

The Corporation of the Town of South Bruce Peninsula

By-Law Number 78-2024

**Being a By-Law to Delegate the Authority to
Enter into Agreements for Encroachment on
Public Lands**

Whereas Section 8 of the *Municipal Act, 2001*, as amended, provides that the powers of a municipality shall be interpreted broadly so as to confer broad authority to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

And whereas Section 9 of the *Municipal Act, 2001*, 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 11 of the *Municipal Act, 2001*, as amended, provides that a municipality may pass by-laws regarding matters within spheres of jurisdiction including highways, structures and parks;

And whereas Section 23.1 of the *Municipal Act, 2001*, as amended, provides authority for a Council to delegate its powers and duties;

And whereas Section 23.2 of the *Municipal Act, 2001*, as amended, provides authority for a Council to delegate its powers to an individual who is a member of its Council, an officer, employee or agent of the municipality and if the power being delegated is minor in nature;

And whereas throughout the Corporation of the Town of South Bruce Peninsula, there exists encroachment upon public lands;

And whereas the Council of the Corporation of the Town of South Bruce Peninsula is desirous of delegating the authority to enter into agreements to permit encroachments on public lands to Town staff, including the Mayor and Clerk.

Now therefore the Council of the Corporation of the Town of South Bruce Peninsula enacts as follows:

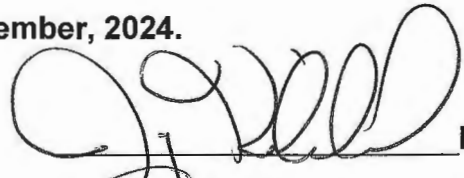
1. That for the purposes of this by-law, the following definitions shall apply:
 - 1.1 **Aerial Encroachment** – shall mean an encroachment that is located at least thirty (30) centimeters above the surface of public lands.
 - 1.2 **Clerk** – shall mean that person appointed by the Town, in accordance with the *Municipal Act, 2001*, as amended.
 - 1.3 **Encroachment** – shall mean any type of vegetation, man-made object or item of personal property of a person which exists wholly upon or extends from a person's

premises onto public lands and shall include any aerial, surface or subsurface encroachment.

- 1.4 **Mayor** – shall mean that person elected in accordance with the *Municipal Election Act, 1996*, as amended and having the roles and responsibilities of the position in accordance with the *Municipal Act, 2001*, as amended.
- 1.5 **Person** – shall include an individual, a sole proprietor, a partnership, an unincorporated association, a trust, a body corporate or a natural person.
- 1.6 **Public Lands** – means any lands owned by, leased, licensed to or under the management of the Town and shall include but not be limited to any public highway, road, street, avenue, parkway, lane, alley, right-of way, road allowance, access, square, place, viaduct or trestle, water, thoroughfare, way or bridge, park, woodland, greenbelt, storm water management facility, open space, cemetery, surface, grassed area, boulevard, ditch, curb, gutter and sidewalk.
- 1.7 **Sub-surface Encroachment** – shall mean an encroachment that is located beneath the surface of public lands to a depth exceeding three (3) centimeters.
- 1.8 **Surface Encroachment** – shall mean an encroachment that is located anywhere between the surface of public lands to a height less than thirty (30) centimeters and beneath the surface of public lands to a depth of not more than three (3) centimeters.
- 1.9 **Town Staff** – shall mean those persons employed by the Town and assigned such duties in service for the Town, as deemed appropriate
2. Town Staff will determine if it is appropriate, lawful and in the best interest of the Town to enter into an agreement for an encroachment upon public lands.
3. There is no requirement for Town Staff to permit an encroachment upon public lands or for Town Staff to authorize an agreement for an encroachment on public lands.
- 4.1 Town Staff are hereby delegated the authority to make the determination regarding the authorization, content and approval of an agreement for encroachment upon public lands.
- 4.2 Said authority shall include the request and implementation of any requirements to be met including but not limited to insurance, legal, survey and monetary requirements and any special or regular terms of agreement.
- 4.3.1 Wherever appropriate, in the sole discretion of Town staff, all structures and/or items that are to be part of any encroachment must be certified and/or approved by the appropriate licensed professional, governing body and regulatory authority and said certification and/or approval must be provided to the satisfaction of Town staff.
- 4.3.2 Any certification or approval required shall be considered to be mandatory and at the cost of the owner.

- 4.4.1 All encroachments must be included on a survey; the survey will form part of the agreement.
- 4.4.2 Surveys must be conducted by a professional, licensed to perform surveys in the Province of Ontario.
- 5. The Mayor and Clerk shall have the delegated authority to execute agreements as they relate to encroachment upon public lands and the provisions contained herein.
- 6. Town Staff will cause the agreements as they relate to encroachments on public lands to be registered on the respective titles of the properties affected by the agreements, whenever deemed appropriate to do so.
- 7. Fees and collection of associated fees, including an application fee and any fee for any services or things provided as they relate to the agreement for encroachment on public lands will be in accordance with those fees and provisions set in the Town Fee By-Law and in any agreement for encroachment.
- 8. All relevant policy, by-laws and legislation shall apply to the exercise of delegated authority authorized by this by-law.
- 9. The issuance or renewal of any encroachment agreement is not intended and shall not be construed as permission or consent by the Town for the owner of personal property to contravene or to fail to observe or comply with any relevant legislation.
- 10. This by-law will come into full force and effect upon the final passing thereof.

Read a first and second time this 19th day of November, 2024.




Mayor

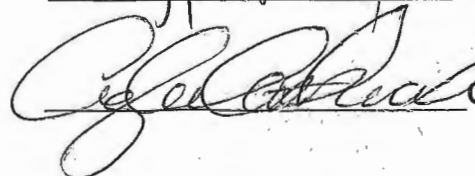


Clerk

Read a third time and finally passed this 19th day of November, 2024.



Mayor



Clerk