



**Municipality of Middlesex Centre
By-Law 2021-095**

Being a by-law of the Corporation of the Municipality of Middlesex Centre to permit encroaching upon public highways and lands through agreement

WHEREAS Section 9 of the Municipal Act, 2001, S.O. 2001, Chapter M.25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority;

WHEREAS the Municipal Act, 2001, S.O. 2001, c.25 (hereinafter the “Municipal Act, 2001”) provides that a municipality may pass by-laws within the following spheres of jurisdiction: Highways, including parking and traffic on highways; Culture, parks, recreation and heritage at section and Structures, including fences and signs at section;

AND WHEREAS section 8 of the Municipal Act, 2001 provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Municipal Act;

AND WHEREAS section 9 of the Municipal Act, 2001 provides that sections 8 and 11 shall be interpreted broadly so as to confer broad authority on municipalities to (a) enable them to govern their affairs as they consider appropriate, and (b) enhance their ability to respond to municipal issues;

AND WHEREAS section 391 of the Municipal Act, 2001 provides that a municipality may pass by-laws imposing fees or charges on any class of persons for the use of its property including property under its control;

AND WHEREAS section 427 of the Municipal Act, 2001 provides that a municipality may proceed to do things at a person's expense which that person is otherwise required to do under a by-law or otherwise but has failed to do and provides that the costs incurred by a municipality in doing a thing or matter under section 427 may be recovered by adding the costs to the tax roll and collecting them in the same manner as taxes

AND WHEREAS the Corporation of the Municipality of Middlesex Centre (the “**Municipality**”) is the registered owner of certain parcels of land located within the Municipality including road allowances and other tracts / parcels of lands situated within the Municipality;

NOW THEREFORE BE IT RESOLVED THAT the Council of the Corporation of the Municipality of Middlesex Centre enacts as follows:

1. Purpose

The purpose of the Encroachment By-Law is to formalize and clarify the procedure for granting encroachments on municipally owned and/or controlled property and outlines the process for granting and terminating encroachments. The Encroachment By-law also sets the guidelines for staff, residents, and members of Council as it relates to any encroachment on municipally owned and/or controlled property.

2. Scope

This By-Law applies to any person or property owner that has, utilizes and/or requires an encroachment whether wholly or in part on or in any right of way, street, easement, municipally owned property or leased lands.

3. Definitions

- 3.1. “Council”, means the Council for the Corporation of the Municipality of Middlesex Centre;
- 3.2. “Director”, means the Director of Public Works and Engineering or that person’s designate;
- 3.3. “Encroachment”, means any aerial, surface, or sub-surface structure or other obstruction, existing on any Municipal Land in part or in whole and includes but is not limited to: buildings, fences, shelters, patios, concrete pillars, planters, posts, poles, newspaper boxes, vending machines, curbs, tree plantings, crops, gardens, landscaping, retaining works, drainage works, satellite dishes, supporting structures, signs, towers, antennae, guy wires, cables, pipes, benches, vehicles, tables and chairs whether permanent or temporary. An Encroachment shall also include but not be limited to the unauthorized removal or destruction of any tree, rock or other thing whether occurring naturally or not;
- 3.4. “Expenses”, means any and all expenses incurred or required to be incurred by the Municipality with regard to removing or otherwise rectifying an Encroachment, storing any seized thing and shall include but not be limited to all charges, costs, administrative fees, taxes, legal fees, losses, H.S.T. Tax, and any incurred interest on such outstanding expenses;
- 3.5. “Encroachment Agreement” means a binding agreement between the Municipality and the property owner, prepared by the Municipality to permit a property owner to erect and maintain an encroachment within a municipal road allowance, or any other municipal property.
- 3.6. “Municipal Lands”, means lands owned by or leased or licensed to or under the management of the Municipality, Municipal easements, and shall include but not be limited to any road, lane, public highway, right of way, park, woodland, greenbelt, storm water management facility, open space, municipal cemetery and lands in which the Municipality holds any real property interest, and all parts thereof, including any surface, grassed area, boulevard, ditch, curb, gutter, and sidewalk.
- 3.7. “Municipality”, means the Corporation of the Municipality of Middlesex Centre;
- 3.8. “Officer”, means a Municipal By-Law Enforcement Officer appointed by Council;
- 3.9. “Property Owner” means the registered owner of the property requiring or necessitating the need for the encroachment;
- 3.10. “Person”, means an individual, partnership, corporation, association, club, business entity, incorporated group or organization, federal or provincial government, crown agent, school board or regional or local municipality, to whom the context can apply in accordance with the *Interpretation Act* of Ontario, as amended but specifically excludes the Municipality;
- 3.11. “unauthorized encroachment” means any encroachment not authorized by this by-law.

4. Roles & Responsibilities

- 4.1. The Director of Public Works and Engineering (or Designate) is responsible for reviewing, approving, terminating, or rejecting encroachment agreements through delegated approval.
- 4.2. The Mayor and Clerk will be responsible for executing the Encroachment Agreement on the recommendation and delegated approval authority of the Director of Public Works and Engineering.

5. Encroachments Prohibited

- 5.1. No person shall erect, place or maintain, or cause to be erected, placed or maintained, an encroachment of any kind on Municipal lands, or on any right-of-way or easement in favour of the Municipality, except where permitted to do so in accordance with this by-law;
- 5.2. Notwithstanding section 5.1, the provisions of this by-law do not apply to the following classes of encroachments:
- 5.2.1. signs, as authorized by the Municipality in accordance with the Sign By-Law;
 - 5.2.2. a temporary encroachment arising as a result of construction, maintenance or other activity as authorized under a valid temporary permit issued by the Municipality;
 - 5.2.3. encroachments permitted as a result of a written and signed agreement with the Municipality, other than an encroachment agreement; and,
 - 5.2.4. encroachments arising as a result of a Committee of Adjustment decision permitting the owner of residential premises to widen a property owner's driveway, provided a curb cut permit from the Municipality is also issued to the owner.

6. Procedure

The Municipality upon receipt of an application for an encroachment agreement under the provisions of this By-law may take into consideration the following factors, among other appropriate factors in the Municipality's discretion:

- 6.1. interference with the Municipality's use, enjoyment or purpose;
- 6.2. creation of unsafe or hazardous conditions if the encroachment is permitted;
- 6.3. interference with any current or future plans, initiatives or works of the Municipality;
- 6.4. interference with a utility or similar installation located on the subject street or right of way;
- 6.5. any impact or diminishment of the public right of use;
- 6.6. incompatibility with the character and nature of the surrounding neighborhood; and,
- 6.7. the size of the Municipally owned lanes, streets, rights of way and walkways.

7. Process

- 7.1. Formal applications for an encroachment agreement shall be made in writing to the Director of Public Works and Engineering (or Designate). Associated annual fees will be processed on or before April 30th of each year so they can be applied to the property tax bill. The application shall include the following information:
- 7.1.1. A plan drawn to scale acceptable by the Director that adequately depicts the extent of the encroachment onto the Municipal property that is fully dimensioned in both plan and profile including heights and underground footings and utility locations, if applicable.

- 7.1.2. PIN (Property Identifier Number) printout for the property that is the subject of the encroachment agreement.
- 7.1.3. Full name, address, telephone number and email address of the owner and owner's Solicitor, if applicable.
- 7.1.4. Application fee plus a onetime registration fee. In addition annual charges will be added to property taxes and collected in the same manner as property taxes.

7.2. Property owners may make one application per proposed encroachment. Completed applications accompanied by the application fee should be delivered to:

Director of Public Works and Engineering
10227 Ilderton Road
RR#2 Ilderton ON, N0M 2A0

8. Review

- 8.1. Upon approval by the Director (or Designate), the application will be forwarded to the Municipality's legal counsel where the Encroachment Agreement will be drafted and sent to the applicant(s) for execution. No building permit or development approval will be issued until the executed agreement is returned from the applicant(s) and or their lawyer, complete with proof of insurance and payment for any charges owing. The executed agreement shall be registered against the property requiring or necessitating the need for the encroachment. Registration shall be completed by the Municipality and subject to a registration fee of \$170.00 that shall be immediately paid by the applicant. Encroachment Agreements shall be subject to an annual rental fee as set out in the Fees and Charges By-law. Any unpaid registration fees, removal fees and annual rental fees shall be subject to interest and penalties as set out in the Fees and Charges By-Law as amended from time to time.
- 8.2. The Municipality of Middlesex Centre upon failure of the property owner to remove an encroachment upon 60 days' notice may order removal of an encroachment in default. The Municipality will remove the encroachment at the encroaching party's expense by placing costs on the Roll thereby liening the property. In the event an encroachment poses an immediate hazard to the public the Municipality will take immediate action as deemed appropriate by the Director of Public Works and Engineering to remove the hazard and bill the costs to the property owner

9. Denial

- 9.1. If the Director of Public Works and Engineering denies an application, the property owner can request a written explanation and reasons for denial.

10. Insurance Requirements:

- 10.1. Any person seeking an encroachment agreement must be capable of holding adequate insurance in the form and type required by the Municipality and indemnifying the Municipality from all claims that may result by reason of the existence of the encroachment. The applicant for the encroachment agreement shall provide proof of insurance in a form and amount satisfactory to the Director (or designate) in the minimum amount of \$2 million or such other higher amount as may be determined by the Director (or Designate) in his/her own discretion and shall name The Corporation of the Municipality of Middlesex Centre as an additional insured. The Certificate of Insurance shall be submitted to the Municipality at the time the executed Encroachment Agreement is returned to

the Municipality. The Certificate of Insurance must be satisfactory in form and content to the Municipality. The applicant agrees to indemnify and hold harmless the Municipality from and against all liability in respect for any and all claims, demands, expenses, costs, judgments, orders, actions that may arise or be made against the Municipality resulting from the encroachment. All approved encroachments are, at all times, considered to be placed and used at the property owner's own risk. The Municipality at no time shall be considered or held responsible for repairing and/or replacing an encroachment or for any damages arising as a result of clearing and removing litter, graffiti, posters, snow or ice, or as a result of repairs or reconstruction.

11. REMOVAL OF UNAUTHORIZED ENCROACHMENTS

- 11.1. Where the Municipality becomes aware of an unauthorized encroachment, the Municipality may give notice in writing to the owner of the premises to which an unauthorized encroachment is appurtenant, to forthwith remove, fill in or close up the encroachment and to restore the public lands to their former condition at the expense of the owner.
- 11.2. Where the notice in subsection 11.1 is not complied with within a period of thirty (30) days of the date of the notice, the Municipality may, on behalf of the owner, remove, fill in or close up the unauthorized encroachment and restore the public lands to their former condition at the expense of the owner, such expense to be recovered in full in the manner as set out under this By-law.
- 11.3. Any materials or structures forming part of or attached to the encroachment and removed by the Municipality may, at the discretion of the Director of Public Works & Engineering, either be deposited at the owner's premises or be stored for thirty (30) days at the owner's expense, such expense to be recovered in full in the manner set out under this By-law. Any item so stored and not claimed by the owner within the said thirty (30) day period shall be disposed of by the Municipality in such manner as it deems appropriate.

12. Recovery of Expenses

- 12.1. All expenses incurred by the Municipality in connection with the enforcement of this by-law shall be paid within thirty (30) days of their billing date, and in the event of failure to pay the entire amount due within the said thirty (30) days, at the discretion of the Municipality, the outstanding balance of the invoice plus interest at a rate of 1.25% per month and any penalties may thereafter be added to the tax roll as of the year in which the expenses were billed and collected in a manner like taxes.
- 12.2. The Municipality may also recover all expenses owing under this by-law by a court action as a debt due to the Municipality.

13. Penalties

- 13.1. Every person who contravenes any provision of this by-law is guilty of an offence on conviction is liable to pay a fine, exclusive of costs, as provided for in the *Provincial Offences Act* of Ontario, as amended.

14. Prohibition Order

- 14.1. When a person has been convicted of an offence under this by-law,
 - 14.1.1. the Superior Court of Justice, or
 - 14.1.2. any other court of competent jurisdiction,

may, in addition to any other penalty imposed on the person convicted, issue an order prohibiting the continuation or repetition of the offence or the doing of any act or thing by the person convicted directed toward the continuation or repetition of the offence.

15. Enforcement

15.1. A municipal by-law enforcement officer acting under this By-law may enter and inspect all buildings, structures or parts thereof that are subject to this By-law at any reasonable time for the purposes of determining whether there is compliance with this By-law.

16. Exceptions and Grandfathering

16.1. The provisions of this By-law shall not apply to those persons who have a valid and binding encroachment agreement with the Municipality with respect to encroachments occurring on highways.

16.2. Any encroachment authorized under an encroachment agreement determined by the Municipal Solicitor to be valid and binding at the date of enactment of this by-law, shall not require further authorization pursuant to this by-law until the encroachment agreement has either expired or is terminated.

16.3. Subject to subsection 15.2, this by-law shall apply to all encroachments which existed or were created before this by-law was enacted and passed.

17. Title

This By-law shall be known as the “Encroachment By-law”.

18. Severability

18.1. Where a court of competent jurisdiction declares any section or part of a section of this By-law to be invalid, or to be of no force and effect, it is the intention of Council in enacting this By-law that the remainder of this By-law shall continue in force and be applied and enforced in accordance with its terms to the fullest extent possible according to law.

19. Final Passing

THAT this by-law shall come into force when it is passed and enacted by Council.

PASSED AND ENACTED this 27th day of October, 2021.

Aina DeViet, Mayor

James Hutson, Municipal Clerk