



CORPORATION OF THE CITY OF KINGSTON

Ontario

By-Law Number 2004-107

**A By-Law To Protect The City's Highways
From Unauthorized Encroachments**

Passed: May 18, 2004

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(Office Consolidation)

A By-Law To Protect The City's Highways From Unauthorized Encroachments

City of Kingston By-law Number 2004-107

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(By-law Number 2004-107; 2007-208)

City Of Kingston

By-Law Number 2004-107

A By-Law To Protect The City's Highways From Unauthorized Encroachments

Passed: May 18, 2004

Whereas subsections 9(3) and 11(1) of the *Municipal Act, 2001* 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;

Therefore the Council of The Corporation of the City of Kingston enacts as follows:

1. Definitions:

In this by-law,

“Authorized encroachment” means an encroachment that is authorized by a valid permit or by the provisions of this or another by-law, and **“unauthorized encroachment”** has the opposite meaning;

“Awning” means a retractable or fixed roof-like cover made of canvas or other suitable material which normally extends over a doorway or window of a building;

“Building” means a structure occupying an area greater than ten square metres that consists of a wall, roof and floor;

“Canopy” means a roof-like structure usually made of fabric, supported by columns, which normally extends over a doorway of a building;

“City” and **“City of Kingston”** mean The Corporation of the City of Kingston, as incorporated on January 1, 1998;

“City Council” means the Council of the City of Kingston;

“Construction” includes anything to do with the construction, erection, installation, extension, alteration, repair, reconstruction or replacement of a building, structure, fence or other object, and **“construct”** has a corresponding meaning;

“Directional sign” means a sign designed to guide or direct pedestrian or vehicular traffic, and includes a guide sign, route marker, trailblazer sign and any other similar device;

1. Definitions cont'd:

“Encroachment” means any object or material, including a building, structure, sign, apparatus, equipment, facility, fence, hedge, earth or rock, which is wholly or partly upon a highway, and **“encroach”** has a corresponding meaning;

“Engineering Division” means the Engineering Division, Department of Planning and Development Services or, in the event of organizational changes, another unit designated by City Council to carry out the Division’s responsibilities;

“Fees and Charges By-Law” means City of Kingston By-Law Number 2005-10, “A By-Law to Establish Fees and Charges to be Collected by the Corporation of the City of Kingston”, or a successor to that by-law”.

“Fence” includes any fence or similar structure constructed of wood, metal, concrete, stone or other material;

“Hedge” means a continuous line of thick shrubs or low trees;

“Highway” means a common and public highway or portion of a common and public highway, and includes any street, lane, road allowance, bridge, trestle, viaduct or structure that forms part of a highway and all lands between the lateral boundaries of a highway;

“Historical marker” includes a marker, sign, plaque, display panel and any similar device;

“Inadvertent” means accidental or unintentional, and **“inadvertence”** and **“through inadvertence”** have corresponding meanings;

“Manager of Engineering” means the Manager of the Engineering Division, his or her designate or, in the event of organizational changes, another employee designated by City Council;

“Owner” means the person who is the registered owner of a property, or the duly authorized agent of the owner;

“Parking meter” means a mechanical or electronic device designed to accept payment in exchange for a period of legal parking that is indicated by means of a signal on the device or on a ticket dispensed by the device;

“Pedestrian” includes an individual with a disability who is using a wheelchair or other remedial appliance or device, as well as an individual who is on foot;

“Permit” means, except where otherwise provided, a permit issued by the City that authorizes an encroachment upon a highway;

“Person” includes a corporation and organization as well as an individual;

1. Definitions cont'd:

“Projecting sign” means a sign that is attached to an exterior wall of a building or structure, either directly or by means of a mast or pole;

“Publication box” means a receptacle for the sale or free distribution of any type of newspaper or publication;

“Real estate sign” includes a real estate advertising sign, a real estate point of sale sign, a real estate open house sign, and a real estate construction site sign,

“Roadway” means the portion of a highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the shoulder;

“Sidewalk” means the portion of a highway between the roadway and the lateral boundary of the highway that is set aside for the use of pedestrians;

“Surveyor” means a member of the Association of Ontario Land Surveyors who is authorized under the *Surveyors Act* to engage in the practice of professional lands surveying in Ontario; and

“Upon a highway” means anywhere within the lateral boundaries of a highway, including the air space above and the ground below the grade of a highway.

(By-Law 2004-107; 2023-11)

2. Application:

- 2.1 This by-law applies to encroachments on every highway that is under the jurisdiction or joint jurisdiction of the City of Kingston.
- 2.2 This by-law does not apply to encroachments on lands, other than highways, owned by the City of Kingston, or to encroachments on provincial highways or private roads.
- 2.3 This by-law does not apply to the use of highways by vehicles for travel or parking, or to activities of a transitory nature that take place on highways.
- 2.4 This by-law does not apply to sandwich board signs whose placement upon a sidewalk complies with the requirements of the applicable by-law that regulates such signs, provided that the City has no objection to the location of the sandwich board sign from a traffic, safety or operational point of view.
- 2.5 This by-law does not apply to election signs, real estate signs and other temporary signs, other than portable and mobile signs, whose placement upon a highway complies with the requirements of the applicable by-law that regulates such signs.

3. Administration:

- 3.1 The Manager of Engineering is responsible for the administration of this by-law on behalf of the City, including the review of applications for permits, the circulation of such applications, where appropriate, to other organizational units and agencies with an interest in the matter, and the issuance of permits.
- 3.2 All provincial offences officers with authority to enforce the by-laws of the City are responsible for enforcing the provisions of this by-law.
- 3.3 No application for a permit will be reviewed and no permit will be issued except for the types of encroachment that are described in Part 4 of the by-law.
- 3.4 Every application shall be submitted in the form specified by the Manager of Engineering, and the applicant shall be responsible for paying the relevant application fee to the City and all other applicable fees, as set out in the Fees and Charges By-Law.
(By-Law 2004-107; 2023-11)
- 3.5 The purpose of the application fee is to cover the costs incurred by the City in reviewing an application, making a site inspection, and issuing the permit.
- 3.6 An applicant may be required to pay additional hourly fees, as set out in the Fees and Charges By-Law if the particular circumstances make it necessary for additional time to be spent on the review of an application.
(By-Law 2004-107; 2023-11)
- 3.7 Before section 3.6 becomes applicable, the applicant will be given advance written notice of the amount of these additional hourly fees.
- 3.8 The fees set out in the Fees and Charges By-Law are in effect for the duration of 2004 only and, on the first day of January of 2005 and of each subsequent year, the fees that were in effect during the previous year will be increased by the rate of inflation.
(By-Law 2004-107; 2023-11)
- 3.9 Every applicant for a permit shall, upon request, provide documentation showing the location or proposed location of the encroachment upon the relevant highway in the form of a sketch plan drawn to scale that provides all relevant measurements or, where deemed necessary, a plan of survey prepared by a surveyor.
- 3.10 The Manager of Engineering may impose conditions as a requirement of obtaining or continuing to hold a permit, including requiring an applicant to enter into an agreement with the City.

Administration cont'd

- 3.11 A permit will not be issued unless all organizational units of the City with an interest in the matter and Utilities Kingston are satisfied that the encroachment will not pose a danger to the safety of persons using the highway, or interfere with the activities or adversely affect the condition or operation of the equipment or facilities of the City, its agents, or Utilities Kingston.
- 3.12 A permit will not be issued unless the application complies with all of the requirements of this by-law and with all other applicable by-laws, statutes and regulations, and unless all applicable fees have been paid.
- 3.13 A permit will not be issued to the owner of a property that is designated under Part IV of the *Ontario Heritage Act* or that is within a heritage conservation district designated under Part V of the *Ontario Heritage Act* unless the application complies with the requirements of the *Ontario Heritage Act* and with any applicable policies of the City's Local Architectural Conservation Advisory Committee.
- 3.14 A permit will not be issued unless the applicant agrees to indemnify the City from liability for all claims for damages that the encroachment sustains as a result of any act done by the City, its agents or Utilities Kingston in the performance of their normal activities.
- 3.15 A permit will not be issued unless the applicant agrees to indemnify the City from liability for all claims for damages that any person sustains as a result of the location or use of the encroachment, and to comply with any other terms and conditions imposed by the City under section 3.10.
- 3.16 A permit will not be issued for a canopy, publication box, temporary hoarding, covered way, scaffolding, dumpster or other object or equipment unless the applicant provides and maintains, at the applicant's expense, liability and property damage insurance, in an amount satisfactory to the City, naming the City as an additional insured in order to protect the City against all liability, and the applicant shall submit proof of such insurance when applying for a permit.
- 3.17 If an annual fee is payable in accordance with Part 4, the City will add the amount of the fee to the tax roll for the property for which the permit was obtained, commencing in the year following the year in which the permit was issued, and will collect the amount in the same manner as taxes.
- 3.18 Where notice is to be provided to a person by the City under this by-law, it will be given by prepaid registered mail or by personal service.

4. Regulations:

General Requirements

4.1 No person shall construct, plant, place or leave in place an encroachment upon a highway or cause or permit an encroachment to be constructed, planted, placed or left in place upon a highway unless:

(a) The encroachment is of a type described in section 4.11 to 4.102.

(By-law Number 2004-107; 2007-208)

(b) The encroachment is authorized by a valid permit issued in accordance with Part 3 or by the provisions of this or another by-law.

(c) All relevant fees, as set out in the Fees and Charges By-Law, including the application fee, all other fees and, where applicable, the annual fee for each year during which the encroachment remains in place, have been paid.

(By-Law 2004-107; 2023-11)

(d) The applicant has submitted proof of a sufficient amount of such liability and property damage insurance, if such insurance is required by section 3.16.

(e) Notwithstanding the provisions of this By-Law, the owner of 4037 Bath Road shall be permitted to place a pylon sign in the boulevard area on the condition that these works shall be provided and maintained by the owner to the satisfaction of the City of Kingston. And that an agreement to authorize the encroachment will be entered into and registered on title.

(By-Law Number 2004-107; 2005-162)

(f) Notwithstanding the provisions of this By-Law, Queen's University shall be permitted to place six pedestrian light fixtures on Albert Street (west side) south of Union Street on the City boulevard, provided that: (a) the light fixtures and all appurtenances are provided and maintained by Queen's University to the satisfaction of the City of Kingston; and (b) Queen's University enters into an encroachment agreement with the City, in a form satisfactory to the Director of Legal Services, which will be registered on title to Queen's University's property.

(By-Law 2020-102)

- 4.2 If the full amount of the annual fee, if any, is not paid by the final date established by the City on which the taxes for the current year are due, the City, after giving notice to the person who is responsible for paying the annual fee, may cancel the permit and, in that event, the encroachment shall no longer be authorized.
- 4.3 Every encroachment that is authorized by a permit shall be constructed, planted, placed or left in place in accordance with the permit and, if an authorized encroachment is moved or altered without the permit holder having obtained a new permit, the original permit shall be deemed to have been cancelled and, in that event, the encroachment shall no longer be an authorized encroachment.
- 4.4 Every encroachment that is authorized by a permit shall be maintained in a good state of repair by the owner of the property for which the permit was obtained or by the permit holder, as the case may be, so as not to pose a danger to the safety of persons using the highway, or to interfere with the activities or adversely affect the condition or operation of the equipment or facilities of the City, its agents, or Utilities Kingston.
- 4.5 If an encroachment that was authorized by a permit is not maintained in a good state of repair, the City, after giving notice to the person responsible for maintaining the encroachment in a good state of repair, may cancel the permit and, in that event, the encroachment shall no longer be an authorized encroachment.
- 4.6 If, as a result of changed circumstances, the City determines that an authorized encroachment poses a danger to the safety of persons using the highway, or interferes with the activities or adversely affects the condition or operation of the equipment or facilities of the City, its agents or Utilities Kingston, the City, after giving notice to the owner of the property for which the permit was obtained or the permit holder, as the case may be, may cancel the permit and, in that event, the encroachment shall no longer be an authorized encroachment.
- 4.7 Every person who constructs, plants, places or leaves in place an encroachment upon a highway or who causes or permits an encroachment to be constructed, planted, placed or left in place upon a highway shall be liable for any damages that any person sustains as a result of the location or use of the encroachment, regardless of whether it is an authorized or unauthorized encroachment.
- 4.8 Every person who constructs, plants, places or leaves in place an encroachment upon a highway or who causes or permits an encroachment to be constructed, planted, placed or left in place upon a highway that is not authorized by a valid permit shall remove the unauthorized encroachment at his or her own expense.

- 4.9 If a person is given notice by the City to remove an unauthorized encroachment and fails to do so by the date specified in the notice, the City may remove the unauthorized encroachment at that person's expense.
- 4.10 If the owner of the adjoining property is the person who fails to remove an unauthorized encroachment by the date specified in a notice given under section 4.9, the City may add the amount of the costs incurred by the City in removing the encroachment to the tax roll for that property and collect the amount in the same manner as taxes.

Fences and Hedges

- 4.11 No permit authorizing a fence or hedge upon a highway will be issued except for a fence or hedge that extends diagonally from the outer limit of a corner lot toward the intersection of two highways, whose purpose is to prevent pedestrians and others from crossing the boulevard at that intersection.
- 4.12 If there is a sidewalk, no portion of a fence or hedge of the type described in section 4.11 shall be permitted to extend nearer than 1.0 metre (3.3 feet) to the inner edge of the sidewalk.
- 4.13 If there is no sidewalk, the setback required for a fence or hedge of the type described in Section 4.11 will be determined by the Manager of Engineering and will be contingent on the classification of the highway and the design of the adjoining highways.
- 4.14 The height of a fence or hedge of the type described in section 4.11 shall not exceed 0.75 metres (2.5 feet), at any point, above the elevation of the centreline of the adjoining highways.
- 4.15 Every owner of a corner lot who proposes to construct a fence or plant a hedge upon a highway of the type described in section 4.11 that complies with the requirements set out in sections 4.12 to 4.14 shall make application for a permit.
- 4.16 A permit authorizing a fence or hedge to encroach upon a highway shall be valid as long as the fence or hedge remains in place or until the permit is cancelled by the City.
- 4.17 An annual fee, as set out in the Fees and Charges By-Law shall be payable by the owner of the corner lot for which the permit was obtained for each year or portion of a subsequent year during which the encroachment remains in place.

Existing Buildings

- 4.18 Every owner whose property contains an existing building that, through inadvertence, encroaches upon a highway shall make application for a permit.
- 4.19 A permit authorizing an inadvertent encroachment upon a highway by an existing building shall be valid as long as the encroachment remains in place or until the permit is cancelled by the City.
- 4.20 An annual fee, as set out in the Fees and Charges By-Law, shall be payable by the owner of the property for which the permit was obtained for each year or portion of a subsequent year during which the encroachment remains in place.
- (By-Law 2004-107; 2023-11)
- 4.21 Subject to section 4.6, every area opening and cellar window that encroaches upon the adjoining highway at a municipal address set out in Schedule B is deemed to be an authorized encroachment.
- 4.22 Every area opening and cellar window that is authorized by Section 4.21 shall be maintained in a good state of repair by the owner of the property served by the area opening or cellar window so as not to pose a danger to the safety of persons using the highway, or to interfere with the activities or adversely affect the condition or operation of the equipment or facilities of the City, its agents, or Utilities Kingston.
- 4.23 If an area opening or cellar window that is authorized by Section 4.21 is not maintained in a good state of repair, the City, after giving notice to the owner of the property served by the area opening or cellar window, may do the necessary work at the owner's expense by adding the costs incurred by the City in doing the work to the tax roll for that property and collecting them in the same manner as taxes.

Refacing of Existing Buildings

- 4.24 Every owner of a property who proposes to reface an exterior wall of an existing building on that property so that the building will encroach upon a highway shall make application for a permit.
- 4.25 A permit authorizing an existing building which has been refaced to encroach upon a highway shall be valid as long as the encroachment remains in place or until the permit is cancelled by the City.
- 4.26 An annual fee, as set out in the Fees and Charges By-Law, shall be payable by the owner of the property for which the permit was obtained for each year or portion of a subsequent year during which the encroachment remains in place.

(By-Law 2004-107; 2023-11)

Projections from Buildings

- 4.27 Every owner of a property who proposes to attach an awning, bracket, cornice, eave, fire escape, projecting sign, sill, window air-conditioner or other object to a building on that property that will project beyond the main walls of the building so as to encroach upon a highway shall make application for a permit.
- 4.28 No awning, bracket, cornice, eave, fire escape, projecting sign, sill, window air-conditioner or other projecting object shall be permitted to encroach upon a highway unless the height of the projection is at least 2.4 metres (8 feet) above the grade of the highway.
- 4.29 No awning or projecting sign that requires a sign permit from the City shall be permitted to encroach upon a highway unless the application complies with the requirements of the applicable by-law regulating signs and advertising devices.
- 4.30 A permit authorizing an awning, bracket, cornice, eave, fire escape, projecting sign, sill, window air-conditioner or other projecting object to encroach upon a highway shall be valid as long as the encroachment remains in place, or until the permit is cancelled by the City.
- 4.31 An annual fee, as set out in the Fees and Charges By-Law shall be payable by the owner of the property for which the permit was obtained for each year or portion of a subsequent year during which the encroachment remains in place.

(By-Law 2004-107; 2023-11)

Canopies

- 4.32 Every owner of a property who proposes to attach a canopy to a building on that property that will encroach upon a highway shall make application for a permit.
- 4.33 No canopy shall be permitted to encroach upon a highway unless:
- (1) The height of the projection over a highway at any point is at least 2.4 metres (8 feet) above the grade of the highway.
 - (2) Subject to the site conditions, the support poles of the canopy are located at least 1.0 metre (3.3 feet) from the inner edge of the sidewalk or, where there is no sidewalk, at least 2.0 metres (6.6 feet) from the back of the curb.
- 4.34 No canopy that requires a sign permit from the City shall be permitted to encroach upon a highway unless the application complies with the requirements of the applicable by-law regulating signs and advertising devices.

- 4.35 A permit authorizing a canopy to encroach upon a highway shall be valid as long as the encroachment remains in place, or until the permit is cancelled by the City.
- 4.36 An annual fee, as set out in the Fees and Charges By-Law, shall be payable by the owner of the property for which the permit was obtained for each year or portion of a subsequent year during which the canopy remains in place.

(By-Law 2004-107; 2023-11)

4. Directional Signs and Historical Markers

- 4.37 Every church or religious organization which proposes to have a directional sign to its place of worship installed upon a highway shall make application for a permit.
- 4.38 No permit for a directional sign will be issued except to a church or religious organization.
- 4.39 Every directional sign for which a permit has been issued under this by-law shall be installed by the City, and no other person shall install a directional sign.
- 4.40 A permit authorizing a directional sign to encroach upon a highway shall be valid as long as the sign remains in place, or until the permit is cancelled by the City.
- 4.41 Every person who proposes to install a historical marker upon a highway to identify a building or site of architectural, historical or cultural significance shall make application for a permit.
- 4.42 A permit authorizing a historical marker to encroach upon a highway shall be valid as long as the marker remains in place or until the permit is cancelled by the City.
- 4.43 Every permit holder shall be responsible for all costs incurred by the City in installing, maintaining and, if applicable, supplying a directional sign or historical marker.
- 4.44 Despite the provisions of this by-law, every tourism-oriented directional sign that is installed and maintained upon a highway in accordance with an agreement between the City and Canadian TODS Limited or its successor is deemed to be an authorized encroachment as long as it is maintained in a good state of repair so as not to pose a danger to the safety of persons using the highway, or to interfere with the activities or adversely affect the condition or operation of the equipment or facilities of the City, its agents or Utilities Kingston.

Banners, Pennants and Flower Baskets

- 4.45 Every local organization or institution that proposes to have a banner installed over a highway shall make application for a permit, and the application shall include the requested dates and the proposed wording on the banner.
- 4.46 No permit for a banner will be issued except to a local organization or institution for the purpose of promoting a community event of a non-partisan, non-political nature.
- 4.47 A banner shall show only the event or events being promoted and other pertinent information, such as the date, time and location of the event or events.
- 4.48 No permit authorizing the installation of a banner over a highway will be issued except for the following locations:
- (1) Princess Street at its intersection with Frontenac Street.
 - (2) Princess Street at its intersection with Clergy Street.
 - (3) Union Street at its intersection with University Avenue.
- 4.49 A permit authorizing a banner to encroach upon a highway shall be valid only for the time period specified in the permit.
- 4.50 Every banner for which a permit has been issued shall be installed and removed by Utilities Kingston, and no other person shall install or remove a banner.
- 4.51 In addition to paying the relevant application fee to the City, the applicant shall be required to pay a fee to Utilities Kingston, as set out in the Fees and Charges By-Law, to cover the costs incurred by Utilities Kingston in installing and removing the banner.
- (By-Law 2004-107; 2023-11)
- 4.52 No banner will be installed by Utilities Kingston unless:
- (1) The applicant holds a valid permit.
 - (2) The applicant pays the full amount of the fees to the City and to Utilities Kingston a minimum of seven days prior to the scheduled date of the banner's installation.
 - (3) The applicant delivers the banner to Utilities Kingston at the location specified in the Utilities Kingston Banner Guidelines a minimum of two days prior to its scheduled date of installation.

- (4) The applicant agrees to pick up the banner at the location specified in the Utilities Kingston Banner Guidelines prior to the end of business hours on the third day after its scheduled date of removal.
 - (5) The banner measures 0.9 by 7.5 metres (3 by 25 feet), and complies with all other requirements in the Utilities Kingston Banner Guidelines, including those relating to ropes and cut flaps.
 - (6) Utilities Kingston is satisfied with the physical condition of the banner.
- 4.53 Utilities Kingston is not responsible for any damages that the banner sustains, and may discard any banner that is not picked up by the time agreed to by the applicant.
- 4.54 Despite Sections 4.45 to 4.53, the Downtown Business Improvement Area (B.I.A.) is authorized to hang pennants and flower baskets from lamp standards located on highways within the designated improvement area, including pennants hung from permanent brackets on light standards at:
- 101 Princess Street,
 - 110 Princess Street,
 - 122 Princess Street,
 - 137 Princess Street
 - 246 Princess Street,
 - 390 Princess Street,
 - 412 Princess Street,
 - 11 Brock Street,
 - 19 Brock Street, and
 - 37 Brock Street,
- Provided that it gives advance written notice to the Manager of Engineering of the specific location and duration of the installations and the wording on the pennants.
- 4.55 Despite Sections 4.45 to 4.53, Queen's University is authorized to hang pennants from lamp standards located on University Avenue between Stuart and Union Streets, provided that it obtains the Manager of Engineering's prior written approval of the specific location and duration of these installations and the wording on the pennants, and pays the City's administration fee, as set out in the Fees and Charges By-Law.

Sidewalk Sales

- 4.56 No person shall place a display of goods, merchandise or objects on a sidewalk, except in accordance with Sections 4.57 to 4.60.
- 4.57 The Downtown Business Improvement Area (B.I.A.) is authorized to sponsor two sales during July and August of each year on sidewalks within the designated improvement area, provided that it gives advance written notice to the Manager of Engineering of the specific locations and dates of these sales.
- 4.58 During an authorized sale, every person who operates a retail business within the designated improvement area may, during business hours, place a display of goods, merchandise and objects on the sidewalk adjacent to his or her permanent place of business, but no person shall place a display on a sidewalk in a location or in a manner that obstructs the movement of pedestrians or that interferes with the activities or adversely affects the condition or operation of the equipment or facilities of the City, its agents, or Utilities Kingston.
- 4.59 During an authorized sale, every person who operates a participating retail business shall be responsible for maintaining a portion of the sidewalk adjacent to his or her permanent place of business for the unobstructed movement of pedestrians that is at least 1.5 metres (5.0 feet) in width and that is kept free and clear of displays and of individuals who have stopped to inspect the displays.
- 4.60 At all other times, every person who operates a retail business within the designated improvement area may, during business hours, place a display of goods, merchandise and objects on the portion of the sidewalk that is immediately adjacent to his or her permanent place of business, but no person shall place a display that occupies more than 0.45 metres (1.5 feet) of the sidewalk or that interferes with the activities or adversely affects the condition or operation of the equipment or facilities of the City, its agents, or Utilities Kingston.
- 4.61 Despite Section 4.56, the Downtown Business Improvement Area (B.I.A.) is authorized to place flower boxes on sidewalks within the designated improvement area, provided that it gives advance written notice to the Manager of Engineering of the specific locations and duration of these installations.

Publication Boxes

- 4.62 Every person who proposes to place a publication box upon a highway shall make application for a permit in each calendar year during all or part of which the person proposes to place the box upon a highway.
- 4.63 No publication box shall be permitted upon a highway unless its proposed location is at least 100 metres (330 feet) from an existing retail business that sells or distributes the same publication.

- 4.64 A permit authorizing a publication box to encroach upon a highway, which shall be valid only for the duration of the calendar year for which it is issued.
- 4.65 If an authorized publication box is not maintained in a neat, clean and rust-free condition, the City, after giving notice to the permit holder, may remove and impound the publication box and, in that event, the permit holder or another person acting on the permit holder's behalf who wishes to recover the publication box shall be required to pay the amount of the costs incurred by the City in removing and impounding the publication box.

Temporary Hoarding and Covered Ways

- 4.66 Every owner of a property who proposes to construct temporary hoarding or a covered way upon a highway for the purposes of a construction project on that property shall make application for a permit.
- 4.67 No permit will be issued for temporary hoarding or a covered way unless appropriate measures are taken to ensure that staff of the City, its agents and Utilities Kingston can gain immediate access to manholes, vaults and similar facilities.
- 4.68 Every owner who obtains a permit in accordance with Section 4.66 shall be responsible for all costs incurred by the City, its agents and Utilities Kingston if it becomes necessary to remove and subsequently reinstate temporary hoarding or a covered way in order to gain access to a manhole, vault or similar facility.
- 4.69 If an owner proposes to construct temporary hoarding or a covered way upon a roadway, a daily occupancy fee, as set out in the Fees and Charges By-Law shall be payable in addition to the application fee.

(By-Law 2004-107; 2023-11)

- 4.70 If an owner proposes to construct temporary hoarding or a covered way upon a portion of a roadway which is regulated by parking meters, a daily fee to compensate the City for the loss of parking revenue, as set out in By-Law Number 495 or a successor to that by-law, shall be payable in addition to the application fee and the daily occupancy fee.
- 4.71 Every applicant for a permit shall agree to comply with the relevant requirements of the Construction Projects Regulation under the Occupational Health and Safety Act and with all other applicable legislation and regulations.
- 4.72 Every applicant for a permit shall agree to take all measures, including the installation of warning signs and barriers, as are necessary to protect the safety of persons using the highway.

- 4.73 Despite Section 4.66, an owner who, in an emergency situation or as a result of an order made under the Building Code Act to undertake remedial work, is required to construct temporary hoarding or a covered way upon a highway in order to protect the safety of persons using that highway, may construct the hoarding or covered way without having obtained a permit.
- 4.74 Every owner who constructs temporary hoarding or a covered way in accordance with Section 4.73 shall make application for a permit on the first subsequent day on which the offices of the City are open for business, and Sections 4.66 to 4.71 are applicable to the application.
- 4.75 A permit authorizing temporary hoarding or a covered way to encroach upon a highway shall be valid only for the time period specified in the permit.
- 4.76 Despite Section 4.75, a permit authorizing temporary hoarding or a covered way to encroach upon a highway that is the result of an order made under the Building Code Act shall be valid only until the date specified in the order for the completion of the remedial work.

Scaffolding

- 4.77 Every owner of a property who proposes to construct scaffolding upon a highway for the purposes of a construction or maintenance project on that property shall make application for a permit.
- 4.78 No permit will be issued for scaffolding unless appropriate measures are taken to ensure that staff of the City, its agents and Utilities Kingston can gain immediate access to manholes, vaults and similar facilities.
- 4.79 If an owner proposes to construct scaffolding upon a roadway, a daily occupancy fee, as set out in the Fees and Charges By-Law, shall be payable in addition to the application fee.
(By-Law 2004-107; 2023-11)
- 4.80 If an owner proposes to construct scaffolding upon a portion of a roadway which is regulated by parking meters, a daily fee to compensate the City for the loss of parking revenue, as set out in the Fees and Charges By-Law or a successor to that by-law, shall be payable in addition to the application fee and the daily occupancy fee.
(By-Law 2004-107; 2023-11)
- 4.81 Every applicant for a permit shall agree to comply with the requirements of the Construction Projects Regulation under the *Occupational Health and Safety Act* and with all other applicable legislation and regulations.
- 4.82 A permit authorizing scaffolding to encroach upon a highway shall be valid only for the time period specified in the permit.

Dumpsters and Other Objects or Equipment

- 4.83 Every owner of a property who proposes to place a dumpster or other object or equipment upon a highway for the purposes of a construction or maintenance project on that property shall make application for a permit.
- 4.84 Every application for a permit shall include provisions dealing with drainage matters that are sufficient to ensure that nothing from a dumpster or other object or equipment drains into a manhole, vault or similar facility.
- 4.85 No permit will be issued if the proposed location of a dumpster or other object or equipment will limit or prevent access to a manhole, vault or other facility.
- 4.86 If an owner proposes to place a dumpster or other object or equipment upon a roadway, a daily occupancy fee, as set out in the Fees and Charges By-Law, shall be payable in addition to the application fee.
(By-Law 2004-107; 2023-11)
- 4.87 If an owner proposes to place a dumpster or other object or equipment upon a portion of a roadway which is regulated by parking meters, a daily fee to compensate the City for the loss of parking revenue, as set out in the Fees and Charges By-Law or a successor to that by-law, shall be payable in addition to the application fee and the daily occupancy fee.
(By-Law Number 2004-107; 2023-11)
- 4.88 No dumpster or other object or equipment shall be permitted to encroach upon a highway unless its use is directly related to a construction or maintenance project on the property of the owner who is applying for the permit.
- 4.89 A permit authorizing a dumpster or other object or equipment to encroach upon a highway shall be valid only for the time period specified in the permit.

Existing Authorized Encroachments Upon Highways

- 4.90 Subject to section 4.6, every existing encroachment described in Schedule C that was authorized by a previous by-law is deemed to continue to be an authorized encroachment upon a highway.
- 4.91 Every existing encroachment that is authorized by Section 4.90 shall be maintained in a good state of repair by the owner of the property or the person who is responsible for the encroachment, as the case may be, so as not to pose a danger to the safety of persons using the highway, or to interfere with the activities or adversely affect the condition or operation of the equipment or facilities of the City, its agents, or Utilities Kingston.

- 4.92 If an existing encroachment that is authorized by Section 4.90 is not maintained in a good state of repair, the encroachment shall be deemed to be no longer authorized and, in this event, Sections 4.8 to 4.10 are applicable to the encroachment.

Long Term Road Occupancy Permits

- 4.93 Every owner of a property who proposes to utilize a portion of the public right of way for the purpose of temporarily extending their property to facilitate the development of the their lands for a period of time exceeding two weeks shall make application for a long term road occupancy permit.
(By-law Number 2004-107, 2007-208)
- 4.94 No permit will be issued for the long term use of the public right of way unless appropriate measures are taken to ensure that staff of the City of Kingston, its agents and Utilities Kingston can gain immediate access to manholes, vaults and similar facilities. In the event of an emergency to address existing underground infrastructure best efforts will be made to provide the applicant with 24 hours notice to vacate the area in order for staff to respond to the emergency.
(By-law Number 2004-107, 2007-208)
- 4.95 In the event that the encroachment impacts the general maintenance and construction activities of the City of Kingston and Utilities Kingston the applicant will be provided 15 working days notice to clear the encroachment area to enable staff to undertake the required works.
(By-law Number 2004-107, 2007-208)
- 4.96 An application fee as set out in the Fees and Charges By-Law is payable by the applicant to the City of Kingston.
(By-law Number 2004-107, 2007-208; 2023-11)
- 4.97 An occupancy fee as set out in the Fees and Charges By-Law is payable by the applicant in addition to the application fee.
(By-law Number 2004-107, 2007-208; 2023-11)
- 4.98 A parking fee shall be required whenever the project impacts an existing on-street or off-street public parking space(s). The applicant will be required, to the extent possible, to maintain continued access to all parking meters. In the event that access to a parking meter(s) cannot be maintained for any length of time during the term of the Road Occupancy Permit, the applicant shall be required to pay the applicable parking fees as set out in the Fees and Charges By-Law
(By-law Number 2004-107, 2007-208; 2023-11)
- 4.99 Every applicant for a permit shall provide the City with Liability Insurance in the amount required by the City in which the City is named as an additional insured.
(By-law Number 2004-107, 2007-208; 2023-11)

Long Term Road Occupancy Permits cont'd

4.100 An Engineer's estimate of the cost to restore the public infrastructure within the work area shall be provided to the Engineering Department for review and approval. A security deposit in the amount of the approved Engineer's estimate shall be provided to the City by the applicant to be refunded at such time as the encroachment area is restored and the City has inspected the site for any deficiencies and all repairs have been undertaken at the cost of the applicant.

(By-law Number 2004-107, 2007-208)

4.101 Every application for a permit shall include a work schedule, detailed drawings of the encroachment as well as a traffic plan which will include all signage for vehicular and pedestrian traffic according to the Ontario Traffic Manual Book 7, Temporary Conditions, all of which must be acceptable to the Engineering Department in its discretion.

(By-law Number 2004-107, 2007-208)

4.102 The permit shall be valid for the time specified on the permit. Should the applicant require extension of the permit an additional application fee will be required and review will be conducted to determine if an additional occupancy fee will be required.

(By-law Number 2004-107, 2007-208)

5. Exemptions:

5.1 Every encroachment upon a highway that has been authorized by or in accordance with the provisions of a by-law of the City, former City of Kingston, former Township of Kingston, former Township of Pittsburgh, or County of Frontenac is exempt from the provisions of this by-law.

5.2 The activities, infrastructure and equipment of the City, its agents, and Utilities Kingston are exempt from the provisions of this by-law.

5.3 The activities of Canada Post Corporation and its agents with respect to the placement of receptacles or devices upon highways for the collection, delivery or storage of mail are exempt from the provisions of this by-law.

5.4 The activities, infrastructure and equipment of companies and agencies that provide public utilities, electricity and telecommunications services upon highways are exempt from the provisions of this by-law if they are carried out in compliance with By-Law Number 99-174, "A By-Law To Establish Provisions For Right-Of-Way Cuts Within Any City Road Allowance Or Public Place", or a successor to that by-law, and with all other applicable requirements.

Exemptions cont'd

- 5.5 The activities upon highways of persons who are carrying out work or installing infrastructure in accordance with the terms and conditions of a subdivision or site plan agreement with the City are exempt from the provisions of this by-law.
- 5.6 Every private entrance upon a highway that complies with the requirements of the applicable by-law regulating private entrances or that is constructed in accordance with the terms and conditions of a subdivision or site plan agreement with the City is exempt from the provisions of this by-law.
- 5.7 Every rural mail box upon a highway that is erected and maintained in compliance with the requirements of the Mail Receptacles Regulations under the *Canada Post Corporation Act* is exempt from the provisions of this by-law.
- 5.8 A patio located upon a highway that is erected and maintained in accordance with the Street Patio Standards and Application Guide and/or that is authorized by a licence agreement and/or permit is exempt from the provisions of this By-Law.

(By-Law 2004-107; 2023-53)

6. Schedules:

The following schedules are attached to and form part of this by-law:

- | | |
|------------|---|
| Schedule A | Fees |
| Schedule B | Authorized Area Openings and Cellar Windows |
| Schedule C | Existing Authorized Encroachments. |

7. Offence And Penalty Provisions:

- 7.1 Any person who contravenes this by-law is guilty of an offence and, upon conviction, is subject to a fine as provided in the Provincial Offences Act and to any other applicable penalties.
- 7.2 If this by-law is contravened and a conviction entered, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty that is imposed, make an order prohibiting the continuation or repetition of the offence by the person convicted.

8. VALIDITY:

- 8.1 If a court of competent jurisdiction declares any provision, or any part of a provision, of this by-law to be invalid, or to be of no force and effect, it is the intention of Council in enacting this by-law that each and every

provision of this by-law authorized by law be applied and enforced in accordance with its terms to the extent possible according to law.

9. Commencement:

9.1 This by-law takes effect and comes into force on the day that it receives third reading and is passed.

Schedule A: Fees (including taxes)

Fees are set out in City of Kingston By-Law Number 2005-10, “A By-Law to Establish Fees and Charges to be Collected by the Corporation of the City of Kingston”, or a successor to that by-law.”

(By-Law Number 2004-107; 2023-11)

Schedule B:

Authorized Area Openings And Cellar Windows

At the following Municipal Addresses:

Brock Street 39
 75

Clarence Street 38
 40
 93
 95

Johnson Street 35
 45

King Street 318
 320
 322
 324
 326
 328
 348
 358

Market Street 16
 18

Montreal Street 4
 19
 39
 57

Ontario Street 176
 178

Schedule 'B'

Authorized Area Openings And Cellars Windows (continued)

Princess Street	49
	51
	53
	78
	93
	95
	105
	109
	111
	116
	118
	120
	137
	214/214A
	268
	344
	346
348	
350	
356	
Wellington Street	153
	167
	169
	171
	203

Schedule C:

Existing Authorized Encroachments

C-1 Fences And Hedges

Location of Encroachment	Type of Encroachment
428 Bagot Street	Fence – chain link, 1.2m (4 feet) high
472 Bagot Street	Fence – chain link, 1.2m (4 feet) high
45 Bay Street	Fence – wooden, 1.1m (3.5 feet) high
27 Carruthers Street	Fence – picket, 1.5m (5 feet) high
112 Casterton Avenue	Fence – wooden, 1.8m (6 feet) high
151 Charles Street	Fence – wire mesh, 1.2m (4 feet) high
10-12 Collingwood Street	Retaining Wall- concrete
564 Division Street	Fence
53 Earl Street	Fence – 1.1m (3.75 feet) high
388 Earl Street	Fence – 0.9m (3 feet) high
58 Lansdowne Street	Fence – cement block, 0.7m (2.3 feet) high
62 Livingston Avenue	Fence – picket, 1.1m (3.6 feet) high
61 Main Street	Fence – wooden, 1.2m (4 feet) high
184 Montreal Street	Fence – 1.2 (4 feet) high
Mowat Avenue at Baiden Street (NW corner)	Fence – picket, 0.9m (3 feet) high
21 Park Street	Fence – 0.9m (3 feet) high
66 Patrick Street	Fence and Curb
46 Raglan Road	Fence – Iron
104 Raglan Road	Retaining Wall – 1.5m (5 feet) long

Schedule C: Existing Authorized Encroachments**C-1 Fences And Hedges Cont'd**

210 Raglan Road	Stone Wall – 0.96m (3.17 feet) high
61-63 Rideau Street	Fence – 1.2m (4 feet) high
71 Rideau Street	Fence
335 Rideau Street	Fence – 1.2m (4 feet) high
6 Scott Street	Fence – chain link Hedge – 0.9m (3 feet) high
Wellington at Bay Street (SW corner)	Retaining wall
288-290 Wellington Street	Fence – 0.9m (3 feet) high
William at Clergy Streets (SE corner)	Fence – chain link, 1.2m (4 feet) high
53-55 William Street	Stone Wall – 0.9m (3 feet) high
228 Yonge Street	Fence – wooden, 1.8m (6 feet) high
96 York Street	Fence
35 Rideau Street	Refacing onto Ordnance Street (south side) by 0.152m (0.5 feet)
553 Union Street	Retaining Wall

(By-Law Number 2004-107; 2023-139)

C-2 Existing Buildings And Projections From Buildings

Location of Encroachment	Type of Encroachment
539 Bagot Street	Fire Escape and Wheelchair Ramp- 0.305m (1.0 foot) back from sidewalk
Bay Street (Providence Manor)	External Loading Dock
Brock Street (north side) between the sidewalk and Chown Memorial Hotel Dieu Parking Garage	Elevator
Brock Street (Queen's Hotel)	Fire Escape
2-4 Cataraqui Street	Wheelchair Ramp – extended sidewalk 14m (45.9 feet) long, 1.8m (5.9 feet) wide
Collingwood Street (east boulevard)	Concrete Stairwell – Queen's University, Leonard Hall
10-12 Collingwood Street	Wheelchair Ramp
46 Montreal Street (Queen Street side)	Fire Escape
317 Montreal Street	Staircase
172 Ontario Street	Fire Escape (Johnson Street)
237 Ontario Street	Stairway and Wheelchair Ramp
86-92 Quebec Street	Porch and Steps
275 Queen Street	Entrance
Sydenham Street (Providence Manor)	Entrance
Wellington at Bay Street (SW corner)	Eaves and Balconies
55 West Street	Stairs – approximately 1.7m (5.7 feet)

(By-Law 2004-107; 2023-202)

C-3 Directional Signs

Location of Encroachment	Type of Encroachment
Clergy and Princess Streets (NE corner)	Sign for Queen Street United Church
Division Street and Benson Street	Single-faced, lighted sign for Kingswood Plaza
Division and Pine Streets (NW corner)	Sign for Zion United Church
Division and Colbourne Street (SE and NW corners)	Signs for Free Methodist Church (2)
Division Street at Kirkpatrick Street	Sign for Kingston Irish Famine Commemoration Association
Johnson at Roden Street (north side)	Sign for Cookes-Portsmouth United Church
King and Centre Streets and Union and Centre Streets	Signs for Bellevue House (2)
McMichael Street and McMahon Avenue	Sign for Strathcona Park Presbyterian Church
Montreal Street at John Street	Sign for Frontenac County Schools Museum Association
Mowat Avenue at King and Johnson Streets	Sign for First Church of Christ Scientist
Princess Street (LaSalle Mews)	Directory of Occupants

C-3 Directional Signs (continued)

Location of Encroachment	Type of Encroachment
Bagot Street at Johnson Street Bagot Street (opposite the Hotel Dieu Hospital Emergency Entrance) Bath Road at Queen Mary Road Brock Street at Sydenham Street Johnson Street at King Street West King Street West at Barrie Street King Street East at Brock Street King Street West (opposite St. Mary's of the Lake Hospital) King Street East at Place d'Armes King Street West at West Street Ontario Street at Place d'Armes (northerly leg) Princess Street at Portsmouth Avenue Sir John A. Macdonald Blvd. at Counter Street Sir John A. Macdonald Blvd. at Princess Street (2 signs) Sir John A. Macdonald Blvd. at Johnson Street Sir John A. Macdonald Blvd. at King Street Sydenham Street at Johnson Street	Signs for Kingston General Hospital
Stuart Street (north side) across from Richardson House	1.2m (4 feet) square illuminated sign for Queen's University- Kingston General Hospital Parking Garage

C-3 Directional Signs (continued)

<p>King Street at Portsmouth Avenue Sir John A. Macdonald Boulevard at Bath Road Sir John A. Macdonald Boulevard at Counter Street Sir John A. Macdonald Boulevard at Dalton Avenue Sir John A. Macdonald Boulevard at Johnson Street Sir John A. Macdonald Boulevard at King Street Sir John A. Macdonald Boulevard at Princess Street Sir John A. Macdonald Boulevard north of Union Street Sir John A. Macdonald Boulevard at Union Street Union Street near Beverley Street</p>	<p>Signs for Queen's University and St. Lawrence College</p>
<p>Union Street Entrance to the Donald Gordon Centre</p>	<p>Queen's University Physical Plan</p>
<p>Weller Avenue and Division Street and Weller Avenue and Montreal Street</p>	<p>Signs for Holy Family Church (2)</p>

C-4 Historical Markers

Location of Encroachment	Type of Encroachment
251 Brock Street (Elizabeth Cottage) 134 Earl Street 180 Johnson Street 194 Johnson Street 225 Mowat Avenue 79-81 Wellington Street	Plaques – Government of Canada

C-5 Other

Location of Encroachment	Type of Encroachment
Arch Street (west side) north of Stuart Street (3) Albert Street (west side) north of King Street West (11) Queen's Crescent (SE corner) and Collingwood Street intersection (SE corner) (1) Union Street (north side) east of Alfred Street (5) Alfred Street (east side) north of Union Street (6) University Avenue (west side) north of Union Street (6) University Avenue (west side) south of Queen's Crescent (7) Stuart Street (north side) west of University Avenue (3) Queen's Crescent (south side) west of University Avenue (4) Barrie Street (west side) north of Deacon Street (9) Deacon Street (north side) west of Barrie Street (3) Arch Street (east side) north of Deacon Street (8) Stuart Street (north side) east of Albert Street (5) Collingwood Street (east side) north of King Street West (7)	Queen's University Pedestrian Light Fixtures
Bagot Street at Earl Street	Benches (2) and Receptacles-Memorial to the late Harry Kelly
2-4 Cataraqui Street	Planter 1.280m (4.2 feet) with two lamps on top of the planter and benches
Parkwood Place at Phillips Street	Flower Planters
Princess Street (north side) between Regent Street and Drayton Avenue	Trees – in planters (7)
449 Princess Street	Trees – in planters (2)
King Street West at Union Street and Mowat Avenue (junction)	Flower Planter not to exceed 600mm (2 feet) above surface of concrete island
400 King Street East at Barrack Street	Light Standards, tree grates, concrete pavers