



Meeting Date: October 13, 2021

Submitted by: Rob Cascaden, P.Eng – Director – Public Works and Engineering

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Report No: PWE 31-2021

Subject: Encroachment By-Law

Recommendation:

THAT Council receive for information Report PWE 30-2021 Encroachment By-Law;

AND THAT Council endorse the Encroachment By-Law as found in Appendix A;

AND THAT Council delegate; approval, rejection, or termination of encroachment agreements to the Director of Public Works and Engineering for the Municipality of Middlesex Centre;

AND THAT Council approve amendments to the Fees and Charges By-law consistent with the fees and charges as identified in the Encroachment By-Law Report PWE 31-2021, and encroachment By-Law found in Appendix A ;

AND FURTHER THAT Council approve that the annual rental charge be added to the property taxes.

Purpose:

The purpose of this report and attached By-Law is to provide residents, staff, and Council a clear and transparent process that allows for encroachments into the Municipality's right of ways, properties, and other land holdings, provided they do not negatively impact current or future municipal use.

Background:

Objective 5.3 of Councils 2021-2026 [Strategic Plan](#), identifies "reviewing and enhancing our processes" as an area of improvement. This By-Law will look to formalize a process for reviewing and processing encroachments that may be requested. While not many requests have been received there has been no formal By-Law in which to review them. This By-Law will provide a council approved document which will aid in the review of

applications as well as providing applicants an outline of the process and information on application requirements, costs, and expectations for any purposed encroachments.

Analysis:

The Municipalities [Municipal Right of Way By-Law](#) prohibits privately owned objects from being placed on, over or under a street or road allowance with the exception of grass and a “private entrance” (e.g. the driveway “apron” that connects a private driveway to the travelled portion of the street). If strictly interpreted, the by-law prohibits the planting of even a single flower on the boulevard by a homeowner and would require the demolition of fences or flower gardens that inadvertently encroach even 1 cm onto a municipal road allowance. In these admittedly extreme examples, the municipality is unlikely to demand the removal of a flower or a small garden that encroaches onto a road allowance or require the demolition only by reason of a 1cm encroachment, notwithstanding the Municipal Right of Way By-Law. There are, however, encroachments on Municipal road allowances that require impact and risk assessment to determine whether they should be allowed, prohibited or possibly ignored. An effective and transparent encroachment By-Law is an essential operational component for every municipality.

The Encroachment By-Law and any subsequent agreements will provide for common conditions and restrictions contained in them. Listed in the Encroachment By-Law are the documents required to be submitted to the Director of Public Works and Engineering to authorize an encroachment agreement following review and approval by the Director of Public Works and Engineering (or Designate) in accordance with the Encroachment By-Law.

According to the Encroachment By-Law, the application and information submitted by the property owner is reviewed for compliance with the Municipality’s policies, and standards by the Public Works and Engineering Department. If the proposed encroachment is compliant with municipal policies and standards then it receives preliminary approval. After preliminary approval, an Encroachment Agreement is prepared by the Municipality’s legal counsel. Municipal staff share the Encroachment Agreement with the property owner(s) to be executed and returned to the municipality. The executed Encroachment Agreement as recommended by the Director of Public Works and Engineering (or Designate) through delegated authority will authorize the Mayor and Clerk to execute an agreement.

Under the Encroachment Agreement the property owner is required to carry general liability insurance. The Encroachment Agreement shall be registered on the title of the adjoining owner’s property. In addition to the application fee, property owners must pay an annual rental fee for the Encroachment Agreement, which is determined by the Director of Public Works and Engineering based on the area of the encroachment.

The fee for making an application for encroachment agreement shall be \$150.00, the fee for registering the agreement on title shall be \$170.00, and the annual rental fee is \$15.00 per square meter to be included on the properties tax bill and remain until the encroachment is removed or the agreement is terminated. Costs identified are in 2021

dollars and are subject to review and adjustment as part of the annual updates to the Fees and Charges By-Law.

An encroachment agreement does not relieve a property owner from acquiring additional permits such as, road occupancy permits, or road closure permits should work be required in the municipal right of way to construct an encroachment.

It is the intent of the Public Works and Engineering Department that all such authorized encroachments be captured in our asset management software and with the permit and associated agreements linked to the private asset.

Financial Implications:

The application and registration fees are intended to be cost neutral and cover the administrative effort required to review and approve any encroachment agreement as well as register an executed agreement on title.

Depending on the number of encroachment agreements there is the possibility of generating some revenue from the yearly rental fee associated with any encroachment agreement.

Strategic Plan:

This matter aligns with following strategic priorities:

- Sustainable Infrastructure and Services
- Responsive Municipal Government

This report and appended Encroachment By-law allow staff to be flexible and responsive to request from residents regarding the use of or encroachment of the municipal right of way or municipal lands, while ensuring the municipality is not adversely impacted.

Attachments:

Appendix A- Encroachment By-Law