

# The Corporation of the City of Kawartha Lakes

## By-Law 2018-

### City Lands Encroachment By-Law

#### Recitals

1. Whereas section 11(2)(4) of the *Municipal Act, 2001*, provides that a municipality may pass by-laws respecting public assets of the municipality acquired for the purpose of exercising its authority under the *Municipal Act, 2001*.
2. And whereas section 425(1) of the *Municipal Act, 2001*, provides that a municipality may pass by-laws providing that a person who contravenes a by-law of a municipality is guilty of an offence.
3. And whereas section 426(1) of the *Municipal Act, 2001* provides that no person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under a by-law passed under the *Municipal Act, 2001*.
4. And whereas section 429 of the *Municipal Act, 2001* provides that a municipality may establish a system of fines.
5. And whereas section 446 of the *Municipal Act, 2001* provides that a municipality may proceed to do things at a person's expense which that person is otherwise required to do under a by-law or otherwise but has failed to do.
6. And whereas section 446 of the *Municipal Act, 2001* provides that the costs incurred by a municipality in doing a thing or matter under section 446 may be recovered by adding the costs to the tax roll and collecting them in the same manner as taxes.

**Accordingly, the Council of The Corporation of the City of Kawartha Lakes enacts this By-law 2018- .**

#### **Section 1.00: Definitions and Interpretation**

1.01 **Definitions:** In this by-law,

**“Building”** shall include, but not be limited to, such things as porches, steps, staircases, awnings, and decks;

**“Commercial Patio”** means any encroachment onto City-owned lands that is not a permanent building or structure, but primarily consists of tables, chairs or other furniture established or used for the purpose of extending retail business operations or the serving area of a restaurant or tavern;

**“City”, “City of Kawartha Lakes” or “Kawartha Lakes”** means The Corporation of the City of Kawartha Lakes and includes its entire geographic area;

**"City Clerk"** means the person appointed by Council to carry out the duties of the clerk described in section 228 of the *Municipal Act, 2001*;

**“Council” or “City Council”** means the municipal council for the City;

**“City Owned Lands”** means lands owned by or leased or licensed to or under the management of the City, City easements, and shall include but

not be limited to any road, lane, public highway, right of way, the Victoria County Rail Trail, shoreline road allowance, unopened road allowance, park, woodland, greenbelt, storm water management facility, open space, municipal golf course, municipal cemetery, and lands in which the City holds any real property interest and all parts thereof, including any surface, grassed area, boulevard, ditch, curb, gutter and sidewalk;

**"Easement" or "Right-of-Way"** means an interest in land owned by another person, consisting of the right to use or control that land, or an area above or below it, for a specific limited purpose and expressly or by implication may preclude certain encroachments, including interests created by a license;

**"Encroachment"** means any type of vegetation, structure, building, man-made object or item of personal property of a person which exists wholly upon, or extends from that person's premises onto, City-owned lands and shall include any aerial, surface or subsurface encroachments and shall also include but is not limited to, any activity that results in a removal, addition, alteration, or material change to the City-owned Lands;

**"Encroachment Agreement"** means an agreement prepared by the City for execution by the City and a person by which such person is granted authorization to erect, place, or maintain an encroachment on City-owned Lands;

**"Expenses"** means any and all sums of money actually spent or required to be spent by the City and shall include but not be limited to all charges, costs, administrative fees, taxes, HST, outlays, legal fees, and losses;

**"Highway"** includes a common and public highway (as defined at section 26 in the *Municipal Act, 2001*), street, avenue, parkway, laneway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof;

**"Manager of Municipal Law Enforcement"** means the person who holds that position and his or her delegate(s) or, in the event of organizational changes, another person designated by Council.

**"Municipal Act"** means the *Municipal Act, 2001* or any successor thereto;

**"Municipal Law Enforcement Officer"** means a person appointed by Council under section 15 of the *Police Services Act* to enforce the by-laws of the City, and includes the Licencing Officer.

**"Owner"** means the registered owner of a parcel of real property from which an encroachment emanates as such person is described in the records of the Land Registry Office;

**"Person"** means an individual, partnership, association, firm, corporation, business entity, club, incorporated group or organization, federal or provincial government, crown agent, school board and regional or other municipality;

**"Personal Property"** means any object or item of property (chattels and including fixtures) other than real property;

**"Premises"** means a parcel of real property under registered ownership and includes all buildings and structures thereon;

**"Realty Services Clerk"** means a person who holds that position.

**"Realty Services Manager"** means the person who holds that position and his or her delegate(s) or, in the event of organizational changes, another person designated by Council.

**"Site Improvements"** shall include, but not be limited to, retaining walls curbs, and sprinkler systems; and

**"Unauthorized Encroachment"** means any encroachment not authorized by this by-law, any other by-law, statute, regulation, policy, or resolution of the City, or written agreement with or approval by the City (patio license issued by Engineering & Corporate Assets Department, road occupancy permit or driveway entrance permit issued by Public Works Department, or otherwise).

1.02 **Interpretation Rules:**

(a) The Schedules attached to this by-law form part of the by-law, and are enforceable as such.

(b) The words "include" and "including" are not to be read as limiting the meaning of a word or term to the phrases or descriptions that follow.

1.03 **Statutes:** References to laws in this by-law are meant to refer to the statutes, as amended from time to time, that are applicable within the Province of Ontario.

1.04 **Severability:**

If a court or tribunal of competent jurisdiction declares any portion of this by-law to be illegal or unenforceable, that portion of this by-law shall be considered to be severed from the balance of the by-law, which shall continue to operate in full force and effect.

This by-law shall not exempt any person from the requirement to comply with any other City by-law. In the event of conflict between the provisions of this by-law, of any encroachment agreement approved after the passing of this by-law, and of any other City by-law, the more restrictive provisions shall apply.

**Section 2.00: Encroachments Prohibited**

2.01 No person shall erect, place, maintain, or carry on, or cause to be erected, placed, maintained, or carried on an encroachment of any kind on City-owned lands except as may be permitted under any by-law, statute, regulation, policy, resolution of the City, or agreement, or where permitted to do so by way of an encroachment agreement, and in accordance with the terms of that agreement, or otherwise in accordance with this by-law.

**Section 3.00: Application for Encroachment – Land Management Committee**

3.01 Any person who wishes to erect, install, maintain, or carry on an encroachment on, or encroach upon, City-owned lands shall be required to submit a request to the Public Works Department for a road occupancy permit or driveway entrance permit, an application to the Engineering & Corporate Assets Department for a patio license, or a request to the Land Management Committee (defined per the Land Management Policy 032-CAO-005) via application to the Realty Services Division in all other cases, seeking permission to do so, together with drawings or plans sufficient to describe the encroachment to the City's satisfaction, and payment of the applicable non-refundable encroachment application fee as set by the City by-law from time to time.

a) The application fee to the Land Management Committee shall be, for encroachment agreements entered into for the period January 1, 2018 to December 31, 2018, \$125.00 as per By-law 2010-118, and as amended upwards for future periods by the City per updates to the Consolidated Fees and Charges By-law 2016-206, at Schedule A-4.

- b) The annual fee for encroachment agreements granted per the Land Management Committee shall be:
  - i) \$125.00, for minor encroachments (stairs, small portion of a building, sign, etc.);
  - ii) \$150.00 for a dock or boathouse;
  - iii) \$200.00 for major encroachments (shed, garage, etc.)
  - iv) \$6,000.00 for co-location of equipment on City-owned tower / building; and
  - v) \$13,000.00 for tower.

## **Section 4.00      Review of Applications to the Land Management Committee**

- 4.01 The Land Management Committee will review the application and may object to the erection, installation, and maintenance of an encroachment on, or encroachment onto City-owned Lands or require that specific conditions be imposed in an encroachment agreement, on the basis that:
- a) the encroachment interferes with the City's intent and purpose in holding the City-owned land;
  - b) the encroachment creates an unsafe condition;
  - c) the encroachment creates liabilities for which the City cannot assign full responsibility to the owner of said encroachment;
  - d) the encroachment creates a situation that is contrary to the any City by-law, City policy or resolution, or any provincial or federal regulation or legislation;
  - e) the encroachment interferes with work, plans, efforts, or initiatives of the City to maintain City-owned lands;
  - f) the encroachment interferes with any utility or other similar installation located on City-owned lands;
  - g) the applicant is unable to reasonably demonstrate a need for the encroachment;
  - h) the encroachment is not an aesthetic improvement or does not maintain the current aesthetics of City property;
  - i) the encroachment interferes with public use of the space or the general public interest in the space (reduced views, reduced ability to travel over or use the property in the vicinity of the encroachment, etc.); or
  - j) any other reason as set out by the Land Management Committee and communicated in writing to the applicant.
- 4.02 When there are objections from the Land Management Committee to the erection, installation, maintenance, or carrying on of an encroachment on any basis set-out in Section 4.01, the application will be denied by the Land Management Committee and the Land Management Committee, via the Realty Services Division, will notify the applicant In writing that the application has been denied and the reason therefore.
- 4.03 In the event that there are no objections from the Land Management Committee to the encroachment being applied for:
- a) The applicant shall be required to execute an encroachment agreement and to pay the applicable encroachment agreement fee and annual fees as set out above. The form and content of the encroachment agreement shall be as established by the Realty Services Division and revised from time to time and may include additional conditions that are deemed to be appropriate to protect the City's interests; and

- b) Subject to the completion of the requirements under Subsection (a), execution of the agreement that will create a registered interest on title is as set out in section 5.04 of the Signing Authority By-law 2016-009, as amended. When the agreement is not registered on title, execution is as set out in section 5.05 of the Signing Authority By-law 2016-009, as amended.
- 4.04 An applicant who wishes to speak to an application that has been denied under Section 4.02 of this By-law may apply to the Clerks' Office to make a deputation before City Council at a Special Meeting of Council, in accordance with the procedural rules governing conduct at Council as set out in By-law 2014-266. In accordance with the Procedural By-law, Council may hear the deputation and decide to do nothing, or a Council member may, by direct motion on the floor of the following Regular Council meeting, refer the matter back to Staff to bring forward a Report and recommendation to Council for consideration.
- 4.05 Encroachment agreements exclusively related to buildings or site improvements may be for a perpetual term and registered on title. Generally, encroachment agreements will be for a term of five years, but may be for such other lesser or greater term, or include renewals or overhold provisions, as the Land Management Committee may advise. All encroachment agreements may be terminable by the City upon written notice.

## **Section 5.00 Registration of Agreements**

- 5.01 Encroachment agreements may be registered in the land registry office against title to the real property from which the encroachment emanates and all expenses in doing so shall be paid for in advance by the applicant to the City. Encroachment agreements under this By-law will be assignable or transferable to succeeding owners registered on title and subject to prior written notice to the City.

## **Section 6.00 No Vested Rights**

- 6.01 The execution of an encroachment agreement in respect of an encroachment does not create any vested right in the owner or occupant of the premises to which the encroachment is appurtenant, or in any other person; and the encroachment agreement may be terminated or suspended in accordance with the terms set out in this By-law or in the encroachment agreement.

## **Section 7.00 Access to Encroachments**

- 7.01 No person shall obstruct, hinder, or interfere with the free access to any encroachment on City-owned lands by a Municipal Law Enforcement Officer, an employee, officer or agent of the City.

## **Section 8.00 Removal and Restoration**

- 8.01 Where the City becomes aware of an unauthorized encroachment on City-owned lands, and:
- a) the encroachment, in the opinion of any Municipal Law Enforcement Officer, poses an imminent safety hazard, the Municipal Law Enforcement Officer may, using City forces or independent contractors, at his or her discretion, remove, fill in, close up and secure the unauthorized encroachment and restore the City-owned lands to their former condition at the expense of the owner, such expense to be recovered in full in a manner provided in Section 9. The owner of any encroachment so removed shall be notified in writing by a Realty Services Division Clerk of said removal and the rationale therefore and, by way of invoice, the cost in relation thereto claimed by the City, as soon as reasonably practicable following said removal.

- b) the encroachment, in the opinion of a Municipal Law Enforcement Officer, does not pose an imminent safety hazard, a Realty Services Division Clerk may give notice in writing to the owner to, within 30 days of the date set out in the notice, remove, fill in or close up the encroachment, and to restore the City-owned lands to their former condition at the expense of the said owner.
  - c) Where the notice in section 8.01(b) is not complied with within 30 days of the date on the notice, a Municipal Law Enforcement Officer may, using City forces or independent contractors, at his or her discretion, remove, fill in, close up, and secure the unauthorized encroachment and restore the City-owned Lands to their former condition at the expense of the owner, such expense to be recovered in full in the manner provided in Section 8.00 provided, however, that:
    - i) If an application is made for an encroachment agreement within 30 days of the date on the notice, a Municipal Law Enforcement Officer shall not proceed to take such action until the application has been fully disposed of and in accordance with Section 8.01(e) and Section 8.02; or
    - ii) if a request for an appeal is made under Section 4.05 within 30 days of the date on the notice advising that an application has been denied, a Municipal Law Enforcement Officer shall not proceed to take such action until the appellant has had an opportunity to be heard by City Council or withdraws his or her request for a deputation and in accordance with Section 8.02.
- 8.02 Where an application has not been approved and has not been advanced to Council in accordance with Section 8.01(e) of this By-law, or where the matter has advanced to City Council and City Council has ultimately decided not to take direct action in the matter, and where written notice of such outcome has been delivered to an applicant by the Realty Services Division, the applicant shall, within 30 days of the date of such notice, remove or cause to be removed such encroachment and restore the City-owned lands to their former condition at no cost to the City and cease encroaching upon the City-owned lands. Where the encroachment has not been removed within 30 days of the notice, a Municipal Law Enforcement Officer may, using City forces or independent contractors, at his or her discretion, remove, fill in, close up, and secure the unauthorized encroachment and restore the City-owned lands to their former condition at the expense of the owner and the expenses associated therewith may be recovered in full in the manner provided in Section 9.00.
- 8.03 Any materials or structures forming part of or attached to the encroachment and removed by or on behalf of the City may, at the discretion of a Municipal Law Enforcement Officer, either be deposited at the owner's premises with consent of the owner, or shall become the property of the City without compensation to the prior owner and may be disposed of in a manner at the discretion of the Municipal Law Enforcement Officer.
- 8.04 The City shall not be responsible for any damage to materials or structures forming part of or attached to the encroachment, arising from the removal of any encroachment by or on behalf of the City, its employees or its agents. Without limiting the foregoing, a Municipal Law Enforcement Officer and any contractors hired to undertake work under this by-law together with any person under their direction may, in carrying out work authorized by this by-law take all reasonable steps required to secure any remaining portion of the materials and structure following removal of the portions thereof which encroach on City-owned Lands.

## **Section 9.00 Recovery of Expenses**

- 9.01 All expenses incurred by the City in connection with the removal of an encroachment, restoration of City-owned lands, and all other expenses in

carrying out the actions authorized under this by-law shall be paid by the owner and shall be due within 30 days of the billing date set out on the invoice and, in the event of failure to pay the entire amount due within the said 30 days, interest may be applied at the rate of 15% annually and at the discretion of the City and subject to applicable legislation, the outstanding balance of the invoice plus interest may thereafter be added to the tax roll of the property from which the unauthorized encroachment emanates for the year in which the expenses were billed and collected in the same manner as taxes.

## **Section 10.00    Infractions and Penalties**

- 10.01 Every person who encroaches on City property in contravention of section 2.01 of this by-law, or who obstructs an officer in contravention of section 7.01 of this by-law, is guilty of an offence and, on conviction, is liable to a maximum penalty as set out in section 61 of the *Provincial Offences Act* R.S.O. 1990, c.P.33, as amended from time to time or any successor thereof.

## **Section 11.00    Exceptions – Boulevards**

- 11.01 Notwithstanding any provision in this by-law, the owner of an adjacent property may, without any further approval from the City, create and maintain encroachments on boulevards in accordance with Schedule "A" to this By-law.
- 11.02 Any encroachments on a boulevard that is not in accordance with Schedule "A" shall only be permitted by way of an encroachment agreement.

## **Section 12.00    Exception – Post Boxes, Mail Boxes, Newspaper Boxes**

- 12.01 This by-law shall not apply to post boxes and mail boxes used for or by Canada Post collection or deliver services which are located on City-owned lands.
- 12.02 This by-law shall not apply to newspaper, magazine, or other similar boxes located on City-owned lands. Persons wishing to locate and maintain such boxes on City-owned Lands will be required to enter into another form of agreement with the City for permission to do so.

## **Section 13.00    Commercial Patios**

- 13.01 Commercial patios may be permitted only by way of an encroachment agreement and the provisions of Schedule "B" of this by-law shall apply to and be contained within all such agreements.

## **Section 14.00    General**

- 14.01 A Municipal Law Enforcement Officer may under this By-law, accompanied by any person under his or her direction, enter onto any land from which an encroachment emanates and into any encroaching building, structure, or parts thereof except for any room or place actually being used as a dwelling (which may only be entered in accordance with Section 430 of the *Municipal Act, 2001*) at any reasonable time for the purposes of determining whether there is compliance with this by-law including, but not limited to, confirming and determining property limit. A Municipal Law Enforcement Officer acting under this Section shall produce proper identification upon request.
- 14.02 Where work is authorized to be undertaken by or on behalf of the City pursuant to this By-law, the City may enter upon land and into structures for that purpose at any reasonable time in accordance with Section 427(2) of the *Municipal Act, 2001*. For this purpose, a Municipal Law Enforcement Officer and contractors hired to undertake work under this By-law

accompanied by any person under their direction, may enter onto the land from which the encroachment emanates and into any encroaching building, structure, or parts thereof except for any room or place actually being used as a dwelling (which may only be entered in accordance with Section 430 of the *Municipal Act, 2001*) at any reasonable time for the purpose of undertaking work authorized under this by-law. A Municipal Law Enforcement Officer or contractor hired to undertake work under this by-law and acting under this Section shall produce proper identification upon request.

14.03 The Manager of Realty Services or City Solicitor may suspend or terminate an encroachment agreement on behalf of the City for:

- a) breach of any of the terms of an encroachment agreement or of this by-law or any other City by-law; and
- b) on such other terms as may be set out in an encroachment agreement.

Further, the Manager of Realty Services or City Solicitor may suspend an encroachment agreement in the event that the City is undertaking or has authorized other including any utility or other occupant of the City-owned lands to undertake work on the City-owned lands and in which case no reinstatement fee shall be applicable and the owner shall remove the encroachment if so requested by the City during the suspension. In the event of such suspension or termination, the owner shall, upon deemed delivery of notice of such suspension or termination, immediately discontinue the use of the encroachment and remove the encroachment from the City-owned lands. If the owner of the encroachment fails to complete the removal within twenty-four hours of said notice of suspension nor termination, a Municipal Law Enforcement Officer may, using the City's forces or independent contractors, at his or her discretion, remove, fill-in, close-up and secure the unauthorized encroachment and restore the City-owned lands to their former condition at the expense of the owner and the expenses therewith may be recovered in full in accordance with Section 9.00.

14.04 A suspension under Section 14.03 shall be in writing from the Realty Services Division and shall be in effect for a minimum of 24 hours from the date and time of deemed delivery of such notice. An encroachment agreement that has been suspended under Section 14.03, may be reinstated by payment of the applicable reinstatement fee as established by the City from time to time, and the provision of evidence, when reasonably possible, to the satisfaction of the Realty Services Division that the reason for the suspension has been remedied.

14.05 Notices under this by-law shall be deemed sufficient if delivered in person, by regular mail, by facsimile, by courier, by electronic mail, or by registered mail to the address of the property from which the encroachment emanates and the last known address of the registered owner of the property from which the encroachment emanates, if different. Any such notice shall be conclusively deemed to have been given and received upon the same day if personally delivered or sent by facsimile, or, if mailed, three business days after same is mailed.

14.06 In this by-law, unless the context otherwise requires, words imparting the singular number shall include the plural, and words imparting the masculine gender shall include the feminine, and further, the converse of the foregoing also applies where the context so requires.

14.07 In addition to the provisions of this by-law, the City may at any time apply to a court of competent jurisdiction to require compliance with this by-law.

14.08 Notwithstanding any provision of this by-law, the application of this by-law is not intended to, nor shall it, expand the existing contractual rights of the City in its easements, rights-of-way, or any other partial interests in real property held by the City.



**Section 15.00: Effective Date**

15.01 This By-law shall come into force on the date it is finally passed.

By-law read a first, second and third time, and finally passed, this 13<sup>th</sup> day of February, 2018.

\_\_\_\_\_  
Andy Letham, Mayor

\_\_\_\_\_  
Cathie Ritchie, City Clerk

Schedule "A" To City Of Kawartha Lakes  
By-Law Number 2018-  
Passed This 13<sup>th</sup> Day of February, 2018

**Boulevard Encroachments not Requiring City of Kawartha Lakes  
Approval**

**Section 1.00 Definitions and Interpretation**

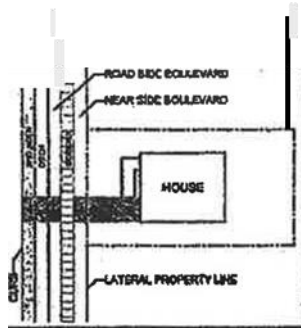
1.01 Definitions: In this Schedule "A"

**"Plant"** means any vegetation that is not a shrub, hedge, or tree.

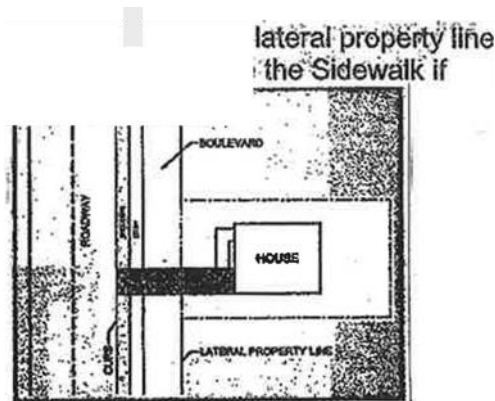
**"Road Side Boulevard"** means that part of a Highway located between a Sidewalk and:

- a) the Curb;
- b) the Shoulder; or
- c) the edge of a Ditch located furthest from the Curb, whichever is more distant from the Roadway;

**"Near Side Boulevard"** means that part of a Highway located between the lateral property line, when a Sidewalk exists:



**"Boulevard"** means that part of a Highway located between the Curb or Shoulder of the Roadway or the edge of a Ditch furthest from the Curb, whichever is more distant from the Roadway, and the lateral property line of the Highway, but for greater clarity does not include the Sidewalk if one exists or a Ditch if one exists:



**"Corner Lot Sight Area"** means that part of a Boulevard adjacent to a corner lot that is bound by the Curbs of the intersecting streets and a line extending through the points on each lateral property line measured 9.0 metres from the point of intersection of the lateral property lines:



**"Curb"** means the lateral boundary of the Roadway, whether such lateral boundary is physically marked or not.

**"Director of Engineering & Corporate Assets"** means the Director of Engineering & Corporate Assets of the City of Kawartha Lakes or his or her designate or successor.

**"Ditch"** means that part of a Highway that was designed or exists for the purpose of storing or carrying storm water.

**"Hard Landscaping"** means any paving stone, boulder, stone, gravel, concrete, asphalt, rail, or any other hard material.

**"Roadway"** means the part of the Highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the Shoulder.

**"Shrub"** means a low woody perennial plant usually having several major branches.

**"Sidewalk"** means the Improved portion of a Highway that is intended primarily for the use of pedestrians and is situated between the Curb or Shoulder of the Roadway, when one exists, and the lateral property line of the Highway.

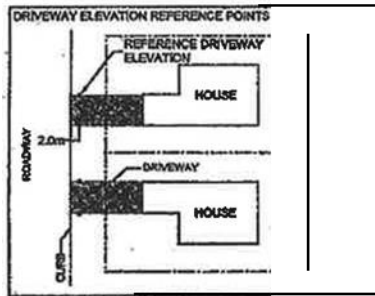
**"Shoulder"** means that part of a Highway which is not the Roadway and is immediately adjacent to the Curb and which has a paved or gravel surface.

- 1.02 The registered owner of a property may cause or permit landscaping on the Boulevard adjacent to his or her property, without any further approvals of the City of Kawartha Lakes, in accordance with the provisions of this Schedule "A".

## **Section 2.00 Planting**

- 2.01 No person shall cause or permit the planting of any material on any part of a Boulevard except a plant, hedge or shrub which is planted and maintained in accordance with the following:

- a) No plant, hedge, or shrub shall be permitted to be placed in, or to overhang, a Ditch, Shoulder, or Sidewalk.
- b) No hedge or shrub shall be permitted:
  - i) In the Road Side Boulevard, when a Sidewalk exists; or
  - ii) When no Sidewalk exists, less than 1.0 metre from the Shoulder, or where there is no Shoulder, less than 1.0 metre from the Curb; or
  - iii) Less than 1.0 metre from a fire hydrant.
- c) Adjacent to a corner lot, no plant, hedge, or shrub located in the Corner Lot Site Area shall be higher than 0.8 metres above the elevation of the nearest point on the nearest adjacent Roadway.
- d) No plant, hedge, or shrub on the Boulevard shall be higher than 0.3 metres above the elevation of the point at the edge of the nearest driveway located within 15.0 metres of such plant, hedge, or shrub, measured 2.0 metres from the Curb. In the event that there is no driveway located within 15 metres of such plant, hedge, or shrub, the height shall not exceed 0.3 metres above the elevation of the nearest point on the Roadway:



- e) Within 1.0 metre of a fire hydrant, no plant shall be higher than 0.3 metres above the existing ground elevation at the location of the plant.
- f) The owner of the land abutting a Boulevard shall at all times be permitted to lay sod, seed, and maintain grass in a Boulevard and a Ditch, but not on a Shoulder, Roadway, or Sidewalk.
- g) Notwithstanding any provision of this Section:
  - i. Where plants, shrubs, or hedges exceed the height restrictions imposed herein; and
  - ii. Where such plants, shrubs, or hedges do not create a sight line obstruction or other hazard, in the opinion of the Director of Engineering & Corporate Assets or the Director of Public Works or his or her designate;

the Director of Engineering & Corporate Assets or the Director of Public Works may approve the exceedance and in which case an encroachment agreement is not required.

### Section 3.00 Hard Landscaping

3.01 No person shall install or maintain or cause to be installed or maintained any Hard Landscaping within any Boulevard, except Hard Landscaping which is installed and maintained in accordance with the following:

[a\) Pursuant to and in accordance with a Driveway Entrance Permit issued by Public Works.](#)

~~a)~~b) The height of the Hard Landscaping shall not exceed the existing ground elevation at the location of the Hard Landscaping.

~~b)~~c) No Hard Landscaping shall be placed in a Ditch.

### Section 4.00 Islands and Centre Medians

4.01 No person shall plant or install any material or item in an island or centre median on any Highway without the prior approval of the Land Management Committee and the Land Management Committee may require a written agreement as a condition of such approval.

4.02 For the purpose of this Schedule "A", the following provisions shall apply:

#### Maintenance

- a) Notwithstanding any other City by-Law, except where the landscaping has been done by the City or under an agreement in accordance with Section 4.01, where any portion of a Highway is landscaped with any plant, hedge, shrub, Hard Landscaping or other material in accordance with this by-law, the registered owner of the property adjacent to the portion of the boulevard on which such items are placed, shall at all times maintain such items in a good and tidy condition.

#### Removal

- b) The City may at any time remove any plant, hedge, shrub, Hard Landscaping, tree or other material located on any part of the Boulevard or Highway, either in whole or in part, without

compensation, restoration or replacement to the person who originally installed the item;

- c) Any landscaping on any part of a Boulevard which is not consistent with this Schedule "A" and this By-law shall be subject to removal in accordance with the provisions of Sections 8.01, 8.02, 8.03, 8.04 and 8.05 of this By-law;

#### Exemptions

- d) Notwithstanding any provision in this by-law or Schedule "A", the registered owner of a property may install street trees on the Boulevard adjacent to his or her property, subject to an approved Boulevard Tree Planting Application from the City of Kawartha Lakes. Approval of such application shall be contingent on the proposed planting not interfering with the use, maintenance, and operation of the Boulevard, the Highway in general, or of any utility or other infrastructure. Any such tree, when planted, shall become the property of the City and the City shall in no way be liable to the adjacent property owner for damage, loss or removal.
- e) This Schedule "A" shall not apply to landscaping carried out by or on behalf of the City;
- f) Notwithstanding any provision herein and for greater clarity, the planting, maintenance and removal of trees on a Boulevard or Highway may also be governed by any applicable City by-Law in effect from time to time.

**Schedule "B" To City Of Kawartha Lakes  
By-Law Number 2018-  
Passed This 13th Day of February, 2018**

**Special Conditions Relating to Encroachment Agreements for  
Commercial Patios**

**Section 1.00      Operation**

- 1.01    Operation shall be limited to the period between April 1<sup>st</sup> to October 31<sup>st</sup> inclusive, of any year during the term of an encroachment agreement.
- 1.02    Operation shall be limited to the period between 7:00 a.m. and 11:00 p.m. and the commercial patio shall, at all other times, be closed.
- 1.03    The commercial patio shall at all times be operated in accordance with the City's Noise By-law , as amended from time to time, or any successor.
- 1.04    Cooking shall not be permitted within the commercial patio.
- 1.05    Any equipment located in a commercial patio that is not used on daily basis for a period of two calendar days or greater shall be removed by the owner from the City-owned lands.
- 1.06    No signage shall be permitted in the commercial patio with the exception of a menu displayed within the commercial patio or affixed to a fence delineating the commercial patio. Any such signage must comply with the City's Sign By-law.

**Section 2.00      Sidewalk Surface**

- 2.01    Artificial surfaces shall not be placed upon any part of the commercial patio unless expressly permitted in the encroachment agreement.
- 2.02    The commercial patio shall at all times be kept in a clean, tidy, and sanitary state free from papers, rubbish and debris of all kinds.

**Section 3.00      Fencing Requirements**

- 3.01    The commercial patios shall be enclosed with a non-permanent free-standing, fence around the perimeter of the commercial patio. Unless otherwise specified in the encroachment agreement, fencing shall meet the following requirements:
  - a)    Fencing shall not be permitted within 2.0 metres of a fire hydrant;
  - b)    Fence openings for entrance and exit shall have a minimum width equal that of the entrance of building from which the commercial patio emanates or 1.0 metres, whichever is greater;
  - c)    At least one fence opening shall be designed so as to permit as access by a person in a wheelchair;
  - d)    Fencing shall not be less than 0.8 metres in height nor more than 1.2 metres in height, but not greater than 0.8 metres in height when located within 30m of an intersection of streets, measured from the curb of said intersecting streets;
  - e)    Fencing shall not be located within 0.5 metres of an adjacent building without the express written permission of the owner of the adjacent building;
  - f)    Fencing shall not be located within 1.0 metre of the curb of a traveled roadway;
  - g)    Fencing shall not be affixed to any street furniture or fixture including, but not limited to benches, trees, bollards or poles;

- h) Fencing must be designed and installed in such a fashion that it can be easily removed; and
- i) Fence posts and rail must be constructed of materials to the satisfaction of the Director of Engineering or his or her designate. Fence posts must be of a rigid material such as metal, wood or plastic. The use of ropes and chains are permitted as fence rails. Fabric inserts are optional.