



MUNICIPALITY OF EAST HANTS BYLAW NUMBER A-300 ENCROACHMENT ON MUNICIPAL REAL PROPERTY

WHEREAS Section 172(1)(b) of the *Municipal Government Act* (MGA) provides Municipalities with the power to make bylaws for the safety and protection of property;

BE IT ENACTED by the Council of the Municipality of East Hants, as follows:

1. SHORT TITLE

1.1. This bylaw shall be known as the “Encroachment on Municipal Real Property Bylaw”.

2. DEFINITIONS

- (a) “CAO” means the Chief Administrative Officer for the Municipality of East Hants, or designate;
- (b) “Council” shall refer to the Council of the Municipality of East Hants;
- (c) “Decision Letter” means the formal, written communication issued by the Municipality outlining Council’s decision on an encroachment, including any conditions, timelines, and rights to appeal. The form and content of the Decision Letter shall be as prescribed by the CAO.
- (d) “Easement” means an interest in land consisting of the right to use or control the land, or an area above or below it, for a specific limited purpose. This includes temporary easements.
- (e) “Encroachment” means the placement, advancement, or extension of a structure or installation or object onto land owned by the Municipality for which a license for may or may not be granted by the Municipality. An encroachment may include any type of vegetation, man-made object, or item of personal property; and shall include any aerial, surface, or subsurface encroachments. For the purposes of this Bylaw, there are four (4) categories of encroachments:





- a. “Licensed Encroachment” means an encroachment temporarily permitted by the Municipality and documented and subject to the terms of an Encroachment License Agreement.
 - b. “Existing Permitted Encroachment” means an encroachment that is proven to have existed prior to the enactment of this Bylaw and/or prior to the Municipality taking ownership of the encroached property, which has been otherwise permitted under a prior agreement, approval, or common law.
 - c. “Proposed Encroachment” means a newly proposed encroachment not previously licensed or otherwise permitted by the Municipality.
 - d. “Unauthorized Encroachment” means an encroachment not licensed under this Bylaw, and is subject to removal.
- (f) “Encroachment License” means a formal written agreement, prepared by the Municipality, between the Municipality and the Property Owner for a Licensed Encroachment under defined terms and conditions. The form and content of the Encroachment License shall be as prescribed by the CAO.
- (g) “Encroachment License Application” means a written application submitted to the Municipality by or on behalf of a Property Owner requesting a License for an encroachment, in a form prescribed by the Municipality. The Encroachment License Application shall, at a minimum, include a completed and signed form, supporting documentation, proof of property ownership or written authorization, and the proposed term of the encroachment.
- (h) “(Encroaching) Property Owner” means the person holding legal title to land adjoining Municipal Real Property who is responsible for any encroachment originating from that land.
- a. If a tenant, occupant, party, or other person places an encroachment on Municipal Real Property, the Property Owner remains fully responsible.
 - b. Only the Property Owner, or authorized agent acting on their behalf, may submit an





Encroachment License Application or enter into an Encroachment License.

- (i) “Expenses” means any and all sums of money spent or required to be spent by the Municipality, and shall include but not be limited to all charges, costs, administrative fees, taxes, outlays, legal fees, and losses.
- (j) “Municipal Real Property” means land and all improvements permanently affixed to the land, including on, above, or below the surface of the land or water. Municipal Real Property is any Real Property belonging to the Municipality of the District of East Hants.
- (k) “Notice of Encroachment” means a formal, written notice issued by the Municipality to an Encroaching Property Owner, informing that an encroachment has been identified and outlining next steps in accordance with this Bylaw. The form and content of the Notice of Encroachment shall be as prescribed by the CAO.
- (l) “Notice to Remove” means a formal, written notice issued by the Municipality to an Encroaching Property owner, requiring the removal of an Unauthorized Encroachment. The form and content of the Notice to Remove shall be as prescribed by the CAO.
- (m) “Person” means an individual, partnership, association, firm or corporation, business entity or club, incorporated group or organization, federal or provincial government, crown agents, centres for education and regional municipalities, to whom the context can apply in accordance with the *Interpretation Act* of Nova Scotia, as amended, but specifically excludes the Municipality of East Hants.
- (n) “Right of Way” means a person’s legal right, established by usage or by contract, to pass through property owned by another person.

3. SCOPE

- 3.1. This Bylaw applies to encroachments on Municipal Real Property, whether existing or proposed, permanent or temporary, structural or non-structural, intentional or accidental.
- 3.2. This Bylaw does not apply to existing Municipal agreements, such as easements, rights-of-way, or other partial property interests.





4. ENCROACHMENTS GENERALLY PROHIBITED

- 4.1. No person shall construct, install, place or maintain, or cause to be constructed, installed, placed, or maintained, an encroachment of any kind on Municipal Real Property, or on any right-of-way or easement in favour of the Municipality, except as permitted under this Bylaw.
- 4.2. All identified encroachments shall be classified by Council motion, unless authority is delegated to the CAO, as a category of Encroachment described in Section 2.e.
- 4.3. Licensed Encroachments shall be permitted through a validly executed Encroachment License.
- 4.4. Unauthorized Encroachments must be removed and the land restored to its original state by the Encroaching Property Owner at its own expense, to the satisfaction of the Municipality.

5. CRITERIA FOR LICENSING AN ENCROACHMENT

- 5.1. Council may classify an encroachment as a Licensed Encroachment only when:
 - a) The encroachment does not interfere with current or future use of the land, including public access;
 - b) The encroachment does not create unacceptable risk to public safety, municipal operations, environmental integrity, or future use of the land;
 - c) The encroachment complies with applicable Municipal policy, bylaw, resolution, and any provincial or federal regulation or legislation; and
 - d) The Municipality's risks and liabilities can be appropriately managed through an Encroachment Agreement.
 - e) The encroachment is the subject of a duly executed Encroachment License between the Property Owner and the Municipality.





5.2. Council may consider whether removal would create unreasonable hardship to the Encroaching Property Owner, and whether a reasonable alternative exists on the Encroaching Property Owner's property.

6. EXISTING PERMITTED ENCROACHMENT

6.1. Existing Permitted Encroachments are generally grandfathered under this Bylaw and shall not be subject to removal under this Bylaw, provided they continue to comply with any prior agreement, applicable laws, and, at the Municipality's sole discretion do not create an unacceptable risk to public safety, municipal operations, or environmental integrity.

6.2. The Municipality may, at its discretion, request an Encroaching Property Owner to enter into a new Encroachment License for an Existing Permitted Encroachment, in order to:

- a) Formalize ongoing terms and conditions;
- b) Clarify responsibilities for maintenance or liability; and/or
- c) Address changes in Municipal policy or land use requirements.

7. UNAUTHORIZED ENCROACHMENT

7.1. Where a Property Owner identifies an Unauthorized Encroachment, the Property Owner must submit an Encroachment License Application, per Section 9.

7.2. Where the Municipality identifies an Existing Unauthorized Encroachment, Municipal staff shall issue a written Notice of Encroachment to the Encroaching Property Owner requiring the Encroaching Property Owner to submit an Encroachment License Application per Section 9 or to voluntarily remove the encroachment.

8. PROPOSED ENCROACHMENT

8.1. Property Owners wishing to apply for an Encroachment License on Municipal Real Property must obtain written authorization from the Municipality before constructing, installing, placing, or maintaining an encroachment of any kind on Municipal Real Property.





8.2. No Proposed Encroachment may proceed until Council approves an Encroachment License Application and an Encroachment License is executed.

8.3. Proposed Encroachments constructed without prior License may be classified as Unauthorized Encroachments and are subject to removal and restoration at the Encroaching Property Owner's expense.

9. ENCROACHMENT LICENSE APPLICATION

9.1. Any person seeking a License to construct, install, place, or maintain an encroachment on Municipal Real Property shall submit an Encroachment License Application to the Municipality.

9.2. Municipal staff shall review the Encroachment License Application in accordance with the criteria set out in Section 5 and shall prepare a recommendation report to Council.

9.3. Council may approve, approve with conditions, or refuse an Encroachment License Application.

a) Council may delegate authority to the CAO to approve Encroachment License Applications that meet Council-approved criteria or fall within specific classes of projects or Municipal Real Property, including, but not limited to, land management activities related to the former Dominion Atlantic Railway line.

9.4. Following Council's, or their delegates, decision, Municipal staff shall issue a written Decision Letter to the Property Owner.

a) Encroachment License Applications approved by the Municipality shall be invited to enter into an Encroachment License.

b) Unauthorized Encroachments shall be ordered for removal by the Encroaching Property Owner within sixty (60) business days of the date of correspondence, unless otherwise specified by Council.





- c) The Property Owner shall have the right to appeal, per Section 15.

10. LICENSE AGREEMENTS FOR LICENSED ENCROACHMENTS

- 10.1. Where an Encroachment License Application has been approved, the Municipality shall prepare an Encroachment License for such Encroachment.
- 10.2. Once the Encroaching Property Owner has been notified in writing that the Encroachment License is ready for execution, the Encroaching Property Owner shall have sixty (60) business days to execute same and pay any applicable fees, unless otherwise directed by Council or their designate.
- 10.3. Failure to execute the Encroachment License or pay fees within the prescribed period shall result in the Encroaching Property Owner being deemed to have abandoned the Encroachment License Application, and the Encroachment shall be classified as an Unauthorized Encroachment.
- 10.4. Encroachment Licenses executed under this Bylaw are not intended to run with title, and the license is not transferable without written consent of the Municipality. A notice of the Encroachment License, and not the License itself, shall be registered on title.
- 10.5. The CAO may execute Encroachment Licenses under this Bylaw, subject to Council authorization.
- 10.6. The CAO may, without further approval of Council:
 - a) Authorize an extension or renewal of an Encroachment License where the extension is consistent with the intent of this Bylaw and the Municipality's standard terms and conditions;
 - b) Authorize an assignment or transfer of an Encroachment License to a new property owner where the encroachment remains unchanged and the transferee agrees in writing to assume all obligations of the Encroachment License; and





- c) Discharge or release a license notice from title if/when an encroachment is removed.
 - d) Fees shall be charged for an extension, renewal, assignment, or transfer of the Encroachment License, at the discretion of the CAO.
 - e) Any request for an extension, renewal, transfer, or release that is not consistent with the Municipality's standard terms and conditions, or that involves unique circumstances as determined by the CAO, shall require a new Encroachment License Application and approval by Council.
- 10.7. An Encroachment License executed under this Bylaw does not create vested rights for the Encroaching Property Owner.
- 10.8. The Municipality may terminate an Encroachment License for breach of licenses' terms, this Bylaw, or any other applicable policy, bylaw, or agreement condition.
- a) Termination provisions in the Encroachment License shall include termination of the License if the encroached Municipal Real Property is required for municipal purposes.

11. MUNICIPAL ACCESS TO ENCROACHMENTS

- 11.1. No person shall obstruct, hinder, or interfere with the free access to any encroachment by a Municipal employee, officer, or agent.

12. DISCONTINUANCE OR TERMINATION OF ENCROACHMENT LICENSES

- 12.1. An Encroaching Property owner wishing to terminate an Encroachment License shall notify the Municipality in writing. The CAO may issue a notice requiring removal, filling in, and restoration of the lands at the Property Owner's expense.
- 12.2. If the Municipality is at any time of the opinion that a breach of the terms and conditions of an Encroachment License has occurred and that the Licensed Encroachment should be discontinued or terminated, or where an Encroachment License has expired, the CAO may issue a notice requiring removal, filling in, and restoration of the lands at the





Property Owner's expense.

- 12.3. Where an Encroaching Property Owner fails to comply with the notice described in Subsection 12.1 and/or 12.2 within thirty (30) business days of receipt of same, the encroachment may be removed or filled in and closed up by the Municipality, and the lands shall be restored to their former condition at the expense of the Property Owner, with such expense to be recovered in full in the manner provided in Section 17, and until the encroachment is so removed or filled in and closed up and the lands restored to their former condition, all expenses incurred by the Municipality in respect thereto shall continue to be paid by the Property Owner.

13. EMERGENCY SITUATIONS

- 13.1. If the CAO deems that an encroachment poses a danger to public health or safety, the CAO may:
- a) Issue notice to the Encroaching Property Owner requiring that the encroachment be repaired, removed, filled in, or closed up, with restoration of the lands to their former condition at the expense of the Property Owner, as applicable; and/or
 - b) Take such measures on behalf of the Encroaching Property Owner, without notice to the Encroaching Property Owner, as the CAO may deem necessary, to remove the danger or potential danger created by the encroachment.
- 13.2. Where the notice described in Subsection 13.1(a) is not complied with within the time period stipulated therein, the Municipality may repair, remove, fill in, or close up the encroachment and restore the lands to their former condition, at the expense of the Property Owner, such expense to be recovered in full in the manner provided in Section 17.
- 13.3. Where the CAO elects to take any action under Subsection 13.1(b), the expenses incurred by the Municipality in doing so shall be recovered in full in the manner provided in Section 17.

14. REMOVAL OF UNAUTHORIZED ENCROACHMENTS





14.1. Upon identification of an Unauthorized Encroachment, the Municipality may issue a Notice to Remove to the Property Owner, requiring removal and restoration at their expense.

14.2. Where the notice in subsection 14.1. is not complied with within sixty (60) business days of the date of the notice, the Municipality may, on behalf of the Property Owner, remove, fill in or close up the Unauthorized Encroachment and restore the lands to their former condition at the expense of the Property Owner, such expense to be recovered in full in the manner provided in Section 17.

15. APPEALS

15.1. A Property Owner may appeal a decision of Council on the basis of one or more of the following:

- a) The Property Owner can demonstrate that the encroachment is an Existing Permitted Encroachment;
- b) The requested timeline for removal creates undue hardship and a reasonable extension is warranted;
- c) Additional information, technical details, or site constraints were not previously noted or considered; and/or
- d) There are unique circumstances that warrant special consideration by Council.

15.2. Appeals must be submitted to the Municipality in writing within thirty (30) business days from the date of correspondence issuing the decision, unless otherwise indicated. If no appeal is submitted within the provided appeal period, the right to appeal is deemed waived.

15.3. An appeal submission must include supporting documentation, justification for the appeal, and the remedy being requested.





- 15.4. Municipal staff shall review the appeal and prepare a recommendation report to Council. Council retains the discretion to authorize, modify, or reject an appeal. Conditions may be applied as part of any authorization. The final decision of Council is binding.
- 15.5. Following Council's decision, Municipal staff shall issue a written appeal Decision Letter to the Property Owner.
- 15.6. If the appeal is denied, the Unauthorized Encroachment must be removed by the Encroaching Property Owner within sixty (60) business days of the date of the written appeal Decision Letter, unless otherwise specified.
- 15.7. If an Encroaching Property Owner fails to comply, the Municipality may, on behalf of the Property Owner, remove, fill in or close up the Unauthorized Encroachment and restore the lands to their former condition at the expense of the Property Owner, such expense to be recovered in full in the manner provided in Section 17.

16. FEES

- 16.1. Encroachment fees shall be set and amended by Council in the Municipal Fee Policy.
- 16.2. Notwithstanding subsection 16.1, Council may, in exceptional circumstances or as part of a specific project or Municipal Real Property, waive payment of all or part of the encroachment fees.

17. RECOVERY OF EXPENSES

- 17.1. All expenses incurred by the Municipality in connection with the enforcement of this bylaw shall be paid within thirty (30) calendar 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 a First Lien on the property and may be recovered in the same manner as taxes, with the interest rate determined by Council.
- 17.2. The Municipality may also recover all expenses owing under this bylaw by a court action as a debt due to the Municipality.





18. ENFORCEMENT

18.1. A Municipal bylaw enforcement officer, or any person designated to enforce this bylaw, may enter upon or into private property for the purpose of inspection and enforcement of this Bylaw.

19. OFFENCE

19.1. Any Person who contravenes any provision of this Bylaw, or who fails to comply with a notice, order, direction, or requirement issued under this Bylaw, is guilty of an offence.

Certification

I, Kim Ramsay, CAO and Municipal Clerk of the Municipality of East Hants, hereby certify that the above noted bylaw was passed at a meeting of the East Hants Municipal Council on _____, 20__.

Kim Ramsay, CPA, CMA
CAO/Municipal Clerk

Bylaw Adoption	
First Reading:	<Month/Day/Year>
Website and Social Media Notifications:	<Month/Day/Year>
Formal Notice of Publication:	<Month/Day/Year>
Second Reading:	<Month/Day/Year>
Website and Social Media Notifications:	<Month/Day/Year>
Formal Final Publication and Enactment:	<Month/Day/Year>





Bylaw Adoption

Enacted Bylaw posted to website:

<Month/Day/Year>

Notice to the Province of Nova Scotia:

<Month/Day/Year>

Version Number	Amendment Description	Council Approval Date
Version 1.0	<Summary of the amendment(s) to the Bylaw>	<Month/Day/Year>

PROPOSAL

