

ENCROACHMENT BY-LAW

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THE CORPORATION OF THE TOWNSHIP OF SCUGOG

BY-LAW 49-08

BEING A BY-LAW TO REGULATE AND CONTROL THE USE OF PUBLIC HIGHWAYS AND LANDS OWNED BY THE TOWNSHIP OF SCUGOG AND TO PERMIT THE SEIZURE AND IMPOUNDING OF THINGS ENCROACHING UPON THESE PUBLIC HIGHWAYS AND LANDS AND TO RECOVER COSTS INCURRED BY THE TOWNSHIP.

WHEREAS Section 9 of the Municipal Act, 2001, S.O. 2001, c.M.25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority;

AND WHEREAS Section 8 of the Municipal Act, 2001, provides that the powers of a municipality under that Act shall be interpreted broadly so as to confer broad authority on municipalities to a) enable municipalities to govern their own affairs as they consider appropriate and, b) enhance their ability to respond to municipal issues;

AND WHEREAS Section 11 of the Municipal Act, 2001, provides that a lower tier municipality may pass By-Laws respecting matters within the spheres of jurisdiction set out therein;

AND WHEREAS the Corporation of the Township of Scugog is the registered owner of certain municipal road allowances and municipally owned tracts of lands, within the Township of Scugog;

AND WHEREAS the Council of the Corporation of the Township of Scugog deems it advisable to enact a By-Law with regard to how Encroachments onto such municipally owned land shall be handled in order to deal consistently with such issues;

NOW THEREFORE the Council of the Corporation of Scugog hereby enacts as follows:

Section 1 DEFINITIONS

“Council”, means the Council for the Corporation of the Township of Scugog;

“Director”, means the Director of Public Works and Parks appointed by Council or that person’s designate;

“Encroachment”, means any aerial, surface, or subsurface structure or other obstruction, existing on any Township Lands. These structures and obstructions shall include but not be limited to the following: buildings, fences, shelters, patios, concrete pillars, posts, poles, newspaper boxes, vending machines, curbs, tree plantings, gardens, landscaping, retaining works, drainage works, satellite dishes, supporting structures, signs, towers, antennae, guy wires, cables, pipes, docks, benches, tables and chairs. Furthermore an Encroachment shall also include but not be limited to the unauthorized removal or destruction of any tree, rock or other thing whether occurring naturally or not;

“Expenses”, means all expenses incurred by the Township with regard to removing or otherwise rectifying an Encroachment, storing any seized thing and shall include, without limitation, all charges, costs, administrative fees, taxes, legal fees, Goods and Services Tax, and any incurred interest on such outstanding expenses;

“Officer”, means a Municipal Law Enforcement Officer appointed by Council;

“Notice”, means a Notice delivered to any person by prepaid registered mail, regular postal delivery, personal service upon the person named, service at the person’s last known address by leaving it with another person who is apparently the age of at least sixteen years or by posting the person’s property with a Notice in a conspicuous location;

“Person”, means an individual, partnership, corporation, association, club, business entity, incorporated group or organization, federal or provincial government, crown agent, school board or regional or local municipality;

“Township”, means the Corporation of the Township of Scugog;

“Township Lands”, means lands owned by or leased or licensed to or under the management of the Township, Township easements, and shall include but not be limited to any road, lane, public highway, right of way, park, woodland, greenbelt, storm water management facility, wharf, dock, open space, municipal cemetery and lands in which the Township holds any real property interest, and all parts thereof, including any surface, grassed area, boulevard, ditch, curb, gutter, and sidewalk.

Section 2 GENERAL PROVISIONS

2.1 No person shall place any Encroachment or in any way obstruct or convert to their own use any Township Lands without the written authorization and consent of the Director, where applicable. Such authorization and consent may include any condition deemed suitable to that Encroachment and may include but not be limited to a cash surety to be applied where the Encroachment’s authorization is revoked and the Encroachment is not forthwith removed upon receipt of notice. Such consent may also include and not be limited to a requirement for a suitable liability insurance policy to be in effect naming the Township as an insured party.

- 2.2 No person shall place, store or locate any Encroachment on any Township Lands save and except where authorized by;
- (a) the provisions of any legislation in force within the Township;
 - (b) the written consent of the Director, where applicable; or,
 - (c) the written consent of Council.
- 2.3 Where Notice is given by the Township to remove an Encroachment, every person who receives such Notice shall take all steps necessary to:
- (a) forthwith remove said Encroachment or replace anything removed from any Township Lands at their own expense; and,
 - (b) return the Township Lands to its original state or condition, which shall be at a standard acceptable to the Township.
- 2.4 (a) Where Notice is given by the Township to a person to remove an Encroachment from any Township Lands, between December 1st and April 1st of the following year said person may request an extension of the time for removal provided he or she provides sufficient information to satisfy the Director, where appropriate, that the Encroachment's removal during that period would cause undue hardship.
- (b) Upon receipt of a request for an extension of time to remove an Encroachment as set out in Section 2.4 (a), the Director, where appropriate, may determine to extend the period of time given for the removal to another date.
- 2.5 Where any Encroachment stored or located on any Township Lands is found and where such Encroachment's ownership, or the person responsible for the Encroachment is not readily identifiable, such Encroachment may be removed and disposed of by the Township in any way it shall deem fit. All expenses incurred by the Township, including costs to restore the Township Lands to their previous condition, shall be the responsibility of the owner or person identified as being responsible for the Encroachment.
- 2.6 The Township 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 Township. The owner shall not be entitled to any compensation for lost revenue or profit arising from the requirement to remove an Encroachment.

- 2.7 In addition to the provisions of Section 2.5, the Township may seize and impound anything found encroaching or being stored on any Township Lands and all expenses incurred by the Township, including the cost of removal, impoundment and storage of anything seized shall be the responsibility of the owner or person responsible for the Encroachment.
- 2.8 Anything impounded under the provisions of Section 2.7 and not claimed by its owner within thirty (30) days, may be disposed of by the Township in any manner which, in its sole and absolute discretion, it sees fit.
- 2.9 Notwithstanding the provisions of Sections 2.3 and 2.4, the Township is not obliged to send Notice to any person prior to removing or impounding any Encroachment on Township Lands.
- 2.10 Where any Encroachment is removed or impounded by the Township, the Township shall make a reasonable effort to locate and notify the owner or person responsible for the Encroachment. Where no owner or responsible person can be located within 60 days, then the Encroachment shall become the property of the Township and may be used or disposed of in any manner that the Township sees fit. The Township shall have no liability to the owner or person responsible for the Encroachment for any such removal or disposal.
- 2.11 Where any Encroachment has been authorized under Section 2.3 and where any damage occurs to that Encroachment by any means, the Township shall not be held responsible for such damage and shall not be obligated in any way to make any repair or restoration to that Encroachment.

Section 3 PENALTIES

- 3.1 Every person who contravenes any provision of this By-Law is guilty of an offence and upon conviction is liable to a fine or penalty exclusive of costs, for each offence, as prescribed by the Provincial Offences Act, R.S.O.1990, C.p.33, as amended.
- 3.2 Any expenses incurred by the Township under the provisions of this By-Law may:
 - (a) in the sole discretion of the Township, be added to the tax roll for the property from which the Encroachment emanates for the year in which the expenses were incurred and collected in the same manner as taxes; or,
 - (b) be recovered by court action as a liquidated debt due and owing to the Township.
- 3.3 Expenses incurred by the Township shall include the actual cost of labour, equipment and an administrative fee of twenty five percent (25%) plus an additional one and one half Percent (1.5 %) interest rate per month for any amounts outstanding.

Section 4 ADMINISTRATION AND ENFORCEMENT

4.1 This By-law shall be administered by the Director.

4.2 This By-law shall be enforced by the Director and an Officer.

Section 5 SHORT TITLE

5.1 This By-Law shall be called the Encroachment By-Law.

Section 6 SEVERABILITY

6.1 If a court of competent jurisdiction should declare any section or part of a section of this By-Law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of this By-Law and it is hereby declared that the remainder of this By-Law shall be valid and shall remain in force.

Section 7 EFFECTIVE DATE

7.1 This By-Law will come in to force on the day of its passing, and where required proper notice has been given.

Read a First, Second and Third Time and finally passed this 23rd day of June, 2008

(Signed) Marilyn Pearce _____
MAYOR, Marilyn Pearce

(Signed) Kim Coates _____
CLERK, Kim Coates