

REPEALED BY BY-LAW NO. 12/2019

APRIL 25, 2019

CONSOLIDATION UPDATE: JULY 19, 2017

THE CITY OF WINNIPEG

THE ENCROACHMENT BY-LAW

NO. 692/74

A By-law of THE CITY OF WINNIPEG to regulate the construction and maintenance of certain encroachments in streets.

WHEREAS The City of Winnipeg may prevent, control or permit the placing or maintaining of anything in a street and may prescribe regulations and charges in respect thereof.

NOW THEREFORE THE CITY OF WINNIPEG, in Council assembled, enacts as follows
amended 6595/95

TITLE

1. This By-law shall be referred to as "**The Encroachment By-law**".

DEFINITIONS

2. "**Assiniboine Park-Fort Gary Community**" and "**St. Boniface-St. Vital Community**" means those communities having boundaries determined under Order in Council No. 844-77.
amended 8162/2002

"**Designated Officer**" means the Director of Planning, Property and Development or such other person as may be authorized in writing by the said Director to exercise some or all of the powers vested in him by this By-law.

amended 3198/82, 5208/89, 6595/95; 8162/2002

"**Encroachment**" means all structures of any form on, above or below ground level which extend into or are constructed or located in a street.

amended 3198/82, 6595/95

"**Skywalk**" means a pedestrian passageway that:

added 74/2017

- (a) connects two separate buildings;
- (b) crosses a street;

- (c) is suspended above street level; and
- (d) is either covered or fully enclosed so as to be protected from weather elements.
added 74/2017

"Space occupied" means the maximum horizontal projected area within which the encroachment or encroachments are contained.
amended 6595/95

"Standing Policy Committee" means the Standing Policy Committee on Property and Development, Heritage and Downtown Development.
added 42/2004; amended 113/2015

"Subject property" means the land upon which is situated the structure of which an encroachment forms part or to which it is attached, or which the encroachment serves or the land otherwise adjoining or connected with an encroachment.
amended 6595/95

EXCEPTIONS

- 3. (1) This By-law does not apply to:
 - (a) private approaches and private walks as defined in and regulated by the Private Access By-law No. 49/2008;
 - (b) conforming water service pipes as defined by the Water By-law;
amended 74/2017
 - (c) conforming private sewer service pipes as defined in the Sewer By-law No. 92/2010; and
amended 74/2017
 - (d) skywalks.
added 74/2017
- (2) For greater certainty, this By-law applies to non-conforming water service pipes and non-conforming private sewer service pipes.
amended 107/2015 (entire section)

APPLICATION OF BY-LAW TO NON-CONFORMING PIPES

- 3.1 Subsection 6(6) and section 8 do not apply to non-conforming water service pipes and non-conforming private sewer service pipes.
added 107/2015

GENERAL REGULATIONS

4. (1) Except as otherwise permitted in this section, no encroachment shall be constructed or maintained without permission of the Designated Officer, who shall prescribe the form of application, permits and licenses, subject to the following:

amended 3198/82

(a) The Designated Officer shall obtain a recommendation from the Director of Public Works, through the Underground Structures Committee, on all proposed or existing underground encroachments which extend within the street more than 1 foot;

amended 8162/2002

(b) Any applicant for an encroachment having the right to appeal any decision made by the Designated Officer in accordance with *The City of Winnipeg Charter*; ¹

amended 3198/82; 8162/2002

(c) The Designated Officer is authorized to negotiate, approve and execute agreements in a form approved by the City Solicitor which impose licence fees as established by Council, and other conditions considered by the City Solicitor to be necessary to protect the interests of the City for

amended 6845/96; 8162/2002; 107/2015

(i) outdoor patios adjacent to restaurants; and
added 107/2015

(ii) non-conforming water service pipes and non-conforming private sewer service pipes that have been approved under the Water By-law or Sewer By-law, as the case may be.

added 107/2015

The Designated Officer is further authorized to approve the assignment or cancellation of any such agreement.

added 107/2015

(d) Where the encroachment is of an unusual or commercial nature that it be referred to the Designated Officer of the City for the purpose of negotiating a reasonable rental and making recommendation to the Chief Administrative Officer for subsequent referral to Council.

amended 6662/95; 8162/2002

(2) Subject to sections 6 and 12 inclusive and to subsection 3 of this section, encroachments constructed or maintained in pursuance of permission of Council or the Standing Policy Committee heretofore granted may be maintained in accordance with the terms and conditions attaching to such permission, in each case subject to the following provisions:

amended 5208/89; 8162/2002; 42/2004

- (a) Such encroachment may not be enlarged or altered in any manner except in conformity with this By-law for the whole encroachment provided, however, that the changing of moveable parts of signs or other encroachments that are designed for changes or the re-painting shall not be deemed to be alterations within the meaning of this section.
 - (b) Should such encroachment be destroyed by any means to an extent of more than fifty per cent (50%) of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this By-law.
 - (c) Should such encroachment be moved for any reason, any distance whatever, it shall thereafter conform with the provisions of this By-law for the new location.
 - (d) Should such encroachment be required to be altered as the result of the provisions of section 9, such alterations shall be made in accordance with the terms set forth therewith.
amended 859/75
- (3) All permitted encroachments shall:
- (a) Remain at the pleasure of Council, except those of an unusual or commercial nature, which shall be subject to negotiation as set out in clause (d) of subsection 1 of section 4.
amended 155/2011
 - (b) Subject to paragraph (c) of this subsection, be constructed and/or maintained to the satisfaction of the Designated Officer.
amended 3198/82
 - (c) Conform to the structural requirements of the by-laws in force governing building standards except that this requirement shall not apply to standards for boulevard protection.
amended 3198/82
 - (d) Have a minimum vertical clearance above the sidewalk level of 3.81 metres (12 feet 6 inches) for overhead encroachments except as set out in Schedule A to this By-law and be subject to the specific requirements of Schedule A to this By-law.
amended 859/75, 6595/95
 - (e) Be subject to an annual charge based on the space occupied by the encroachment with the exception of signs and those of any unusual or commercial nature.
amended 859/75

- (f) Be constructed so that the removal of the encroachment may be made without causing the building to become structurally unsafe.
amended 859/75
- (4) No person shall maintain or permit to be maintained, an encroachment if it interferes with any light, power, telephone or telegraph pole or wire, or any apparatus or appliance connected therewith, or with any utility as provided in The Winnipeg Building By-law.
amended 5208/89, 6595/95
- (5) Where, in the judgement of the Designated Officer, the age of the building or type of encroachment requires certification, as a condition precedent to the issuance of a license, or the renewal of same, the owner or his authorized agent or the person responsible for the building encroachment, may be required to supply the City with a certificate by a Registered Architect or Professional Engineer of the Province of Manitoba stating that such encroachment is structurally sound.
amended 3198/82
- (6) The Designated Officer may refuse to issue a permit,
 - (i) to erect an encroachment, if the erection of such encroachment interferes with traffic or with the effectiveness of a traffic control device.
 - (ii) to re-erect an encroachment if the encroachment has been altered to such an extent that it interferes by reason of such alteration, with traffic or with the effectiveness of a traffic control device.
amended 3198/82
- (7) Applications for encroachments related to boulevard protection shall be accepted only for those areas of the City designated in Schedule B to this By-law and shall be subject to the specific requirements of Schedule A to this By-law.
amended 3198/82

DUTIES OF OWNERS

5. Every application for permission to erect, re-erect or alter, or for the maintenance of an encroachment shall be made by the registered owner or his authorized agent of the subject property, or of the land intended to be used as such, who shall:

- (a) file an application for such permission with the Designated Officer in a form satisfactory to him, together with drawings and specifications of the existing or proposed structure and where the encroachment already exists a certificate prepared by a Manitoba Land Surveyor giving details of the encroachment, except in the case of signs a certificate will be required at the discretion of the Designated Officer.
amended 3198/82

- (b) pay to the City an annual license fee as provided in section 6.
amended 116/2003
- (c) complete such agreement as may be required by the City Solicitor for the purpose of giving effect to the terms and conditions upon which such permission may be granted in the case of an encroachment of an unusual or commercial nature.
amended 859/75

ANNUAL LICENCE FEES

- 6. (1) The owner of land with an approved encroachment thereon shall pay to The City an annual encroachment licence as set forth in The Development Fees By-law.
amended 6595/95
- (2) The annual encroachment licence fee shall be payable in respect of each calendar year, whether the encroachment is maintained for the entire calendar year or only for a portion thereof.
- (3) Annual encroachment licence fees shall be paid within thirty (30) days of the due date.
- (4) Licence fees not paid within the thirty day period shall be subject to an additional fee set forth in The Development Fees By-law.
amended 6595/95
- (5) Licences for encroachments are transferrable throughout the year in which the licence is valid.
- (6) In the case of the death of the licensee, or the disposal by the licensee of the business or premises including the encroachment, during the currency of the licence issued therefor, the licence shall expire, unless the new owner of the legal representative of the previous owner applies to the Designated Officer and obtains a transfer of the licence within the year that the licence is valid.
- (7) When an encroachment is removed from one location and relocated in another location, the licensee shall apply to the Designated Officer for a transfer of the licence to the new address prior to the transfer.
amended 5763/91

INDEMNITY

- 7. (1) The owner of a subject property shall make or be liable for the cost of any adjustment or alteration to the encroachment as may be required by reason of any street widening or other usage of the street by The City, and shall assume all risk of damage to any encroachment attaching thereto by reason of any use whatsoever

made of the street. In no way shall The City be held liable for any damages, costs or expenses in connection with an encroachment which may in any way arise from such widening or usage.

- (2) The owner of a subject property shall indemnify The City against all damages, costs and expenses which The City may suffer, incur or be put to by reason of the existence, maintenance or use of any encroachment attaching thereto, and, if required, will deliver to The City a Bond of Indemnity in an amount satisfactory to the Chief Financial Officer, and in form satisfactory to the City Solicitor.

amended 116/2003

INSURANCE

8. The payment of the annual licence fee herein provided in respect of any permitted encroachment shall entitle the licensee to the benefit of a third party liability policy of insurance for not less than \$250,000.00, all inclusive, to be placed by The City and be in force during the currency of the licence, insuring The City and such licensee against loss by reason of liability (if any) imposed upon The City and the licensee by law for damages on account of bodily injury accidentally sustained, including death at any time resulting therefrom, which whether wholly or partially may be caused by or arise out of or be in any way attributable to the erection, construction, maintenance, continuance or use of the encroachment or any adjuncts or accessories thereto, or the reparation or want of reparation of the encroachment, adjuncts or accessories, or The City's permitting and licensing the encroachment, and in addition thereto, against property damage, similarly caused, and for which a similar liability may exist.

REPAIRS AND ALTERATIONS

9. Should it be necessary at any time or from time to time in the opinion of the Designated Officer to repair, alter, re-construct or remove an encroachment, or should the Council order the same to be removed, the Designated Officer will give notice to the owner in accordance with the *Charter* of the encroachment to so repair, alter, re-construct or remove the same within such time as may be provided in any agreement made between the owner and The City in respect of such encroachment, or otherwise provided for in any by-law or resolution of The City, or if not so provided, in such manner and within such time as the Designated Officer shall deem necessary and if the owner does not within the time set in such notice comply therewith, the Designated Officer may cause the work to be done and the cost and expense of so doing as certified by him shall be paid forthwith by the owner; provided that in circumstances considered by him, in his sole discretion, to present any dangerous or hazardous condition requiring immediate remedy, the Designated Officer may cause any such work to be done without prior notice to the owner, and the cost and expense of so doing as certified by him shall likewise be paid forthwith by the owner. ²

amended 3198/82; 8162/2002

COLLECTION OF ANNUAL LICENCE FEES, COSTS AND EXPENSES

10. Any annual licence fees, costs and expenses imposed by section 6 and/or 9 in respect of an encroachment, may be added to the taxes of the subject property and collected in the same manner as ordinary municipal taxes.

INTERFERENCE PROHIBITED

11. No person shall interfere in any way with the Designated Officer or anyone acting under the authority of, or by the instructions or either of them, in the performance of any of the duties imposed upon them by this By-law.

amended 3198/82; 8162/2002

PENALTY

12. (1) Any person found guilty of a breach of any provision of this By-law shall be liable on conviction thereof to a fine not exceeding \$500.00 and costs.

(2) In addition to subsection 12(1) aforesaid, any person or corporation may be required to observe or perform such terms and conditions as a Judge may impose.

amended 3472/83

REPEAL

13. By-law Nos. 16883 and 19302 and amendments thereto of the former City of Winnipeg, By-law No. 88/72 of The City and all those portions of section 10.13 of Building By-law No. 711 of The Metropolitan Corporation of Greater Winnipeg, other than those regulating structural requirements are hereby repealed.

SCHEDULE

14. The document attached hereto and marked Schedule "A" hereto, shall form part of this By-law and shall be identified by the signature of the City Clerk.

DONE AND PASSED in Council assembled, this 3rd day of July, 1974.

1 [See sections 189 and 121 of The City of Winnipeg Charter for information about appeals, including information about the time limit for appeals and how appeals are to be filed.](#)

2 [See sections 116 and 117 of The City of Winnipeg Charter for information about how to serve orders, decisions and other documents.](#)

SCHEDULE A**AREAWAYS**

1. (1) All areaways shall be constructed with sufficient reinforced concrete walls and roofs to retain the surface of the street and its superimposed live loads to the satisfaction of the Director of Public Works.
amended 8162/2002
- (2) All areaways having all or portion of its structure exposed at the sidewalk surface shall
 - (a) be constructed of noncombustible materials,
 - (b) be provided with solid non-slip surfaces, and
 - (c) not extend above the street or sidewalk surface.

MARQUEES, CANOPIES, AWNINGS AND SUN VISORS*amended 3245/82*

2. (1) All marquees, canopies, awnings and sun visors shall be constructed in accordance with the requirements of The Winnipeg Building By-law.
amended 5208/89, 6595/95
- (2) The owner of any awning, or sun visor shall prevent the accumulation of excess water, snow or ice on any such awning, or sun visor.
amended 3420/83
- (3) The horizontal clearance between any portion of a marquee, canopy awning, or sun visor shall be not less than 0.61 metres (24 inches) from that portion of the street used by vehicular traffic and in no case shall they encroach more than 3.66 metres (12 feet) over the street.
amended 3420/83, 6595/95
- (4) No portion of a marquee, canopy, awning or sun visor shall be permitted to be less than 2.59 metres (8 feet 6 inches) above the level of the sidewalk or established grade except that any fringe associated with a canopy or awning made of flame-resistant textile may have a clearance of not less than 2.28 metres (7 feet 6 inches).
amended 3420/83, 6595/95
- (5) Notwithstanding subsection (4) awnings may have a minimum clearance of 2.08 metres (6 feet 10 inches).
amended 6595/95

- (a) over encroaching stairs, whether above or below grade, with or without railings; or
- (b) on the following street frontages:
 - (i) west side of Osborne Street between River Avenue and Stradbrook Avenue;
 - (ii) east side of Osborne Street between River Avenue and Stradbrook Avenue.
amended 3472/83
- (6) The roofs of all marquees shall be drained in such a manner that the water flowing therefrom shall be carried back into the building.
amended 3475/83

FIRE APPARATUS

- 3. (1) Exterior hose connections for fire extinguishing equipment and air inlets and outlets hereafter installed, shall not project over or into a street.
- (2) Where fire alarm bells or gongs are required to warn the occupants of the building to which it is attached, they may project not more than 0.31 metres (12 inches) over a street and not less than 2.59 metres (8 feet 6 inches) from the sidewalk level or established grade.
amended 5763/91, 6595/95

FIRE ESCAPE

- 4. No portion of a fire escape shall
 - (i) be less than 3.35 metres (11 feet) above the sidewalk or established grade.
amended 6595/95
 - (ii) be less than 0.61 metres (24 inches) from that portion of the street used by vehicular traffic and in no case shall it encroach more than 3.66 metres (12 feet) over the street.
amended 5763/91, 6595/95

SIGNS

5. (1) Except as otherwise provided therein, all encroaching signs shall be constructed in accordance with the provisions of The Winnipeg Building By-law.
amended 6595/95
- (2) Illuminated signs encroaching on, over or into streets shall be constructed of noncombustible materials throughout except combustible plastics as provided in The Winnipeg Building By-law may be used as facing material, letters and decorations.
amended 6595/95
- (3) No portion of encroaching signs shall
- (a) Be less than 2.59 metres (8 feet 6 inches) above the sidewalk or established grade except for marquee or canopy signs complying with The Winnipeg Building By-law and except as provided in subsections 5, 6 and 7.
amended 5763/91, 6595/95
- (b) Be less than 0.61 metres (24 inches) from that portion of the street used by vehicular traffic and in no case shall it encroach more than 3.66 metres (12 feet) over the street.
amended 6595/95
- (4) No free swinging or rotating encroaching sign, except those operated by a mechanical device, shall hereafter be erected on, hung or attached to any building or structure and those erected prior to the passage of this By-law, shall be immediately removed by the owner, proprietor or occupant thereof or changed to conform with this By-law when so ordered.
- (5) Every encroaching warning sign as required in The Winnipeg Building By-law shall be not less than 2.59 metres (8 feet 6 inches) above the sidewalk or established grade.
amended 6595/95
- (6) Temporary signs or wall signs, when 2.59 metres (8 feet 6 inches) or more above the sidewalk or established grade may encroach not more than twelve inches, in no case shall such sign encroach below this clearance.
amended 6595/95
- (7) Encroaching signs on lands under the "HW" Historic Design Review Designation of The Downtown Winnipeg Zoning By-law shall require a minimum clearance of 2.59 metres (8 feet 6 inches).
amended 6595/95

- (8) Except as otherwise provided by any other By-law of The City and except as provided in subsection (9) the area of any encroaching projecting sign whether made up in one or more sections, shall not exceed 8.36 square metres (90 square feet) on any one side or a total of 16.7 square metres (180 square feet) for the entire sign.
amended 6595/95
- (9) Except as otherwise provided by any other by-law of The City, an encroaching projecting sign, the vertical dimensions of which exceed its horizontal dimensions, shall not have an area exceeding 11.6 square metres (125 square feet) on any one side or a total area exceeding 23.2 square metres (250 square feet).
- (10) Except as otherwise provided by any other by-law of The City, the total area of a combination roof and encroaching projecting sign shall not exceed 11.6 square metres (125 square feet) on any one side.
amended 5208/89, 5763/91

BOULEVARD PROTECTION

repealed 125/2007

SCHEDULE B

1. Those areas of the Assiniboine Park-Fort Garry Community which are not serviced by sidewalks.
2. The St. Boniface-St. Vital Community.
amended 3198/82