

BY-LAW NO. 1468 ON PUBLIC DOMAIN OCCUPANCY PERMITS

ADOPTION PROCEDURE SUMMARY	
NOTICE OF MOTION AND FILING:	DECEMBER 12, 2023
ADOPTION OF THE BY-LAW:	DECEMBER 14, 2023
COMING INTO EFFECT:	JANUARY 1, 2024

WHEREAS notice of motion was given on December 12, 2023, and the draft by-law was filed at the same meeting;

ON DECEMBER 14, 2023, COUNCIL ENACTED THE FOLLOWING:

CHAPTER I
DECLARATIVE AND INTERPRETIVE PROVISIONS

Territory covered

1. The provisions of this by-law shall apply to the entire territory of the Town.

Subject to the rights of the Town and compliance with applicable laws and regulations, an occupant bordering a public way may, without authorization, occupy the unused part of the right-of-way of the public way located on the front line and in the extension of the dividing lines of their bordering building. Such occupancy shall not constitute a real right.

Interpretation

2. The titles, tables, symbols, plans and sketches contained herein form an integral part hereof for all legal purposes. In the event of contradiction between such titles, tables, symbols, plans and sketches and the text itself, the text shall prevail.
3. In the event of a contradiction between two provisions of this by-law or between this by-law and another by-law, the specific provision shall have precedence over the general provision.

In the event of a contradiction between two provisions of this by-law or between this by-law and another by-law, the more restrictive or prohibitive provision shall apply unless specified otherwise.

The Town decrees the adoption of this by-law in its entirety and section by section. Should any section be deemed invalid, the other sections of this by-law shall continue to apply.

The standards established by third parties to which this by-law refers are those in effect when it was adopted. Any changes made to these standards shall enter into force on the date set by the municipality in the form of a resolution whose adoption is announced in a public notice.

Terminology

4. Unless the context indicates otherwise, words and expressions shall have the meaning and significance given to them in the terminology chapter. When a word or expression is not specifically mentioned, it is used with the meaning usually given to this word or expression.

Authorization (Autorisation): A permission issued hereunder and taking the form of a permit.

Director (Directeur): The director of Technical Services or another employee designated by him.

Public domain (Domaine public): Any immovable that belongs to the Town, including but not limited to the roads, laneways, public places, sidewalks, medians, off-street bike paths and surplus public right-of-way, parks and public gardens.

Surplus public right-of-way (Emprise excédentaire de la voie publique): The part of the public way that is located between the edge of the pavement or the sidewalk and the boundary of the bordering properties.

Urban furniture (Mobilier urbain): Includes but is not limited to trees, shrubs, benches, bollards, fire hydrants, boundary markers, witness marks, cables, valve chambers, fences, conduits, residual material containers, fountains, grates, lampposts, playground equipment, monument, low walls, artworks, signs, poles, trash receptacles, catch basins, access shafts, manholes, streetlamps and pipes, whether utilitarian or decorative, installed by the Town for its purposes.

Occupant (Occupant): Any person who has legal ownership of an immovable, whether as the owner or a person authorized by the owner.

Occupancy (Occupation): The presence of a construction, piece of equipment, structure or installation on the ground, aboveground or underground.

Applicant (Requérant): The occupant of an immovable who has submitted an authorization application hereunder.

CHAPTER II

SCOPE OF APPLICATION

- Interdiction**
5. Occupancy of the public domain is prohibited without an authorization as provided hereunder.
- Notwithstanding the preceding paragraph, obtaining a public domain occupancy permit is discretionary because it concerns property that belongs to the Town and with which the Town may do as it pleases. When justified by the public interest, the Director may submit an occupancy authorization request to Council so that it may make a decision regarding the authorization.
- Powers of the Director**
6. The Director is responsible for administering and applying this by-law.
- The Director holds the powers necessary to administer and apply this by-law, including:
- (1) issuing or refusing to issue any permit required hereunder, depending on whether or not the requirements have been met;
 - (2) requiring of the owner or occupant any document or plan necessary for analyzing an application for a permit provided hereunder;
 - (3) visiting or examining, at any reasonable time of day, any property to determine whether the provisions hereof have been complied with;
 - (4) taking samples, whether inside or outside buildings;

- (5) issuing a statement of offence. Accordingly, in the event of an offence, he shall notify the offender in writing of the nature of the offence committed and the possible penalties and may issue a stop-work order;
- (6) requiring an attestation specifying that the work has been carried out in compliance with the laws and regulations of the provincial and federal competent authorities;
- (7) revoking any permit when a condition thereof or any provision hereof is not complied with;
- (8) requiring, when there are reasons to believe that there exists a serious and imminent danger related to the use, fitting out, maintenance or any other activity carried out on the public domain, that immediate measures be taken to eliminate or reduce this danger.

Official

- 7. A Technical Services employee designated by the Director shall have the powers specified in section 6.

Required permit

- 8. In the event that an authorization described in section 5 is granted, the authorization shall take the form of a permit.

The holder of the public domain occupancy permit shall comply with the terms and conditions of occupancy specified herein or in the permit.

Permit application

- 9. A permit application shall be submitted to the Director using the form provided for the purpose titled Application for Permit to Occupy or Temporarily Obstruct Public Property no fewer than 10 working days before the planned beginning of the occupancy of the public domain. The form shall include the following information:

- (1) the applicant's name, address and occupation;
- (2) if appropriate, the name and address of the establishment of which the permit holder is the operator and, if he is the owner of the building where he is located, an identification of this building by its lot number and the civic address of any buildings erected thereon;
- (3) the purposes for which the occupancy is being applied for;
- (4) the duration of the occupancy;
- (5) the works and objects that will occupy the public domain, the type of work to be performed and the activities that will take place there;
- (6) the measures to be taken to ensure the safety of persons and of the public domain, if applicable.

A permit application shall be accompanied by the following documents:

- (1) on request, the preliminary plan showing the dimensions and location of the planned occupancy;
- (2) on request, proof of liability insurance in effect for the duration of the occupancy;
- (3) on request, a plan and a technical description of the authorized occupancy, signed and sealed by a land surveyor;
- (4) the payment set for the permit and the right of occupancy;

- (5) if required, a sign plan signed and sealed by an engineer and having been pre-authorized by an Engineering Department employee;
- (6) If required, in the event of a major obstacle, a traffic maintenance study. If such a study is required, the permit application processing time may take longer than 10 working days.
- (7) on request, any other plan deemed necessary and signed and sealed by an engineer.

When possible, the Town will process an application for a permit or renewal within 10 working days.

Liability insurance 10. When required, the liability insurance policy shall be maintained in effect for the entire duration of the occupancy.

Revocation 11. The issuing of any permit provided in section 8 shall be conditional on the exercise by the Town of its right to revoke at any time and through a notice given by the director of Technical Services to the permit holder and setting the deadline by which the occupancy concerned by the authorization shall end or be removed from the public domain.

The authorization that is the subject of the permit shall become null and void on the date of the revocation notice given under the first paragraph.

When the deadline set in the revocation notice is reached, the permit holder shall have removed from the public domain the occupancy concerned by the authorization. The holder of a revoked permit shall return it to the Town manager on request.

Removal 12. The Director may temporarily or definitively remove any construction, equipment or installation that occupies the public domain if:

- (1) it has not been authorized;
- (2) the permit has expired;
- (3) the permit has been revoked;
- (4) public safety is compromised;
- (5) the permit holder is in default of payment of the fees prescribed by the by-law;
- (6) when the permit holder has not acted in conformity with the notice given in the second paragraph;
- (7) when the Town needs to use the public domain for its own purposes;
- (8) when the permit holder has not acted in conformity with the various notices given by Town representatives regarding the various municipal by-laws.

When the Director considers that the holder of a permit issued hereunder is occupying the public domain in contravention of any by-laws, conditions or terms of the permit or authorization, he shall have delivered to the permit holder a notice indicating the corrective measures to be taken to regularize the occupancy and a deadline for doing so, beyond which the Director shall proceed with the removal of the permit holder's constructions, equipment and installations.

The costs for a removal in accordance with subparagraphs (1) to (8) of the first paragraph may be recovered from the owner of the construction, equipment or installation or from the permit holder.

Permit holder's liability 13. Any holder of a public domain occupancy permit shall be liable for any damage to property or persons resulting from the occupancy, shall indemnify the Town and hold it harmless in respect of any claim for such damages.

CHAPTER III CONDITIONS OF THE PUBLIC DOMAIN OCCUPANCY

Obligations of the permit holder

14. The occupancy permit holder shall, at the end of each occupancy period mentioned in the permit, completely vacate the public domain and remove all residues of the occupancy.

The permit holder shall comply with all applicable municipal by-laws.

The permit holder shall not allow anyone without the Director's authorization to occupy the premises during the period of validity of the permit issued to him.

The permit holder shall notify the Town of any encumbrance by a third party or any other obstacle relating to his occupancy and caused by a third party.

If required, the permit holder shall obtain from the Town and any other ministry, government or public organization concerned the permits and certificates necessary to for the authorized occupancy to take place.

The permit holder shall keep the locations that he occupies in a well-maintained and clean state.

The permit holder shall fulfill all obligations related to the safety of the premises, ensure that the equipment installed functions properly and is compliant and display the required signage.

In the event of damage to the public property after the occupancy, the permit holder shall clean and restore the premises and reinstall, repair or replace any urban furniture that has been removed, damaged or lost. All costs shall be borne by the permit holder.

Signage

15. The permit holder is responsible for obtaining and installing any temporary signage necessary during the occupancy. This includes:

(1) road work signs compliant with the standards of the Ministère des Transports du Québec (*Tome V – Signalisation routière*);

(2) any no-parking signs.

The signage shall also be maintained during the permit validity period. When signs are missing, unstable, fallen, wrongly installed, hidden, illegible, poorly maintained, dirty or lacking retroreflection compliant with requirements or otherwise non-compliant in any way, the permit holder is responsible for ensuring that all parts of the signs are in compliance with the approved sign plan and with the MTQ's *Ouvrages routiers standards (Tome V – Signalisation routière)*.

Unless otherwise indicated, the permit holder shall meet the obligations defined in the applicable sections of the most up-to-date version of the Quebec government's *Cahier des charges et devis généraux – Infrastructures routières – Construction et réparation* and the Quebec Highway Safety Code.

The permit holder shall implement any changes requested by the Director or official. He shall make the changes and additions to and removal of signs deemed necessary to ensure the safety of users and workers. The costs associated with these changes shall be borne by the permit holder.

Without further notice, in the event of failure to control traffic or ensure safety, a Town representative shall make the necessary changes and the costs incurred shall be billed to the permit holder.

Advance warning signs on approaches to construction sites

16. As part of construction site management, it may be that such signage elements are necessary, as the case may be, and in such cases, they shall be paid for by the permit holder:
- (1) when a street segment is to be completely closed, the addition, for each direction, of a variable message sign (VMS) and of road flagmen. Before closing the segment, the VMS shall be installed on the date requested by the Town and shall be managed in accordance with the directive issued by the Town for the purpose;
 - (2) when a traffic lane is to be closed for the entire duration of the work, the addition of flagmen or of temporary traffic lights. For periods when the temporary traffic lights do not allow for a smooth traffic flow, the permit holder shall rely on flagmen.

Pavement marking and marking removal work

17. In some cases, temporary marking may be required. All marking and marking-removal work shall be pre-authorized by the Town.
- When applicable, the permit holder shall submit for approval to the designated official marking plans signed and sealed by an engineer for each operation, phase or stage of the work. The permit holder shall coordinate the work so as never to leave the pavement unmarked or with unnecessary marking. The marking-removal work shall not leave any visible traces of paint.

Traffic light programming

18. Any change to traffic light programming (phases or cycles) during the work shall be coordinated with the designated official. The permit holder shall submit his request at least 10 working days before the start of the work requiring such changes.
- When carrying out his work, a change to the traffic light programming may be required of the permit holder. In particular, when the number of lanes of an approach to an intersection is reduced or when the proper use of the installed detection loops cannot be guaranteed.
- Unless stated otherwise, the permit holder is responsible for having specialists in the field make the changes to the traffic light programming required as part of his work.
- At no time is the permit holder authorized to make changes to the traffic light programming without the Director's authorisation. Any costs incurred to make these changes shall be borne by the permit holder.

Obstruction, unauthorized closing or late opening of a traffic lane

19. Any obstruction, closing or late opening of a traffic lane must be approved beforehand by a designated official.

Relocating equipment

20. Some types of occupancy may require relocating a bus stop, electrical utility pole, electric vehicle charging station, billboard or any other construction or equipment located on the public domain. The permit holder is responsible for communicating with the various stakeholders before the start of the occupancy period and for obtaining the required authorizations.

CHAPTER IV TEMPORARY OCCUPANCY

Temporary occupancy

21. An occupancy of the public domain for a continuous period of less than one year shall be considered, for the purposes hereof, a temporary occupancy.

The related permit shall be valid only for the authorized occupancy period. The permit shall be granted for a single period. This period shall be shown on the permit and the permit may be renewed but may not be extended beyond one year.

The temporary public domain occupancy permit may authorize, among other things:

- (1) an obstruction of the public domain;
- (2) the parking of vehicles or machinery for work or delivery purposes for a period longer than four hours;
- (3) the placement of materials and goods;
- (4) the installation of equipment, containers, scaffolding, construction site fences, temporary shelters or other works or installations required in particular for the construction site;
- (5) the temporary closing of a public way, in particular a sidewalk, pedestrian passage or bike path, to traffic due to the work;
- (6) reserving parking space for the workers of a construction site.

22. Unless agreed upon in writing with the Town, obstacles are not permitted:

- between 20:00 and 7:00, from Monday to Friday inclusively;
- between 17:00 and 9:00 on Saturday;
- on Sundays and holidays.

23. An occupancy permit issued for the purposes of work on an immovable shall be valid only for the portion of the public domain adjacent to the immovable.

Permit-related obligations

24. For the duration of the occupancy, the permit holder shall maintain a linear and uninterrupted pedestrian passage of at least 1.5 m in width. He shall also maintain a passage for cyclists when there is a bike lane or path. When the permit holder encroaches on the sidewalk or bike path, a clearance of 3 m instead of 1.5 m must be provided.

These passages shall be designed for every type of person who may use them, including persons in wheelchairs or with strollers and the blind. The permit holder shall maintain access to adjacent buildings and laneways and shall ensure emergency vehicles have access to the construction site at all times.

Residual materials collection must be able to take place despite the occupancy. For residual materials collection, the permit holder is responsible for ensuring that the bins have been moved to a place where pick-up can be done and also that the bins have been emptied by the collection truck. His responsibility includes marking the bins (owner's address), if applicable, and returning the emptied bins to the addresses concerned. Otherwise, he is required to empty them himself and at his expense.

The permit holder shall ensure that the grass is cut and noxious weeds, such as ragweed, are controlled in and around his construction site.

In winter season, the permit holder is responsible for snow and ice removal from the occupied zone and the pedestrian and cyclist passages, if applicable.

Cancellation of the permit

25. Any occupancy permit may be cancelled if the Director determines the public domain is needed or for other causes of inappropriate behaviour by the permit holder. The restoration of the property shall be completed in the 30 days following the cancellation of the permit or in accordance with an agreement reached between the Town and the permit holder.

CHAPTER V
FEE STRUCTURE

Analysis fee

26. All applications for temporary occupancy of the public domain are subject to an analysis fee of \$50 (taxes included).

Fees

27. In addition to the analysis fee and depending on the nature and duration of the permit, the follow fees (taxes included) shall be charged:

Temporary occupancy permit:

- Obstruction for a period of no longer than one day: free;
- Obstruction for a period of longer than one day: \$120 a day;
- Parking of vehicles or machinery for work or delivery purposes for a period of more than four hours but no more than one day: free;
- Parking of vehicles or machinery for work or delivery purposes for a period of more than one day: \$120 a day;
- Reserving parking space for the workers on a construction site: \$10 per 5 metres of length of street obstructed per day.

For fee application purposes, a public domain shall end on one or another of the following dates:

- (1) on the end date specified in the permit;
- (2) when the occupancy permit is withdrawn at the applicant's request;
- (3) when any removal is done by the Town; or
- (4) on any other date agreed upon with the Director.

When an occupancy ends, the price of the right to occupy the public domain shall, if appropriate, be adjusted and based on the number of days of effective occupancy during the current fiscal year.

In the event of an occupancy of the public domain without a permit, due to an expired or revoked permit, or that is larger in size that that provided in the permit, the price of the occupancy shall be adjusted for the number of effective days or the actual size of the occupancy. This price shall be payable by the occupant of the public domain or by the holder of the expired, revoked or deviated-from permit.

In the event the immovable for whose use a permanent occupancy has been authorized is disposed of, the occupancy amount shall be collected from the subsequent owner of the immovable whose name appears on the property assessment roll.

**CHAPTER VI
PENAL PROVISIONS**

- Fines**
28. Any person who contravenes any provision of this by-law shall have committed an infraction and be liable to:
- (1) if the offender is a natural person:
 - b) a fine of \$250 to \$1,000 for a first offence;
 - b) a fine of \$500 to \$2,000 for any repeat offence;
 - (2) if the offender is a moral person:
 - c) a fine of \$500 to \$2,000 for a first offence;
 - d) a fine of \$1,000 to \$4,000 for any repeat offence.
- If an infraction continues for more than one day, the infraction committed on each day shall constitute a separate infraction and the penalties specified for each of the infractions may be imposed each day that the infraction continues, in accordance with this section.
- If the permit holder is not reachable within a 15-minute period to fulfill the Town's requirements, the Town manager reserves the right to impose a fine provided herein and to have the work carried out at the permit holder's expense.
- Application of this by-law**
29. Town Council authorizes the Director, all persons designated by him and the director of Public Security and employees to institute criminal proceedings against any offender of any provision hereof and consequently authorizes these persons to deliver a statement of offence for the purpose; these persons are responsible for applying this by-law, including exercising any power of inspection or visit provided herein..
- Interference with the work of a designated official**
30. Interfering in any way whatsoever, in particular by making a false statement or by acts, with an official in the performance of his duties hereunder shall constitute an infraction.
- Application**
31. This by-law, including the fees, applies to any and all temporary occupancies of the public domain existing on December 31, 2023.
- Coming into force**
32. This by-law shall come into effect according to the Law and is effective as of January 1, 2024.

Peter J. Malouf
Mayor

Alexandre Verdy
Town Clerk