

The Corporation of the United Townships of Dysart, Dudley, Harcourt, Guilford, Harburn, Bruton, Havelock, Eyre and Clyde

By-Law no. 2021-31

Being a by-law to regulate encroachments within the Municipality of Dysart et al

Whereas Section 9 of the Municipal Act, 2001, S.O. 2001, c.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 a municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's 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, including but not limited to Highways, including parking and traffic on highways, Transportation systems, other than highways, Culture, parks, recreation and heritage, Structures, including fences and signs;

And whereas section 391(c) 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 the Corporation of the United Townships of Dysart et al is the registered owner of certain municipal road allowances, municipally owned tracts of lands, and is the beneficiary of easements in favour of the Municipality, within the Municipality of Dysart et al;

And whereas the Council of the Corporation of the United Townships of Dysart et al deems it advisable to enact a By-Law with regard to how Encroachments onto such lands shall be handled in order to deal consistently with such issues;

Now therefore the Council of the Corporation of the United Townships of Dysart et al hereby enacts as follows:

Definitions

1. In this by-law,
 - a) "Alteration", means any activity that results in a removal, addition, alteration, or material change to Public Lands including, but not limited to, the removal, addition, or alteration of, or material change to grading, vegetation or trees, structures, or any other natural or human-made features located therein or thereon;
 - b) "Chief Building Official", means the Chief Building Official for the Corporation of the United Townships of Dysart et al;
 - c) "Council", means the Council for the Corporation of the United Townships of Dysart et al;
 - d) "Easement" means 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 license;
 - e) "Encroachment", means 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;

- f) "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, Goods and Services Tax, and any incurred interest on such outstanding Expenses;
- g) "License of Occupation", means an agreement prepared by the Municipality for execution by the Municipality and a Person by which such Person is granted authorization to erect, place, or maintain an Encroachment on Public Lands.
- h) "Municipality", means the Corporation of the United Townships of Dysart et al;
- i) Public 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, storm water management facility, wharf, dock, 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.
- j) "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;
- k) "Officer", means a Municipal Law Enforcement Officer appointed by Council;
- l) "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;
- m) "Right-of-way" means a Person's legal right, established by usage or by contract, to pass through grounds or property owned by another Person.

General Provisions

- 2.1 No Person shall erect, place or maintain, or cause to be erected, placed or maintained, any Encroachment of any kind on Public Lands, or on any Right-of-way or Easement in favour of the Municipality, or in any way obstruct or convert to their own use any Public Lands without the written authorization and consent of Council.
- 2.2 No Person shall undertake or carry on any Alteration of any kind on or to Public Lands except as may be permitted under any by-law, statute, regulation, policy, resolution of the Municipality, or agreement.
- 2.3 Any Person requesting authorization to erect, install or maintain an Encroachment on Public Lands shall be required to submit an application for a License of Occupation to the Municipality seeking permission to do so, along with payment of the applicable application fee as defined in the Municipal Tariff of Fees by-law 2014-25, as amended.
- 2.4 Where Council deems it appropriate, a License of Occupation agreement may be registered against title to the applicant's property with the land registry office and all Expenses in doing so shall be paid for in advance by the applicant. Council may impose such terms and conditions to any License of Occupation as they may deem appropriate
- 2.4 Notwithstanding subsection 2.1, the provisions of this by-law do not apply to the following classes of Encroachments:
 - a) signs, as authorized through By-law Number 2010-29, as amended, (the "Sign By-Law"); and

- b) Encroachments permitted as a result of a written and signed agreement with the Municipality, other than a License of Occupation;
- 2.5 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 Public Lands at their own Expense; and
 - b) return the Public Lands to its original state or condition, which shall be at a standard acceptable to the Municipality.

2.6 Where Notice is given by the Municipality to a Person to remove an Encroachment from any Public 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 Council, where appropriate, that the Encroachment's removal during that period would cause undue hardship.

Upon receipt of a request for an extension of time to remove an Encroachment, Council may determine to extend the period of time given for the removal to another date.

2.7 Where any Encroachment stored or located on any Public Lands is found, 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 Public Lands to their previous condition, shall be the responsibility of the owner or Person identified as being responsible for the Encroachment.

2.8 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.

2.9 In addition to the provisions of Section 2.7, the Municipality may seize and impound anything found encroaching or being stored on any Public 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.

2.10 Notwithstanding the provisions of Sections 2.7 and 2.6, the Municipality is not obliged to send Notice to any Person prior to removing or impounding any Encroachment on Public Lands.

2.11 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 the owner or responsible Person has been located and notified, they shall make arrangements to claim the encroachment within 30 days, if no claim has been made, 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.

2.12 In addition to Section 2.11 where the owner of an encroachment reinstalls an encroachment on any Public Lands, or on any Right-of-way or Easement in favour of the Municipality such encroachment shall be removed and become property of the Municipality and may be used or disposed of in any manner that the Municipality sees fit. All Expenses incurred by the Municipality, including costs to restore the Public Lands to their previous condition, shall be the responsibility of the owner or Person identified as being responsible for the Encroachment.

2.13 Where an encroachment has been removed, the costs incurred by the Municipality will be paid in full by the owner or responsible person before such encroachment is returned.

2.14 Where any Encroachment has been authorized by Council 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.

Penalties

- 3.1 Every Person who contravenes any provision of this By-Law is guilty of an offence and upon conviction is liable to a fine or penalty exclusive of costs, for each offence, as prescribed by the Provincial Offences Act, R.S.O.1990, C.p.33, as amended.
- 3.2 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 may thereafter be added to the tax roll as of the year in which the Expenses were billed.
- 3.3 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 quarter Percent (1.25 %) interest rate per month for any amounts outstanding.

Administration and Enforcement

- 4.1 This By-law shall be administered by the Chief Building Official.
- 4.2 This By-law shall be enforced by the Chief Building Official and an Officer.

Short Title

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

Severability

- 6.1 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.

Repeal

- 7.1 By-Law 2019-28 is hereby repealed.

Effective Date

- 8.1 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, signed and the Corporate Seal attached hereto this 27th day of April, 2021.



Mayor: Andrea Roberts



Clerk: Mallory Bishop