

THE CORPORATION OF THE CITY OF NORTH BAY

BY-LAW NO. 2007-205

**BEING A BY-LAW TO REGULATE ENCROACHMENTS
ON CITY OWNED PROPERTY**

WHEREAS the *Municipal Act, 2001* provides that a municipality may pass by-laws within the following spheres of jurisdiction:

- Highways, including parking and traffic on highways at section 11(1)1;
- Transportation systems, other than highways at section 11(1)2;
- Waste Management at section 11(1)3;
- Public Utilities at section 11(1)4;
- Culture, parks, recreation, and heritage at section 11(1)5;
- Drainage and flood control, except storm sewers at section 11(1)6;
- Structures, including fences and signs at section 11(1)7; and
- Parking, except on highways at section 11(1)8;

AND WHEREAS section 391(1)(c) of the *Municipal Act, 2001* provides that a municipality may pass by-laws imposing fees or charges on any class of persons for the use of its property including property under its control;

AND WHEREAS section 427(1) of the *Municipal Act, 2001* provides that a municipality may proceed to do things at a person's expense which that person is otherwise required to do under a by-law or otherwise but has failed to do;

AND WHEREAS section 427(3) of the *Municipal Act, 2001* provides that the costs incurred by a municipality in doing a thing or matter under section 427(1) may be recovered by adding the costs to the tax roll and collecting them in the same manner as taxes;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF NORTH BAY ENACTS AS FOLLOWS:

SHORT TITLE

1. This by-law shall be known and may be cited as the "City Lands Encroachment Bylaw".

DEFINITIONS

2. In this by-law,
 - (a) "Building" shall include, but not be limited to, such things as porches, steps, staircases, awnings, and decks;
 - (b) "Commercial Patio" means any encroachment onto City-owned lands that is not a permanent building or structure, but primarily consists of tables, chairs or other furniture established or used for the purpose of extending retail business operations or the serving area of a restaurant or tavern.
 - (c) "City" means The Corporation of the City of North Bay;
 - (d) "City Council" means the Council of the City of North Bay;
 - (e) "City-owned Lands" means lands owned by or leased or licensed to or under the management of the City, City easements, and shall include but not be limited to any road, lane, public highway, right-of-way, park, woodland, greenbelt, storm water management facility, open space, municipal golf course, municipal cemetery, and lands in which the City holds any real property interest, and all parts thereof, including any surface, grassed area, boulevard, ditch, curb, gutter, and sidewalk;

- (f) "Designated Enforcement Person" means any person authorized by a City bylaw to enforce this By-law;
- (g) "Designated Staff Person" means a person employed by the City of North Bay and holding one of the following positions: Chief Administrative Officer, City Solicitor, Managing Director or their designates;
- (h) "Easement" or "Right-of-Way" means an interest in land owned by another person, consisting of the right to use or control that land, or an area above or below it, for a specific limited purpose and expressly or by implication may preclude certain encroachments, but does not include an interest created by a license;
- (i) "Encroachment" means any type of vegetation, structure, building, man-made object or item of personal property of a person which exists wholly upon, or extends from that person's premises onto, City-owned lands and shall include any aerial, surface, or subsurface encroachments and shall also include, but is not limited to, any activity that results in a removal, addition, alteration, or material change to the City-owned Lands;
- (j) "Encroachment Agreement" means an agreement prepared by the City for execution by the City and a person by which such person is granted authorization to erect, place, or maintain an encroachment on City-owned Lands;
- (k) "Expenses" means any and all sums of money actually spent or required to be spent by the City, and shall include but not be limited to all charges, costs, administrative fees, taxes, GST, outlays, legal fees, and losses;
- (l) "Highway" includes a common and public highway, street, avenue, parkway, laneway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof;
- (m) "*Municipal Act*" means the *Municipal Act, 2001* or any successor thereto;
- (n) "Owner" means the registered owner of a parcel of real property from which an encroachment emanates as such person is described in the records of the land registry office;
- (o) "Person" means an individual, partnership, association, firm, corporation, business entity, club, incorporated group or organization, federal or provincial government, crown agent, school board and regional or other municipality;
- (p) "Personal Property" means any object or item of property other than real property;
- (q) "Premises" means a parcel of real property under registered ownership and includes all buildings and structures thereon;
- (r) "Site Improvements" shall include, but not be limited to, retaining walls, curbs, and sprinkler systems; and
- (s) "Unauthorized Encroachment" means any encroachment not authorized by this by-law, any other by-law, statute, regulation, policy, or resolution of the City.

ENCROACHMENTS PROHIBITED

3. No person shall erect, place, maintain, or carry on, or cause to be erected, placed, maintained, or carried on an encroachment of any kind on City-owned Lands except as *may* be permitted under any by-law, statute, regulation, policy, resolution of the City, or agreement, or where permitted to do so by way of a current encroachment agreement or otherwise in accordance with this By-law.

APPLICATION FOR ENCROACHMENT

4. Any person who wishes to erect, install, maintain, or carry on an encroachment on, or encroach upon, City-owned Lands shall be required to submit an application to the City, to the attention of the Office of the City Solicitor, seeking permission to do so, together with drawings or plans sufficient to describe the encroachment, to the City's satisfaction, and payment of the applicable non-refundable encroachment application fee as set by City by-law from time to time.
5. The form, content, and information requirements of the application and of all applicable fees, including annual fees, shall be as prescribed by the City from time to time. Encroachment agreements may include encroachment agreement annual fees and which will be established at the commencement of a term of an encroachment agreement.

REVIEW OF APPLICATIONS

6. City departments shall review the application and may object to the erection, installation, and maintenance of an encroachment on, or encroachment onto City-owned Lands, or require that specific conditions be imposed in an encroachment agreement, on the basis that:
 - (a) the encroachment interferes with the City's intent and purpose in holding the City-owned Land;
 - (b) the encroachment creates an unsafe condition;
 - (c) the encroachment creates liabilities for which the City cannot assign full responsibility to the owner of said encroachment;
 - (d) the encroachment creates a situation that is contrary to the any City by-law, City policy or resolution, or any provincial or federal regulation or legislation;
 - (e) the encroachment interferes with work, plans, efforts, or initiatives of the City to maintain City-owned Lands;
 - (f) the encroachment interferes with any utility or other similar installation located on City-owned Lands; or
 - (g) the applicant is unable to reasonably demonstrate a need for the encroachment.
7. When there are objections from any City department to the erection, installation, maintenance, or carrying on of an encroachment on any basis set-out in Section 6, the application shall be denied by staff and the City shall notify the applicant in writing that the application has been denied and the reason therefore.
8. In the event that there are no objections from any City department to the encroachment being applied for:
 - (a) the applicant shall be required to execute an encroachment agreement with the Office of the City Solicitor and to pay the applicable encroachment agreement fee and first encroachment agreement annual fee, as established by the City from time to time, and registration costs. The form and content of encroachment agreement shall be as established by the City and revised from time to time and may include additional conditions that are deemed to be appropriate to protect the City's interests. In the event that the applicant is not the registered owner of the real property to which the encroachment is appurtenant, the City requires that the registered owner of said real property also be a party to the encroachment agreement; and

- (b) subject to the completion of the requirements under Subsection (a), the Mayor and Clerk are hereby authorized to execute encroachment agreements on behalf of the City subject to the approval of the form and content of the encroachment agreement by the City Solicitor and any other designated staff person. In the event that an agreement is not fully executed, all monies deposited by the applicant with the City save and except encroachment application fees and encroachment agreement fees shall be returned to the applicant without interest.
9. An applicant who wishes to appeal an application that has been denied under Section 7 of this By-law may apply to appear as a delegation before City Council or City Council and City Council's decision on the matter shall be final.
10. Encroachment agreements exclusively related to buildings or site improvements shall be for a perpetual term. Encroachment agreements for all other purposes shall be for a term of twenty-one (21) years. All encroachments agreements shall be terminable by the City upon six (6) months written notice.

REGISTRATION OF AGREEMENTS

11. Encroachment agreements shall be registered in the land registry office against title to the real property from which the encroachment emanates and all expenses in doing so shall be paid for in advance by the applicant to the City. Encroachment agreements under this By-law shall not be assignable or transferable except for those relating to buildings or site improvements where the applicant demonstrates to the satisfaction of the City Solicitor that the building or site improvement has been encroaching on City-owned Lands for more than ten (10) years as at the time this Bylaw is passed.

NO VESTED RIGHTS

12. The execution of an encroachment agreement in respect of an encroachment does not create any vested right in the owner or occupant of the premises to which the encroachment is appurtenant, or in any other person, and the encroachment agreement may be terminated or suspended in accordance with the terms set out in this By-law and in the encroachment agreement.

ACCESS TO ENCROACHMENTS

13. No person shall obstruct, hinder, or interfere with the free access to any encroachment on City-owned Lands by a Designated Staff Person, a Designated Enforcement Person, an employee, officer, or agent of the City.

REMOVAL AND RESTORATION

14. Where the City becomes aware of an unauthorized encroachment on City-owned Lands, and:
- (a) The encroachment, in the opinion of any Designated Staff Person, poses an imminent safety hazard, the Designated Staff Person may, using City forces or independent contractors, at his or her discretion, remove, fill in, close up, and secure the unauthorized encroachment and restore the City-owned Lands to their former condition at the expense of the owner, such expense to be recovered in full in the manner provided in Section 18. The owner of any encroachment so removed shall be notified in writing by a Designated Staff Person of said removal and the rationale therefor and, by way of invoice, the cost in relation thereto claimed by the City, as soon as reasonably practicable following said removal.
- (b) The encroachment, in the opinion of a Designated Staff Person, does not pose an imminent safety hazard, a Designated Staff Person may give notice in writing to the owner to forthwith remove, fill in or close up the encroachment, and to restore the City-owned Lands to their former condition at the expense of said owner.

- (c) Where the notice in section 14(b) is not complied with within thirty (30) days of the date on the notice, a Designated Staff Person may when authorized by City Council resolution, using City forces or independent contractors, at his or her discretion, remove, fill in, close up, and secure the unauthorized encroachment and restore the City-owned Lands to their former condition at the expense of the owner, such expense to be recovered in full in the manner provided in Section 18 provided, however, that:
 - (d) If an application is made for an encroachment agreement within thirty (30) days of the date on the notice, a Designated Staff Person shall not proceed to take such action until the application has been fully disposed of and in accordance with Section 14(e) and Section 15; or
 - (e) If a request for appeal is made under Section 10 within thirty (30) days of the date on the notice advising that an application has been denied, a Designated Staff Person shall not proceed to take such action until the appellant has had an opportunity to be heard by City Council or withdraws his or her request for appeal and in accordance with Section 15.
15. Where an application has not been approved and has not been appealed in accordance with Section 14(e) of this By-law, or where City Council has refused an appeal, and where written notice of such decision has been delivered to an applicant, the applicant shall within thirty (30) days of the date of such notice remove or cause to be removed such encroachment and restore the City-owned Lands to their former condition at no cost to the City and cease encroaching upon the City-owned Lands. Where the encroachment has not been removed within thirty (30) days of the notice, a Designated Staff Person may, when authorized by City Council resolution, using City forces or independent contractors, at his or her discretion, remove, fill in, close up, and secure the unauthorized encroachment and restore the City-owned Lands to their former condition at the expense of the owner and the expenses associated therewith may be recovered in full in the manner provided in Section 18.
16. Any materials or structures forming part of or attached to the encroachment and removed by or on behalf of the City may, at the discretion of the Designated Staff Person, either be deposited at the owner's premises, with consent of the owner, or be stored for sixty (60) days at the owner's expense, such encroachment storage fee to be recovered in full in the manner provided in Section 18. Any item so stored and not claimed by the owner within the sixty (60) day period shall become the property of the City without compensation to the prior owner and may be disposed of in a manner at the discretion of a Designated Staff Person.
17. The City shall not be responsible for any damage to materials or structures forming part of or attached to the encroachment, arising from the removal of any encroachment by or on behalf of the City, its employees or its agents. Without limiting the foregoing, a Designated Staff Person and any contractors hired to undertake work under this By-law together with any person under their direction may, in carrying out work authorized by this By-law take all reasonable steps required to secure any remaining portion of the materials and structure following removal of the portions thereof which encroach on City-owned Lands.

RECOVERY OF EXPENSES

18. All expenses incurred by the City in connection with the removal of an encroachment, restoration of City-owned Lands, and all other expenses in carrying out the actions authorized under this By-law shall be paid by the owner and shall be due within thirty (30) days of the billing date set out on the invoice and, in the event of failure to pay the entire amount due within the said thirty (30) days, interest may be applied at the rate of 1.5% per month (19.562% annually) and:
- (a) at the discretion of the City and subject to applicable legislation, the outstanding balance of the invoice plus interest may thereafter be added to the tax roll of the property from which the unauthorized encroachment emanates for the year in which the expenses were billed and collected in the same manner as taxes; or

- (b) the City may also recover all expenses and interest owing under this By-law by a court action as a debt due to the City.

INFRACTIONS AND PENALTIES

19. Every person who contravenes any of the provisions of this by-law is guilty of an offence and on conviction is liable to a maximum penalty as set out in section 61 of the Provincial Offences Act R.S.O. 1990, c. P.33, as amended from time to time or any successor thereof.

EXCEPTION – BOULEVARDS

20. Notwithstanding any provision in this By-law, the owner of an adjacent property may, without any further approval from the City of North Bay, create and maintain encroachments on boulevards in accordance with Schedule "A" to this By-law. (b) Any encroachment on a boulevard that is not in accordance with Schedule "A" shall only be permitted by way of an encroachment agreement.

EXCEPTION - POST BOXES, MAIL BOXES, NEWSPAPER BOXES

21. This By-law shall not apply to post boxes and mail boxes used for or by Canada Post collection or delivery services which are located on City-owned Lands.
22. This By-law shall not apply to newspaper, magazine, or other similar boxes located on City-owned Lands. Persons wishing to locate and maintain such boxes on City-owned Lands will be required to enter into another form of agreement with the City for permission to do so.

COMMERCIAL PATIOS

23. Commercial patios may be permitted only by way of an encroachment agreement and the provisions of Schedule "B" of this By-law shall apply to and be contained within all such agreements.

GENERAL

24. A Designated Staff Person or a Designated Enforcement Person under this By-law, accompanied by any person under his or her direction, may enter onto any land from which an encroachment emanates and into any encroaching building, structure, or parts thereof except for any room or place actually being used as a dwelling which may only be entered in accordance with Section 430 of the Municipal Act, at any reasonable time for the purposes of determining whether there is compliance with this By-law including, but not limited to, confirming and determining property limit. A Designated Staff Person or Designated Enforcement Person acting under this Section shall produce proper identification upon request.
25. Where work is authorized to be undertaken by or on behalf of the City pursuant to this By-law, the City may enter upon land and into structures for that purpose at any reasonable time in accordance with Section 427(2) of the Municipal Act. For this purpose, Designated Staff Persons, Designated Enforcement Persons and contractors hired to undertake work under this By-law accompanied by any person under their direction, may enter onto the land from which the encroachment emanates and into any encroaching building, structure, or parts thereof except for any room or place actually being used as a dwelling which may only be entered in accordance with Section 430 of the Municipal Act at any reasonable time for the purpose of undertaking work authorized under this By-law. A Designated Staff Person or Designated Enforcement Person or contractor hired to undertake work under this By-law and acting under this Section shall produce proper identification upon request.
26. A Designated Staff Person may suspend or terminate an encroachment agreement on behalf of the City for: (a) breach of any of the terms of an encroachment agreement or of this By-law or any other City By-law; and (b) on such other terms as may be set out in an encroachment agreement. Further, a Designated Staff Person may suspend an encroachment agreement in the event that the City is undertaking or has authorized others including any utility or other occupant of the City-owned Lands to undertake work on the City-owned Lands and in which case no Encroachment Reinstatement Fee shall be applicable and the owner shall remove the encroachment if so requested by the City during the suspension. In the event of such suspension or termination, the owner shall,

upon deemed delivery of notice of such suspension or termination, immediately discontinue the use of the encroachment and remove the encroachment from the City-owned lands. If the owner of the encroachment fails to complete the removal within twenty-four (24) hours of said notice of suspension or termination, a Designated Staff Person may, using the City's forces or independent contractors, at his or her discretion, remove, fill-in, close-up, and secure the unauthorized encroachment and restore the City-owned lands to their former condition at the expense of the owner and the expenses therewith may be recovered in full in accordance with Section 18.

27. A suspension under Section 26 shall be in writing from a Designated Staff Person and shall be in effect for a minimum of twenty-four (24) hours from the date and time of deemed delivery of such notice. An encroachment agreement that has been suspended under Section 26, may be reinstated by payment of the applicable Reinstatement Fee as established by the City from time to time, and the provision of evidence, when reasonably possible, to the satisfaction of a Designated Staff Person that the reason for the suspension has been remedied.
28. Notices under this By-law shall be deemed sufficient if delivered in person, by regular mail, by facsimile, or by registered mail to the address of the property from which the encroachment emanates and the last known address of the registered owner of the property from which the encroachment emanates, if different. Any such notice shall be conclusively deemed to have been given and received upon the same day if personally delivered or sent by facsimile or, if mailed, three (3) business days after the same is mailed.
29. In this By-law, unless the context otherwise requires, words imparting the singular number shall include the plural, and words imparting the masculine gender shall include the feminine, and further, the converse of the foregoing also applies where the context so requires.
30. In addition to the provisions of this By-law, the City may at any time apply to a court of competent jurisdiction to require compliance with this By-law.
31. Notwithstanding any provision of this By-law, the application of this By-law is not intended to, nor shall it, expand the existing contractual rights of the City in its easements, rights-of-way, or any other partial interests in real property held by the City.

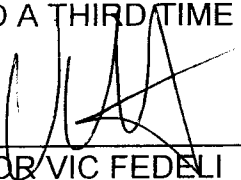
SEVERABILITY

32. Where a court of competent jurisdiction declares any section or part of a section of this By-law to be invalid, or to be of no force and effect, it is the intention of the City in enacting this By-law that the remainder of this By-law shall continue in force and be applied and enforced in accordance with its terms to the fullest extent possible according to law.
33. This By-law shall not exempt any person from the requirement to comply with any other City By-law. In the event of conflict between the provisions of this By-law, of any encroachment agreement approved after the passing of this By-law, and of any other City By-law, the more restrictive provisions shall apply.

READ A FIRST TIME IN OPEN COUNCIL THE 3RD DAY OF DECEMBER, 2007.

READ A SECOND TIME IN OPEN COUNCIL THE 3RD DAY OF DECEMBER, 2007.

READ A THIRDTIME IN OPEN COUNCIL THE 3RD DAY OF DECEMBER, 2007.



 MAYOR VIC FEDELI



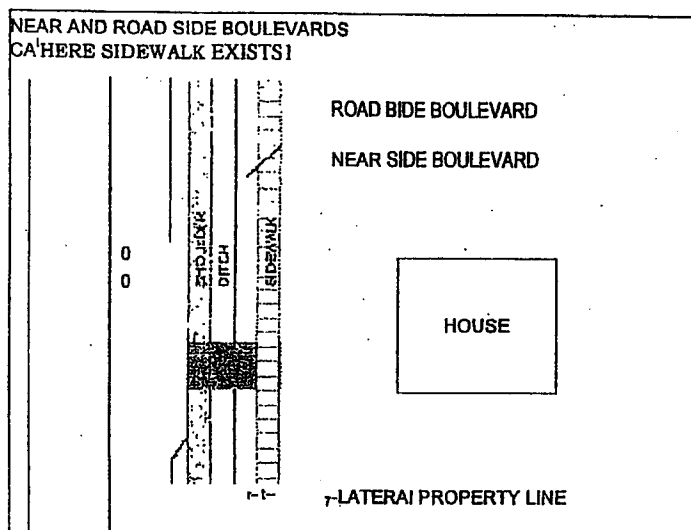
 CITY CLERK CATHERINE CONRAD

**SCHEDULE "A" OF
ENCROACHMENT BY-LAW 2007-205**

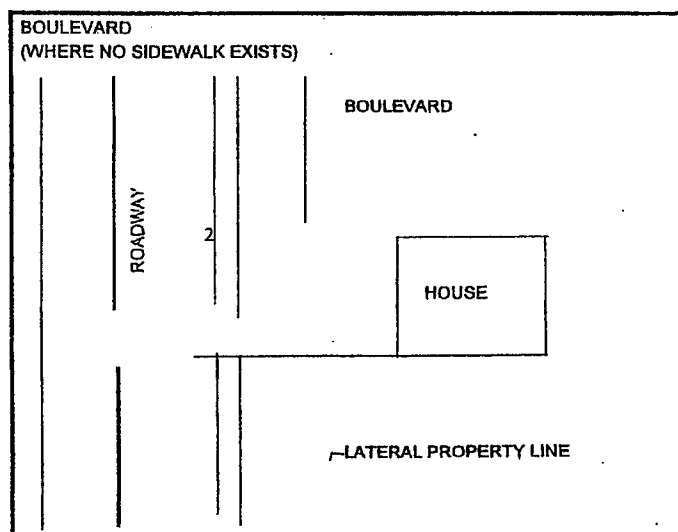
**BOULEVARD ENCROACHMENTS NOT REQUIRING CITY OF NORTH BAY
APPROVAL**

1. For the purposes of Section 20 and this Schedule "A", the following definitions shall apply:

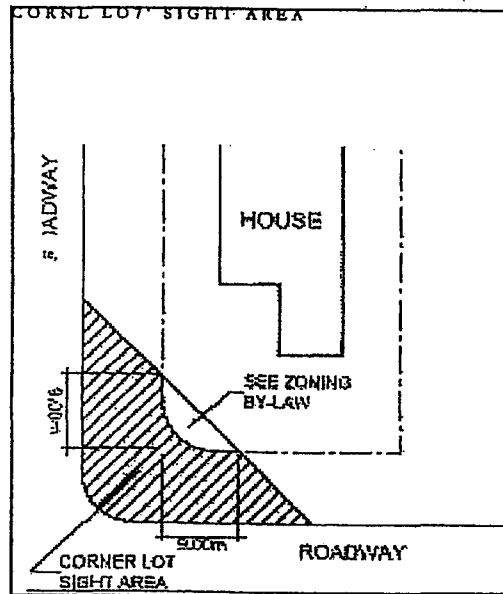
- (a) "Plant" means any vegetation that is not a shrub, hedge, or tree.
- (b) "Road Side Boulevard" means that part of a Highway located between a Sidewalk and:
the Curb;
the Shoulder; or
the edge of a Ditch located furthest from the Curb,
whichever is more distant from the Roadway;
- (c) "Near Side Boulevard" means that part of a Highway located between the lateral property line of the Highway and the side of the Sidewalk closest to such lateral property line, when a Sidewalk exists;



- (d) "Boulevard" means that part of a Highway located between the Curb or Shoulder of the Roadway or the edge of a Ditch furthest from the Curb, whichever is more distant from the Roadway, and the lateral property line of the Highway, but for greater clarity does not include the Sidewalk if one exists or a Ditch if one exists;



- (e) "Corner Lot Sight Area" means that part of a Boulevard adjacent to a corner lot that is bound by the Curbs of the intersecting streets and a line extending through the points on each lateral property line measured 9.0 metres from the point of intersection of the lateral property lines;



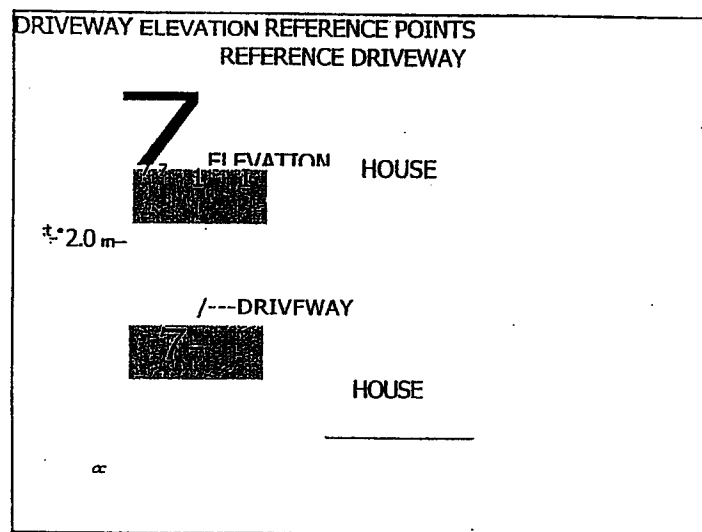
- (f) "Curb" means the lateral boundary of the Roadway, whether such lateral boundary is physically marked or not;
- (g) "Commissioner of Environment & Transportation" means the Commissioner of Environment & Transportation of the City of North Bay or his or her designate or successor;
- (h) "Ditch" means that part of a Highway that was designed or exists for the purpose of storing or carrying storm water;
- (i) "Hard Landscaping" means any paving stone, boulder, stone, gravel, concrete, asphalt, rail, or any other hard material;
- (j) "Highway" includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof. For greater certainty, Highway includes a Boulevard, but for the purposes of this By-law does not include a Provincially-owned Highway;
- (k) "Roadway" means the part of the Highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the Shoulder;
- (l) "Shrub" means a low woody perennial plant usually having several major branches;
- (m) "Sidewalk" means the improved portion of a Highway that is intended primarily for the use of pedestrians and is situated between the Curb or Shoulder of the Roadway, when one exists, and the lateral property line of the Highway;
- (n) "Shoulder" means the part of a Highway which is not the Roadway and is immediately adjacent to the Curb and which has a paved or gravel surface;

2. The registered owner of a property may cause or permit landscaping on the Boulevard adjacent to his or her property, without any further approvals from the City of North Bay, in accordance with the provisions of this Schedule "A".

Planting

3. No person shall cause or permit the planting of any material on any part of a Boulevard except a plant, hedge or shrub which is planted and maintained in accordance with the following:

- (a) No plant, hedge, or shrub shall be permitted to be placed in, or to overhang, a Ditch, Shoulder, or Sidewalk.
- (b) No hedge or shrub shall be permitted:
 - (i) In the Road Side Boulevard, when a Sidewalk exists; or
 - (ii) When no Sidewalk exists, less than 1.0 metre from the Shoulder, or where there is no Shoulder, less than 1.0 metre from the Curb; or
 - (iii) Less than 1.0 metre from a fire hydrant.
- (c) Adjacent to a corner lot, no plant, hedge, or shrub located in the Corner Lot Sight Area shall be higher than 0.8 metres above the elevation of the nearest point on the nearest adjacent Roadway;
- (d) No plant, hedge, or shrub on the Boulevard shall be higher than 0.3 metres above the elevation of the point at the edge of the nearest driveway located within 15.0 metres of such plant, hedge, or shrub, measured 2.0 metres from the Curb. In the event that there is no driveway located within 15 metres of such plant, hedge, or shrub, the height shall not exceed 0.3 metres above the elevation of the nearest point on the Roadway;



- (e) Within 1.0 metre of a fire hydrant, no plant shall be higher than 0.3 metres above the existing ground elevation at the location of the plant.
- (f) The owner of land abutting a Boulevard shall at all times be permitted to lay sod, seed, and maintain grass in a Boulevard and a Ditch, but not on a Shoulder, Roadway, or Sidewalk.
- (g) Notwithstanding any provision of this Section:
 - (i) Where plants, shrubs, or hedges exceed the height restrictions imposed herein; and
 - (ii) Where such plants, shrubs, or hedges do not create a sight line obstruction or other hazard, in the opinion of the Commissioner of Environment & Transportation or his or her designate; the Commissioner of Environment & Transportation may approve the exceedance and in which case an encroachment agreement is not required.

Hard Landscaping

- 4. No person shall install or maintain or cause to be installed or maintained any Hard Landscaping within any Boulevard, except Hard Landscaping which is installed and maintained in accordance with the following:
 - (a) The height of the Hard Landscaping shall not exceed the existing ground elevation at the location of the Hard Landscaping.
 - (b) No Hard Landscaping shall be placed in a Ditch.

Islands and Centre Medians

5. No person shall plant or install any material or item in an island or centre median on any Highway without the prior approval of City Council and City Council may require a written agreement as a condition of such approval.
6. For the purpose of this Schedule "A", the following provisions shall apply:

Maintenance

- (a) Notwithstanding any other City By-law, except where the landscaping has been done by the City or under an Agreement in accordance with Section 5, where any portion of a Highway is landscaped with any plant, hedge, shrub, Hard Landscaping or other material in accordance with this By-law, the registered owner of the property adjacent to the portion of the Boulevard on which such items are placed, shall at all times maintain such items in a good and tidy condition;

Removal

- (b) The City may at any time remove any plant, hedge, shrub, Hard Landscaping, tree or other material located on any part of the Boulevard or Highway, either in whole or in part, without compensation, restoration, or replacement;
- (c) Any landscaping on any part of a Boulevard which is not consistent with this Schedule "A" and this By-law shall be subject to removal in accordance with the provisions of Sections 14, 15, 16, 17, and 18 of this By-law;

Exemptions

- (d) Notwithstanding any provision in this By-law or Schedule "A", the registered owner of a property may install street trees on the Boulevard adjacent to his or her property, subject to an approved Boulevard Tree Planting Application from the City of North Bay. Approval of such application shall be contingent on the proposed planting not interfering with the use, maintenance, and operation of the Boulevard, the Highway in general, or of any utility or other infrastructure. Any such tree, when planted, shall become the property of the City and the City shall in no way be liable to the adjacent property owner for damage, loss, or removal.
- (e) This Schedule "A" shall not apply to landscaping carried out by or on behalf of the City;
- (f) Notwithstanding any provision herein and for greater clarity, the planting, maintenance and removal of trees on a Boulevard or Highway may also be governed by any applicable City By-law in effect from time to time.

**SCHEDULE "B" OF
ENCROACHMENT BY-LAW 2007-205**

**SPECIAL CONDITIONS RELATING TO ENCROACHMENT AGREEMENT FOR
COMMERCIAL PATIOS**

1. Operation shall be limited to the period between May 1st to September 31st, inclusive, of any year during the term of an encroachment agreement.
2. Operation shall be limited to the period between 7:00 a.m. and 11:00 p.m. and the commercial patio shall, at all other times, be closed.
3. The commercial patio shall at all times be operated in accordance with the City's Noise By-law 1976-142, as amended from time to time, or any successor.
4. Cooking shall not be permitted within the commercial patio.
5. Any equipment located in a commercial patio that is not used on a daily basis for a period of two (2) calendar days or greater shall be removed by the owner from the City-owned Lands.
6. No signage shall be permitted in the commercial patio with the exception of a menu displayed within the commercial patio or affixed to a fence delineating the commercial patio. Any such signage must comply with the City's Sign By-law.

Sidewalk Surface

7. Artificial surfaces shall not be placed upon any part of the commercial patio unless expressly permitted in the encroachment agreement.
8. The commercial patio shall at all times be kept in a clean, tidy, and sanitary state free from papers, rubbish and debris of all kinds.

Fencing Requirements

9. The commercial patios shall be enclosed with a non-permanent free-standing, fence around the perimeter of the commercial patio. Unless otherwise specified in the encroachment agreement, fencing shall meet the following specifications:
 - (a) Fencing shall not be permitted within 2.0 metres of a fire hydrant;
 - (b) Fence openings for entrance and exit shall have a minimum width equal to that of the entrance of building from which the commercial patio emanates or 1.0 metre, whichever is the greater;
 - (c) At least one fence opening shall be designed so as to permit easy access by a person in wheelchair;
 - (d) Fencing shall not be less than 0.8 metres in height nor more than 1.2 metres in height, but not greater than 0.8 metres in height when located within 30m of an intersection of streets, measured from the curb of said intersecting streets;
 - (e) Fencing shall not be located within 0.5 metres of adjacent buildings without the express written permission of the owner of the adjacent building;
 - (f) Fencing shall not be located within 1.0 metre of the curb of a travelled roadway;
 - (g) Fencing shall not be affixed to any street furniture or fixture including, but not limited to, benches, trees, bollards or poles;
 - (h) Fencing must be designed and installed in such a fashion that it can be easily removed; and

- (i) Fence posts and rails must be constructed of materials to the satisfaction of the Managing Director of Engineering, Works and Environment & Services or his or her designate. Fence posts must be of a rigid material such as metal, wood or plastic. The use of ropes and chains are permitted as fence rails. Fabric inserts are optional.
10. No deviation from the approved table or seating arrangement, or the overall dimensions or location of the Patio Area or location of the entrances or exits shall be permitted without prior written approval of a Designated Staff Person. Designated Staff Persons are hereby specifically authorized to provide written approvals under this Section.

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