



The Corporation of the Municipality of
Central Elgin

BY-LAW NO. 2639

**BEING A BY-LAW TO REGULATE ENCROACHMENTS ON
PUBLIC LANDS**

WHEREAS the *Municipal Act, 2001 S.O. 2001, c.25, as amended*, provides that a municipality may pass by-laws within the following spheres of jurisdiction: Highways, including parking and traffic on highways at Section 11(3) 1; Culture, parks, recreation and heritage at Section 11(3) 5 and Structures, including fences and signs at Section 11(3) 7;

AND WHEREAS Section 8 of the *Municipal Act, 2001 S.O. 2001, c.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 under the *Municipal Act, 2001 S.O. 2001, c.25, as amended*;

AND WHEREAS Section 9(1) of the *Municipal Act, 2001 S.O. 2001, c.25, as amended*, provides that Section 8 and Section 11 shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate and enhance their ability to respond to municipal issues;

AND WHEREAS Section 391(c) of the *Municipal Act, 2001 S.O. 2001, c.25, as amended*, 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 446(1) of the *Municipal Act, 2001 S.O. 2001, c.25, as amended*, 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 WHEREAS Section 446(3) of the *Municipal Act, 2001 S.O. 2001, c.25, as amended*, provides that the costs incurred by a municipality in doing a thing or matter under Section 446(1) may be recovered by adding the costs to the tax roll and collecting them in the same manner as taxes;

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF
CENTRAL ELGIN ENACTS A BY-LAW AS FOLLOWS:**

SHORT TITLE

This By-law shall be known and may be cited as the "Encroachment By-law".

Section 1-Definitions

For the purpose of this By-law:

- 1.1 "Applicant" shall mean the Person applying for an Encroachment Agreement and shall include an Owner seeking an Encroachment Agreement, or renewal of an Encroachment Agreement.
- 1.2 "Clerk" shall mean the Clerk of the Corporation of the Municipality of Central Elgin, or designate.

- 1.3 "Council" shall mean the Council of the Corporation of the Municipality of Central Elgin.
- 1.4 "Director of Infrastructure & Community Services" shall mean the Director of Infrastructure & Community Services of the Corporation of the Municipality of Central Elgin, or designate.
- 1.5 "Easement" shall mean an interest in land owned by another Person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose, but does not include an interest created by a licence agreement.
- 1.6 "Encroachment" shall mean any type of vegetation, man-made object or item of personal property of a person which exists wholly upon, or extends from a Person's Premises onto, public lands and shall include any aerial, surface or subsurface encroachments:
- (a) "aerial encroachment" shall mean an encroachment that is located at least thirty (30) centimeters above the surface of public lands;
 - (b) "surface encroachment" shall mean an encroachment that is located anywhere between the following: the surface of public lands to a height less than thirty (30) centimetres and beneath the surface of public lands to a depth of not more than three (3) centimetres;
 - (c) "sub-surface encroachment" shall mean an encroachment that is located beneath the surface of public lands to a depth exceeding three (3) centimetres.
- 1.7 "Encroachment Agreement" shall mean an agreement prepared by the Municipality for execution by the Municipality and an Applicant granting authorization to erect, place or maintain an Encroachment.
- 1.8 "Expense" shall mean any and all sums of money actually spent or required to be spent by the Municipality, and shall include but not be limited to all charges, costs, a twenty five percent (25%) administrative fee, taxes, outlays, legal fees and losses.
- 1.9 "Highway" shall mean a highway within the meaning of *The Municipal Act, 2001 S.O. 2001, c.25*, as amended that is subject to the jurisdiction of the Municipality.
- 1.10 "Municipality" shall mean the Corporation of the Municipality of Central Elgin.
- 1.11 "Officer" shall mean a Municipal Law Enforcement Officer appointed by a Municipality of Central Elgin by-law, and/or a Police Officer.
- 1.12 "Owner" shall mean the registered owner of a parcel of property as such person is described in the most current assessment roll of the Municipality.
- 1.13 "Person" shall include an individual, a sole proprietorship, a partnership, an unincorporated association, a trust, a body corporate, a natural person or any other entity having recognized at law as having competency to enter into a contract.
- 1.14 "Personal Property" means any object or item of property other than real property.
- 1.15 "Premises" means a parcel of real property under registered ownership and includes all buildings and structures thereon.
- 1.16 "Public Lands" means lands owned by, leased, licensed to or under the management of the Municipality, and shall include but not be limited to any public highway, road, street, avenue, parkway, lane, alley, square, place, viaduct or trestle, water, thoroughfare, way or bridge, park, woodland, greenbelt, storm water management facility, open space,

cemetery, and all parts thereof, including any surface, grassed area, boulevard, ditch, curb, drain, gutter and sidewalk.

- 1.17 "Right-of-Way" shall mean a person's legal right, established by common law, deed or by contract, to pass through grounds or private property which affords access to abutting lots and does not include a Highway.
- 1.18 "Sign" shall mean any structure or device, intended for identification or advertisement, visible to the general public.
- 1.19 "Unauthorized Encroachment" shall mean any encroachment not authorized by this By-law.

Section 2-General Prohibitions

- 2.1 No person shall erect, place or maintain, or cause to be erected, placed or maintained, an Encroachment of any kind on public lands, or on any right-of-way or easement in favour of the Municipality, unless permitted to do so in accordance with this By-law.
- 2.2 Notwithstanding Section 2.1 of this By-law, the provisions of this By-law do not apply to the following classes of encroachments:
 - (a) Signs and Advertising Devices, as authorized by the Municipal Sign By-law;
 - (b) Encroachments permitted as a result of a written and signed agreement with the Municipality, other than an Encroachment Agreement;

Section 3-Request for Encroachment

ENCROACHMENT AGREEMENT APPLICATION FEES

- 3.1 All Encroachment Agreement application fees are for administrative purposes and are, therefore, non-refundable if the application is refused for any reason or is withdrawn by the Applicant prior to the issuance of an Encroachment Agreement.
- 3.2 The Encroachment Agreement application fee shall be as set out in Municipality of Central Elgin Rates & fees By-law, as may be amended or replaced from time to time.

ENCROACHMENT AGREEMENT APPLICATION - FULL INFORMATION REQUIRED

- 3.3 Every Applicant shall provide in full a complete application, at the time the application is submitted or the Director of Infrastructure & Community Services shall not accept the application.
- 3.4 Every Applicant shall provide a complete application, at the time the application is submitted, including:
 - (a) All information required on the application form;
 - (b) payment of the prescribed Encroachment Agreement Application;
 - (c) any other document or information as may be required in any other Section of this By-law;
 - (d) any other affidavit, document or information as may be requested by the Director of Infrastructure & Community Services at any time during the term of the Encroachment Agreement.
 - (e) proof that the need for the encroachment is reasonable, feasible and no practicable alternative option exists. In addition, the encroachment must not

jeopardize the health or safety of the public, must be in the public's best interest and must be minor in nature.

ENCROACHMENT AGREEMENT APPLICATION - SUBJECT TO APPROVAL

- 3.5 Every Encroachment Agreement application will be subject to investigations by and comments or recommendations from such municipal or provincial departments or agencies as the Director of Infrastructure & Community Services deems necessary, or as directed by Council, including but not limited to:
- (a) Ontario Provincial Police,
 - (b) Public Health,
 - (c) Fire Department,

INCOMPLETE APPLICATION

- 3.6 Any Encroachment Agreement application that does not comply with the provisions of Section 3.4 of this By-law, shall be deemed incomplete and shall be returned by registered mail to the applicant pursuant to Section 3.10 of this By-law.
- 3.7 Any Encroachment Agreement application that has not received approvals from all municipal or provincial departments or agencies as the Director of Infrastructure & Community Services deems necessary within ninety (90) days from the date of the filing of the application, due to the Applicant's inability to comply with the requirements, shall be deemed to be incomplete.

INFORMATION HELD IS OPEN TO INSPECTION

- 3.8 Any application, comment, recommendation, information, document or thing in the possession of the Director of Infrastructure & Community Services pursuant to the provisions of this By-law shall be made available by the Director of Infrastructure & Community Services for an inspection:
- (a) by any Officer employed in the administration or enforcement of this By-law; and
 - (b) by any other person upon the consent, satisfactory to the Director of Infrastructure & Community Services, of the person, civic department, board, commission, authority or other agency which produced or submitted the application, comment, recommendation, information, document or thing; subject only to the limitations imposed by the *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, CHAPTER M.56, as amended*.

NOTICE

- 3.9 Every Encroachment Agreement owner shall notify the Director of Infrastructure & Community Services in writing within ten (10) days of any change in mailing address and shall be sent to:

Municipality of Central Elgin
Director of Infrastructure & Community Services
450 Sunset Drive
St. Thomas, ON
N5R 5V1

- 3.9 Any notice or request made pursuant to this by-law may be given in writing by regular mail or email and is effective:
- (a) On the date on which a copy is hand delivered to the Person to whom it is addressed; or

- (b) On the fifth (5th) day after a copy is sent by regular mail to the Person's last known address; or
 - (c) On the fifth (5th) day after a copy is sent by email to the Person's email address used in the Entrance Permit Application Form.
- 3.11 For the purpose of Section 3.10 of this By-law, the Encroachment Agreement Owner's last known address shall be deemed to include the address provided pursuant to Section 3.4 of this By-law and any updated mailing address given to the Municipality pursuant to Section 3.9 of this By-law.

AGREEMENT TO BE EXECUTED

- 3.12 Where a request to erect, install or maintain an encroachment has been approved, the Clerk shall prepare an Encroachment Agreement, and once the Applicant has been notified in writing that the Encroachment Agreement is ready for execution, the Applicant shall have thirty (30) calendar days to execute same.

CONTRAVENTION OF OTHER LAWS PROHIBITED

- 3.13 The issuance or renewal of an Encroachment Agreement under this By-law is not intended and shall not be construed as permission, acquiescence or consent by the Municipality for an Owner that has entered into such Encroachment Agreement to contravene or to fail to observe or comply with any law of Canada, Ontario or any other regulation, safety standard, or By-law of the Municipality, the County of Elgin or any other competent authority having jurisdiction.

Section 4-Registration of Agreement

- 4.1 Where the Director of Infrastructure & Community Services deems it appropriate, an Encroachment Agreement may be registered against title to the Encroachment Applicant's property in the Land Registry Office and all expenses in doing so shall be paid for in advance by the Applicant.

Section 5-Authority of the Director of Infrastructure & Community Services

- 5.1 The Director of Infrastructure & Community Services shall have delegated authority to:
- (a) approve or reject any application submitted for an Encroachment Agreement;
 - (b) impose such terms and conditions to any request and/or Encroachment Agreement as the Director of Infrastructure & Community Services may deem appropriate; and
 - (c) determine whether any Encroachment Agreement expiring on a date after the date of enactment and passage of this By-law shall be renewed and/or extended.

Section 6-Revocation

- 6.1 The execution of an Encroachment Agreement in respect of an Encroachment does not create any vested right in the owner or occupant of the premises to which the encroachment is appurtenant, or in any other person, and the Encroachment Agreement may be revoked in accordance with the terms set out therein.

Section 7-Access to Encroachments

- 7.1 No person shall obstruct, hinder or interfere with the free access to any Encroachment by an employee, officer or agent of the Municipality. Where the Encroachment is a building or structure the Owner shall provide reasonable access to the building or structure for the Municipality to be able to confirm the safety and integrity of the structure and its contents.

Section 8-Discontinuance of Encroachments

- 8.1 The Director of Infrastructure & Community Services may revoke an Encroachment Agreement:
- (a) If the owner of any premises to which an Encroachment is appurtenant desires to permanently discontinue the encroachment. The owner shall notify the Director of Infrastructure & Community Services in writing and the Director of Infrastructure & Community Services shall thereafter cause a notice to be sent to the owner by an Officer advising that the encroachment shall be removed or filled in and closed up, and the public lands shall be restored to their former condition by the Owner at the Owner's sole cost and expense;
 - (b) If the Director of Infrastructure & Community Services is at any time of the opinion that a breach of the terms and conditions of an Encroachment Agreement has occurred and that the Encroachment should be discontinued, or where an Encroachment Agreement has expired, the Director of Infrastructure & Community Services shall cause a notice to be sent to the owner advising that the Encroachment be removed or filled in and closed up, and the public lands be restored to their former condition by the Owner at the Owner's sole cost and expense; and/or
 - (c) If the Director of Infrastructure & Community Service believes that the Encroachment permitted by the Encroachment Agreement interferes with any operations, projects, strategies or other purpose of the Municipality, then the Director of Infrastructure & Community Service shall cause a notice to be sent to the Owner advising that the Encroachment shall be removed or filled in and closed up, and the public lands shall be restored to their former condition by the Owner at the Owner's expense.
- 8.2 Where an Owner fails to comply with the notice described in Section 8.1 of this By-law, within a reasonable timeframe, as determined by the Director following service of the Notice, the Encroachment may be caused to be removed and/or filled in and closed up by an Officer, and the public lands restored to their former condition at the expense of the Owner, such expense to be recovered in full in the manner provided in Section 11 of this By-law, and until the Encroachment is so removed or filled in and closed up and the public lands restored to their former condition, all expenses incurred by the Municipality in respect thereto shall be the sole responsibility of the Owner and, if not paid, shall be recovered in the manner provided for in Section 11. No Person served with a Notice under Section 8.1 of this by-law shall fail to comply with such Notice within the time provided by such Notice.
- 8.3 Where an Encroachment Agreement has been registered on title pursuant to section 4.1 of this By-Law and the Encroachment is discontinued pursuant to this Section 8, then the Encroachment Agreement shall be deleted from title of the property which it was registered against at the sole cost and expense of the Owner. If the Owner fails or refuses to pay such costs then these costs may be included and recovered pursuant to Section 11 of this By-law.

Section 9-Emergency Situations

- 9.1 If an Officer deems that an emergency exists or may exist as a result of any Encroachment related to the health and safety of the public, at the Officer's sole and absolute discretion, the Officer may:
- (a) notify in writing the Owner of the premises to which the encroachment is appurtenant, requiring the repair, removal, filling in or closing up of the encroachment and restoration of the public lands to their former condition at the expense of the Owner, so that the encroachment is no longer deemed to be a source of danger or potential danger to the public by the Officer, and/or
 - (b) take such measures on behalf of the Owner, without notice to the Owner, as the Officer may deem necessary to remove the danger or potential danger created by the Encroachment.
- 9.2 Where the notice in Section 9.1(a) of this By-law is not complied with within a reasonable timeframe as determined by the Director of the date and time of the service of the Notice, an Officer may, on behalf of the Owner, remove, fill in or close up the dangerous or potentially dangerous 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 provided in Section 11 of this By-law.
- 9.3 Where the Officer elects to take any action under Section 9.1(b) of this By-law, the expenses incurred by the Municipality in so doing shall be recovered in full in the manner provided in Section 11 of this By-law.
- 9.4 Where an Encroachment Agreement has been registered on title pursuant to section 4.1 of this By-Law and the Encroachment is discontinued pursuant to this Section 9, then the Encroachment Agreement shall be deleted from title of the property which it was registered against at the sole cost and expense of the Owner. If the Owner fails or refuses to pay such costs then these costs may be included and recovered pursuant to Section 11 of this By-law.

Section 10-Removal of Unauthorized Encroachments

- 10.1 Where the Municipality becomes aware of an unauthorized Encroachment, an Officer shall 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.
- 10.2 Where the notice in Section 10.1 of this By-law is not complied with within a reasonable timeframe as determined by the Director, an Officer shall, 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 provided in Section 11 of this By-law.
- 10.3 Any materials or structures forming part of or attached to the Encroachment and removed by an Officer shall, at the discretion of the Officer, either be deposited at the Owner's premises or be stored for a reasonable timeframe as determined by the Director at the Owner's expense, such expense to be recovered in full in the manner provided in Section 11 of this By-law. Any item so stored and not claimed by the owner within said reasonable period shall be disposed of by the Municipality in such manner as it deems appropriate.

- 10.4 No Person served with a Notice under Section 10.1 of this by-law shall fail to comply with such Notice within the time provided by such Notice.

Section 11-Recovery of Expenses

- 11.1 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 a refusal or failure to pay the entire amount due within said thirty (30) days, at the discretion of the Municipality, the outstanding balance of the invoice may thereafter be added to the tax roll as of the year in which the expenses were billed.
- 11.2 The Municipality may also recover all expenses owing under this By-law by a court action or any other legal remedy as a debt due to the Municipality.

Section 12-Infractions and Penalties

- 12.1 Every person who contravenes any of the provisions of this by-law is guilty of an offence and upon conviction is liable to pay a fine or penalty for each offence, exclusive of costs, as provided for in the *Provincial Offences Act, R.S.O. 1990, c.P.33*, as may be amended from time to time.

Section 13-Prohibition Order

- 13.1 When a person has been convicted of an offence under this By-law,
- (a) the Superior Court of Justice, or
 - (b) 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.

Section 14 - Administration

ADMINISTRATION OF BY-LAW

- 14.1 Unless otherwise indicated, the administration of this By-law is assigned by Council to the Director of Infrastructure & Community Services who may delegate the performance of functions under this By-law from time to time as occasion requires.
- 14.2 In this By-law, unless the contrary intention is indicated, words used in the singular shall include the plural and words used in any pronoun or term indicating a particular gender identity shall include all gender identities, where applicable.

Section 15 - Enforcement

ENFORCEMENT OF BY-LAW

- 15.1 An Officer shall be responsible for the enforcement of this By-law.
- 15.2 No person shall hinder or obstruct, or attempt to hinder or obstruct, any Officer or the Clerk while exercising any power or performing any duty under this By-law.

15.3 If there is a conflict between a provision in this By-law and a provision of any other Municipal By-law, the provision that establishes the highest standard to protect the health, safety and welfare of the general public shall apply.

Section 16-Exceptions and Grandfathering

16.1 Notwithstanding Section 2.1 of this By-law, any encroachment authorized under an Encroachment Agreement determined by the Clerk 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 expired or is terminated.

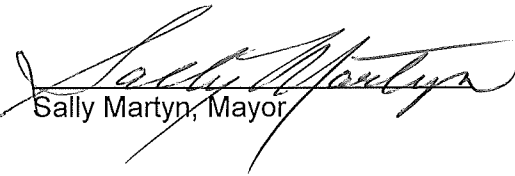
16.2 Subject to Section 16.1 of this By-law, this By-law shall apply to all encroachments which existed or were created before this By-law was enacted and passed.

Section 17 – Severability

17.1 In the event any section or provision of this By-law is held invalid, the remainder of the By-law shall continue in force.

17.2 This By-law shall come into full force and effect on the date of its passing by Council.

READ a FIRST, SECOND and THIRD TIME and finally passed this 27th day of September, 2021.


Sally Martyn, Mayor


Paul Shipway, CAO/Clerk