

# Encroachment Permit Application Guidelines

City of Niagara Falls, New York

The Facility Use Application and Agreement for encroachments is available by contacting the Mayor's Office at 716-286-4320. We suggest giving yourself **three (3) weeks lead time before the date of your proposed encroachment** so that you have reasonable time to complete the following steps necessary to process your Application:

- STEP 1:** Start by completing pgs. 1-3 of the Facility Use Application and Agreement for an encroachment. Hold off on signing pg. 4 before a notary public until later. Once you have supplied all the requested information on pages 1-3, email a PDF scan of pages 1-5 to the Mayor's Office. Alternatively, deliver a copy of pgs. 1-5 to the Mayor's Office. You will retain the original for the time being.
- STEP 2:** Pgs. 1-3 of your Application will then be reviewed for completeness, and you will be asked to clarify any conflicting or ambiguous responses. The Mayor's Office, with the assistance of the City Risk Manager, will also assess the nature of the proposed encroachment to determine its risk level for insurance purposes. Once the risk level has been determined, you will be supplied with **Exhibit A** (pgs. 6-8 or the Application and Agreement), consisting of the appropriate Insurance Requirements of the City of Niagara Falls, New York.
- STEP 3:** Add **Exhibit A** to your Application and Agreement, which will make it an eight (8) page document. Review all its pages but hold off on signing pg.4. Instead, provide a PDF scan or complete copy of pages 1-8 to your insurance agent/broker so that they can review the City's stringent insurance requirements and advise you as to your cost, as well as their ability to meet all requirements.
- STEP 4:** Once you know whether the cost of the required insurance is in your budget and whether the agent/broker can comply with the City's insurance requirements, have that office supply you with all required certificates and additional insured endorsements. Upon receipt of those materials, attach them to the end of your eight (8) page Application and Agreement and take the entire packet to a Notary Public so that he or she may witness your signature and complete the bottom portion of pg. 4.
- STEP 5:** Deliver to the Mayor's Office the complete original and now fully signed and notarized pages 1-8 of the Application and Agreement and all the insurance documents that your agent/broker supplied you with.
- STEP 6:** Upon receipt, the City will begin its review process, which includes sending a complete copy of your materials to the City's insurance agent/broker for review. If we find any deficiencies in your paperwork, you will be notified to promptly make all necessary corrections.
- STEP 7:** Once all your insurance information has been approved by the City's agent/broker, and there are no other deficiencies to correct in your Application, the Mayor will be able to grant your Facility Use Application and Agreement, which you will receive a copy of along with your encroachment permit.

**CITY OF NIAGARA FALLS, NEW YORK**  
**FACILITY USE APPLICATION AND AGREEMENT**

**To be completed by an Applicant requesting to encroach on or over any City Facility.**  
As used herein, the term Facility includes but is not limited to any City right-of-way or City-owned property, land, premises, and/or structure.

**APPLICATION SUB-TYPE:      **ENCROACHMENT PERMIT****

*(ver. 08.20.2024)*

*Type or legibly print all requested information.*

**To: Robert M. Restaino, Mayor**

Date Application Submitted to Mayor: \_\_\_\_\_

1. ENCROACHMENT TYPE (e.g., *Dumpster*): \_\_\_\_\_ NUMBER & SIZES: \_\_\_\_\_
2. REASON(S) THE ENCROACHMENT IS NECESSARY: To accommodate work planned or currently being performed at (insert full address of the location(s)) \_\_\_\_\_  
Describe nature and scope of such work: \_\_\_\_\_  
\_\_\_\_\_
3. OWNER OF THE EQUIPMENT (e.g., *Dumpster*): \_\_\_\_\_
4. DATE(S) AND TIME(S) OF PROPOSED ENCROACHMENT: \_\_\_\_\_  
\_\_\_\_\_
5. SPECIFIC LOCATION(S) OF PROPOSED ENCROACHMENT(S) (Specify what you wish to encroach upon, e.g., *sidewalk, driveway apron, roadway, etc.*): \_\_\_\_\_  
\_\_\_\_\_

*(Attach a map and/or aerial view images of locations(s) if that would be helpful).*

6. YOUR NAME:  
Print the full legal name of the person completing and signing this document *on behalf of the Applicant.*  
(If you are a sole proprietor, you are the only person who may complete and sign this Application):  
  
\_\_\_\_\_

First name	Middle Name	Last Name
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7. NAME OF YOUR ORGANIZATION, BUSINESS, OR OTHER ENTITY  
APPLYING FOR THE ENCROACHMENT PERMIT (hereafter, "**Applicant**"): \_\_\_\_\_

*(Be sure to provide the Applicant's full legal name)*

8. What type of **entity** is the Applicant? Specify the type by circling one of the following:
  1. Not-for-Profit Corporation
  2. Corporation
  3. Limited Liability Company
  4. None of the above

9. If you circled # 1, 2 or 3, then provide the following information:

State of incorporation: \_\_\_\_\_ Date of incorporation: \_\_\_\_\_

10. If you circled # 4, explain what type of entity the Applicant is (*e.g., Sole Proprietor, Partnership, etc.*): \_\_\_\_\_

For a non-corporate business entity, provide the year, State, and County of formation here: \_\_\_\_\_

11. Provide the complete legal mailing address of the Applicant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Provide the business phone of the Applicant: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

13. **Describe your relationship to the Applicant** including title, and whether you are an officer or employee:

\_\_\_\_\_

14. Do you represent to the City of Niagara Falls, New York, that you are authorized by the Applicant to complete and sign this document and legally bind the Applicant to the terms and conditions herein?

Yes or No: \_\_\_\_\_.

***If you answered "No" - Do not proceed further. You are not entitled to submit this Application.***

15. Provide your personal mailing address if different from the above-named Applicant's address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

16. Provide the best phone numbers for communicating with you. Note which ones are mobile phones:

\_\_\_\_\_

17. Provide your email address: \_\_\_\_\_

18. NAME & ADDRESS OF APPLICANT'S CUSTOMER: \_\_\_\_\_

\_\_\_\_\_

19. ADDITIONAL INFORMATION ABOUT THE INTENDED USE OF THE CITY'S FACILITIES:

\_\_\_\_\_  
\_\_\_\_\_

20. Identify the supervisor in charge on behalf of the Applicant for the duration of the proposed use of any City-owned Facility and/or encroachment upon any public right-of-way.

\_\_\_\_\_  
First name Middle Name Last Name

21. Provide the best phone numbers for communicating with your supervisor in charge, and note which ones are mobile phone numbers: \_\_\_\_\_
22. Provide any other information that you would like the City to consider before deciding whether to grant permission to the Applicant: \_\_\_\_\_
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### **FACILITY USE AGREEMENT**

The undersigned is over 21 years of age and is a duly authorized representative of the Applicant. As such, I represent that I am authorized to sign this Facility Use Application and Agreement on behalf of the Applicant, such that the Applicant will be legally bound by all the terms and conditions of this Agreement immediately upon the City of Niagara Falls, New York, ("City") granting this Application.

To the fullest extent permissible by law, the Applicant, in consideration of the grant by the City of a revocable permit or license to use City facilities or encroach on or over the City's public right-of-way, as more fully described in the above Application, hereby agrees to defend, indemnify, and hold harmless the City, including its Council, boards, officers, agents, employees, and volunteers, from and against any and all liability, loss, damages, claims or actions, including costs and attorney's fees, for loss of life, bodily injury or property damage arising out of or in connection with the above Application, this Agreement, or the permit or license granted by the City to the Applicant hereunder. Whenever any person who would otherwise be indemnified by this Agreement is prohibited from obtaining such indemnification by reason of the General Obligations Law of New York, Applicant shall contribute to the payment and satisfaction of all judgments entered against each such person in proportion to the relative culpability of the Applicant.

The rights and duties created by this indemnification shall be in addition to and not in limitation upon any common-law, statutory, and other contractual rights that the City or other indemnified persons have against Applicant. This indemnification, and the rights and duties created hereby, is effective as of the date the Application is granted and shall continue in full force and effect notwithstanding the expiration or termination of the use or encroachment.

Applicant shall also procure and maintain in place each insurance policy that is specified more fully in the attached **Exhibit A**, for so long as the Facility use or encroachment exists, and otherwise comply with all other terms and conditions set forth in the said Exhibit. Applicant acknowledges that its failure to secure and maintain any insurance required herein or by the City Risk Manager shall constitute a material breach of the conditions for the Applicant to receive or continue possessing a permit or license to use City facilities or encroach upon a public right-of-way, and upon its failure to secure and maintain such required insurance, the permit or license to use or encroach shall be deemed revoked and the Applicant shall immediately cease the use and/or remove the encroachment.

Applicant further agrees to the following terms and conditions:

Applicant is solely responsible for taking pre-encroachment and post-encroachment digital photos to document the condition of the City's property and/or right-of-way immediately before and after the Applicant's encroachment. For example, when placing anything on or near a curb, sidewalk or driveway apron, the Applicant will photograph the condition of those items, before and after, to demonstrate that it caused no damage to them. The pre-encroachment digital photos shall be emailed to the Mayor's Office by the first business day after the encroachment commences. Failure to comply with this deadline is grounds for immediate termination of the permit or license granted by the City to the Applicant hereunder. The post-encroachment digital photos shall be emailed to the Mayor's Office within two business days after the encroachment ceases. In both cases, the emails shall identify the Applicant's name, the location(s) of the encroachment, and specify whether the attached digital photos show pre- or post-encroachment conditions.

At the end of the above-described encroachment, whether due to termination or revocation of the permit by the City, or for any other reason, the Applicant will return the City's property and/or right-of-way that was used during the encroachment in a clean and undamaged condition. Otherwise, the Applicant agrees to reimburse the City the cost of all necessary cleaning as well as all the cost of all repair or replacement work required to restore the City's property

and/or right-of-way. It is the Applicant's responsibility to take both pre- and post-encroachment photos as a precondition to it disputing any charges for such cleaning, repair, or replacement work.

As between the City and the Applicant, the Applicant shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs (including the provision of safety equipment, devices, and warning signs) in connection with the operation and placement of its vehicles, materials, and equipment, as well as the performance of all its work and services, related in any way to the above Application, this Agreement, or the permit or license granted by the City to the Applicant hereunder.

This Agreement and any permit or license granted by the City to the Applicant hereunder is revocable at will by the Mayor or the City Administrator, with no recourse against the City for loss of use, loss of income, or any other claim for monetary damages.

This Agreement and any permit or license granted by the City to the Applicant hereunder may not be assigned by the Applicant or its right, title, or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the City's previous written consent, and attempts to do so are null and void.

This Agreement constitutes the entire and integrated agreement between the City and the Applicant and supersedes all prior negotiations, representations, or agreements between them, either written or oral. This Agreement may be amended or modified only by a written instrument, signed by the City and the Applicant. The City shall not be deemed to have waived any term or requirement of this Agreement unless the waiver is expressly memorialized in a writing signed by the City and the Applicant.

**By signing my name below, I further certify that all my answers and factual representations hereinabove and in all documents attached hereto are true and complete to the best of my knowledge,** and I fully understand that I am presenting all such materials to a public servant of the City for filing and/or recording as part of the records of such municipality. I further certify my understanding that any knowing omission or false statement made by me on this application or any of its attachments shall make me liable for criminal prosecution, up to and including a class E felony pursuant to Penal Law § 175.35 (Offering a false instrument for filing in the first degree) and/or § 210.10 (Perjury in the second degree).

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature – must be witnessed by a Notary Public)

\_\_\_\_\_  
(Print your name and Title within the Applicant organization)

STATE OF NEW YORK        )  
COUNTY OF NIAGARA       : SS  
CITY OF NIAGARA FALLS    )

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 202\_\_ by \_\_\_\_\_, who is personally known to me, or who proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the above instrument and acknowledged to me that he/she executed the same in his/her capacity noted immediately below his/her signature, and that by his/her signature on the said instrument, the individual, or the person upon behalf of which the individual acted, executed the said instrument.

\_\_\_\_\_  
Notary Public

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*FOR CITY USE ONLY*

**This encroachment permit may *not* be granted for any of the following purposes:**

- Placement of any sign that encroaches upon public property or a public right-of-way. These require an application to the Sign Officer followed by a Council vote to approve or deny. [Refer to Part 13 Zoning Ordinance, 1309.4, 1309.5 and 1309.9].
- Placement or installation of any marquee or canopy sign that projects over or otherwise encroaches upon a public right-of-way. These require Planning Board review and Council approval. [Refer to Part 13 Zoning Ordinance, 1309.16].
- Placement or installation of any outdoor patio within a public right-of-way. These require an encroachment agreement with the City, renewable on an annual basis. [Refer to Part 13 Zoning Ordinance, 1321.12.2].
- Placement or installation of a structure, pavement, utility construction, signage, and similar improvements that encroach in any manner upon any landscape screening and buffers governed by Part 13 Zoning Ordinance 1322. These require a special permit that may only be granted by the City Planning Board. [Refer to Part 13 Zoning Ordinance 1322.6 (A)].
- Placement, construction or erection of poles or stringing of wires upon any public streets or alleys of the City. This requires the permission of the City Council in most instances. [Refer to City Ordinances such as 901.07].
- Removing or disturbing the surface of any street, lane, alley or sidewalk or improvements thereon. Such activities, including any digging or excavation, must be approved by resolution of the City Council or otherwise permitted by a City Ordinance, which is a separate process not covered by this Application. [Refer to City Ordinances such as 901.04 - 901.07, 903.01 - 903.06, and 903.07].

Application granted and Permit issued by: \_\_\_\_\_ Date: \_\_\_\_\_  
Mayor