PROVINCE OF QUEBEC
TOWN OF HAMPSTEAD

BY-LAW NO. 1035

BY-LAW CONCERNING THE OCCUPATION OF THE PUBLIC DOMAIN OF THE TOWN OF HAMPSTEAD.

WHEREAS it is in the interest of the Town of Hampstead to regulate the occupation of its public domain;

WHEREAS notice of motion of By-law no. 1035 was given at the regular Council meeting held on April 3, 2023;

WHEREAS draft By-law no. 1035 was adopted at the regular Council meeting held on April 3, 2023;

WHEREAS all Council members received a copy of the present By-law and declare having read it;

ON MAY 1, 2023, THE COUNCIL DECREES AS FOLLOWS:

CHAPTER I
GENERAL PROVISIONS

DIVISION I

DEFINITIONS

1. In this By-law, the following words signify:

« Competent authority »: the Director General or any employee to whom he has delegated, in whole or in part, powers relating to the application of this By-law;

« Public domain »: the roads, alleyways, squares and public places, including sidewalks, medians, off-street bicycle paths and the public right-of-way, parks and public gardens;

« Public right-of-way »: that part of a public road which is located between the pavement or the sidewalk and the limit of neighbouring properties;

« Urban furniture »: the trees, bushes, benches, bollards, fire hydrants, boundary markers, witness marks, speed bumps, cables, valve chambers, fences, conduits, fountains, grates, lampposts, monuments, walls, low walls, signposts, parking meters, poles, trash bins, manholes, access shafts, containers for recyclable materials, sewers, street lights, pipes, vaults and other similar things, utilitarian or decorative, installed by the Town for its purposes;

« Occupation »: the presence of a construction or installation on the ground, above-ground or underground.

DIVISION II

AUTHORIZATION

2. The occupation of the public domain is prohibited without an authorization granted in accordance with this By-law.

Notwithstanding the first paragraph, the occupation of the public domain by a vehicular access or a footpath in conformity with the provisions of the *Zoning By-law* does not require an authorization.

3. When an authorization mentioned in the first paragraph of section 2 is granted, a permit shall be issued. The holder of an occupation of the public domain permit must comply with the terms and conditions for the occupation that are mentioned within.

DIVISION III

REVOCATION

4. The deliverance of any permit mentioned in section 3 is conditional upon the Town's right to revoke it at any time by a notice given by the competent authority to the holder of the permit and stating the delay for the removal of the authorized constructions or installations from the public domain.

The authorization granted by the permit becomes null and void at the date indicated in the notice given in accordance with the first paragraph.

5. At the expiration of the delay indicated in the notice of revocation, the permit holder must have removed from the public domain any authorized construction or installation.

6. The holder of a revoked permit shall return it to the competent authority upon demand.

DIVISION IV

REMOVAL

7. The competent authority may, temporarily or permanently, remove any construction or installation that occupies the public domain:

1° without a permit;

2° due to an expired permit;

3° due to a revoked permit when the delay prescribed in the notice of revocation has expired;

4° in a manner that poses a danger to public safety;

5° in a manner that hinders the normal operations of the Town departments or its contractors, including the repair, maintenance, or snow removal

from the public domain;

6° when the permit holder is in default of payment of the tariffs prescribed by this By-law;

7° when the permit holder has not acted in conformity to a notice given under the second paragraph of this section;

8° when the Town has an urgent need to use the public domain.

Where the competent authority considers that the holder of a permit granted under this By-law occupies the public domain in contravention to the By-laws or the terms and conditions of the authorization given in the permit, it delivers to the holder a notice indicating the corrections required to regularize the occupation and a delay to do so, failing which the Town shall proceed with the removal of the permit holder's constructions or installations.

8. The costs for the removal in accordance with the first paragraph of section 7 may be recovered from the owner of the construction or installation or the permit holder.

DIVISION V

REGISTER OF OCCUPATIONS

9. The competent authority shall keep a register of the occupations of the public domain. This register may be kept in the form of computerized database.

10. Shall be recorded in the register:

1° the permit number and its date of issue;

2° the relevant information mentioned on the permit;

3° the relevant information mentioned on the documents required to obtain the permit;

4° any subsequent modification to such information and the date of the modification;

5° the mention that a revocation or removal has been made and the date of such revocation or removal.

11. Where the ownership of an immovable for the benefit of which an authorization to occupy the public domain was granted is transferred, the new owner may obtain from the Town that the original permit be transferred to his or her name and inscribed on the register, and that an excerpt confirming such modification be delivered.

DIVISION VI

TYPES OF OCCUPATION

§ 1. – Temporary occupation

12. An occupation of the public domain for a continued period of 30 days or less constitutes a temporary occupation and, subject to division IV, the relevant permit is valid only for the period indicated.
Such period is indicated on the permit and it may not exceed 30 days. Any

additional period requires a new permit to continue to occupy the public domain.

13. A permit for the temporary occupation of the public domain may authorize, amongst others:

1º the deposit of materials or merchandise;

2º the installation of equipment, containers, scaffolding, job site fences, temporary shelters, or other works or installations;

3º the parking of machinery, cranes, trucks, tool vehicles or other vehicles;

4º the installation of tents or other temporary structures for a holiday, celebration, or other similar event.

§ 2. – Permanent occupation

14. An occupation of the public domain for a continued period exceeding one year is a permanent occupation and, subject to division IV, the relevant permit is valid as long as the conditions of its deliverance are not modified and the tariff for the right to occupy the public domain is acquitted in accordance with the provisions of the applicable *By-law concerning tariffs* for each financial exercise for which it is due.

15. A permit for the permanent occupation of the public domain may authorize, amongst others:

1° the encroachment of a building;

2° the encroachment by a projecting structure;

3° a construction erected in the public right-of-way;

4° a rainfall monitoring installation or other public utility installation;

5° cables, poles, pipes, conduits and other similar installations;

6° a tunnel or underground parking;

7° a permanent above-ground shelter.

DIVISION VII

GENERAL CONDITION

16. Any occupation of the public domain is conditional upon the permit holder’s liability for any damage to property or to persons resulting from the occupation, and that the holder indemnify and save harmless the Town in respect of any claim for such damages.

The occupation is also subject to the condition that it does not endanger the public and does not hinder the normal operation of the Town departments and its contractors, including the repair, maintenance, or snow removal from the public domain.

DIVISION VIII

TARIFFING

17. The tariffs for the occupation of the public domain are prescribed in the

By-law concerning tariffs.

18. For the purpose of tariffing, the occupation of the public domain ends on one of these dates:

1° that of the reception by the competent authority of the notice prescribed by section 26;

2° that of a removal by the Town in accordance with section 7;

3° that on which the occupation really ceased, when it has ceased after the date mentioned in paragraph 1°.

When an occupation ceases, the tariff for the right to occupy the public domain is, where applicable, adjusted according to the number of days of effective occupation during the financial exercise in progress.

19. In the case of an occupation of the public domain without a permit, due to an expired or revoked permit, or where the occupation exceeds the dimensions prescribed in the permit, the tariff for the occupation is due for the number of days of effective occupation and the true dimensions of the occupation. This tariff is payable by the occupant of the public domain or by the holder of the permit that expired, that was revoked or that exceeds its authorized occupation, as the case may be.

20. Where the ownership of the immovable for the benefit of which the permanent occupation is authorized is transferred, the tariff for occupation is paid by the subsequent owner of the immovable, as it appears on the perception roll for municipal taxes for the relevant fiscal exercise.

CHAPTER II
PERMITS FOR THE OCCUPATION OF THE PUBLIC DOMAIN

DIVISION I

PERMITS

21. For an occupation of the public domain, the application for authorization shall be presented to the competent authority and indicate:

1° the name, address, and occupation of the applicant;

2° if applicable, the name and address of the establishment of the holder and, if the applicant is the owner of the immovable, the identification of said immovable by its lot numbers and the civic address of any buildings erected thereon;

3° the purpose for which the occupation of the public domain is requested;

4° a description of the works and objects that will occupy the public domain, of the type of works to be performed and of the activities that will take place;

5° and be accompanied by:

i. three copies of a preliminary plan indicating the dimensions and location of the proposed occupation;

ii. payment of the tariff prescribed for the permit, in accordance with the *By-law concerning tariffs*.

22. Upon presentation of an application in accordance with section 21, the competent authority shall inform and obtain the opinion of the Public Works Department before delivering the requested permit.

In addition, in the case of an application for permanent occupation of the public domain, the competent authority shall submit a recommendation to the municipal council for the approval of the occupation by resolution.

Before granting its approval, the council may, if it deems it opportune, require the transmission of a notice to the neighbouring property owners or to any other person that may have an interest in the application, so that they may have an opportunity to be heard by the council.

23. Where, upon presentation of an application in accordance with section 21, and, il applicable, following the adoption of the resolution mentioned in section 22, the competent authority decides to authorize the occupation, it shall inform the applicant and deliver the requested permit when the following conditions are met by the applicant:

1° provide to the competent authority, upon request, a proof of insurance in accordance with the first paragraph of section 25;

2° for permanent occupation, file with the competent authority a plan and technical description of the authorization, signed and sealed by a land surveyor;

3° pay to the Town the tariff for the right to occupy the public domain for the first period, as provided by the *By-law concerning tariffs* applicable for the fiscal exercise in progress on the first day of occupation.

24. The occupation permit contains the following information:

1° the name, address, and occupation of the holder;

2° the identification of the establishment of the holder and, if the holder is the owner of the immovable, the identification of said immovable by its lot numbers and the civic address of any buildings erected thereon;

3° the identification of the emplacement where the occupation will take place and the dimensions of the occupied public domain;

4° a description of the works and objects that will occupy the public domain, of the type of works to be performed and of the activities that will take place;

5° the purpose for which the occupation of the public domain is authorized;

6° the duration of the authorized occupation;

7° the measures to be taken to ensure the safety of persons and of the public domain, if need be;

8° the other terms and conditions that the competent authority may determine;

9° the number and the date of the resolution approving a permanent occupation;

10° the text of sections 4 to 8, 19, 26 and 27.

25. A liability insurance shall be maintained for the duration of the occupation and the coverage shall be indexed each five years, according to a rate determined by the competent authority.

The holder must provide to the competent authority, upon request, proof of compliance with the first paragraph.

DIVISION II

OBLIGATIONS OF THE HOLDER

26. The permit holder shall, at the end of each occupation period mentioned in the permit, completely vacate the public domain and remove all residues of the occupation. He or she shall also give to the competent authority a notice that such works have been performed.

The holder shall also conform with the first paragraph if the occupation of the public domain ceases before the expiration of the permit.

27. The costs for the repair of the public domain damaged due to an occupation, for the reinstallation of the urban furniture that was removed or temporarily relocated, and for the repair or replacement of urban furniture that was damaged or lost shall be imputed to the permit holder.

CHAPTER III

PENALTIES

28. Whoever contravenes a provision of this By-law commits an infraction and may be liable:

1° in the case of a natural person:

a) for a first offence, a fine of $100 to $1,000;

b) for a second offence, a fine of $400 to $2,000;

c) for any additional offence, a fine of $1,000 to $2,000;

2° in the case of a legal person:

a) for a first offence, a fine of $200 to $2,000;

b) for a second offence, a fine of $800 to $4,000;

c) for any additional offence, a fine of $2,000 to $4,000;

CHAPTER IV

FINAL PROVISION

29. This By-law shall come into force in accordance with the law.

Jeremy Levi, Mayor

Poovadee Permal-Vardin, Town Clerk