

BY-LAW NO RCM-68-2018

BY-LAW CONCERNING THE OCCUPANCY OF PUBLIC PROPERTY

Notice of motion	June 11, 2018
Adoption	July 16, 2018
Entry into force	August 2, 2018
Amended by RCM-68.1-2020	September 21, 2020

Regular meeting of the Council of the City of Dorval held at City Hall, 60 Martin Avenue, Dorval, Quebec, Monday, July 16, 2018 and chaired by Mayor Edgar Rouleau.

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WHEREAS the powers conferred by the Cities and Towns Act;

WHEREAS it is necessary to establish the procedure and conditions for issuing permits for occupancy of the public property in order to regulate activities, installations, and other uses of the public property;

WHEREAS a notice of the present by-law was given at a council meeting held on June 11, 2018;

CONSEQUENTLY, the Council decrees and orders by this By-Law the following:

SECTION 1
 GENERAL PROVISIONS

SUBSECTION I
 INTERPRETATION

1. In this by-law, the following words mean:

“authority having jurisdiction”: the municipal Council, the Public Works Director and his duly authorized representatives, or any city employee to whom the Public Works Director may have delegated all or part of the powers relating to the enforcement of this by-law;

“City”: the City of Dorval;

“public property”: property owned by the City and affected to public utility, including, without limitation, streets, lanes, squares, parks, and public places, including sidewalks, medians, bike paths, the right of way beyond a public thoroughfare, and public gardens;

“right of way beyond a public thoroughfare”: the part of a public thoroughfare situated between the edge of a roadway or the sidewalk and the line of bordering properties;

“street furniture”: objects, whether useful or ornamental, put up by the City in public spaces to meet the needs of the users, including, without limitation, trees, shrubs, benches, bollards, fire hydrants, geodetic markers, benchmarks, charging stations, speed bumps, cables, gate chambers, fences, conduits, fountains, grates, street lights, monuments, walls, low walls, street signs, poles, waste containers, catch basins, access shafts, containers for recyclable resources, manholes, and pipes;

“occupancy”: the fact, for a construction or a structure, of being on the ground, aboveground, or underground;

SUBSECTION 2 PERMITS

2. No public property may be occupied without a permit, obtained by submitting an application to the competent authority for this purpose, in accordance with the procedure set out in Schedule A of this by-law.
3. Except as provided for in subsection 3, either of the following permits can be obtained from the City:
 - 1° permit for temporary occupancy;
 - 2° permit for periodic occupancy;
 - 3° permit for permanent occupancy.
4. Every permit holder must comply with the terms and conditions of occupancy provided for in this by-law.

SUBSECTION 3 TYPES OF OCCUPANCIES

5. The occupancy of public property for a continuous period of no more than a year is a temporary occupancy and, subject to subsection 6, the permit for the temporary occupancy is valid only for the authorized occupancy period. The period is specified in the permit and may not be extended beyond a year. At the end of that period, a new permit is required to continue occupying public property.

Permits for the temporary occupancy of public property apply in particular to:

- 1° the storage of materials or goods;
 - 2° the installation of equipment, containers, scaffolds, site fences, temporary shelters, or other structures or facilities;
 - 3° film shootings, neighbourhood festivals, and other social events;
 - 4° the use of our parks or public domain for profit or for events organized by corporations or organizations. *(added by RCM-68.1-2020)*
6. The occupancy of public property for a continuous period of no more than 7 months a year is a periodic occupancy and, subject to subsection 6, the permit for the periodic occupancy is valid as long as its issue conditions are not amended and that fees for the right to occupy public property are paid in accordance with the by-law concerning fees that apply to the current fiscal year.

Permits for the periodic occupancy of public property apply in particular to:

- 1° the installation of bike racks;
 - 2° the development of commercial terraces, where authorized under urban planning by-laws;
 - 3° the installation of floral displays.
7. The occupancy of public property for a continuous period of more than a year is a permanent occupancy and, subject to subsection 6, the permit for the permanent occupancy is valid as long as its issue conditions are not amended and that fees for the right to occupy public property are paid in accordance with the by-law concerning fees that apply to the current fiscal year.

Permits for the permanent occupancy of public property apply in particular to:

- 1° an encroachment by a building;
 - 2° an encroachment by a projecting construction;
 - 3° a construction erected in the right of way beyond public property;
 - 4° a rain gauge structure or other public utility;
 - 5° cables, poles, pipes, conduits, and other similar installations;
 - 6° a tunnel or underground parking area;
 - 7° a permanent above-ground shelter;
 - 8° an antenna structure or other telecommunication or energy transmission structure (where allowed).

SUBSECTION 4 GENERAL CONDITION

8. Any occupancy of public property, whether it is covered by a permit issued under this by-law or is authorized under another by-law, is conditional on the holder of the permit or authorization being liable for all damage to property or to persons resulting from the occupancy, siding with the City and holding it harmless from any claims for damages.

SUBSECTION 5 REGISTER OF OCCUPANCIES

9. The authority having jurisdiction must keep a register of every occupancy of public property.
10. The following details are entered on the register:
 - 1° the permit number and issue date;
 - 2° the relevant information recorded on the permit;
 - 3° the relevant information contained in the documents required to be granted a permit;
 - 4° any subsequent alteration to the information provided, and the relevant date;
 - 5° the reference to any revocation or removal that was carried out, and the relevant date.
11. Where an immovable for the use of which a permit to occupy public property was previously granted is alienated, the new owner may have the City enter his name on the original permit in the register and be provided with an extract confirming the alteration by submitting an application for that purpose to the authority having jurisdiction.

SUBSECTION 6 REVOCATION

12. The issue of a permit under article 2 is conditional on the exercise by the City of its right of revocation at any time by means of a notice served by the authority having jurisdiction on the holder of a permit. This notice must set the period at the end of which the constructions or facilities covered by the permit must be removed from the public property.

The authorization covered by a permit becomes void on the date of notice of revocation served under the first paragraph.

13. At the end of the period set in the notice of revocation, all constructions or facilities covered by a permit must have been removed from the public property.
14. Revoked permits must be returned on request to the authority having jurisdiction.

SUBSECTION 7 REMOVAL

15. The authority having jurisdiction may temporarily or permanently remove any construction or facility that occupies public property in any of the following cases:
 - 1° the construction or facility is not covered by a permit;
 - 2° the permit is expired;
 - 3° the permit is expired and the removal period prescribed by the notice of revocation has elapsed;
 - 4° the construction or facility constitutes a safety hazard;
 - 5° the holder has not paid the fees required under this by-law;
 - 6° the holder of an occupancy permit has not conformed to the notice provided for in the second paragraph;
 - 7° the City must urgently use public property for its own purposes.

Where the authority having jurisdiction notes that the holder of a permit issued under this by-law occupies public property contrary to the by-laws or terms or conditions

of the authorization covered by the permit, it serves a notice to the holder specifying the proper corrective measures to upgrade the occupancy, as well as a time limit to do so, beyond which period the holder's constructions or facilities will be removed.

16. The removal fees under paragraphs 1 to 7 of the first paragraph of article 15 are recoverable from the owner of a construction or facility or from the holder of the permit.

SUBSECTION 8 FEES

17. The fees for the right to occupy public property are paid in accordance with the by-law adopted by City Council concerning fees that apply to the current fiscal year.
18. For fee application purposes, an occupancy of public property ends at one of the following dates:
 - 1° the date of receipt by the authority having jurisdiction of the notice referred to in article 2 of Schedule A;
 - 2° at the date referred to in article 7;
 - 3° at the date of a removal carried out by the City under article 15;
 - 4° at the date it has actually ended, where it ends after the date referred to in paragraph 1 or 2.

Where an occupancy ends, the fees for the right to occupy public property are adjusted, as the case may be, according to the number of days of actual occupancy during the current fiscal year.

19. For the occupancy of public property without a permit, under an expired or a revoked permit, or one of greater size than the one provided for in the permit, the occupancy fees are payable for the actual number of days and the actual size of the occupancy.

The fees are payable by owners of the construction or facility or by holders of an expired, revoked, or non-conforming permit, as the case may be.

20. Where an immovable for the use of which a permanent occupancy is authorized is alienated, the occupancy fees are collected from the next owner of the immovable whose name appears on the property tax collection roll for the fiscal year concerned.

SECTION 2 EXISTING OCCUPANCIES

21. The rights and obligations created by a by-law, a resolution of the municipal council or the decision of a delegated city employee to give effect to it before the coming into force of this by-law are replaced by the rights and obligations arising from a permit issued under this by-law.

The authorisation thus replaced ceases to have effect on the date of issue of the permit. No reference to that contract need appear in the land register.

SECTION 3 PENAL PROVISIONS

22. Any person who contravenes a provision of this by-law is guilty of an offence and is liable:
 - 1° in the case of an individual:
 - a) for a first offence, to a fine of \$100 to \$1000;
 - b) for a second offence, to a fine of \$400 to \$2000;
 - c) for any subsequent offence, to a fine of \$1000 to \$2000;
 - 2° in the case of a corporation:
 - a) for a first offence, to a fine of \$200 to \$2000;
 - b) for a second offence, to a fine of \$800 to \$4000;

c) for any subsequent offence, to a fine of \$2000 to \$4000;

SECTION 4
FINAL PROVISIONS

23. The present by-law comes into force according to law.

APPROVED _____ MAYOR

APPROVED _____ CITY CLERK

SCHEDULE A
PROCEDURE FOR OBTAINING THE PERMIT FOR THE OCCUPANCY OF PUBLIC
PROPERTY

SUBSECTION 1
REQUIRED INFORMATION

1. Applications for an occupancy of public property must provide:

- 1° the applicant's name, address, and occupation;
- 2° the name, address, and occupation of the holder, if different from the applicant;
- 3° if applicable, the name and address of the establishment operated by the holder and, if he owns the immovable where it is located, the identification of the immovable by lot numbers and address of buildings erected there;
- 4° the purposes for which the occupancy of the public domain is requested;
- 5° the structures and objects that will occupy public property, the type of work to be carried out and the activities to be practised there;

and be submitted with:

- 1° a preliminary plan in electronic form specifying the size and site of the proposed occupancy;
- 2° in the case of a roadblock, the sign plan and the detour plan in electronic format;
- 3° in the case of a commercial terrace, proof that an applicant is the operator of the establishment for the use of which the occupancy is requested, and that he is authorized by the owner to operate on public property for that purpose or that he owns the immovable where the establishment is located, as the case may be;
- 4° the payment of fees for a permit, set in the by-law concerning fees for the current fiscal year on the first day of occupancy.

2. Where, on filing of an application in accordance with article 1 of this schedule the authority having jurisdiction decides to authorize the occupancy, it informs the applicant and issues the required permit provided he meets the following requirements:

- 1° provide the authority having jurisdiction, on request, with proof that he carries the insurance referred to in article 4 of this schedule;
- 2° file with the authority having jurisdiction, on request, a plan and technical description of the authorized occupancy, signed and sealed by a land surveyor;
- 3° pay the fees to the City for the right to occupy public property that apply to the first occupancy period, as set in the by-law concerning fees for the current fiscal year on the first day of occupancy.

3. The occupancy permit contains the following information:

- 1° the holder's name, address, and occupation;
- 2° the identification of the establishment operated by the holder and, if he owns the immovable where it is located, the identification of the immovable by lot numbers and address of buildings erected there;
- 3° the identification of the site of the occupancy and the size of public property that is occupied;
- 4° a description of structures and objects occupying public property, the type of work to be carried out and activities to be practised there;
- 5° the purposes for which the occupancy of public property is authorized;
- 6° the authorized occupancy period;
- 7° the public safety measures and public property safety measures to be taken, as the case may be;
- 8° the other terms and conditions of the authorization that the authority having jurisdiction may determine;
- 9° the text of articles 12, 15, and 17 of this by-law, and 2 and 3 of this schedule.

4. Every holder of a permit for the occupancy of public property must keep in force the liability insurance for the full occupancy period at the amount indicated on the permit, and this amount must be indexed every 5 years at the rate determined by the authority having jurisdiction.

Every holder must submit proof, on request, to the authority having jurisdiction, that he conforms to the first paragraph.

SUBSECTION 2 HOLDERS' OBLIGATIONS

5. At the end of each period of occupation set in the permit, the holder of an occupancy permit must vacate the public property and remove all waste resulting from the occupancy. A notice of the end of occupancy must also be given to the authority having jurisdiction.

Holders who cease to occupy public property before the end of the period must also conform to the first paragraph.

6. The cost of rebuilding public property that was damaged as a result of the occupancy, of putting back in place street furniture temporarily removed or moved, of repairing or replacing damaged or lost street furniture, is at the holder's expense.