

Applying for Comfort

A letter of comfort is an agreement between the City and a property owner who owns lands adjacent to municipal property and whose structure(s) or other item encroaches onto municipal land. The encroachment will be allowed to remain so long as the City of Kenora does not require the said lands to carry out any purpose or function. It is the policy of the Corporation of the City of Kenora that there shall be no unauthorized encroachments onto municipal property or road allowances.

All decisions on Letter of Comfort applications are made by City Staff and are final. Each Letter of Comfort application will be evaluated on its own merit, on a case-by-case basis.

Encroachments

An encroachment is an item that is placed, erected or built upon the public right-of-way for private use. The following are examples of encroachments; please note, encroachments are not limited to these examples:

1. Structures or Buildings

Existing buildings or structures that were inadvertently and partially erected over municipal property or a road allowance and cannot be easily removed or relocated (i.e. buildings, residential structures, signs, retaining walls, garages, etc.).

2. Fences or Walls

The City may allow an existing fence to encroach onto municipal under certain circumstances.

3. Tree(s) & Landscape Features

A Letter of Comfort is not required for tree(s). Please contact the City of Kenora's Parks Supervisor prior to planting trees on municipal property. Encroachments such as clotheslines, flagpoles, mailboxes or other similar items should not be located on municipal property and must be removed by the owner; no Letter of Comfort will be granted. Features such as hedges or shrubbery that encroach on municipal property shall not require a Letter of Comfort unless the feature is used to determine a boundary.

Letter of Comfort Terms & Conditions

Applications for Letters of Comfort are not guaranteed to be approved.

- Letter of Comfort Agreements are not transferrable by a property owner unless written consent from the City of Kenora is given.
- New residential encroachments shall not be permitted. New commercial encroachments may be permitted at the discretion of staff or Council.
- No changes, alterations or improvements shall be made to the encroachment without prior approval from the City of Kenora.
- The term for Letter of Comfort Agreements shall be for a period of time equal to or shorter of; as long as the occupant owns the adjoining lands, until the encroachment is removed, or until such a time that the City of Kenora, at its discretion, requires the lands.

The Application Process

1. Applicant will pre-consult with the Planning Department Staff.
2. Applicant will submit the complete application and pay the required transaction fee.
3. The complete application will be circulated for comment to various City Departments and related agencies where applicable. All application information requested on the application form must be provided before the application will be considered by staff and/or Council.
4. A decision will be made within 2-3 weeks of the application being deemed complete.
5. If approved, all Applicants must provide an insurance certificate agreement that indemnifies and saves harmless the City of Kenora from all loss, costs, damages, expenses, claims and demands whatsoever to which the Corporation, may be put or which it may suffer or sustain for which it may be liable by reason of anything done or omitted to be done in the construction, maintenance, alteration or operation of structure(s) consisting the encroachment. Please contact your insurance provider to discuss the insurance certificate.

This Application Must be Submitted to:

City of Kenora Planning Department - Planning@kenora.ca

60 Fourteenth Street North, 2nd Floor
Operations Centre - Kenora, ON P9N 4M9
Fax: 807-467-2246

Prescribed Information

Personal Information contained on this form is collected pursuant to the Municipal Act and will be used for the purpose of processing and approval of this application and associated applications.

Questions about this collection should be directed to: Freedom of Information and Privacy Coordinator, City of Kenora, One Main Street South, Kenora, ON P9N 3X7 – (807) 467-2027

Office Use Only

Date Stamp - Date Received:

File Number: _____

Roll Number: _____

Application Fee Paid: \$ _____

Application Deemed Complete (Date): _____

1.0 - Submission Requirements

Note: If the information below is not received the application cannot be deemed complete.

- ☐ Pre-consultation meeting
- ☐ 1 original copy of the completed application form
- ☐ The required application fee of \$400.00 as per the schedule of fees By-law
- ☐ Site Plan Sketch indicating structures and proposed encroachments
- ☐ Survey, certified by an Ontario Land Surveyor (OLS), identifying the encroachments (if existing)
- ☐ Required supporting documents/report(s)
- ☐ A completed Authorization, signed by all the registered owners when an Agent is acting on behalf of the Owner(s)

2.0 - Applicant Information

Subject Property Information

Civic Address (Street & Number)	
Roll Number	6016
Legal Description	
PIN(s)	
Lot Frontage (Metres)	
Depth (Metres)	
Area (Ha.)	

Owner/Applicant Information				
Check Appropriate Box:	☐ Person(s)		☐ Company	
Registered Land Owner	Surname:		First Name:	
Mailing Address	Street No.:	Street Name:	Postal Code:	Unit Num.:
City			Province	
Contact Information	Phone:		Fax:	
Email				
Acquisition Date of Subject Land				
Agent/Solicitor Information				
Company or Firm Name				
Name	Surname:		First Name:	
Mailing Address	Street No.:	Street Name:	Postal Code:	Unit Num.:
City			Province:	
Contact Information	Phone:		Fax:	
Email				
Mortgages, Encumbrances, Holders of Charges etc. of Subject Land				
Company				
Contact Person	Surname:		First Name:	
Mailing Address	Street No.:	Street Name:	Postal Code:	Unit Num.:
Contact Information	Phone:		Fax:	
Email				

3.0 – Easements

Are there any easements or restrictive covenants affecting the subject land?

☐ Yes

☐ No

If yes, please describe the easement or covenant and its effect:

4.0 – Nature of Encroachment

Describe the nature and extent of the encroachment(s):

Please check the appropriate box(s). Types of encroachment include but not limited to:

☐ Permanent building or structure

☐ Fence, wall, or retaining wall

☐ Landscape feature

☐ Parking on road allowance

☐ Projection

☐ Other (please specify)

Can the encroachment be removed or relocated?

☐ Yes

☐ No

Dimensions of the encroachment:

Width _____

Depth _____

This structure encroaches into a:

☐ Road allowance (please indicate the name of road/street) _____

☐ Municipal property

☐ Shore allowance (please name body of water) _____

5.0 – Reason(s)

Describe the length of time that the encroachment has taken place and the reason(s) that the encroachment cannot be removed:

6.0 Additional Information

Please provide any additional information that you feel would be beneficial to the application:

7.0 Directions to Property

Please provide directions to the subject property:

8.0 – Sketch

A sketch is required showing the following:

- a. The boundaries and dimensions of the Subject Lands
- b. The location of all existing buildings and structures on the Subject Land, indicating the encroachments onto municipal property
- c. The location of the Subject Lands and encroachment in relation to adjacent properties
- d. The boundaries and dimensions of any encroaching items
- e. The location, width and name of any roads within or abutting the Subject Land indicating whether it is an unopened road allowance, a public traveled road, a private road or a right of way
- f. Indicate North with an arrow on the sketch the location and nature of any easement affecting the subject land
- g. All necessary information must be contained on one single sketch or site plan

Site Plan Sketch/Surveys will be accepted in Metric only (1foot =0.3048 metres, 1 acre = 0.4046 ha). The maximum size for the accompanying sketch/site plan shall be 11" by 17". If there is information provided on larger sizes, at least one copy shall be provided on the 11" by 17" format. Elevation drawings shall also be provided if applicable.

9.0 – Sworn Declaration or Affidavit

I, _____ of the _____ in the province of _____, make oath and say (or solemnly declare) that the information contained in this application is true and that I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

Sworn (or declared) before me at the _____
_____ in the _____ this _____ day of
_____ in the year _____

Commissioner of Oaths

Applicants(s)

For Residential Encroachments:

Homeowner's Liability Insurance

Homeowner's liability insurance is satisfactory to the Owner and underwritten by an insurer licenced to conduct business in the Province of Ontario. The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall have a limit of not less than \$_____.

The individual must provide proof of Homeowner's Liability Policy by way of a letter from the Broker. The Owner cannot be added as additional insured.

For Commercial Encroachments:

Commercial General Liability Insurance

Commercial General Liability Insurance satisfactory to the Owner and underwritten by an insurer licenced to conduct business in the Province of Ontario. The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- a. A limit of liability of not less than \$_____/occurrence with an aggregate of not less than \$_____
- b. Add the City as an additional insured with respect to the operations of the Named Insured
- c. The policy shall contain a provision for cross liability and severability of interest in respect of the Named Insured
- d. Non-owned automobile coverage with a limit not less than _____ (usually \$2,000,000) and shall include contractual non-owned coverage (SEF 96)
- e. Products and completed operations coverage
- f. Broad Form Property Damage
- g. Contractual Liability
- h. Owners and Contractors Protective
- i. The policy shall provide 30 days prior notice of cancellation

11.0 Agreement

The Terms and Conditions of this Agreement if approved, as set out in this application, are as follows:

Letter of Comfort Agreement

The Corporation of the City of Kenora (the "City") acknowledges that all or a portion of the structures as indicated on the site sketch attached to and forming part of this application are located on property owned by the City. The applicant (the "Encroaching Party") has applied to permit the continued existence of the encroachment.

Until and unless the area occupied by said encroachment is required by the City, the City has no objection to the continuation of the encroachment in its current form. The Encroaching Party shall defend, indemnify and save harmless The Corporation of the City of Kenora, its elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever, including but not limited to bodily injury, sickness, disease or death or to damage to or destruction of tangible property including loss of revenue or incurred expense resulting from disruption of service, arising out of or allegedly attributable to the negligence, acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of the Encroaching Party, its directors, officers, employees, agents, contractors or subcontractors, or any of them, in connection with or in any way related to the delivery or performance of this Contract. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Encroaching Party in accordance with this Contract and shall survive this Contract. The Encroaching Party shall provide the City with proof of insurance, in a form and amount satisfactory to the City, in support of this indemnity.

The Encroaching Party hereby agrees that any improvements made to the structure located on City property may only be done with prior City approval and are at the sole risk and cost of the Encroaching Party. This agreement is valid for a period of time equal to the shortest of:

- a) As long as the Encroaching Party owns the adjoining
- b) Until the encroachment ceases to exist
- c) Until such a time as the City, in its sole discretion, requires the lands; or
- d) Until the encroachment does not meet City specifications

Upon termination of this agreement any improvements shall be removed, to the specifications of the City, in a timely manner at the sole cost of the Encroaching Party. The Encroaching Party agrees that if it does not remove the encroachment within the time specified by the City, the City may carry out such removal at the Encroaching Party's expense and may collect the costs of such removal from the Encroaching Party in the same manner as municipal taxes.

No further increases in area or volume of the encroachment shall be permitted under this Agreement. The Encroaching Party acknowledges that the encroachment referred to in this Agreement has not and shall not give the Encroaching Party any right, title or interest in the lands owned by the City where the encroachment exists. The Encroaching Party has not obtained and shall not obtain any possessory title or rights to the said lands and the Encroaching Party acknowledges that the encroachment is by permission of the City in accordance with the terms of this Agreement.

The Corporation of the City of Kenora

Authorized Official

Title

Signed

Date

Property Owner (Owner of Encroachment)

Signature

Information provided, including personal information, is collected for the purpose of creating a record that may become available to the general public.