



MUNICIPALITY OF NORTH MIDDLESEX

BY- LAW NUMBER 13 of 2019

BEING A BY-LAW TO REGULATE AND CONTROL THE USE OF PUBLIC HIGHWAYS AND LANDS OWNED BY THE MUNICIPALITY OF NORTH MIDDLESEX AND TO PERMIT THE SEIZURE AND IMPOUNDING OF THINGS ENCROACHING UPON THESE PUBLIC HIGHWAYS AND LANDS AND TO RECOVER COSTS INCURRED BY THE MUNICIPALITY.

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;

AND WHEREAS Section 8 of the *Municipal Act*, 2001, provides that the powers of a municipality under that *Act* shall be interpreted broadly so as to confer broad authority on municipalities to a) enable municipalities to govern their own affairs as they consider appropriate and, b) enhance their ability to respond to municipal issues;

AND WHEREAS Section 11 of the *Municipal Act*, 2001, provides that a lower tier municipality may pass By-Laws respecting matters within the spheres of jurisdiction set out therein;

AND WHEREAS the Corporation of the Municipality of North Middlesex is the registered owner of certain municipal road allowances and municipally owned tracts of lands, within the Municipality of North Middlesex;

AND WHEREAS the Council of the Corporation of the Municipality of North Middlesex deems it advisable to enact a By-Law with regard to how Encroachments onto such municipally owned land shall be handled in order to deal consistently with such issues;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF NORTH MIDDLESEX ENACTS AS FOLLOWS:

SECTION 1 - DEFINITIONS

"Council", means the Council for the Corporation of the Municipality of North Middlesex;

"Director", means the Director of Operations or that person's designate;

“Encroachment”, means any aerial, surface, or subsurface structure or other obstruction, existing on any Municipal Lands. These structures and obstructions shall include but not be limited to the following: buildings, fences, shelters, patios, concrete pillars, 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, tables and chairs. Furthermore, 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;

“Expenses”, means all expenses incurred by the Municipality with regard to removing or otherwise rectifying an Encroachment, storing any seized thing and shall include, without limitation, all charges, costs, administrative fees, taxes, legal fees, H.S.T. Tax, and any incurred interest on such outstanding expenses;

“Obstruction”, means an individual or group of individuals attempt to hinder an “Officer” or “Director” from completing an inspection by way of avoidance or providing false information.

“Officer”, means a Municipal Law Enforcement Officer appointed by Council;

“Notice”, means a Notice delivered to any person by prepaid registered mail, regular postal delivery, personal service upon the person named, service at the person’s last known address by leaving it with another person who is apparently the age of at least sixteen years or by posting the person’s property with a Notice in a conspicuous location;

“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;

“Municipality”, means the Corporation of the Municipality of North Middlesex;

“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.

SECTION 2 - GENERAL PROVISIONS

21 No person shall place any Encroachment or in any way obstruct or convert to their own use any Municipal Lands without the written authorization and consent of the Director, where applicable. Such authorization and consent may include

- any condition deemed suitable to that Encroachment and may include but not be limited to a cash surety to be applied where the Encroachment's authorization is revoked and the Encroachment is not forthwith removed upon receipt of notice. Such consent may also include and not be limited to a requirement for a suitable liability insurance policy to be in effect naming the Municipality as an insured party.
- 22 No person shall place, store or locate any Encroachment on any Municipal Lands save and except where authorized by;
- a. the provisions of any legislation in force within the Municipal;
 - b. the written consent of the Director, where applicable; or,
 - c. the written consent of Council.
- 23 Where Notice is given by the Municipality to remove an Encroachment, every person who receives such Notice shall take all steps necessary to:
- a. forthwith remove said Encroachment or replace anything removed from any Municipal Lands at their own expense; and,
 - b. return the Municipal Lands to its original state or condition, which shall be at a standard acceptable to the Municipality.
- 24 (a) Where Notice is given by the Municipality to a person to remove an Encroachment from any Municipal Lands, between December 1st and April 1st of the following year, said person may request an extension of the time for removal provided he or she provides sufficient information to satisfy the Director, where appropriate, that the Encroachment's removal during that period would cause undue hardship.
- (b) Upon receipt of a request for an extension of time to remove an Encroachment as set out in Section 2.4 (a), the Director, where appropriate, may determine to extend the period of time given for the removal to another date.
- 25 Where any Encroachment stored or located on any Municipal Lands is found and where such Encroachment's ownership, or the person responsible for the Encroachment is not readily identifiable, such Encroachment may be removed and disposed of by the Municipality in any way it shall deem fit. All expenses incurred by the Municipality, including costs to restore the Municipal Lands to their previous condition, shall be the responsibility of the owner or person identified as being responsible for the Encroachment.
- 26 The Municipality shall not be responsible for any damage to the Encroachment or any costs or damages directly or indirectly incurred by any person, arising from

the requirement to remove, or the removal of, any Encroachment at the direction of, or by, the Municipality. The owner shall not be entitled to any compensation for lost revenue or profit arising from the requirement to remove an Encroachment.

- 27 In addition to the provisions of Section 2.5, the Municipality may seize and impound anything found encroaching or being stored on any Municipal Lands and all expenses incurred by the Municipality, including the cost of removal, impoundment and storage of anything seized shall be the responsibility of the owner or person responsible for the Encroachment.
- 28 Anything impounded under the provisions of Section 2.7 and not claimed by its owner within thirty (30) days, may be disposed of by the Municipality in any manner which, in its sole and absolute discretion, it sees fit.
- 29 Notwithstanding the provisions of Sections 2.3 and 2.4, the Municipality is not obliged to send Notice to any person prior to removing or impounding any Encroachment on Municipal Lands.
- 210 Where any Encroachment is removed or impounded by the Municipality, the Municipality shall make a reasonable effort to locate and notify the owner or person responsible for the Encroachment. Where no owner or responsible person can be located within 60 days, then the Encroachment shall become the property of the Municipality and may be used or disposed of in any manner that the Municipality sees fit. The Municipality shall have no liability to the owner or person responsible for the Encroachment for any such removal or disposal.
- 211 Where any Encroachment has been authorized under Section 2.3 and where any damage occurs to that Encroachment by any means, the Municipality shall not be held responsible for such damage and shall not be obligated in any way to make any repair or restoration to that Encroachment.

SECTION 3 - PENALTIES

- 31 Every person who contravenes any provision of this By-Law is guilty of an offence and upon conviction is liable to pay a fine or penalty exclusive of costs, for each offence, as prescribed by the *Provincial Offences Act*, R.S.O.1990, and c.P.33, as amended.
- 32 Every person who is guilty of an offence under this By-law may, if permitted under the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended, pay a set fine, and the Chief Judge of the Ontario Court, Provincial Division, shall be requested to establish set fines as set out in Schedule "A" to this By-law.

- 33 Any expenses incurred by the Municipality under the provisions of this By-Law may:
- (a) in the sole discretion of the Municipality, be added to the tax roll for the property from which the Encroachment emanates for the year in which the expenses were incurred and collected in the same manner as taxes; or,
 - (b) be recovered by court action as a liquidated debt due and owing to the Municipality.
- 34 Expenses incurred by the Municipality shall include the actual cost of labour, equipment and an administrative fee of twenty-five percent (25%) plus an additional one and one half Percent (1.5%) interest rate per month for any amounts outstanding.

SECTION 4 - OBSTRUCTION

- 4.1 In accordance with the provisions of the *Municipal Act* S.O. 2001, c. 25, as amended, Section 426 (1), no person shall hinder, interfere with or otherwise obstruct, either directly or indirectly, an officer, employee of the Municipality of North Middlesex and/or agent in the lawful exercise or power or duty under this By-law.

SECTION 5 - ADMINISTRATION AND ENFORCEMENT

- 5.1 This By-law shall be administered by the Director.
- 5.2 This By-law shall be enforced by the Director and an Officer.

SECTION 6 - SHORT TITLE

- 6.1 This By-Law shall be called the Encroachment By-Law.

SECTION 7 - SEVERABILITY

- 7.1 If a court of competent jurisdiction should declare any section or part of a section of this By-Law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of this By-Law and it is hereby declared that the remainder of this By-Law shall be valid and shall remain in force.

SECTION 8 – APPLICATION FOR ENCROACHMENT

- 8.1 The following information must be submitted to commence an Encroachment

Agreement process:

1. A complete Application Form attached as Appendix A to this By-law.
2. An application fee as established from time to time by Council in accordance to the Municipality's Fees and Charges By-law, By-Law # 13 of 2019 as amended.
3. A plan or sketch of the subject lands with details of the encroachment clearly marked thereon.

The Application will be submitted to the Clerk's Office and circulated to the appropriate Departments for review, comment and recommendations.

A staff report with a recommendation may be presented to Council for its consideration.

If approved by Council and or the Director, the applicant will be required to pay all costs associated, including the costs of the registration of the encroachment agreement. A registered Reference Plan describing the location of the encroachment is required for the preparation of the Encroachment Agreement and for registration purposes. The Encroachment Agreement requires the encroaching party to provide proof of insurance, naming the Municipality as an additional named insured.

SECTION 9 - EFFECTIVE DATE

- 9.1 This By-Law will come in to force on the day of its passing and where required proper notice has been given.

Read a First, Second and Third Time and finally passed this 13th day of March 2019.

MAYOR,

CLERK,

Reasons for requesting encroachment:

Do you have a survey showing the encroachment: Yes No

If yes, please submit one copy of the survey. Survey plan will be required for Agreement.

The Applicant understands that this application is being taken in accordance with the Municipality's Encroachment By-Law and may be denied based on the criteria herein being of By-Law 13 of 2019.

Yes No

In the event that this application is approved, it will be necessary for the Applicant to execute an Encroachment Agreement and be register on title.

FEES ASSOCIATED WITH APPLICATION	
Administration Review Fee:	\$ 100.00
Encroachment Agreement Fee:	\$ 150.00

SOLICITOR (if applicable)

Name: _____

Address: _____

Telephone: _____ E-Mail: _____

**Municipality of North Middlesex
Schedule "A" to By-Law # 13 of 2019
Offences under the *Provincial Offences Act***

Encroachment By-Law # 13 of 2019	SECTION	SET FINE
Place Encroachment on municipal land without authorization from Director.	2.1	\$100.00
Fail to remove Encroachment from Municipal Land when directed	2.3	\$200.00
Obstruct or attempt to obstruct an officer, municipal employee or agent exercising their duties.	4.1	\$500.00
Fail to apply for encroachment agreement.	8.1	\$100.00