

BYLAW NO. 8995

The Underground Encroachment and Sidewalk Safety Bylaw, 2012

Whereas the City has the power under *The Cities Act* to make bylaws for the safety, health and welfare of the citizens of the City;

And Whereas the City has the power under *The Cities Act* to make bylaws respecting the enforcement of its bylaws, including providing for inspections to determine if bylaws are being complied with, and to issue orders to remedy any contraventions;

And Whereas the City has the power under *The Cities Act* to permit Encroachments under the sidewalks and streets of the City for the benefit of abutting property Owners, and to determine the terms and conditions of the use, maintenance, repair and replacement of such Encroachments;

And Whereas such Encroachments currently exist in the City, and these Encroachments are typically attached to and form part of the basements of abutting properties and are only accessible through the abutting properties;

And Whereas the structure associated with these Encroachments creates a void under the Sidewalk and forms the supporting structure for the Sidewalk and street above and abutting the Encroachment;

Now Therefore the Council of The City of Saskatoon enacts:

Short Title

1. This Bylaw may be cited as The Underground Encroachment and Sidewalk Safety Bylaw, 2012.

Purpose

2. The purpose of this Bylaw is:
 - (a) to ensure that Encroachments are safe and properly maintained so as to provide safe passage for pedestrians and vehicles in areas over or abutting an Encroachment; and
 - (b) to prescribe the terms and conditions of the use, maintenance, inspection, repair and replacement of such Encroachments.

Definitions

3. In this Bylaw:

- (a) “City” means The City of Saskatoon;
- (b) “Council” means the Council of The City of Saskatoon;
- (c) “Encroachment” means an area, opening or structure located in or under a street that is attached to the abutting property including the top or covering of the area, opening or structure if the top or covering is a Sidewalk;
- (d) “General Manager” means the Manager of the Fire Protective Services Department for The City of Saskatoon, or his delegate;
- (e) “Designated Officer” means an employee or agent of the City appointed, pursuant to Section 2(1)(e) of *The Cities Act*, by the General Manager to act as a designated officer for the purposes of this Bylaw;
- (f) “Owner” means the Owner of the property immediately abutting the Encroachment;
- (g) “Property” means land or improvements or both;
- (h) “Sidewalk” means that part of an encroachment that forms the top or cover of the Encroachment, and which is designed and intended for the use of pedestrians; and
- (i) “Street” means a street as defined in Section 2 of *The Cities Act*.

Administration of the Bylaw

- 4. (1) Except as otherwise provided, Council hereby delegates the administration and enforcement of this Bylaw to the General Manager.
- (2) The General Manager may further delegate the administration and enforcement of this Bylaw to any employee or agent of the City.

Responsibility

5. The Owner shall, pursuant to Section 281 of *The Cities Act*, retain responsibility for all costs and damages arising out of the existence of the Encroachment and Sidewalk, including those arising out of the condition of the Sidewalk that are caused or contributed to by the Owner's failure to maintain the Encroachment.

Maintenance of Encroachment, Sidewalk and Street

6. The Owner shall maintain, repair or replace the Encroachment in accordance with the standards and specifications set out by the General Manager, and shall pay all costs associated with the maintenance, repair or replacement of the Encroachment, including the costs to repair any damage to the Street caused by the repair.
7. If, in the opinion of the General Manager, the Sidewalk is not safe, the Owner shall repair the Sidewalk in accordance with the standards and specifications set out by the General Manager, and shall pay all costs associated with the maintenance, repair or replacement of the Sidewalk.
8. If the Street that abuts the Encroachment or Sidewalk requires repair due to any reason contributed to or caused by the presence or condition of the Encroachment or Sidewalk, the Owner shall pay to the City its reasonable costs to repair the Street.

Special Features of the Sidewalk

9.
 - (1) If the Owner wishes to retain or provide special features for the Sidewalk, including heritage features such as prismatic glass blocks, and if such special features are approved by the General Manager, the Owner shall be responsible for all costs associated with the construction, maintenance and repair of the Sidewalk and special features.
 - (2) Any special features shall comply with all standards, terms and conditions that the General Manager may impose.
 - (3) The General Manager shall not approve the installation of any special features unless the Owner enters into an agreement with the City that reflects the terms and conditions imposed for the construction, repair and maintenance of the special features and the Encroachment. The agreement shall provide that the agreement shall be registered against title to the Property immediately abutting the Encroachment for as long as the special features exist.

Removal of Encroachment

10. The General Manager may at any time order the removal of the Encroachment and the filling in of the area or opening and the replacement of the pavement or the sidewalk upon such terms and conditions as the General Manager may impose, whether or not the encroachment constitutes a safety concern or involves a contravention of this Bylaw.

No Vested Right

11. The existence of an Encroachment or its proximity or attachment to any Property shall not create a vested right in any property.

Fees

12. (1) Council may, in accordance with Section 281 of *The Cities Act*, charge the Owner an annual or other fee for the privilege or use of the Encroachment.
- (2) In accordance with Section 281 of *The Cities Act*, any fees or other charges imposed pursuant to (1) hereof may be added to the tax roll of the Property abutting the Encroachment as a special assessment.

Reports

13. The Owner shall, at its expense, provide such reports on the condition of the Encroachment as the General Manager in his or her sole discretion may require.

Inspections

14. (1) The inspection of Property by the City to determine if this Bylaw is being complied with is hereby authorized.
- (2) Inspections under this Bylaw shall be carried out in accordance with Section 324 of *The Cities Act*.
- (3) No person shall obstruct a Designated Officer who is authorized to conduct an inspection under this section, or a person who is assisting a Designated Officer.
- (4) The Owner shall, upon reasonable notice, provide access to the City to the Encroachment through the property abutting the Encroachment so the City may inspect the Encroachment and Sidewalk.

Warrants

15. If the Owner refuses or for any reason fails to provide access to the Encroachment pursuant to Subsection 12(4), the City may, pursuant to Sections 325 and 326 of *The Cities Act*, apply for a warrant to gain access.

Order to Remedy Contraventions

16. (1) If a Designated Officer finds a contravention of this Bylaw, the Designated Officer may, by written order, require the Owner or occupant of the Property abutting the Encroachment to which the contravention relates to remedy the contravention.
- (2) An Order given under this Bylaw shall comply with Section 328 of *The Cities Act*.
- (3) An Order given under this Bylaw shall be served in accordance with Section 347 of *The Cities Act*.

Registration of Notice of Order

17. If an order is issued pursuant to Section 16, the City may, in accordance with Section 328 of *The Cities Act*, give notice of the existence of the order by registering an interest against the title to the Property abutting the Encroachment that is the subject of the order.

Appeal of Order to Remedy

18. (1) A person may appeal an order made pursuant to Section 16 in accordance with Section 329 of *The Cities Act*.
- (2) Appeals shall be made to the Saskatoon Property Maintenance Appeal Board, which Board is hereby designated to hear appeals under this Bylaw.
- (3) The Board shall consist of five members appointed by Council. A quorum shall consist of three members.

City Remedying Contraventions

19. The City may, in accordance with Section 330 of *The Cities Act*, take whatever actions or measures are necessary to remedy a contravention of this Bylaw, or to prevent a re-occurrence of the contravention.

Adding Amounts to Tax Roll

20. The City may, in accordance with Section 333 of *The Cities Act*, add any unpaid expenses and costs incurred by the City in remedying a contravention of this Bylaw to the taxes on the Property abutting the Encroachment on which the work was done.

Civil Action to Recover Costs

21. The City may, in addition to or instead of its rights under Section 19 hereof, in accordance with Section 332 of *The Cities Act*, collect any unpaid expenses and costs incurred in remedying a contravention of this Bylaw by civil action for debt in a court of competent jurisdiction against the Owner of the Property abutting the Encroachment on which the work was done.

Emergencies

22. In an emergency, the City may, in accordance with Section 331 of *The Cities Act*, take whatever actions or measures are necessary to eliminate the emergency, whether or not the emergency involves a contravention of this Bylaw.

Offences

23. (1) No person shall:
 - (a) fail to comply with an order made pursuant to this Bylaw;
 - (b) obstruct or hinder any Designated Officer or any other person acting under the authority of this Bylaw; or
 - (c) fail to comply with any other provision of this Bylaw.
- (2) Every person who contravenes any provision of Subsection (1) is guilty of an offence and liable on summary conviction:
 - (a) in the case of an individual, to a fine of not more than \$10,000;
 - (b) in the case of a corporation, to a fine of not more than \$25,000; and
 - (c) in the case of a continuing offence, to a maximum daily fine of not more than \$2,500 per day.

- (3) If a person is convicted of an offence pursuant to this section, and if the individual fails to pay the fine with respect to the conviction within the prescribed time, the individual convicted may be imprisoned for a term of not more than one year, unless the fine is paid sooner.
- (4) If a person is convicted of an offence pursuant to this section, the person is not relieved of the obligations to comply with the bylaw or order, and the Court may, in accordance with Section 344 of *The Cities Act*, in addition to any other penalty imposed, order the person to comply with this Bylaw or an order issued pursuant to this Bylaw.

Coming Into Force

24. This Bylaw shall come into force on the day of its final passing.

Read a first time this 16th day of January, 2012.

Read a second time this 16th day of January, 2012.

Read a third time and passed this 16th day of January, 2012.

"Donald J. Atchison"
Mayor

"Janice Mann" "SEAL"
City Clerk