

BY-LAW NUMBER 13-37

OF

THE CORPORATION OF THE TOWNSHIP OF CLEARVIEW

Being a By-Law to impose an Encroachment Agreement Policy

Whereas, Section 11 (1) of the Municipal Act, 2001, S.O. 2001, c.25 (hereinafter the "Municipal Act, 2001") provides that a municipality may pass a by-law within the following spheres of jurisdiction: Highways, including parking and traffic on highways; culture, parks, recreation and heritage and structures, including fences and signs; and

Whereas, Section 9 of the Municipal Act, 2001 provides a municipality with natural person powers to enter into agreements; and

Whereas, Section 391 of the Municipal Act, 2001 provides that a municipality may pass by-laws imposing fees or charges on any class of persons for the use of its property including property under its control;

NOW THEREFORE, The Council of the Corporation of the Township of Clearview hereby enacts as follows:


1. That Schedule "A" – Encroachment Agreement Policy shall be deemed to form part of this by-law.
2. That the fees and charges as outlined in Schedule "A" shall be applied to every formal request for an encroachment agreement to Council.
3. That this By-law shall come into force and effect on date of passage.

By-Law Number 13-37 read a first, second and third time and finally passed this 8th day of July, 2013.


MAYOR


CLERK

POLICY & PROCEDURE

 <p>CLEARVIEW TOWNSHIP Established 1794</p>	<p style="text-align: right;">Page 1 of 3</p> <p>Created: June 21, 2013</p>
<p>Subject:</p> <p style="text-align: center;">ENCROACHMENT AGREEMENTS</p>	<p>Revised:</p>
<p>Approved By:</p>	<p>Date Approved:</p>

POLICY STATEMENT

The Township of Clearview recognizes that encroachment agreements may need to be entered into from time to time. Formal agreements between the Township and Property Owners are required whenever a permanent structure is placed on Township property to safeguard the best interests of both parties.

PURPOSE

This policy outlines the procedure to be undertaken when an encroachment agreement is requested by a property owner or agency.

APPLICATION FEE

An application fee of \$250.00 is due by the applicant upon receipt of application. Applicant is responsible for further fees including providing a Registered Plan or survey at time of application (if required) and registration of encroachment on title.

POLICY REQUIREMENTS

1. Process Overview

A property owner may apply to the Clerk's Department to request an encroachment agreement. The applicant is required to complete the required application form and pay the applicable fees as set out in this policy.

Upon receipt of a completed application form and applicable fees, the Clerk's Department will circulate notice of the application to relevant internal departments for their review and comment. The applicant will be required to submit a Registered Plan (R-Plan), survey or drawing (if waiver is signed) to the satisfaction of the Clerk's Department. The Township may require the applicant to submit an R-Plan or survey if Staff are unable to use the drawing required to comment on the proposed encroachment. This would be provided at the applicant's expense.

The Clerk's Department will assess the application together with the comments received from internal departments to determine Staff's support or not in a report to Council. If Council approval is granted, the Owner(s), Mayor and Clerk will execute an encroachment agreement, as authorized by by-law.

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The encroachment agreement will be registered on title to the encroacher’s property by their Solicitor and is not discharged until the encroachment is removed, no longer exists or has been brought to an end, as determined by Council, regardless of any change in ownership.

2. Encroachment Agreement Application Process

Procedure:

1. Owner to submit a complete application by mail or in person with the applicable fee.
2. Upon receipt of a complete application and applicable fee, the Clerk’s Department will take the required steps to open the file and process the application.
3. Site visit by staff (where deemed necessary).
4. Memo which may include maps, drawings or photos is circulated to appropriate departments for comments and review.
5. Comments received and additional investigation undertaken (if required). Commenting Departments may request access to an R-Plan for the property, if required.
6. Staff recommendation to Council made based on evaluation process as follows:

Approve	Refuse
<ul style="list-style-type: none"> - Conforms with Encroachment Policy - Conforms with the Township’s Zoning By-law - Approval from commenting Departments 	<ul style="list-style-type: none"> - The health and safety of the public could be in jeopardy - It is not in the public’s best interest - It is not minor in nature - Negative internal or external feedback. - Concerns presented by Staff cannot be satisfactory resolved



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7. If the application is denied:

- a) Notify the applicant by letter
- b) Inform Township By-law Enforcement for potential enforcement.

8. If application is approved:

- a) Three (3) Encroachment Agreements are executed by the Mayor and Clerk.
- b) Executed agreements are provided to Property Owner for execution. One (1) copy of the agreement to be provided back to the Township with confirmation of registration on title.
- c) Agreement will be retained by the Clerk's Department in accordance with the Municipal Records Retention Policy as approved by Council.

Encroachment Discharge Process

Procedure:

1. Owner submits written correspondence to the Clerk requesting a discharge of encroachment.
2. Upon receipt of correspondence, Clerk's Office Staff will take the required steps to open the file and process the request.
3. Site Visit by By-law Enforcement will confirm structure has been removed from Township property.
4. Staff will take a report to Council to rescind by-law and discharge agreement.
5. Certified copy of the by-law will be provided to the Property Owner to have the encroachment agreement discharged from the title.
6. Property Owner shall be responsible to ensure agreement is discharged from title and bore all costs associated with this task.