



CORPORATE POLICY
(Licence of Occupation)

SECTION: Development	EFFECTIVE DATE: February 27, 2017
SUBJECT: Process and Review of Applications for a Licence of Occupation	POLICY NUMBER: Development-07

POLICY:

1. Introduction:

- 1.1 Occasionally, owners of residential properties discover that a portion of their dock, deck, dwelling, sewage disposal system, garage or driveway or other appurtenance encroach on a portion of an abutting road, unopened road allowance, or other property ("Town Land") owned by or under the jurisdiction of the Town of Huntsville (the "Town"). In other cases, an owner may wish to seek Town permission to use or build one or more of the above noted structures on a portion of abutting Town Land.
- 1.2 It is the general policy of the Town not to allow encroachments onto Town Land. Rather, it is the Town Council's preference that, wherever possible, owners of abutting properties apply to purchase the portion of the Town Land affected prior to building on it. This preference typically applies to unopened road allowances and original shore road allowances but could potentially apply to any Town Land.
- 1.3 In exceptional circumstances, the Town may authorize an abutting or neighbouring property owner to occupy a portion of Town Land without requiring it to be purchased from the Town. In those circumstances, the Town will receive and consider an application by the adjacent owner to enter into Licence of Occupation Agreement with the Town to permit existing and/or proposed encroachments on Town Land that are associated with an existing use where it is deemed expedient and in the Town's interest to do so.

2. Application:

- 2.1 An application for a Licence of Occupation Agreement shall be considered complete upon receipt by the Town of:
 - i) a completed application form (Appendix I to this policy) is received from an applicant;
 - ii) an application fee, in accordance with the Town's Fees and Charges By-law;
 - iii) seasonal (summer) pictures of the developed lands, or lands to be developed, where applicable; and
 - iv) a detailed sketch or site plan, "to scale", which clearly shows the following:
 - a) the location and measurements of all existing and/or proposed structures/encroachments on the applicant's property
 - b) the location and measurements of all existing and/or proposed uses, structures/encroachments on the Town's property;
 - c) the distance from the uses, structures/encroachments to the abutting lot lines and from the shore line (where applicable);
 - d) existing and proposed vegetation;
 - e) driveways and paths; and
 - f) Letter of Authorization, if the applicant has authorized an agent to act on their behalf.

- 2.2 The application fee, in accordance with the Town's Fees and Charges By-Law, will cover the following tasks:
- i) review of the application submission for completeness and creation of the new file;
 - ii) circulation of submission to Town departments;
 - iii) review of proposal and communication with applicant respecting any matters raised by internal circulation and review prior to consideration of approval;
 - iv) preparation of preliminary approval memo or if required, report to Committee; and
 - v) if necessary, transfer of file to solicitor with instruction letter.

2.3 An application for a Licence of Occupation Agreement will be considered **expired** if it has been inactive for a period of six (6) months from date of receipt of the complete application.

3. General:

3.1 Staff have the authority to approve applications for Licence of Occupation Agreements. However, staff are not always required to exercise this authority and may on occasion refer controversial, complicated applications or those identified in Section 3.2 with a staff report to Committee for its consideration. If the timing of the matter is urgent, it may be referred directly to Council by staff.

3.2 Licence of Occupation Agreements will only be entered into by the Town with an abutting or neighbouring property owner, if the municipality chooses not to sell the portion of Town Land abutting the applicant's property because:

- i) the Town Land may be needed for a current or future operational requirement of the Town;
- ii) where the Town has confirmed in writing its willingness to sell a portion of the Town Land to the adjacent landowner and the adjacent landowner is unable to purchase the Town Land on terms acceptable to the Town; or
- iii) the sale of the Town Land would contravene policies of the official plan or another plan or by-law of the Town of Huntsville.

Where the applicant is not the abutting property owner, but rather, is a neighbouring property owner, staff shall consult with any other abutting property owner who may be impacted by the proposal and prepare a staff report for Committee's consideration. If the timing of the matter is urgent, it may be referred directly to Council by staff.

3.3 No Licence of Occupation Agreement will be entered into by the Town:

- i) if written plans or policies of the Town indicate that the portion of the Town Land that is the subject of an application will be used within ten (10) years for public road or recreation purposes; or
- ii) if the use proposed by the applicant on the portion of Town Land contravenes the Town's Comprehensive Zoning By-law.

3.4 An applicant who enters into and benefits from a License of Occupation shall pay, in addition to an application fee, an annual licence fee as identified in the Town's Fees and Charges By-Law as amended from time to time.

3.5 Where a Licence of Occupation permits an encroachment on, or use of Town Land, the encroachment must be removed and/or relocated onto the applicant's principle property, or the use cease by the end of the term of the Licence Agreement, at the applicant's expense, and the Town property is to be returned to its natural state.

3.6 Notwithstanding Section 3.4, where the Town Land is to be purchased from the Town by the end of the term of the Licence Agreement, the payment received by the Town as an annual licence fee, excluding application fees, may, at the Town's discretion, be discounted from the purchase price of the land to be purchased. Where the annual licence fee paid exceeds the value of the Town Land, no refund from the Town is necessary nor shall it be required.

3.7 Notwithstanding Section 3.5 or 3.6, a Licence of Occupation Agreement may be reissued, at the sole discretion of the Town of Huntsville, to permit the continued existence of the encroachment for such time as the Town, in its sole discretion, may determine.

- 3.8 When a Lease or Licence of Occupation that was issued pursuant to a predecessor policy rescinded by Council expires, consideration of a new Licence of Occupation shall be given pursuant to the provisions of this Licence of Occupation policy at its entirety.
- 3.9 A Licence of Occupation shall not be transferrable or assignable by the owner.
- 4. Procedure for New Applications and Renewal Applications:**
- 4.1 Upon receipt of an application submission by the Clerk's Department, it will be reviewed for completeness in accordance with the Section 2 herein.
- 4.2 Once it has been determined that the application is complete, a file will be setup and the application submission circulated to Town Departments for review and comment. The Clerk's staff will synthesize comments into a memorandum to file or, if necessary with controversial or complicated files as determined by Town Clerk, a staff report with a recommendation to issue or deny a Licence of Occupation Agreement.
- 4.3 Upon preliminary approval by Clerk's staff or Committee/Council, the following will be completed:
- i) confirm that the applicant is the owner of property adjacent to the Town Land and that the Town is the owner of the Town Land that is the subject matter of the Licence of Occupation Agreement application;
 - ii) prepare the Licence of Occupation Agreement and forward three copies to the applicant for signature together with a request for a prorated portion of the annual licence fee payable;
- 4.4 Once a decision has been made on a controversial or complicated file, such file may be transferred by Clerk's staff to the Town's solicitor for processing. The Town's solicitor will act on its behalf for the preparation of the Licence of Occupation Agreement to authorize the encroachment onto Town Land. The Town's solicitor will, upon receiving instruction, complete the following:
- i) confirm that the applicant is the owner of property adjacent to the Town Land and that the Town is the owner of the Town Land that is the subject matter of the Licence of Occupation Agreement application;
 - ii) prepare the Licence of Occupation Agreement and forward three copies to the applicant for signature together with a request for a prorated portion of the annual licence fee payable;
 - iii) submit the title search, an invoice and the three copies of the Licence of Occupation Agreement signed by the applicant to the Town for completion.
- 4.5 All legal fees incurred by the Town in connection with the Licence of Occupation Agreement, are the responsibility of the applicant.
- 4.6 The applicant shall also be responsible for payment of all costs associated with consultants retained by the Town, if required, including survey costs incurred in connection with the review and processing of the Licence of Occupation Agreement application.
- 4.7 One original copy of the Agreement will be returned to the applicant upon execution by the Clerk or designate.
- 4.8 The prorated annual licence fee is due on the date of execution of the Agreement and the full fee is due on January 1st of each year thereafter during the currency of the Agreement. Finance Department staff will be responsible for all financial transactions and the tracking thereof related to approved Licences of Occupation.
- 4.9 In addition to the requirements of Section 4.8, the owner shall provide to the Clerk or designate on or before the payment of the prorated annual fee or annual fee, as the case may be, proof of liability insurance coverage applicable to the adjacent property acceptable to the Town and naming the Town as an additional insured with respect to any liability that may arise from the placement of the encroachment as authorized pursuant to the Licence of Occupation Agreement.
- 4.10 The Clerk's Department shall ensure that the property and other details pertaining to new and reissued Licences of Occupation are entered into the Town's database so that it can be included by Corporate Information staff into a layer in the Town's Geographic Information System.

OBJECTIVE:

To provide a procedure for entering into Licence of Occupation Agreements with owners of land that abut Town Land within the Town of Huntsville that is consistent, fair to the public and protects the interest of the Town.

SCOPE:

RESPONSIBILITY:

All staff shall consider and follow this procedure in the processing of licence of occupation application agreements when processing and authorizing development approvals within the Town.