

THE RURAL MUNICIPALITY OF ROSSER

BY-LAW NO. 01-24

Being a By-law of the Rural Municipality of Rosser to regulate the construction and maintenance of encroachments.

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**WHEREAS** the Municipality is empowered by *The Municipal Act*, CCSM c. M225, to pass by-laws with respect to encroachments:

**Spheres of jurisdiction**

232(1) A council may pass by-laws for municipal purposes respecting the following matters:

- (a) the safety, health, protection and well-being of people, and the safety and protection of property;
- (b) people, activities and things in, on or near a public place or a place open to the public, including parks, municipal roads, recreation centres, restaurants, facilities, retail stores, malls, and private clubs and facilities that are exempt from municipal taxation;
- ...
- (e) private works on, over, along or under municipal roads;
- (f) property adjacent to highways or municipal roads, whether the property is publicly or privately owned;
- ...
- (h) drains and drainage on private or public property;
- ...
- (l) public utilities;
- ...
- (o) the enforcement of by-laws.

**Exercising by-law-making powers**

232(2) Without limiting the generality of subsection (1), a council may in a by-law passed under this Division

- (a) regulate or prohibit;
- (b) adopt by reference in whole or in part, with any changes the council considers necessary or advisable, a code or standard made or recommended by the Government of Canada or a province or a recognized technical or professional organization, and require compliance with the code or standard;
- (c) deal with any development, activity, industry, business, or thing in different ways, or divide any of them into classes and deal with each class in different ways;
- (d) establish fees or other charges for services, activities or things provided or done by the municipality or for the use of property under the ownership, direction, management or control of the municipality;
- (e) subject to the regulations, provide for a system of licences, permits or approvals, including any or all of the following:
  - (i) establishing fees, and terms for payment of fees, for inspections, licences, permits and approvals, including fees related to recovering the costs of regulation,

- (ii) establishing fees for licences, permits and approvals that are higher for persons or businesses who do not reside or maintain a place of business in the municipality,
- (iii) prohibiting a development, activity, industry, business or thing until a licence, permit or approval is granted,
- (iv) providing that terms and conditions may be imposed on any licence, permit or approval, and providing for the nature of the terms and conditions and who may impose them,
- (v) providing for the duration of licences, permits and approvals and their suspension or cancellation or any other remedy, including undertaking remedial action, and charging and collecting the costs of such action, for failure to pay a fee or to comply with a term or condition or with the by-law or for any other reason specified in the by-law, and
- (vi) providing for the posting of a bond or other security to ensure compliance with a term or condition;

**AND WHEREAS** the Municipality deems it expedient and in the public interest to establish a by-law to regulate the construction and maintenance of encroachments;

**NOW THEREFORE** the Council of the Rural Municipality of Rosser, duly assembled, enacts as follows:

#### **Short Title**

- 1 This By-law may be referred to as the “Encroachment By-law”.

#### **Definitions**

- 2 In this By-law:

“**Act**” means *The Municipal Act*, CCSM c M225;

“**applicant**” means the person who submits an application for an encroachment licence;

“**Approving Authority**” means Council, except in the case of an encroachment where the encroachment licence fee is less than \$25,000.00, in which case the Approving Authority is the Designated Officer, unless the Designated Officer refers the matter to Council for approval;

“**benefitting property**” means the property from which an encroachment extends into a road;

“**Council**” means the municipal council of the Municipality;

“**Designated Officer**” means the Chief Administrative Officer of the Municipality and any other person to whom the Chief Administrative Officer has delegated responsibility for enforcing or administering any part of this By-law;

“**encroachment**” means a building, structure, or object, or any portion thereof, that is located on, over, across, or below a road or a part of a road;

**“encroachment licence”** means a licence issued in accordance with this By-law that authorizes the construction or maintenance of an encroachment;

**“encroachment licence fee”** means the annual fee payable in respect of an encroachment for which an encroachment licence is issued, as calculated in accordance with this By-law;

**“licence holder”** means the person to whom an encroachment licence has been issued under this By-law;

**“Municipality”** means the Rural Municipality of Rosser;

**“owner”**, in respect of an encroachment, means

(a) where an encroachment licence has been issued in respect of the encroachment in accordance with this By-law, the licence holder; or

(b) the owner of the benefitting property;

**“road”** has the same meaning as a “municipal road” as defined in the Act, and for greater certainty includes the entire road right of way; and

**“utility infrastructure”** means infrastructure required by a utility to deliver services, including pipes, conduits, valves, manholes, hydrants, vaults, poles, overhead wires, metering devices, and pressure regulators.

### **Application**

3(1) This By-law does not apply to encroachments owned by the Municipality.

3(2) Council may waive any or all requirements of this By-law in respect of a specific encroachment, in the absolute discretion of Council.

### **Encroachments permitted to continue**

4(1) Despite anything else in this By-law, any encroachment that lawfully existed prior to the coming into force of this By-law is authorized to continue unless

(a) the owner of the encroachment fails or has failed to comply with

(i) any condition of the original approval of the encroachment;

(ii) any condition imposed on a licence issued in respect of the encroachment; or

(iii) any provision of any agreement in respect of the encroachment.

(b) the owner of the encroachment enlarges or alters, or permits the enlargement or alteration of, the encroachment; or

(c) the encroachment is damaged or destroyed by any means to the extent of 50% or more of the replacement value of the encroachment.

- 4(2) Where an encroachment that lawfully existed prior to the date on which this By-law is enacted fails to meet any of the requirements under subsection (1), the owner of the encroachment must
- (a) do all things that the Designated Officer reasonably determines to be necessary to ensure that the encroachment meets the requirements of this By-law; or
  - (b) remove the encroachment.

#### **General requirements for encroachments**

- 5(1) Except as otherwise permitted by this By-law, no encroachment shall be constructed or maintained without permission of the Designated Officer, who shall prescribe the form of application and licences.
- 5(2) The owner of an encroachment must not alter or enlarge the encroachment unless the alteration or enlargement of the encroachment is approved by the Designated Officer.
- 5(3) No person shall maintain or permit to be maintained, an encroachment if it interferes with any light, power, or telecommunication pole or wire, or any apparatus or appliance connected therewith, or with any utility infrastructure.

#### **Required alterations to encroachments**

- 6(1) The Designated Officer is authorized to require that the owner of an encroachment, at the owner's expense, complete repairs, alterations or reconstruction of the encroachment, within a period of time as determined by the Designated Officer, if the Designated Officer determines that the encroachment
- (a) requires repairs to eliminate or reduce the risk of harm to people, property or the environment; or
  - (b) requires alterations or reconstruction to accommodate
    - (i) any use of the road made or proposed to be made by the Municipality; or
    - (ii) the widening of the road.
- 6(2) Where the Designated Officer requires that an owner complete repairs, alterations or reconstruction of an encroachment under subsection (1), the owner must, within the specified timeframe,
- (a) complete the required repairs, alterations or reconstruction; or
  - (b) remove the encroachment.

## **Removal of encroachments**

- 7 If Council determines that an encroachment must be removed for any reason, the owner of the encroachment must, at the owner's expense, remove the encroachment to the satisfaction of the Designated Officer within the timeframe specified by Council, subject to the terms of any encroachment agreement in respect of the encroachment.

## **Encroachment licence required**

- 8(1) The owner an encroachment must not install or permit to be installed, or maintain or permit to be maintained, an encroachment unless and until he or she ensures that a valid encroachment licence has been issued in respect of the encroachment.
- 8(2) Despite subsection (1), an encroachment licence is not required for the following encroachments:
- (a) encroachments owned by Manitoba Hydro, Centra Gas, federally regulated telecommunications providers, and any other entities in respect of which the Municipality lacks legal jurisdiction to require encroachment licences;
  - (b) culverts and approaches constructed or maintained in accordance with RM of Rosser Policy TR – 14 “Culvert and Approach Policy (Commercial & Industrial)”, as amended or replaced; and
  - (c) culverts and approaches constructed or maintained in accordance with RM of Rosser Policy TR – 15 “Culvert and Approach Policy (Rural Residential and Agricultural)”, as amended or replaced.

## **Encroachment licence application**

- 9(1) The Designated Officer is authorized to determine the form in which an application for an encroachment licence must be submitted.
- 9(2) An application for an encroachment licence may be submitted by
- (a) the owner of the encroachment; or
  - (b) any person on behalf of the owner with the owner's permission.
- 9(3) An applicant must ensure that an application for an encroachment licence includes
- (a) payment of the application fee set out in the Fees and Charges By-law, as amended or replaced, unless waived by the Designated Officer; and
  - (b) all information that the Designated Officer determines is reasonably necessary for Council to assess and decide in respect of the application, which may include drawings and specifications and a plan prepared and certified by a Manitoba Land Surveyor in respect of the proposed encroachment.

- 9(4) The Designated Officer may require all information for the application and may on a failure to provide the necessary information return or refuse an application for an encroachment if the application fails to meet any of the requirements of this section.

### **Application approval**

- 10(1) The Designated Officer, on receipt of an encroachment licence application that is compliant with section 9, shall refer the application the Approving Authority for approval.
- 10(2) Despite subsection (1), the Approving Authority is not obligated to approve any application for an encroachment licence.
- 10(3) The Approving Authority may refuse to approve any application for an encroachment licence if the encroachment is not desirable or in the public interest, as determined by the absolute discretion of the Approving Authority.

### **Issuance of encroachment licences**

- 11 The Designated Officer may issue an encroachment licence where
- (a) the Approving Authority has approved the application for the encroachment licence;
  - (b) the applicant has paid the applicable fee; and
  - (c) where required by the Approving Authority, the owner of the encroachment has entered into an encroachment agreement with the Municipality pursuant to this By-law.

### **Conditions on an encroachment licence**

- 12(1) The Approving Authority may impose any conditions on an encroachment licence that it deems necessary.
- 12(2) The licence holder shall comply with all conditions imposed on an encroachment licence.
- 12(3) It is a condition of every encroachment licence that
- (a) the licence holder and the owner of the encroachment must permit entry at any reasonable time, without notice, by the Designated Officer to the property in respect of which the encroachment licence was issued for the purposes of conducting inspections or otherwise administering or enforcing this By-law;
  - (b) subject to the terms of any encroachment agreement entered into in respect of the encroachment, an encroachment exists at the pleasure of Council and the owner of the encroachment must remove the encroachment, at the

owner's expense, when required by Council and within the timeframe established by Council;

- (c) the licence holder and the owner of the encroachment must ensure that the encroachment complies at all times with this By-law; and
- (d) the licence holder and the owner of the encroachment must indemnify the Municipality against any claims, damages, costs, and expenses caused by or related to the existence, maintenance, or use of the encroachment.

### **Encroachment licence fee**

- 13(1) Subject to the terms of an encroachment agreement, a licence holder shall pay an annual encroachment licence fee at the time an encroachment licence is issued, and in subsequent years no later than June 30 of each year, until the encroachment in respect of which the encroachment licence was issued is removed to the satisfaction of the Designated Officer.
- 13(2) The amount of the encroachment licence fee is the amount set in the Fees and Charges By-law, as amended or replaced, for the encroachment in respect of which the encroachment licence was issued. The total amount of the encroachment licence fee shall be calculated by the Designated Officer.
- 13(3) Notwithstanding any other provision of this By-law, the Approving Authority may waive the encroachment licence fee, in the absolute discretion of the Approving Authority.

### **Cancelling an encroachment licence**

- 14(1) On reasonable notice to a licence holder, the Designated Officer may cancel an encroachment licence if
  - (a) the licence holder fails to comply with
    - (i) this By-law;
    - (ii) a condition of the encroachment licence; or
    - (iii) subject to the provisions of the encroachment agreement, any provision of an encroachment agreement in respect of the encroachment authorized by the encroachment licence;
  - (b) the Designated Officer determines that the applicant provided false or misleading information in the application that affected the decision of the Approving Authority to approve the encroachment licence; or
  - (c) unless otherwise specified in the encroachment licence, any fee or charge associated with the encroachment licence is not paid within 30 days following the date on which the fee or charge is due and payable.

### **Transferring an encroachment licence**

- 15 An encroachment licence or encroachment agreement may not be transferred or assigned to a different licence holder, encroachment, or location without the consent of the Approving Authority.

### **Encroachment agreements required**

- 16(1) Where an application for an encroachment licence is approved in accordance with this By-law, the Approving Authority may require the owner of the encroachment to enter into an encroachment agreement with the Municipality.
- 16(2) Without limiting the generality of subsection (1), an encroachment agreement may require the owner to
- (a) obtain and maintain commercial general liability insurance, including third party liability insurance, with the Municipality added as an additional insured and an endorsement to provide the Municipality with written notice of cancellation;
  - (b) provide a bond of indemnity in an amount sufficient to indemnify the Municipality in the event of damages, costs, and expenses suffered or incurred by the Municipality caused by or related to the existence, maintenance, or use of the encroachment;
  - (c) pay all direct costs of the Municipality resulting from the construction and maintenance of the encroachment, such as permitting, utility coordination, legal and engineering costs, and inspections; and
  - (d) pay all indirect costs of the Municipality that may be associated with the encroachment, such as road degradation or other overhead costs.

### **Penalties**

- 17(1) The failure to pay any amount payable under this By-law within the time required is a contravention of this By-law.
- 17(2) All amounts payable under this By-law are an amount owing to the Municipality and may be collected by the Municipality in the same manner as a tax.

### **Enforcement**

- 18(1) This By-law shall be enforced pursuant to the Municipality's General Enforcement By-law, as amended.
- 18(2) The Designated Officer may take whatever action or measures are necessary to remedy a contravention of this by-law in accordance with the Municipality's General Enforcement By-law and the Municipality's enforcement policy and procedures.

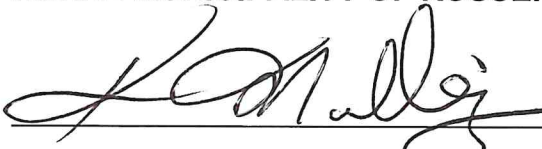


**Coming into force**

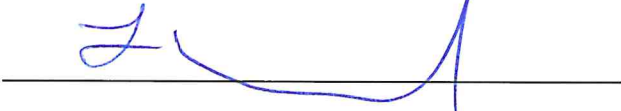
19 This By-law shall come into force on the day it receives third reading.

DONE AND PASSED by the Council of the Rural Municipality of Rosser, in Council duly assembled, in Rosser, Manitoba, this 23 day of January, 2024.

**RURAL MUNICIPALITY OF ROSSER**



Reeve: Kenneth Mulligan



Chief Administrative Officer: Larry Wandowich

READ a First time this 9 day of January, 2024  
READ a Second time this 23 day of January, 2024  
READ a Third time this 23 day of January, 2024