

Municipality Of Chatham-Kent
Infrastructure and Engineering Services
Public Works

To: Mayor and Members of Council

From: Ryan Brown, P.Eng,
Director of Public Works

Date: May 29, 2020

Subject: Encroachment Agreement – 27 Adelaide Street South, Chatham

Recommendations

It is recommended that:

1. The General Manager of Infrastructure and Engineering Services be authorized to enter into an encroachment agreement, to be drafted and approved by the Manager of Legal Services, for construction of an outdoor seating area deck with overhead pergola attached to the commercial property being PIN 00504-0056, municipally known as 27 Adelaide Street South, Chatham.
2. The attached by-law confirming the encroachment (Appendix “B”), be approved.

Background

Administration has received a request from 1092224 B.C. LTD. to enter into an encroachment agreement for the purpose of constructing an outdoor seating area with overhead pergola outside the commercial property known as Sons of Kent Brewing Co. and located at 27 Adelaide Street South, Chatham. This request was received several months ago and Administration and the owners have been working on the details of the design and agreement since. The encroachment will extend over the municipal sidewalk on Adelaide Street South approximately 1 foot 6 inches wide and 14 feet 2 inches long. The area proposed to be used for seating is between the sidewalk and the property owned by 1092224 B.C. LTD. and as a result there will be no interference with the continued use of the sidewalk in this location.

Comments

Initially after reviewing the encroachment described in Appendix “A” (attached), there were concerns from Administration related to the potential for issues accessing the existing infrastructure (water and gas lines, access to sidewalk snow removal) located in the vicinity of the encroachment. However, after negotiations with the property owner, the following conditions have been agreed upon:

- The structure and footings have been designed to be temporary in nature. It will not need to be removed seasonally, but must be removable in the event that the Municipality requires access to the underground infrastructure to complete maintenance or repairs.
- Due to the proximity of the structure to the sidewalk, there is some prospect that a sidewalk plow may strike it. The property owner has acknowledged this risk, agreed to provide insurance which will cover the encroachment area, and has agreed to hold the Municipality harmless for any claims arising from use of this encroachment area.
- Should the Municipality require the lands for future municipal purposes, the encroachment will be removed.

Areas of Strategic Focus and Critical Success Factors

The recommendations in this report support the following areas of strategic focus:

Economic Prosperity:

Chatham-Kent is an innovative and thriving community with a diversified economy

A Healthy and Safe Community:

Chatham-Kent is a healthy and safe community with sustainable population growth

People and Culture:

Chatham-Kent is recognized as a culturally vibrant, dynamic, and creative community

Environmental Sustainability:

Chatham-Kent is a community that is environmentally sustainable and promotes stewardship of our natural resources

The recommendations in this report support the following critical success factors:

Financial Sustainability:

The Corporation of the Municipality of Chatham-Kent is financially sustainable

Open, Transparent and Effective Governance:

The Corporation of the Municipality of Chatham-Kent is open, transparent and effectively governed with efficient and bold, visionary leadership

Has the potential to support all areas of strategic focus & critical success factors

Neutral issues (does not support negatively or positively)

Consultation

Legal Services has reviewed the encroachment by-law and found it acceptable. Legal Services has drafted and negotiated an encroachment agreement to be entered into between the Municipality and 1092224 B.C. LTD. upon Council approval of this encroachment.

Financial Implications

There are no financial implications resulting from the recommendations.

Prepared by:

Ryan Brown, P.Eng.
Director, Public Works

Reviewed by:

Thomas Kelly, P.Eng, MBA
General Manager
Infrastructure and Engineering Services

Consulted and confirmed the content of the consultation section of the report by:

David Taylor
Manager, Legal Services

Attachments: Appendix A – Proposed Drawings
Appendix B – Draft By-law

c Manager, Legal Services

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BY-LAW NUMBER _____

OF THE CORPORATION OF THE
MUNICIPALITY OF CHATHAM-KENT

A by-law to permit the encroachment of an outdoor seating area deck to be placed on part of PIN 00504-0272 in Chatham, Ontario.

FINALLY PASSED THE ____ day of _____, 2020.

WHEREAS 1092224 B.C. LTD. (the "Owner"), is the owner of an outdoor seating area deck (the "outdoor seating area deck").

AND WHEREAS the Municipality is the registered owner of PIN 00504-0272 in Chatham, forming part of Adelaide St. S., Chatham.

AND WHEREAS the Owner wishes to install the outdoor seating area deck on the part of PIN 00504-0272 depicted in Schedule "B" attached hereto (the "Boulevard") which will form what is hereinafter referred to as the "Encroachment").

AND WHEREAS the Owner has applied for permission to maintain the Encroachment.

BE IT THEREFORE ENACTED by the Council of the Corporation of the Municipality of Chatham-Kent as follows:

1. The Owner shall be entitled to maintain the Encroachment on the Boulevard until the Corporation of the Municipality of Chatham-Kent in its sole and absolute discretion requires possession of the Boulevard for municipal purposes or until the Owner removes the Encroachment from the Boulevard, whichever event shall first occur.
2. That the permission granted by this By-law shall enure to the benefit of and the obligations resulting therefrom as herein set out to be binding upon the heirs, executors, administrators, successors and assigns of the Owner and of The Corporation of the Municipality of Chatham-Kent.
3. The Owner shall as a condition of the granting of permission hereunder, enter into an Agreement with the Corporation, and the General Manager of Infrastructure and Engineering Services is authorized to execute such Agreement.
4. This By-law affects the lands described in Schedule "A" annexed hereto.

5. This By-law shall come into force and effect upon being finally passed.

THIS By-law shall come into full force and effect upon the final passing thereof.

READ A FIRST, SECOND AND THIRD TIME this ____ day of _____, 2020.

Mayor – Darrin Canniff

Clerk – Judy Smith

SCHEDULE "A"

PIN 00504-0272, being part of the boulevard known as Adelaide St. S., in the
Community of Chatham, Municipality of Chatham-Kent

SCHEDULE "B"

For the purposes of this By-Law, the "Boulevard" is comprised of the part of PIN 00504-0272 outlined below.

