

By-law No. 1-11, A By-law to Manage Town Owned Lands

Rothesay is the owner of lands other than road rights-of-way abutting the property of many Rothesay residents. Some of these residents desire to develop improvements on the Town owned lands to complement their properties. Some residents have specific property rights to use municipal land for particular purposes.

The municipality has responsibility for ensuring public land can be used for the purposes for which it is intended without obstruction by private property owners or others and also for ensuring that such use can take place in a manner which is safe and does not cause nuisance to private property owners nearby.

This By-law is intended to balance these interests and those of the municipality in general to protect itself from liability claims and to provide recreation opportunities for its citizens. In general the use of Town land for personal purposes should be seen as a privilege granted by the municipality where it does not impose undue hardship on the municipality or neighbouring property owners.

To these ends, Rothesay Council adopts the following:

1. Council may specify parts of the municipality which are subject to this policy.
2. An inspection of Town owned land will be conducted at least once each year.
3. Any structures, landscaping or other improvements observed will be recorded and nearby property owners interviewed to determine their interest in such improvements.
4. Where a property owner identifies an existing improvement on Town property as being desirable, that property owner will be invited to apply for an encroachment agreement.
5. Where the improvement is deemed by Town staff to be hazardous, unsightly or otherwise undesirable, the property owner responsible for the improvement will be requested to remedy the undesirable characteristics. Where the owner is unwilling or unable to do so, the improvement will be removed and the site restored.
6. Any improvements, which cannot be attributed to a particular owner in the vicinity, will be removed.
7. Where a property owner wishes to make improvements not in place at the time of the adoption of this By-law, he or she may apply for an agreement to construct such improvements (encroachment agreement), which agreement shall be approved by Council.

8. An encroachment agreement may be issued, if the following criteria are met.
 - a. The improvement does not create a hazard or make a natural hazard more severe.
 - b. The improvement does not obstruct access to the general public.
 - c. The appearance of the improvement is generally complementary to development in the vicinity.
 - d. The applicant agrees to remove the improvement or modify it in the future if so directed by the Town.
 - e. The applicant agrees that the Town may remove or have removed any improvement, at the applicant's expense, if such removal is required to conduct municipal operations or activities.
 - f. The applicant agrees to pay for the cost of supplying and installing signage identifying hazards where deemed necessary by the Town.
 - g. The applicant indemnifies the Town against third party claims against the Town and executes a waiver of liability for any damages to persons or property resulting from the improvements on public land.
 - h. The applicant pays the fees set out in schedule A for such agreement.
9. In the case of new construction an applicant will be required to provide detailed graphics and other material to explain the proposed project, its construction methods, an assessment of its structural integrity where applicable and such other information as required to assess the project's compliance with the criteria set out in clause 8.
10. The Town may notify property owners in the vicinity of the application through electronic or other means.
11. An encroachment agreement may be issued to ensure the criteria in paragraph 8 are met and with conditions such as the measures to reduce hazards, means of access to the site, hours when work may be conducted; mandatory repair work to adjacent property and such other conditions as necessary to ensure the improvement is consistent with the objectives of this By-law.
12. Encroachment agreements will be issued for a maximum of five (5) years and may be renewed.
13. Applicants for renewal of an encroachment agreement will be required to pay the renewal fee set by Council and submit any supplementary information required.
14. If the property owner wishes to modify an improvement for which an encroachment agreement has been issued, he or she may apply for a new agreement and the original process will apply.

15. Where an improvement is made on Town property prior to the issuance of an encroachment agreement, Council may order the improvement removed and cause the parties responsible to be charged for the cost of such removal.
16. Where an encroachment agreement has been issued, and improvements vary from those approved, Council may order the improvement removed and cause the parties responsible to be charged for the cost of such removal.
17. Upon adoption of this By-law Town staff will conduct an initial inspection of the property recording all improvements which have been made and any deemed to be hazardous. For this purpose the Town may engage a professional specifically qualified to identify such hazards.
18. Council will establish a fee schedule for the issuance and renewal of agreements such that the cost of administering the service is borne by the value of the agreements issued.
19. Council may waive an encroachment agreement fee, where it deems such waiver to be in the public interest.

FIRST READING BY TITLE:	<u>12 March 2012</u>
SECOND READING BY TITLE:	<u>10 April 2012</u>
READING IN ITS ENTIRETY:	<u>10 September 2012</u>
THIRD READING AND ENACTMENT:	<u>10 September 2012</u>

William J. Bishop
Mayor

Mary Jane E. Banks
Town Clerk

By-law 1-11

Schedule A - Fees

Agreement Type	Fee	Comment
Initial Agreement	\$200	Renewable after five years
Renewal of agreement	\$150	Renewable after five years
Agreement, after inspection	\$1000	Agreements required after identified by Town inspection process and after first 12 months
Owner Changes	\$50	Changes to original agreement when initiated by property owner
Town Changes	\$500	Changes to original agreement when initiated by Town staff due to failure to apply for modifications