encroachment Application on the basis that:

- a. The encroachment creates an unsafe condition or poses a danger to the public, such as but not restricted to: impeding or restricting sight lines, impeding normal access, obstructing vision of traffic or pedestrians, creating

operational conflicts or creating hazards during the winter season when snow covers the ground, such as rocks, boulders, wires, lines, etc.;

- b. The encroachment diminishes the public's right of usage, such as but not restricted to: impeding the public's passage and/or access along a travelled portion of a road, sidewalk, or lane, or interfering with or obstructing normal pedestrian, bicycle or snowmobile use;
- c. The applicant is unable to reasonably demonstrate a need for the encroachment;
- d. The encroachment interferes with the Town's intent and purpose in holding the public land;
- e. The encroachment creates liabilities for which the Town cannot assign full responsibility to the owner of said encroachment;
- f. The encroachment enlarges an existing encroachment;
- g. The encroachment adversely affects municipal operations, work, plans, efforts or initiatives of the Town to maintain public lands;
- h. The encroachment interferes with any utility or other similar installation located on public lands including underground infrastructure;
- i. The encroachment creates a situation that is contrary to any Municipal by-law, policy or resolution or any Provincial or Federal regulation or legislation; or
- j. Any other reason that Council deems appropriate.

Issuance

28. Where approval of an Encroachment Agreement Application has been granted, the Owner shall:

- a. Provide proof of Liability Insurance, if applicable, in the amounts specified in the agreement;
- b. Pay all costs associated, including the costs of the registration of the Encroachment Agreement; and
- c. Pay any encroachment fee as may be established by the Town in the Fees and Charges By-law.

29. In the event that the applicant is not the registered owner of the real property to which the Encroachment benefits, the registered owner of said real property shall also be a

party to the Encroachment Agreement.

30. Encroachment Agreements under this By-law are binding on subsequent owners and may be assignable or transferable following the purchase and sale of a property in accordance with Town policies.
31. 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 terminated or suspended in accordance with the terms set out in this By-law and in the Encroachment Agreement.

Suspension and Termination

32. The Town may suspend or terminate an Encroachment Agreement for a breach of:
 - a. Any terms of an Encroachment Agreement;
 - b. This By-law or any other Town By-law; or
 - c. On such other terms as may be set out in an encroachment agreement.
33. If the Town requires the land for municipal purposes such as, but not limited to, the construction of capital projects or installation of services, the Town may cancel an Encroachment Agreement subject to the terms and notice provisions contained within such agreement and cause the encroachment to be removed.

Part 5 – Removal and Restoration

Removal of Unauthorized Encroachment

34. Every Person shall be responsible for immediately discontinuing the use and removal of the Encroachment to the Town's satisfaction at their sole expense, where:
 - a. An application has not been approved in accordance with this By-law and written notice of such decision has been delivered to an applicant;
 - b. A notice of suspension or termination is served;
 - c. The Encroachment is in non-compliance with this By-law; or
 - d. An Owner is ordered to do so by an Officer.
35. Every person who causes or permits an unauthorized Encroachment onto public lands shall be responsible for restoring the public land to its original condition to the Town's satisfaction at their sole expense.

36. Where a Person fails to remove an Encroachment or restore Public Lands, the Town may perform any required remedial work, including removal, at the expense of the owner in accordance with Part 6 of this By-law.

**Part 6 – Enforcement
Orders and Removal of Encroachments**

37. An Officer or the Director of Capital Works, accompanied by any Person under their direction, may at any reasonable time, enter and inspect any land for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- a. This By-law;
- b. A direction or order of the municipality issued under this By-law; or
- c. A condition of an agreement issued under this By-law.

38. Where an Officer is satisfied that a contravention of the By-law has occurred, the Officer may make an order requiring the Person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity.

39. Where an Officer is satisfied that a contravention of the By-law has occurred, the Officer may make an order requiring the Person who contravened the by-law, or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to do work to correct the contravention.

40. An order issued pursuant to Section 39 may require a person to undertake all necessary work, including:

- a. To remove the unauthorized Encroachment;
- b. To restore the Town lands to their former condition; and/or
- c. To submit a completed Encroachment Agreement Application to the Town.

41. An order under Section 39 may require work to be done even though the facts which constitute the contravention of the By-law were present before the By-law making them a contravention came into force.

42. An order may be delivered:

- a. Personally, with service deemed effective on the date the order is given;
- b. By registered mail to the address where the contravention occurred or the last

known address of any person named in the order, with service deemed on the fifth day after mailing; or

- c. By posting the order in a conspicuous location on the land where the contravention occurred or at the last known address of any person named in the order, with service deemed effective on the day after posting.

Remedial Work

43. Wherever an order, issued pursuant to this By-law, directs or requires any matter or thing to be done by any Person within a specified time period, in default of it being done by the specified time period, an Officer may initiate remedial action.
44. The Town may recover from any Person directed or required to do the matter or thing, the costs incurred by adding the costs to the tax roll and collecting them in the same manner as property taxes.
45. Where work is authorized to be undertaken by or on behalf of the Town pursuant to this By-law, the Town may enter upon land and into structures for that purpose at any reasonable time in accordance with Section 435(2) of the *Municipal Act, 2001*.
46. Officers and contractors hired to undertake work under this By-law accompanied by any Person under their direction may enter onto the land from which the encroachment emanates and into any encroaching building, structure, or parts thereof except for any room or place actually being used as a dwelling which may only be entered in accordance with Section 437 of the *Municipal Act, 2001* at any reasonable time for the purpose of undertaking work authorized under this By-law.

Disposition of Encroachments

47. Any Encroachments removed by the Town under this By-law may be directly deposited onto the property from which the Encroachment comes from, relates to, or was created for.
48. Any motorized equipment, containers, trailers, or motorized tools removed by the Town may be deposited at the property from which the Encroachment comes from, relates to, or was created for, or be stored at a Town facility for up to 60 days at the Owner's expense.
49. Any item in section 48 shall only be released to its owner after the owner has shown proof of ownership and paid the Town any applicable expense for the removal and storage of the item.
50. Any item in section 48 that is stored at a Town facility for more than 60 days and for which an owner has not been identified may be disposed of by the Town in any manner that it deems appropriate.

51. Any item in section 48 that is stored at a Town facility for more than 60 days and for which the owner, having been identified, has failed to pay the applicable expenses and claim the item, may be disposed of pursuant to the provisions of the *Repair and Storage Liens Act*, R.S.O. 1990, c.R.25, as amended.

Offences and Penalties

52. No person shall fail to comply with the provisions of an Agreement entered into under Part 5 of this By-law.

53. No person shall fail to comply with an order issued under Section 38 or 39 of this By-law.

54. Every Person who contravenes a provision of this by-law or an order made under it, whether deliberately or inadvertently, and every director or officer of a corporation who concurs in such contravention by the corporation, is guilty of an offence and is liable to a fine, and such other penalties, as provided for in the *Provincial Offences Act*, R.S.O, 1990, c. P.33, and the *Municipal Act, 2001*, as both may be amended from time to time.

55. Every Person who hinders or obstructs, or attempts to hinder or obstruct, any Person who is exercising a power or performing a duty under this by-law is guilty of an offence.

Part 7 – Enactment

Severability

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

Conflict

57. Where there is a conflict between a provision of this By-law or subsequent Encroachment Agreement and a provision in any other By-law, the more restrictive provisions shall prevail, subject to the greater paramountcy of provisions that protect the health or safety of persons.

Enactment

58. That this by-law shall come into force and take effect on the passing thereof.

Read a first and second time and finally passed this 24th day of June, 2025

Terry Richardson, Mayor

Jessica Walters, Clerk

By signing this by-law on June 25, 2025, I Mayor Richardson confirm that I will not exercise the power to veto this by-law and the by-law is deemed approved.

Schedule A to By-law No. 2025-0051

Set Fines for Infractions under Part I Provincial Offences

**For Town of Greater Napanee By-law No. 2025-0051
Being a By-law to Regulate Encroachments on Municipally Owned Lands**

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Provision creating or defining offence	COLUMN 3 Set Fine
1.	Construct, install, maintain, plant, or store an encroachment on municipal land without authorization.	Section 7	\$200.00
2.	Permit an encroachment to be maintained or left in place on municipal land without authorization.	Section 8	\$200.00
3.	Fail to comply with the provisions of an encroachment agreement.	Section 52	\$400.00
4.	Fail to comply with an order.	Section 53	\$400.00
5.	Obstruct an Officer.	Section 55	\$600.00

Note: The penalty provisions for the offences indicated above is Section 54 of By-law No. 2025-0051, a certified copy of which has been filed.