

BY - LAW NUMBER 305

**A BY-LAW RESPECTING THE MAKING AND MAINTENANCE OF AREAS
IN OR UNDER HIGHWAYS AND SIDEWALKS AND THE
ENCROACHMENT OF BUILDING THEREON**

Passed the 16th day of September, 1941.

WHEREAS it is deemed expedient to authorize owners of land to make, maintain and use areas under and openings to them in highways and sidewalks in the City of Windsor and to prescribe the terms and conditions under which the same shall be made, constructed, maintained and used, and for making an annual charge for such privilege.

THEREFORE the Municipal Council of The Corporation of the City of Windsor enacts as follows

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1. In this by-law -

(a) ¶Corporation[] shall mean The Corporation of the City of Windsor;

(b) ¶Council[] shall mean the Municipal Council of the Corporation;

¶Encroachment[] shall mean and include an areaway, opening or chute for coal or other purpose, in or under a highway or sidewalk in the City of Windsor;

(d) ¶Licensee[] shall mean the owner of the lands adjoining the highway or sidewalk in or under which permission for the construction, maintenance or use of an encroachment has been granted by the Council.

2. (a) No person shall construct, maintain or use an encroachment adjoining any property unless the owner of such adjoining property has first applied for and obtained permission from the Council so to do;

(b) The Council shall not consider such application without a favourable report from the appropriate Committee of the Council.

3. On obtaining such permission the licensee shall before constructing or maintaining or using an encroachment secure from the Clerk of the Corporation the permit in writing therefor, and execute an agreement with the Corporation in form approved by the Solicitor of the Corporation, undertaking and agreeing -

(1) To bear the cost of construction thereof and to carry out the same to the satisfaction of the Engineer of the Corporation, and in accordance with the plan therefor approved by the Council;

(2) To indemnify the Corporation from and against all actions, suits, claims and demands, and from all loss, costs, charges and expense that may result from the granting of such permission or the construction, maintenance or use of an encroachment pursuant thereto;

(3) To pay to the Corporation as and with the taxes each year the annual areaway rental charge provided for by Section # 5 of this by-law or any amendments thereto;

(4) To maintain such encroachment at all times in a manner satisfactory to the said Engineer;

(5) To repair, at his own expense, to the satisfaction of the said Engineer, any damage caused to the sidewalk, boulevard or pavement, or to any drains, conduits, wires, pipes or their appurtenances by the construction, maintenance or use of the said encroachment or resulting therefrom in any way whatever;

(6) To discontinue and close up the same upon notice from the said Engineer at the direction of the Council, and to thereupon restore the sidewalk and other structures or installations referred to in (5) above, to their former condition and location within the time prescribed by such notice, all in a manner satisfactory to the said Engineer, and upon his failure so to

do, to pay the costs of such closing up and restoration forthwith upon completion thereof if such work is performed by the said Engineer;

- (7) That he will not use or permit the use of the said encroachment for human habitation;
- (8) That all costs incurred by the Corporation by reason of the said encroachment shall be payable and payment of them may be enforced in like manner as taxes are payable and payment of them enforced;
- (9) That the agreement may be registered against the lands of the licensee;
- (10) To pay the cost of registration of the agreement;
- (11) That the Corporation shall have the right to place pipes, cables, wires, poles and other appliances in and through the said encroachment, and -
- (12) That the covenants, provisions and conditions contained in the agreement shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the said licensee.

4. The Council may revoke any permit granted pursuant to this by-law and notify the licensee to forthwith repair, close up or fill in the same and upon the failure to comply with the said notice within two (2) weeks from the date thereof the said Engineer may perform such work and the cost thereof, including the cost of restoring the sidewalk and any installation thereunder, shall be paid by the licensee upon demand, and if not so paid, shall be added to and collected in the same manner as taxes on the said lands.

5. The licensee shall with the taxes in each year while the agreement referred to in paragraph 3 hereof is in force, pay to the Treasurer of the Corporation the following annual charge therefor -

- (a) For each areaway or opening, Five Cents (\$.05) per square foot of street, including sidewalk, occupied by such areaway or opening, provided that the minimum charge hereunder shall be One Dollar (\$ 1.00); (see Res. 790/69)
- (b) For each coal or other chute - One Dollar (\$ 1.00); (see Res. 790/69)

6. The said Engineer, in the year 1941, shall measure every areaway or opening then existing in or under highways and sidewalks in the City of Windsor, and compute the annual charge to be made against every licensee, and shall ascertain the number of coal or other chutes and the charges therefor, and shall make a return thereof to the said Clerk, before the preparation of the Tax Collector's roll for the year 1942.

7. The said Clerk shall enter the charges for such areaways, openings or coal chutes from the return made to him by the said Engineer as hereinbefore provided, in the Tax Collector's Roll against the lands of the respective licensees and the same shall be rated against such properties, and thereafter shall be levied and collected with the taxes for the current year in the same manner as other taxes, and the said Clerk shall make such corrections to the said return as may from time to time become necessary through information secured from permits issued and reports from the said Engineer.

8. Whenever an encroachment is constructed after the said Engineer has made the return to the said Clerk as provided in paragraph 6 hereof, the licensee shall, upon securing the permit therefor, pay an amount equal to the annual charge computed in accordance with paragraph 5 hereof.

9. (a) No person shall maintain or use any building or other erection which by inadvertence has been wholly or partially erected upon any highway in the City of Windsor unless the permission of the Council so to do has first been obtained.

(b) The owner or occupant of a building or other erection for which a permit has been obtained under Clause (a) hereof, shall enter into an agreement with the Corporation in form approved by the said Solicitor, and shall pay to the said Treasurer an annual fee of not less than One Dollar (\$ 1.00) at the rate of Five Cents (\$.05) per square foot of the highway upon which said building or other erection encroaches, or such other fee as the Council may direct, and the said fee shall be a charge upon

-3-

the land used in connection therewith and shall be payable and payment of it enforced in like manner as taxes are payable and the payment of them enforced.

10. The Mayor and Clerk of the Corporation are hereby authorized to execute on behalf of the Corporation and seal with the seal thereof all agreements entered into pursuant to paragraphs 3 and 9 of this by-law.

11. Every person who contravenes any of the provisions of this by-law (Chapter) is guilty of an offence and shall, upon conviction thereof, forfeit and pay a penalty of not more than Five Thousand

Dollars (\$ 5,000), exclusive of costs and every such fine is recoverable under the Provincial Offences Act. (amended B/L 10277, May 22/90)

12. By-law Number 4049 passed by the Municipal Council of the former Corporation of the City of Windsor on the 6th day of April, 1931, and all other by-laws inconsistent with or repugnant to the provisions of this by-law are hereby repealed.

13. This by-law shall come into force on the day of the final passing thereof.

(signed) A. J. REAUMIE
Mayor

(S E A L)

(signed) C.V. WATERS
Clerk

First Reading September 16, 1941
Second Reading September 16, 1941
Third Reading September 16, 1941

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AMENDED BY:

By-law No. 10277

May 22, 1990

SEE RES.

Res. 790/69

July 14, 1969

Res. 952/76

Oct. 18, 1976

OFFICE CONSOLIDATION

This copy is prepared for purposes of convenience only and for accurate reference recourse should be had to the original copy of the by-law and amending by-laws.