

Dumpster 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 a 'Dumpster Only' encroachment. (So, if your request is to place a dumpster *and a storage trailer* full of roofing shingles on City property, then this is not the correct Application for you to complete.) 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. This may require you to make corrections to your Application, which is why you were asked to hold off on signing page 4 before a Notary.
- STEP 3:** Take note of **Exhibit A** at the end of the Application. These are the City's insurance requirements. Provide a complete copy of your Application and any attachments that you have added to your insurance agent/broker so that they can review the City's stringent insurance requirements and advise you on the cost, as well as their ability to meet all City 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, along with any additional information that you attached to your application, such as drawings, photos, etc.
- 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 advisor 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 advisor, and there are no other deficiencies to correct in your Application, the Mayor will be able to make a decision on your Application. If approved, the Mayor will sign the 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 (Dumpster only)** (ver. 5.13.2025)

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

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, verify that you spelled the Applicant's name exactly as recorded by the NYS Secretary of State. Research it at <https://apps.dos.ny.gov/publicInquiry/> and then provide:

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).

(Signature – must be witnessed by a Notary Public)

Date: _____

(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

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].

Coordinate with DPW before approving any encroachment application.

- Send a copy of the completed application and all attachments, especially aerial maps, drawings, etc., to the Director of DPW so that his staff can survey the encroachment area before and after the use or project. This will assist DPW in identifying any damage caused to a right-of-way (ROW) or other City property.

Encroachments for dumpsters are rated low risk for insurance purposes. In that situation, include EXH A – LOW RISK Encroachment Ins” with the Application that is sent to the requester.

Application granted and Permit issued by: _____ Date: _____
Mayor

EXHIBIT A – FOR LOW-RISK ENCROACHMENT

INSURANCE REQUIREMENTS OF THE CITY OF NIAGARA FALLS, NEW YORK

Regarding Applicant's use of City facilities or encroachment on or over a public right-of-way

Notwithstanding any terms, conditions, or provisions in any other writing with the City of Niagara Falls, New York, (hereinafter, "City"), the Applicant shall obtain, at its own expense, all insurance policies specified below that will provide, at minimum, the coverage limits noted for each, and otherwise satisfy each of the additional terms and conditions set forth below:

1. **Commercial General Liability Insurance (mandatory for all Applicants):**

\$2,000,000 for each occurrence/\$4,000,000 general and products/completed operations aggregates. The general aggregate shall apply on a per-project basis.

2. **Automobile Liability Insurance, but only if** the Applicant's proposed use of any City Facility and/or encroachment on or over a public right-of-way involves the use of any of Applicant-owned, hired, or leased automobiles, trucks, trailers, or other type of self-propelled equipment registered for use on the public highway and/or used in operations relating to the activities of the Applicant:

\$1,000,000 combined Single Limit for owned, hired, and non-owned motor vehicles.

3. **Umbrella or Excess Insurance:** *If General Liability and/or Auto limits are lower than required in the above sections, then Umbrella Liability or Excess Liability must be provided with limits that, at minimum, make up the difference. Excess coverage shall be on a follow-form basis.*

4. **Workers' Compensation, Employers' Liability, and NYS Disability Insurance is required for each business that will be performing work at any time during the encroachment and anywhere on the property and/or address(es) identified on page 1 of the Application, as follows:**

Statutory Workers' Compensation, Employers' Liability Insurance, and NYS Disability Insurance for all employees. Proof of coverage or exemption must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable. (See additional guidance below, under the heading: 'Securing Proof of Workers' Compensation and....")

The City Risk Manager reserves the right to increase any or all the above-required insurance.

Whenever the Applicant procures insurance with any coverage limits higher than the minimum limits noted above, each higher limit will be deemed substituted in the appropriate numbered paragraph(s) above. And in the event Applicant procures one or more additional policies of insurance for the protection of the City but not specified above, then each such additional policy of insurance will immediately be deemed required and incorporated herein, in numeric order, directly underneath the last numbered paragraph above. The City shall thereby be entitled to additional insured status and protection as to each such higher coverage limit and/or additional insurance policy procured by the Applicant.

Naming the City as an Additional Insured:

The Applicant (a/k/a the "Insured") shall also effectuate the naming of the City - which includes its Council, boards, officers, agents, employees, and volunteers - as an **additional insured on all the Applicant's insurance required above or by the City Risk Manager, except workers' compensation and NYS disability insurance.** Furthermore, each policy required to name the City as an additional insured shall:

1. **Be an insurance policy from an A.M. Best-rated or better insurer, authorized to conduct business in New York State. A New York State admitted insurer is preferred.**
2. **State that the Insured's coverage shall be primary and non-contributory coverage for the City, which includes its Council, boards, officers, agents, employees, and volunteers.**

3. **The City shall be listed as an additional insured by using endorsement CG 2026 or equivalent. A complete copy of all required additional insured endorsements must be attached to the certificate of insurance.**

Certificate of Insurance Requirements:

For so long as its use of City facilities or encroachment on or over the City's public right-of-way is in existence, the Applicant shall maintain in place all the insurances required above and **shall provide the City Administrator with all current certificates of insurance to demonstrate the existence of said insurance and to demonstrate no lapse in coverage.**

1. The Applicant must provide the City Administrator with all necessary Certificate(s) of Insurance, evidencing its procurement of all required insurance and coverages before the Applicant may use any City Facility or encroach upon any City property or right-of-way.
2. All such certificates and forms must be complete and acceptable to the City.
3. The Applicant's full legal name must be listed as the "Insured" on each Certificate of Insurance ("COI")
4. Each COI must identify the City as a "Certificate Holder" with the following address information:

**Attn: City Administrator (Encroachment)
City of Niagara Falls, New York
745 Main Street
Niagara Falls, New York 14301**

5. The 'Description of Operations' section of each COI must state:
 - A. **"The City of Niagara Falls, New York, its Council, Boards, Officers, Agents, Employees, and Volunteers are included as additional insured on a primary and non-contributory basis on the General Liability, Auto Liability (if applicable), and Umbrella/Excess Liability (if applicable), per form(s) _____."** (This is in addition to providing the City with additional insured endorsements for all insurance policies required above).
 - B. **briefly describe the Applicant's Encroachment, ending with the following statement ".... as more fully described in the attached Facility Use Application and Agreement with the City.**

Miscellaneous Terms and Conditions:

1. At the City's request, the Applicant shall provide a copy of the declaration page of any required liability, excess or umbrella policy with a list of endorsements and forms for each. If so requested by the City, the Applicant shall provide a copy of all policy endorsements and forms.
2. The failure of the City to demand, request, obtain, or object to the contents of any certificate of insurance, form, endorsement, declaration page, policy, or the absence of same, shall not be deemed a waiver of any and all rights held by the City.
3. No insurance company issuing a policy that is required herein or by the City Risk Manager shall have any recourse against the City for payment of any premium or for assessments such as a deductible or self-insured retention. If any insurance company ignores this prohibition, then the Applicant that was required to procure the policy shall indemnify the City for all premiums and assessments sought to be charged to the City.
4. The City is a member/owner of the New York Municipal Insurance Reciprocal (NYMIR). The Applicant further acknowledges that the procurement of such insurance as required herein is intended to benefit not only the City but also NYMIR, as the City's insurer.

Securing Proof of Workers' Compensation and Employer's Liability Insurance and New York State Statutory Disability Benefits:

NYS Workers' Compensation Law requires that a business produce proof of workers' compensation and/or disability and paid family leave benefits coverage to a state or municipal agency when it seeks to obtain a license, permit, or contract. To comply with coverage provisions of Section 57 of the Workers' Compensation Law, businesses must (1) be legally exempt from obtaining workers' compensation insurance coverage, (2) obtain such coverage from insurance carriers, or (3) be self-insured or participate in an authorized group self-insurance plan. Therefore, Applicant must provide coverage evidence in one of the following forms to the City, or the current equivalent of any of them in the event of revisions or replacements:

- 1) CE-200 Certificate of Attestation of Exemption. A CE-200 form can only be used to attest **to a government entity** that an applicant requesting a license, permit or contract is not required to carry workers' compensation and/or disability and Paid Family Leave benefits coverage. It CAN NOT be used to respond to the Board regarding periods of non-compliance or penalties issued for not having insurance coverage. It also CAN NOT be used to show another business or that business's insurance carrier that coverage is not required.
 - a. Certificates are only valid for the specific license, permit or contract. Certificates for building permits are job-specific and a separate certificate will be required for each building permit.
 - b. Certificates are assigned a unique certificate number that can be validated by the government official issuing the license, permit, or contract.

Only two types of entities may apply for a certificate to show they are exempt from the requirement to provide workers' compensation and/or disability and Paid Family Leave benefits coverage when obtaining a license, permit or contract with a government agency:

- New York entities with no employees
- Out-of-state entities obtaining a contract or license where all the work is performed outside of New York State

Certificates/Affidavits must be stamped as received by the N.Y.S. Workers' Compensation Board.

For more details, see: https://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp

- OR -

- 2) One of the following:
 - C-105.2, Certificate of Workers' Compensation,
 - U-26.3, New York State Insurance Fund Certificate of Workers' Compensation Coverage,
 - SI-12 – Certificate of Workers' Compensation Self-Insurance, or
 - SIG-105.2 – Certificate of Participation in Workers' Compensation Group Self-Insurance.

(ver. 09.24.2024)