

**PROVINCE OF QUÉBEC
PONTIAC COUNTY
MUNICIPALITY OF LITCHFIELD**

BYLAW NUMBER 2017-023

BYLAW RESPECTING THE USE, DEVELOPMENT AND MAINTENANCE OF THE UNUSED PART OF A PUBLIC ROAD RIGHT OF WAY AND RESPECTING OBSTRUCTIONS AND ENCROACHMENTS ON PUBLIC ROADS AND PLACES.

WHEREAS section 19 of the *Municipal Powers Act* authorizes a municipality to adopt bylaws with respect to matters of environment;

WHEREAS section 59 of the *Municipal Powers Act* authorizes a municipality to adopt nuisance bylaws;

WHEREAS section 62 of the *Municipal Powers Act* authorizes a municipality to adopt regarding safety;

WHEREAS section 67 of the *Municipal Powers Act* authorizes a municipality to adopt bylaws to govern encroachments on public roads;

WHEREAS Council considers it appropriate to adopt a bylaw concerning congestion and encroachment on public roads and spaces and the maintenance of some of these spaces;

WHEREAS a notice of motion was given at a regular Council meeting, namely on November 7th, 2016, to the effect that this bylaw would be submitted for adoption;

THEREFORE, it is moved by Emile Morin and enacted by the municipal Council of the Municipality of Litchfield and the said municipal Council hereby orders and enacts its ruling as follows:

ARTICLE 1 - PREAMBLE

The Preamble is an integral part of this bylaw.

ARTICLE 2 – TERRITORY

This bylaw applies throughout all of the territory of the Municipality of Litchfield.

ARTICLE 3 – INTERPRETATION AND DEFINITIONS

In the event of any inconsistency between two provisions within this present bylaw or in this present bylaw and another bylaw, the specific provision shall prevail over the general provision.

Where a restriction or prohibition prescribed by this bylaw or any provision thereof is inconsistent with any provision of any other bylaw of the Municipality or any other provision of this bylaw, the most restrictive or prohibitive provision shall apply, unless otherwise indicated.

For the interpretation of this bylaw, unless the context indicates a different meaning, a word or expression has the meaning attributed to it in this article. If a word or term is not specifically noted, it is used in the sense commonly attributed to such word or term.

Public road right Area of land, generally located between the boundaries of frontage property on each side, on one part of which is constructed one or more lanes open to public use.

A public road right of way may or may not be cadastral.

Frontage property Private property that is adjacent to a public road right of way on its front, rear, or lateral line.

Public road right of way The line that separates private property from the public road right of way.

Unused part of a public road right of	<p>A portion of a public road right of way that is adjacent to a frontage property on its front, rear, or lateral line, and lies between the public road right of way and the public road and the edge of a roadway, but that is not used by the Municipality, or the Government of Canada or the Government of Québec as a roadway.</p> <p>The installation or authorization to install, by the Municipality, the Government of Canada, the Government of Québec, a public transit corporation or a public utility, surface or underground public utility infrastructure, structure or construction equipment, other than a roadway, on an otherwise unused portion of a public road right of way, does not constitute a “use” within the meaning of the first paragraph of this definition.</p>
Unused part of a public road right of way used by the frontage property	<p>Unused part of a public road right of way that is situated in the extension of the dividing lines of the adjoining frontage property.</p> <p>Extension of the dividing lines:</p> <p>For properties located on the façade of a straight traffic lane or roadway, the extension of the dividing line shall be determined according to the perpendicular line to be drawn from the point of intersection of the dividing line of the two (2) neighbouring properties and the public road right of way to the edge.</p> <p>As for properties located on the façade of a curved roadway, the extension of the dividing line is determined according to a line to be drawn from the point of intersection of the dividing line of the two (2) neighbouring properties and the public road right of way in the direction of the centre of the circle from the curve.</p>
Public Spaces	Parks, streets, beaches, docks, parking lots, public areas under the jurisdiction of the Municipality.
Frontage Property Owner	Without restricting the current meaning of owner, means a natural or legal person, trade union, trust, patrimony by appropriation, company or any group or association of natural or legal persons having an interest in a frontage property as an owner, a co-owner, an emphyteutic lessee, usufructuary, institute of substitution, or liquidator. The obligations imposed on a frontage owner under this bylaw may also be required of the owner, occupier or tenant, as applicable.
Roadway	Any land or structure dedicated to public vehicle and pedestrian traffic, including the edge of the roadway, the median, islands located in the centre of the roadway or separating two traffic lanes and the roadway, including a road, street or lane, a pedestrian walkway or path, and a bicycle path.

ARTICLE 4 – GENERAL PROVISIONS RELATIVE TO THE USE, DEVELOPMENT, AND MAINTENANCE OF THE UNUSED PART OF A PUBLIC ROAD RIGHT OF WAY

4.1 Subject to the rights of the Municipality and to compliance with applicable legislation and regulations, the frontage property owner is the owner, with regard to the unused portion of the public road right of way located in the extension of the dividing lines of the owner’s frontage property, of the same rights and obligations regarding the use, development, and maintenance as those applying to the frontage property belonging to the owner.

4.2 The exercise, by the frontage property owner, of the rights and obligations regarding the use, development and maintenance on an unused portion of the public road right of way, shall not be construed as having the effect of depriving the Municipality of the rights it holds over part or all of the public road right of way and that must at all times take precedence over the rights of any person with respect to said public road right of way.

4.3Notwithstanding any other provision of this bylaw, every owner of a frontage property must, at his own expense, develop and maintain all the unused portion of the public road right of way located in the extension of the dividing lines of the frontage property he owns.

4.4That part of the public road right-of-way used by the frontage property owner shall be designed and maintained by that owner in a homogeneous manner with the rest of the immovable and in accordance with the provisions of this bylaw and other regulations of the Municipality. The bylaws of the Municipality apply, with the necessary modifications, to that part of the public road right of way used by the frontage property owner, in the same manner and in accordance with the same rules as those applicable to the portion of the frontage property adjacent to the public road right of way.

4.5The frontage property owner may not, at any time or in any way, modify or otherwise alter the infrastructures, equipment, constructions or structures installed or authorized in the public road right of way by the Municipality, the Government of Québec, the Government of Canada, a transit corporation or a public utility company in accordance with applicable statutory and regulatory provisions and the frontage property owner may not, at any time or in any manner, be liable for the maintenance of such equipment, construction or structure.

4.6In all cases where the execution of work, to be performed on both a frontage property and that part of the public road right of way used by the frontage property owner, is subject to the obligation to obtain a permit or certificate of authorization in accordance with applicable regulations, all such work may be the subject of a single application for a permit or certificate.

ARTICLE 5 – PROVISIONS RELATIVE TO DEVELOPMENT

5.1Except for spaces used by the frontage property owner, as vehicular access and private sidewalk, the entire surface of that portion of the public road right of way used by the frontage property owner shall feature lawn, trees, shrubs, or other plants.

5.2Subject to existing plantations compliant on the date of entry into force of this bylaw, no tree, shrub or other plant, other than lawn, may cover the part of the public road right of way used by the frontage property owner in the first three (3) metres calculated from the edge of the roadway.

5.3Subject to existing plantations compliant on the date of entry into force of this bylaw, no tree, shrub or other plant, other than lawn, may cover the part of the public road right of way used by the frontage property owner In the first three (3) metres of the location of an outdoor shutoff valve, a manhole or a municipal sewage catch basin and no tree or shrub may cover the portion of the public road right of way used by the frontage property owner, in the first three (3) metres of the location of a hydrant.

5.4The development of that part of the public road right of way used by the frontage property owner shall not, at any time or in any manner, constitute a nuisance to traffic or a danger to public safety.

5.5Except for utilities, equipment, constructions or structures installed or authorized in the public road right of way by the Municipality, the Government of Québec, the Government of Canada, a public transit corporation, and a public utility company, no underground or shallow construction other than a private sidewalk, vehicular access, carport or temporary garage and fence, may be erected on the portion of the public road right of way used by the frontage property owner.

5.6All developments and constructions carried out by the frontage property owner in the portion of the public road right of way used by the frontage property owner must be carried out in a homogeneous manner to any other part of such developments or constructions located on the frontage property.

5.7All developments and constructions made in the portion of the public road right of way used by the frontage property owner shall be carried out in such a manner that they are not likely to interfere with the various maintenance and snow removal operations of the

Municipality within the public road right of way. No construction may exceed the height of the curb or, if there is no curb, paving, for a distance of one (1) metre calculated from the curb or pavement.

ARTICLE 6 – PROVISIONS RELATIVE TO MAINTENANCE

6.1The portion of the public road right of way used by the frontage property owner must be kept in sanitary condition, clean and free of all impediments in compliance with applicable municipal regulations.

Without limiting the scope of the foregoing, the Municipality may require the removal of any tree or other necessary maintenance action, when one or more components of the frontage property owner's maintenance is non-compliant, causes damage to buildings, installations or municipal equipment or becomes a danger to public safety. If the frontage property owner fails to do so within the prescribed period, the Municipality may carry out the work at the expense of the frontage property owner.

6.2Without limiting the scope of the obligations under article 6.1 the maintenance obligation of the frontage property owner includes mowing the lawn, trimming, pruning and felling trees, shrubs and other vegetation in the public road right of way used by the frontage property owner.

6.3The frontage property owner is responsible for any damage to persons or property, resulting from the frontage property owner's use or from a failure to meet his or her obligations, on the portion of the public road right of way used by the frontage property owner.

ARTICLE 7 – IMPEDIMENT / OBSTRUCTION / ENCROACHMENT

It is forbidden for any person to impede, obstruct, encumber, or encroach in any manner, by means of an object, effect, or vehicle of any kind, including snow and ice, any municipal roadway or public space.

It is also forbidden to allow trees or vegetation from private property to impede, obstruct, encumber, or encroach on a public roadway or public space.

ARTICLE 8 – APPLICATION OF THE BYLAW

The designated officials responsible for applying this present bylaw are the Director of Public Services, as well as the designated employees.

The Council may appoint one or more persons, other than the aforementioned officials, to ensure the application of this present bylaw.

ARTICLE 9 – POWER OF THE DESIGNATED OFFICIAL

9.1The officials responsible for the application of the present bylaw are authorized to remove or cause to be removed, without delay or upon expiration of an allowed timeframe, impediments, obstructions, encumbrances, or encroachments or any nuisance elements that encroach, obstruct, or impede a public roadway or public space by persons having caused them or the owner concerned.

In the event of a refusal to comply with this request within the time limit, the designated official may, without further delay or notice, remove impediments, obstructions, or encroachments in a public roadway or public space, including cutting or having cut any branches, trees or vegetation in this regard.

9.2Designated officials are entitled to visit the premises between 7 a.m. and 7 p.m. to ensure compliance with the provisions of this present bylaw.

9.3Designated officials may take photographs and any samples they deem necessary to ensure compliance with the provisions of this present bylaw.

9.4Any occupant of the premises being visited must receive a designated official or any accompanying agent.

ARTICLE 10 – DISPOSAL OF MATERIALS

In the case of an encroachment or encumbrance on the public road right of way or space, the Municipality may proceed to the removal and disposal of the materials if the owner does not remove the encroachments, obstructions or impediments within the timeframe set by the municipality.

In the case of discarded materials placed on a public roadway or in a public space, should it be necessary for the Municipality to rent a building or warehouse to hold these materials, their owner shall, before recovering such materials, pay to the Municipality the storage costs to include actual rental costs and labour required to remove and store such property.

If the person having caused such encumbrance, obstruction, or impediment is unknown, the Municipality shall dispose of these materials in accordance with the law.

ARTICLE 11 - PENALTIES

11.1 Any natural person who contravenes any of the provisions of this bylaw commits an offence and is liable in addition to the payment of the expenses:

- a) For a first offence, to a fine of not less than \$200;
- b) For a first repetition of an offence in the same calendar year, to a fine of not less than \$300;
- c) For a second repetition of an offence in the same calendar year, to a fine of not less than \$500;
- d) If an offence continues, it constitutes a separate offence each and every day and the offender is liable to a fine on each day that the offence continues.

11.2 Any legal person who contravenes a provision of this bylaw commits an offence and is liable in addition to the payment of the expenses:

- a) For a first offence, to a fine of not less than \$400;
- b) For a first repetition of an offence in the same calendar year, to a fine of not less than \$800;
- c) For a second repetition of an offence in the same calendar year, to a fine of not less than \$1,000;
- d) If an offence continues, it constitutes a separate offence each and every day and the offender is liable to a fine on each day that the offence continues.

11.3 When the sentence is pronounced, the appropriate court may, in addition to ordering the offender to pay the fine as outlined in the preceding articles, order that the offender take the necessary measures to put an end to such impediment, congestion, obstruction, or encroachment and that, failure to act within the prescribed period, appropriate measures be undertaken by the Municipality at the expense of said offender.

ARTICLE 12 – INTERPRETATIVE PROVISIONS

In this text, the use of the masculine gender includes both male and female and is used solely for the sake of conciseness.

ARTICLE 13 – ENTRY INTO FORCE

The present bylaw shall enter into force following the completion of the formalities as prescribed by Law.

Notice of motion: December 5, 2016
Adoption: January 9, 2017

Certified true copy

Given on: January 9, 2017

Colleen Larivière
Mayor

Julie Bertrand
Director General