



Municipality of  
**Dutton Dunwich**

By-Law No. 2021-57

**BEING A BY-LAW TO ESTABLISH A MUNICIPAL POLICY ON THE USE OF  
UNOPENED ROAD ALLOWANCES**

WHEREAS Section 44 of the Municipal Act, 2001, S.O. 2001, Chapter 25, as amended, imposes on local municipalities the obligation to manage and maintain the Public Road System lying within the boundaries of the Municipality; and

WHEREAS Section 35 of the Municipal Act, 2001, S.O. 2001, Chapter 25, as amended, provides that a municipality may remove or restrict any common law rite of passage over any public highway within the boundaries of the Municipality; and

WHEREAS the Municipality receives requests from time to time from Ratepayers and other interested parties for permission to use portions of unopened road allowances lying within the boundaries of the Municipality;

AND WHEREAS the purpose of this By-law is to establish policies with respect to the requirements of the Municipality, if Council approves the use of an unopened road allowance.

NOW THEREFORE the Municipal Council of the Corporation of the Municipality of Dutton Dunwich enacts as follows:

1. SHORT FORM NAME

- 1.1. THAT this by-law may be cited as "The Municipality of Dutton Dunwich policy on use of Unopened Road Allowances".

2. SCHEDULES

- 2.1. Schedules attached to and forming part of this by-law:

Schedule "A" – Policy on the use of Unopened Road Allowances

Schedule "B" – Application Form

Schedule "C" – Temporary License Agreement

3. EFFECTIVE DATE

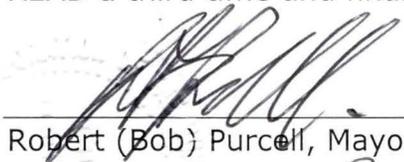
- 3.1. THAT this By-law shall take effect upon its adoption.

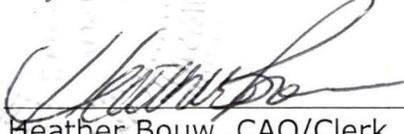
4. SEVERABILITY

- 4.1. In the event that a section, sections or parts thereof of this by-law are found by a Court of competent jurisdiction to be invalid or ultra vires, such section, sections or parts thereof shall be deemed to be severable, with all other sections or parts of this by-law remaining in full force and effect.

READ a first and second time this 18<sup>th</sup> day of August, 2021.

READ a third time and finally passed this 18<sup>th</sup> day of August, 2021.

  
Robert (Bob) Purcell, Mayor

  
Heather Bouw, CAO/Clerk

**Schedule "A" to By-law #2021-57**  
**"The Municipality of Dutton Dunwich Policy on use of Unopened Road Allowances"**

POLICY RATIONALE

WHEREAS the Municipality of Dutton Dunwich has, within its geographic boundaries, a number of original unopened road allowances that have not yet been opened and of which the Municipality wishes to retain ownership until such time as it determines whether those unopened road allowances are or are not surplus to their needs as part of the roads system of the Municipality;

AND WHEREAS the Municipality receives requests from time to time from Ratepayers and other interested parties for permission to use portions of unopened road allowances lying within the boundaries of the Municipality;

THEREFORE, the following provisions shall apply:

1. Upon submission of an application in the form set out in Schedule "B" attached hereto, the Municipality will consider allowing the use of an unopened road allowance.
2. If permission is granted by Council to use the unopened road allowance, the applicant shall enter into a Temporary License Agreement in the form set out in Schedule "C", attached hereto and subject to amendment or additional requirements at the discretion of the Municipality, with the Corporation of the Municipality of Dutton Dunwich.
3. If permission is granted by Council to use the unopened road allowance, the following policies shall apply, as determined by the Municipality:
  - a. Any Municipal, Provincial or Federal requirements dealing with Environmental Protection and all other issues are met at the expense of the Applicant.
  - b. The actual location of the allowance is the responsibility of the applicant and shall be required to be identified by a registered plan of survey, at the expense of the applicant.
  - c. If a new entrance-way is required, the applicant shall apply for an entrance permit with the Roads Superintendent of the Municipality and/or the Ministry of Transportation, as applicable. Where entry is upon a roadway not under the jurisdiction of the Municipality, the standards and specifications of the County of Elgin and/or the Ministry of Transportation, as applicable, shall apply.
  - d. If brushing and clearing of the road allowance is undertaken, all costs and works shall be completed through an agreement with the Municipality.
  - e. The applicant shall agree in writing that any and all improvements to the road allowance are at the sole expense of the applicant and all such improvements must be approved by the Municipality.
  - f. The applicant must post the road allowance with a notice, in a form acceptable to the Municipality, advising all users of the road allowance that the roadway is an unassumed Municipal roadway and is used at his/her own risk.
  - g. The applicant must agree in writing that the Municipality assumes no liability, responsibility or obligation whatsoever to construct and/or maintain and/or repair the road allowance.
  - h. The applicant must agree to indemnify and save harmless the Municipal Corporation from any and all manner of actions, causes of actions, claims or demands whatsoever for or by reason of any personal injury and/or property damage in any way arising out of any accident or activity whatsoever occurring on the road allowance and shall provide the insurance coverage required of it by the Municipality.

- i. The applicant shall not erect any gates or barriers on the road allowance unless otherwise directed to do so by the Municipality.
4. No person shall store any vehicle, boat, trailer, etc. on an unopened road allowance owned by the Municipality of Dutton Dunwich.
5. No person shall perform any work, remove trees, soil or other material or erect upon or use any unopened road allowance without the specific written approval of Council.
6. The provisions of this By-law shall not apply to prevent the use of any unopened road allowance pursuant to existing arrangements between the user(s) and the Municipality if such use was lawfully occurring on the day of the passing of this By-law, so long as such use continues.

Schedule "B" to By-law #2021-57

APPLICATION FORM

Municipality of Dutton Dunwich

Application for use of Unopened Road Allowance

Name of Applicant(s): \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Location of Road Allowance: \_\_\_\_\_

Note: Applications must be accompanied by a sketch. If permission is granted, a registered plan of survey will be required, at the expense of the applicant(s).

Reason for Application: \_\_\_\_\_

Duration (start and end): \_\_\_\_\_

Details of work proposed on road allowance: \_\_\_\_\_

Are boundaries of the road allowance surveyed, marked or easily determined: \_\_\_\_\_

Does the proposed use affect drainage or wetlands? \_\_\_\_\_

DATED AT \_\_\_\_\_, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Witness

**Schedule "C" to By-law #2021-57**

**TEMPORARY LICENSE AGREEMENT**

**THIS TEMPORARY LICENSE AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

BETWEEN:

**THE CORPORATION OF THE MUNICIPALITY OF DUTTON DUNWICH**

(the "Licensor")

and

**[NAME(s) OF APPLICANT(s)]**

(the "Licensee")

**WHEREAS:**

1. The Licensee is the registered owner of the lands legally described as [insert legal description of lands] and being P.I.N. [insert P.I.N.] and described municipally as [insert municipal address];
2. The Licensor is the registered owner of the lands described in Schedule "A", attached hereto, and known municipally as the unopened road allowance known as [insert description of unopened road allowance] (the "Lands"), and for the purposes of permitting the Licensee to use the Lands for the purposes of ingress and egress, the Licensor has agreed to grant this license;

**IN CONSIDERATION** of these premises and other good and valuable consideration the parties agree as follows:

1. The Licensor grants to the Licensee the non-exclusive use of the Lands for the purposes hereinafter set forth, for the period of 12 months, commencing [insert date] and expiring [insert date].
  - (1) The Licensee hereby accepts the Lands in the condition existing as of the date of this Agreement and will not call upon the Licensor
2. The Licensee covenants with the Licensor:
  - (1) To pay the license fee as set out in clause 1 hereof;
  - (2) To use the Lands only for the purposes of ingress and egress, and not to erect any buildings or structures on the Lands without written permission from the Licensor other than those expressly required to be installed by the Licensee in accordance with the terms of this Agreement;
  - (3) To maintain the appearance of the lands in a neat, clean and well-kept manner appropriate to the condition of land in the area;
  - (4) To ensure that no refuse, litter, garbage or loose material accumulates in or about the Lands;
  - (5) To ensure that no trees are removed, and no grade changes are carried out;
  - (6) To bear the expense of any and all improvements to the Lands at its sole expense, and to obtain the written approval of the Municipality to all such improvements;
  - (7) To install, at the Licensee's sole cost and within 30 days of the execution of this Agreement, the signage and steel posts shown on the sketch attached hereto as Schedule "B", including without limitation signage informing users of the road allowance that the roadway is unassumed and is used at the risk of the user;
  - (8) To provide and maintain comprehensive general liability insurance in the minimum amount of \$2 million with respect to its use of the Lands during the full term of this Agreement and any extension thereof, naming the Licensor as an additional insured, and to provide a certificate evidencing same, prior

to execution of this Agreement and as required by the Licensor. Without limiting the generality of the foregoing, such public liability insurance shall contain provisions for cross-liability, severability of interests, and no cancellation or alterations without the consent of the Licensor;

(9) Not to assign this Agreement without the prior written consent of the Licensor, which consent may not be unreasonably withheld; and

(10) To comply with all federal, provincial and municipal laws, rules, regulations and by-laws and to hold the Licensor harmless from the consequences of its failure to do so.

3. The Licensor assumes no liability, responsibility or obligation whatsoever to construct and/or maintain and/or repair the Lands.
4. The Licensee shall at all times indemnify and save harmless the Licensor from and against any and all claims, demands, losses, costs, charges, expenses, actions and other proceedings (including those in connection with workers' compensation or any similar or successor arrangement) made, brought against, suffered by or imposed on the Licensor or its property in respect of any failure by the Licensee to fulfill any of its obligations under this Agreement:
  - (1) To any person or property (including, without restricting the generality of the foregoing, employees, contractors, agents and property of the Licensor) directly or indirectly arising out of, resulting from or sustained by reason of the occupation or use of the Lands, or any operation in connection therewith or any fixtures of chattels thereon, or
  - (2) To any person while on adjoining lands of the Licensor in the course of that person's entry onto or exit from the Lands.
5. The Licensor shall not be liable, directly or indirectly, for any personal injuries that may be suffered or sustained by any person who may be on the Lands or for any loss or damage or injury to property belonging to the Licensee or any other person unless such injury, loss or damage is due to the Licensor's negligence or default or the negligence or default of those for whom the Licensor is in law responsible.
6. If the Licensee defaults in performing any of its obligations under this Agreement, the Licensor shall give written notice to the Licensee of such default giving the Licensee ten (10) business days to remedy such default, failing which the Licensor may terminate this License and the Licensee shall forthwith remove its chattels and fixtures, if any, from the Lands. Any improvements shall be removed and the Lands restored to their condition as at the date of this Agreement, unless the Municipality provides express written consent for such improvements to remain.
7. Any notice required to be given to the Licensor under the terms of this Agreement shall be sufficiently given if delivered to the Licensor or mailed by prepaid registered mail addressed to it at:

Municipality of Dutton Dunwich  
199 Currie Road  
Dutton ON, N0L 1J0  
Office: 519-762-2204  
Fax: 519-762-2278  
Attention: Clerk

Any notices required to be given to the Licensee under the terms of this Agreement is deemed to be sufficiently given if delivered to the Licensee or mailed by prepaid registered mail addressed to the Licensee at:

[Licensee's address for notice]

Or at such other address as the Licensee may in writing designate. In either case, such notice shall be deemed to have been received on the date of its delivery or in the case of mailing, five (5) business days after it is delivered to the post office.

8. This Agreement shall enure to the benefit of, and be binding upon the parties and their respective successors and (where permitted) assigns.

IN WITNESS WHEREOF the parties have affixed their respective corporate seals attested by the hands of their respective officers duly authorized in that behalf.

THE CORPORATION OF THE MUNICIPALITY  
OF DUTTON DUNWICH

Per:

\_\_\_\_\_  
[name], Mayor

Per:

\_\_\_\_\_  
[name], Clerk

We have the authority to bind the Municipality

\_\_\_\_\_  
[Licensee's name]

\_\_\_\_\_  
Witness

\_\_\_\_\_  
[Licensee's name]

\_\_\_\_\_  
Witness

**Schedule "A" – Legal Description of the Lands**

[insert legal description of lands]

**Schedule "B" – Sketch Showing Signage and Posts to be Installed by Licensee**