

THE CORPORATION OF THE TOWN OF MIDLAND

BY-LAW 2026-45

A By-law to regulate and address Encroachments on Municipally owned property in the Town of Midland.

WHEREAS section 8 of the *Municipal Act*, S.O. 2001, c.25 as amended provided that the powers of a municipality shall be interpreted broadly to enable a municipality to govern its affairs as it considers appropriate and enhance its ability to respond to municipal issues;

AND WHEREAS section 11 of the *Municipal Act*, S.O. 2001, c.25 provides that a municipality may pass by-laws within the following spheres of jurisdiction; structures including fences and signs, parking except on highways, health, safety and well-being of persons, protection of persons and property, including consumer protection, culture, parks, recreation and heritage, public assets of the municipality acquired for the purpose of exercising its authority under this or any other Act;

AND WHEREAS section 391 of the *Municipal Act*, S.O. 2001, c.25 provides that a municipality may pass by-laws imposing fees or charges on persons for the use of its property including property under its control;

AND WHEREAS sections 425, 426 and 429 of the *Municipal Act*, S.O. 2001, c. 25, states a municipality may pass By-laws providing that a person who contravenes a By-law of the municipality passed under this Act is guilty of an offence, no person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this Act or under a By-law passed under this Act and a municipality may establish a system of fines for offences under a By-law of the municipality passed under this Act;

AND WHEREAS sections 444, 445 and 446 of the *Municipal Act*, S.O. 2001, c.25 states 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 that the costs incurred by the municipality in doing a thing or matter under this section may be recovered by adding the costs to the tax roll and collecting them in the same manner as taxes;

AND WHEREAS the Council considers it necessary and desirable to pass a By-law to address the following:

- a) Governing the application and approval procedure for the authorization of encroachments on Town property;
- b) To mitigate the Town's exposure to risk and liability; and
- c) To protect the town's rights and obligations with respect to Town property

while protecting the broader public interest by ensuring the safety and accessibility of its property, including property under its control.

NOW THEREFORE THE COUNCIL OF THE CORPORATON OF THE TOWN OF MIDLAND HEREBY ENACTS AS FOLLOWS:

SHORT TITLE

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

1. DEFINITIONS

In this By-law:

"Alteration" means any activity that results in the removal, addition, alteration, or material change to the Town property including, but not limited to, the removal, addition, or alteration of, grading, vegetation or trees, structures, or any other natural or human-made features located therein or thereon;

"Boulevard" means that portion of the highway between the Town property line and the Highway which is not used or intended to be used for vehicular travel by the general public, and includes the landscaped areas and any driveway apron, but does not include any paved or poured hard-surface sidewalk or a curb or gutter that is not part of a driveway apron;

"Boulevard garden" means an area of ground within the public right-of-way where an Owner or Occupant cultivates plants to provide aesthetic value or native habitat on the Boulevard directly abutting their residential private property and, where applicable, on the portion of the public right-of-way extending beyond a Sidewalk up to the property line of the abutting residential private property, but does not include the cultivation of prohibited plants, shrubs, bushes, trees, or hard landscape features;

“Building” means any structure having a roof, supported by columns or walls and shall include, but not be limited to such things as porches, steps, staircases, awnings, and decks;

“Curb” means a lateral boundary of the Highway, whether such lateral boundary is physically marked or not;

“Designated Staff Person” means a person employed by the Town and designated to perform a function under this By-law;

“Ditch” means that part of a Highway that was designed or exists for the purpose of storing or carrying stormwater;

“Easement” means an interest in land owned by another person, consisting of the right to use or control that land, or an area above or below it, for a specific limited purpose and expressly or by implication may preclude certain encroachments, but does not include an interest created by a license;

“Encroachment” means any type of vegetation, structure, building, man-made object or item of personal property of a person which exists wholly upon, or extends from that person’s premises onto, Town lands and shall include any aerial, surface, or subsurface encroachments, but does not include sod, topsoil and seed;

“Encroachment Agreement” means an agreement prepared by the Town for execution by the Town and a person by which such person is granted authorization to erect, place, or maintain an encroachment on Town lands;

“Expenses” means any and all sums of money actually spent or required to be spent by the Town, and shall include but not be limited to all charges, costs, administrative fees, taxes, HST, outlays, legal fees and losses;

“Fees and Charges By-law” means the current version of the Town of Midland Fees and Charges By-law.

“Hard Landscape Feature” means any non-vegetative, solid, structural or aesthetic element that can include garden walls, retaining walls, decorative rocks or boulders, pavers, concrete, bricks, stones, statues, or any other constructed or manufactured material that alters the natural grade or composition of the landscaped area;

“Highway” means a common and public highway, and includes one or both of the following:

- a) Any street, road, avenue, court, parkway, lane, driveway, boulevard, sidewalk, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles or persons, or
- b) The area between the lateral property lines of any highway or road allowance include any curbs, gutters, boulevards, culverts, ditches and retaining wall;

“Liability Insurance” means a valid and in good standing liability insurance policy with coverage in an amount to be specified by the Town, at its sole and absolute discretion, the liability insurance shall cover the portion of the Town’s land containing the encroachment and the policy shall name the Town of Midland as an additional insured;

“Municipal Act” means the *Municipal Act*, 2001 and any successor thereto;

“Occupant” means any person or persons over the age of 18 years in possession of the property;

“Officer” means a person employed by the Town and appointed as a Municipal Law Enforcement Officer by the Town or any other person duly appointed by Council to administer the provisions of this By-law;

“Owner” means

- a) The registered owner of a site, including any heirs, assigns, personal representatives, and successors in title;
- b) Mortgagee in possession of the site;
- c) The person for the time being managing or receiving the rent of the site or premises in connection with which the word is used whether on their account or as agent or trustee of any other person, or who would so receive the rent if such land and premises were let; or
- d) A lessee or occupant of the site who, under the terms of a lease, is required to repair and maintain the site in accordance with the standards for maintenance and occupancy of the site.

“Person” means an individual, partnership, association, firm, corporation, business entity, club, incorporated group or organization, federal or provincial government, crown agent, school board and regional or other municipality;

“Personal Property” means any object or item of property other than real property;

“Premises” means a parcel of real property under registered ownership and includes all buildings and structures thereon;

“Prohibited Plant” means any plant as defined by the Weed Control Act of Ontario, any invasive species as described in the Plant Protection Act of Canada, any plant that has the ability to grow more than 45 centimetres in height or any plant that has thorns or sharp foliage;

“Sidewalk” means the improved portion of the Highway that is intended primarily for the use of pedestrians and is situated between the curb or shoulder of the highway, when one exists, and the lateral property line of the highway;

“Site” shall have the same meaning as premises;

“Site Improvements” shall include, but not be limited to, retaining walls, curbs, concrete walkways and sprinkler systems;

“Shoulder” means the part of the highway which is not the Highway and is immediately adjacent to the curb and which has a paved or gravel surface;

“Town” means The Corporation of the Town of Midland;

“Town lands” means any lands owned by or leased or licensed to or under the management of the Town, easements in favour of the Town, which can include but is not limited to any road, lane, public highway, right-of-way, 0.3 meter reserve, park, woodland, wetland, valley land, watercourse corridor, greenbelt, walkways, stormwater management facility, open space and lands in which the Town holds any real property interest, and all parts thereof, including any surface, grassed area, boulevard, ditch, curb, gutter and sidewalk;

“Unauthorized Encroachment” means any encroachment not authorized by this By-law, any other By-law, statute, regulation, policy, or resolution of the Town, or agreement.

2. APPLICATION

- 2.1 The Schedules appended to this By-law are incorporated into and form part of this By-law.
- 2.2 This By-law applies to all land in the Town of Midland.

- 2.3 Notwithstanding any provision of this By-law, the application of this By-law is not intended to, nor shall it expand the existing contractual rights of the Town in its easements, rights-of-way, or any other partial interests in real property held by the Town.
- 2.4 Notwithstanding any other provision, this By-law shall not apply to any encroachment that is:
- a) permitted under any By-law, statute, regulation, policy or resolution of the Town;
 - b) permitted under the Patio Program;
 - c) permitted by a current encroachment agreement;
 - d) a post or mailbox used for or by Canada Post collection or delivery services which are located on Town lands;
 - e) a newspaper, magazine, or other similar box location on Town lands; or
 - f) a sign erected on behalf of the Town or any other sign as authorized by the Sign By-law, as amended, or any successor By-law;
 - g) receptacles or waste collection bins set out on the boulevard for the collection services
- 2.5 Persons wishing to locate and maintain such boxes as described in 2.4(d) and (e) on Town lands shall require Town permission and may be required to enter into another form of agreement.

3. REGULATIONS

- 3.1 This By-law shall not exempt any person from the requirement to comply with any other Town By-law, including the acquisition of required permits or approvals.
- 3.2 This By-law shall not exempt Owners or Occupants of the premises from the requirement to maintain the adjacent boulevard directly abutting residential private property in a condition of compliance and conformity with Town By-laws and policies.
- 3.3 Every owner or occupant who intends to carry out any alteration or an encroachment on Town lands shall first make an application to the Town.
- 3.4 Where an encroachment agreement is issued, every person shall comply with those terms and conditions set out in the agreement.

- 3.5 All work performed under the authorization of an encroachment agreement or at the direction of an officer or designated staff person shall be completed in accordance with all other laws, including the acquisition of the required permits and underground utility locates, where applicable.
- 3.6 Every person shall abide with all terms/conditions imposed by a utility owner or a locate package.
- 3.7 Every person shall comply with an order issued under the By-law;
- 3.8 Every person shall comply with an Order issued under Section 431 of the Municipal Act.
- 3.9 The Town shall bear no responsibility for the loss, damage, or replacement of any encroachment, whether authorized or not, which is removed, disturbed, or damaged as a result of operations, maintenance, or repairs performed by the Town, its contractors, or any person working under the authority or direction of the Town or an upper-tier municipality. This includes but is not limited to tree stump removal, tree planting, snow removal, utility repairs, or any other municipal maintenance activities.
- 3.10 Where municipal operations, maintenance or repairs occur, the Town shall only be responsible for the replacement and, or installation of sod or seed.
- 3.11 Every person who installs or maintains an encroachment shall do so at their sole risk and expense and shall indemnify, save harmless, and defend the Town, its elected officials, officers, employees, agents, and any other person for whom it is in law responsible, from and against any and all claims, demands, suits, actions, proceedings, fines, losses, costs, damages, charges, or expenses, including legal fees, in any way connected with the existence of the encroachment.

4. PROHIBITIONS

- 4.1 No person shall cause or permit the erection, placement or maintenance of an encroachment on Town lands, except in accordance with the terms and conditions set out in the Encroachment Agreement and where explicitly permitted.

- 4.2 No person shall cause or permit the installation or maintenance of a boulevard garden without an encroachment agreement where the boulevard garden does not comply with section 5 of this By-law.
- 4.3 No person shall obstruct, hinder, or interfere with any person who is exercising a power or performing a duty under this By-law.

5. BOULEVARD GARDENS

- 5.1 Every owner or occupant shall be permitted to plant or maintain a boulevard garden without an encroachment agreement, subject to the following;
- a) It shall not be planted in, or overhand a ditch, shoulder, stormwater management facility, sidewalk or highway;
 - b) It shall be maintained so as to not exceed forty-five centimeters (45 cm) in height;
 - c) It shall be at grade with any adjacent sidewalk;
 - d) It shall not be planted within ninety centimetres (90 cm) from any adjacent sidewalk;
 - e) It shall not be planted within ninety centimetres (90cm) from any adjacent curb or shoulder;
 - f) It shall not contain a garden wall or any hard landscape features;
 - g) it shall only be dressed with soil, topsoil or mulch;
 - h) it shall not cause materials, including soil or mulch to come into contact with the trunk or base of a boulevard tree;
 - i) it shall not cause damage or injury to a person or thing;
 - j) it shall not contain any prohibited plants;
 - k) it shall not obstruct the visibility of motorists or pedestrians, traffic sightlines or which obstructs or detracts from the visibility of effectiveness of any traffic sign or control device;
 - l) it shall not inhibit or obstruct Town operations including but not limited to snow ploughing, maintenance of the Town trees or the repair and maintenance of Town infrastructure;
 - m) it shall not inhibit or obstruct access to fire hydrants, post office boxes, or any installations belonging to the Town, County or utility provider;
 - n) it must comply with all other Town By-laws, including the acquisition of any required permits or approvals.
- 5.2 Every boulevard garden installed within the Town shall be maintained so as to not be neglected and comply with all other applicable By-laws and legislation.

- 5.3 Every owner or occupant who installs or maintains a boulevard garden that is not in compliance with Section 5.1 shall be responsible for the removal and restoration to the satisfaction of the Town at their sole expense.

6. LIABILITY

- 6.1 The provisions of this By-law shall not be construed as relieving or limiting the responsibility or liability of any person who has lawfully or unlawfully erected, placed, altered or continued an encroachment from any personal injury, including injury resulting in death or property damage resulting from such encroachment, or from acts or omissions of such person, or their agents, employees or contractors, in the erection, placement, alteration, continuation or removal of the encroachment. Likewise, provisions of this By-law shall not be construed as acceptance by the Town, its officers, employees, or agents of any responsibility or liability whatsoever by reason of allowing an encroachment, approving the request for an encroachment agreement, or removing an unauthorized encroachment.
- 6.2 The Town is not responsible for any damages, losses or injuries caused by or to an encroachment. For further clarity, the Town is not responsible for any damages caused to an encroachment as a result of the Town's operations, including, but not limited to, ploughing, grass cutting, boulevard tree maintenance, or the repair and maintenance of the Town's infrastructure.

7. INDEMNIFICATION

- 7.1 The holder of an encroachment agreement shall be jointly and severally responsible to indemnify the Town, its officers, employees, and agents from all losses, damages, costs, expenses, claims, demands, actions, lawsuits, or other proceedings of every nature and kind arising from, and in consequence of, the erection, placement, alteration, continuation or removal of an unauthorized encroachment.
- 7.2 An owner who holds an encroachment agreement shall file annually with the Town a certificate of general liability insurance for the property to which the encroachment relates and showing the Town as an additional insured, that is satisfactory to the Manager of Legal & Risk.

If the individual is a commercial owner, file annually with the Town a certificate of general liability insurance for the property to which the encroachment related and showing the Town as an additional insured

8. DELEGATED AUTHORITY

- 8.1 The Manager of Legal & Risk shall have delegated authority to:
- a) Approve or reject any application submitted for an encroachment agreement;
 - b) Revoke an encroachment agreement that has been issued;
 - c) Impose terms and conditions on any application for an encroachment agreement as deemed appropriate under this By-law;
 - d) Determine whether any encroachment agreement expiring on a date after the date of enactment and passage of this By-law shall be renewed, extended or amended in consultation with relevant Town staff.
 - e) Execute all encroachment agreements.

9. ENCROACHMENT AGREEMENTS

Application

- 9.1 Any owner or occupant who wishes to encroach upon Town land shall first submit an encroachment agreement application to the Town along with payment of the application fee as outlined in the Fees and Charges By-law.
- 9.2 An application for the issuance, renewal, amendment, or revocation of an agreement shall be made in a form and manner approved by the Town and shall contain all requirements to the satisfaction of the Town, including:
- a) Completed and signed application form;
 - b) Plans, surveys, and other information sufficient to describe the encroachment;
 - c) Payment of the applicable non-refundable encroachment application fee as outlined in the Fees and Charges By-law;
 - d) Refundable encroachment registration fee as set by the Fees and Charges By-law; and,
 - e) Any other information required by the Town.
- 9.3 An application for an agreement shall be deemed incomplete, and no agreement shall be issued if;

- a) The application has not been completed in full;
- b) The application is missing any such requirements listed in this By-law, or Schedules hereto; or,
- c) The application fee has not been paid.

10.PROCESS

10.1 The Town, upon receipt of an application for an encroachment agreement under the provisions of this By-law may take into consideration the following factors, among other appropriate factors in the municipality's discretion:

- a) The encroachment interferes with the Town's intent and purpose in holding the Town land;
- b) The encroachment creates an unsafe or hazardous condition;
- c) The encroachment creates liabilities for which the Town cannot assign full responsibility to the owner of said encroachment;
- d) The encroachment creates a situation that is contrary to any Town By-law, Town policy or resolution, or any provincial or federal regulation or legislation;
- e) The encroachment interferes with work, plans, efforts or initiatives of the Town to maintain Town lands;
- f) The encroachment interferes with any utility or other similar installation located on Town lands;
- g) The encroachment would impact or diminish the public's right to use the lands;
- h) The encroachment is incompatible with the character and nature of the surrounding neighbourhood;
- i) The applicant is unable to reasonably demonstrate a need for the encroachment; or,
- j) At the discretion of the CAO or designate.

10.2 If the Manager of Legal & Risk denies an application, the owner or occupant can request a written explanation detailing the reasons for the denial.

10.3 If the owner or occupant is dissatisfied with the decision, they have the right to appeal the decision.

11. Appeals

- 11.1 If the owner or occupant is dissatisfied with the decision, they have 14 days to request, in writing, to exercise their right to appeal. This appeal will be heard by Council and Council's decision is a final decision.
- 11.2 The request for appeal shall be submitted to Manager of Legal & Risk who will in turn request that the matter be placed on the agenda for the next available Council meeting.
- 11.3 At the hearing of the appeal, the person or property owner will have the opportunity to present their case regarding why the encroachment should be allowed.
- 11.4 If receipt of a request for appeal isn't received, the Town shall interpret such inaction to mean the person or Owner has fully withdrawn their application request.
- 11.5 Council, in considering a request for appeal may:
 - a) Uphold the decision of the Town;
 - b) Require the Town to vary a condition in an encroachment agreement; or
 - c) Require the Town to enter into an encroachment agreement on such conditions as the Council considers appropriate.

12. EXECUTION AND REGISTRATION

- 12.1 Where approval of an encroachment agreement application has been granted, the owner or occupant shall:
 - a) Provide proof of liability insurance, if applicable, in the amounts specified in the agreement; and,
 - b) Pay the encroachment fee as set by the Town.
- 12.2 In the event that the applicant is not the registered owner of the real property to which the encroachment is appurtenant, the registered owner of the said real property shall also be a party to the encroachment agreement.
- 12.3 Where an application has been approved, the Town shall prepare an encroachment agreement, and once the applicant has been notified that the encroachment agreement is ready for execution, the applicant shall have thirty (30) days to execute same.

- 12.4 In the event that an encroachment agreement is not fully executed within the prescribed time, the applicant shall be deemed to have abandoned the application and any fees paid are non-refundable.
- 12.5 Encroachment Agreements shall be registered in the land registry office against title to the real property from which the encroachment emanates and all expenses in doing so shall be paid for in advance by the applicant to the Town.

13. TRANSFER

- 13.1 Encroachment agreements under this By-law are binding on subsequent owners and may only be assignable or transferable following the purchase and sale of a property with the consent of the Town and in accordance with Town policies.

14. NO VESTED RIGHTS

- 14.1 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 terminated or suspended in accordance with the terms set out in this By-law and in the encroachment agreement.

15. EMERGENCY SITUATIONS

- 15.1 If the CAO or designate deems an emergency to exist or could exist, the CAO or designate may cause, without notice, any action required to abate the emergency, including but not limited to removing any encroachment, and in such case the Town shall be responsible only for returning the Town lands to a standard acceptable to the Town.

16. SUSPENSION AND TERMINATION

- 16.1 A designated staff person may suspend or terminate an encroachment agreement on behalf of the Town for a breach of:
- a) Any of the terms of the encroachment agreement;
 - b) This By-law or any other Town By-law; or
 - c) On such other terms as may be set out in an encroachment agreement.
- 16.2 A designated staff person may suspend an encroachment agreement in the event that the Town is undertaking or has authorized others including any utility or other occupant of the Town lands to undertake work on the Town lands, in which case, no encroachment reinstatement fee shall be applicable, and the owner shall remove the encroachment if so requested by the Town during the suspension.
- 16.3 A suspension shall be provided in writing from a designated staff person and shall be in effect for a minimum of twenty-four (24) hours from the date and time of deemed delivery of such notice.
- 16.4 An encroachment agreement that has been suspended under 16.1, may be reinstated by payment of the applicable reinstatement fee as described in the Fees and Charges By-law, and the provision of evidence that the reason for the suspension has been remedied, when reasonably possible, to the satisfaction of a designated staff person.
- 16.5 The Manager of Legal & Risk, or their designate, is authorized to release and discharge from title registration, an encroachment agreement when so requested, subject to the encroachment being discontinued and the requestor paying any applicable fees and costs associated with the release of the agreement and registration of same in advance.

17. REMOVAL AND RESTORATION

Removal of Unauthorized Encroachment

- 17.1 Every person shall be responsible for immediately discontinuing the use and removal of the encroachment to the Town's satisfaction at their sole expense, where:

- a) An application has not been approved and has not been appealed in accordance with section 11 of this By-law, and written notice of such decision has been delivered to an applicant;
- b) A notice of suspension or termination is served;
- c) The encroachment is in non-compliance with this By-law; or,
- d) An owner or occupant is ordered to do so by an officer or designated staff person.

Restoration of Town Land

- 17.2 Every person who causes or permits an alteration onto Town lands shall be responsible for restoring the Town lands to its original and approved condition to the Town's satisfaction at their sole expense.
- 17.3 Where a person fails to remove an encroachment to restore Town lands, the Town may perform any required remedial work, including removal, at the expense of the owner in accordance with section 20.1 of this By-law and dispose of any unauthorized encroachments in accordance with Section 20.1 of this By-law.

18. ENFORCEMENT

Inspection

- 18.1 An officer or designated staff person, accompanied by any person under his or her direction, may at any reasonable time, enter and inspect any land for the purpose of carrying out an inspection to determine whether or not the following are being complied with;
- a) This By-law;
 - b) A direction or order of the municipality;
 - c) A condition of an agreement issued under this By-law; or,
 - d) An order made under section 431 of the *Municipal Act*, 2001.
- 18.2 For the purposes of an inspection, an officer may:
- a) Require the production for inspection of documents or things relevant to the inspection;
 - b) Inspect and remove documents or things relevant to the inspection for the purposes of making copies or extracts;
 - c) Require information from any person concerning a matter related to the inspection; and

- d) Along or in conjunction with a person processing special or expert knowledge, make examinations or take tests, samples, or photographs necessary for the purposes of the inspection.
- 18.3 A receipt shall be provided for any document or thing removed under Section 18.2 and the document or thing shall be promptly returned after the copies or extracts are made.
- 18.4 A sample taken under Section 18.2 shall be provided into two parts, and one part shall be delivered to the person from whom the sample is taken, if the person so requests at the time the sample is taken and provides the necessary facilities.
- 18.5 If a sample is taken under Section 18.2 and the sample has not been divided into two parts, a copy of any report on the sample shall be given to the person from whom the sample was taken.

19. ORDERS

- 19.1 Where an officer is satisfied that a contravention of the By-law has occurred, the officer may make an Order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity.
- 19.2 Where an officer is satisfied that a contravention of the By-law has occurred, the officer may make an Order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention.
- 19.3 Orders issued pursuant to subsection 19.1 and 19.2 shall set out in writing;
- a) The municipal address or legal description of the land;
 - b) The reasonable particulars of the contravention(s);
 - c) The date by which the order must be complied with; and
 - d) If applicable, the work to be completed.
- 19.4 An Order issued pursuant to Section 19.2 of this By-law may require a person to undertake all necessary work, including;
- a) Cease all work;

- b) Remove the unauthorized encroachment;
 - c) Restore the Town lands to their former condition; and/or,
 - d) Submit a completed encroachment agreement application, including any application fees to the Town.
- 19.5 An Order under Section 19.2 may require work to be done even though the facts which constitute the contravention of the By-law were present before the By-law making them a contravention came into force.
- 19.6 An Order issued under this By-law may be served personally, by email or by mail to the last known address of the person and such other persons affected by it as determined by the inspector.
- 19.7 If an Order is served by registered mail, the service shall be deemed to have been made five (5) days after mailing. Where service of an Order is made by email, the Order shall be deemed served on the same day after the Order was emailed.
- 19.8 In addition to service under section 19.7, an Order may also be posted on the Property in a location visible to the public. If an Order is posted on the Property, it shall be deemed served on the same day that the Order is posted.
- 19.9 No Person shall fail to comply with an Order issued under the authority of this By-law.
- 19.10 No Person shall fail to comply with an Order issued by the court under Section 431 of the *Municipal Act* pursuant to this By-law.

20. REMEDIAL WORK

- 20.1 Wherever an Order, issued pursuant to this By-law, directs or requires any matter or thing to be done by any person within a specified time period, in default of it being done by the specified time period, an officer may initiate remedial action.
- 20.2 For the purposes of taking remedial action under Section 20.1 the Town, its staff, and its agents may enter, at any reasonable time, upon any lands on which a default occurred to carry out a required matter or thing.

- 20.3 Where work is authorized to be undertaken by or on behalf of the Town pursuant to this By-law, the Town may enter upon land and into structures for that purpose at any reasonable time in accordance with Section 446(1) of the *Municipal Act*, 2001.
- 20.4 For this purpose, designated staff persons, By-law Enforcement Officers, and contractors hired to undertake work under this By-law accompanied by any person under their direction may enter onto the land from which the encroachment emanates and into any encroaching building, structure, or parts thereof except for any room or place actually being used as a dwelling which may only be entered in accordance with Section 437 of the *Municipal Act*, at any reasonable time for the purpose of undertaking work authorized under this By-law.
- 20.5 The Town shall not be responsible for any damage to materials or structures forming part of or attached to the encroachment, arising from the removal of any encroachment by or on behalf of the Town, its employees, or its agents.

21. DISPOSITION OF ENCROACHMENTS

- 21.1 Any encroachments, other than motorized equipment, containers, trailers, or motorized tools removed by the Town under this By-law may be directly deposited onto the property from which the encroachment comes from, relates to, or was created for, or the encroachment may be treated as refused by the Town or become property of the Town which can be disposed of in any manner or used for any Town purpose.
- 21.2 Any motorized equipment, containers, trailers or motorized tools removed by the Town may be deposited at the property from which the obstruction comes from, relates to, or was created for, or be stored at the Town facility for 60 days at the owner's expense.
- 21.3 Any item identified in subsection 21.2 shall only be released to its owner after the owner has shown proof of ownership and paid the Town any applicable expense for the removal and storage of the item.
- 21.4 Any item identified in subsection 21.2 that is stored at a Town facility for more than 60 days and for which an owner has not been identified may be disposed of by the Town in any manner that it deems appropriate.

- 21.5 Any item identified in subsection 21.2 that is stored at a Town facility for more than 60 days and for which the owner, having been identified, has failed to pay the applicable expenses and claim the item, may be disposed of pursuant to the provisions of the *Repair and Storage Liens Act*, R.S.O. c.R.25, as amended.

22. RECOVERY OF COSTS

- 22.1 All expenses incurred by the Town in connection with the enforcement of this By-law shall be paid within 30 days of their billing date, and in the event of failure to pay the entire amount due within the said 30 days, at the discretion of the Town, the outstanding balance of the invoice may thereafter be added to the tax roll of the appurtenant property benefitting from the encroachment as of the year in which the expenses were billed along with any interest charges and administrative fees.

23. OFFENCES

- 23.1 Every person who contravenes any provision of this By-law, or an Order made under it, whether deliberately or inadvertently, and every director or officer of a corporation who knowingly concurs in the contravention of this By-law by the corporation is guilty of an offence and on conviction is liable to a fine and such other penalties, as provided for in the *Provincial Offences Act*, R.S.O. 1990, c. P.33. and the *Municipal Act*, 2001, as both may be amended from time to time.
- 23.2 Each day on which a person contravenes any provisions of this By-law shall be deemed to constitute a separate offence under this By-law as provided for in section 429(2) of the *Municipal Act*, S.O. 2001, c. 25. 13.3
- 23.3 For the purposes of this By-law, if there is an offence respecting two or more acts or omissions, each of which separately constitutes an offence and is a contravention of the same provision of this By-law, then the offence is deemed a multiple offence.
- 23.4 Every person who hinders or obstructs, or attempts to hinder or obstruct, any person who is exercising a power or performing a duty under this By-law is guilty of an offence.

- 23.5 Every person who neglects or refuses to produce any information or thing or to provide any information required by any person acting pursuant to a court order is guilty of an offence.

24. FINES AND PROHIBITION ORDER

- 24.1 Every person who is charged with an offence under this By-law, upon conviction is liable to a fine as follows:

- a) To a minimum fine of \$500 and a maximum fine of \$100,000;
- b) For each day or part of a day that the offence continues, to a minimum fine of \$500.00 and a maximum fine of \$10,000, and the total of all daily fines for the offence is not limited to \$100,000; and
- c) In the case of multiple offences, for each offence included in the multiple offence, to a minimum fine of \$500.00 and a maximum fine of \$10,000 and the total of all fines for each included offence is not limited to \$100,000.
- d) Nothing in this By-law shall limit any rights or remedies the Town may otherwise have available by law.

25. ADMINISTRATIVE PENALTIES

- 25.1 An officer may require a person, subject to the conditions set out within the Administrative Penalties By-law 2025-35, as amended, or successor By-law, to pay an administrative penalty if the inspector is satisfied that the person has failed to comply with:

- a) A provision within this By-law;
- b) An agreement made under this By-law;
- c) An encroachment agreement made under this By-law; or,
- d) An Order issued under this By-law.

- 25.2 Every person who is served with a Penalty Notice pursuant to section 25.1 is liable to pay to the Town of Midland an administrative penalty in the amount set out in the Administrative Penalties By-Law 2025-35, as amended.

26. CONFLICT

26.1 Where there is conflict between a provision of this By-law or subsequent encroachment agreement and a provision in any other By-law, the more restrictive provisions shall prevail.

27. EFFECTIVE DATE

That this By-law shall come into force and effect on the final passage thereof.

BY-LAW PASSED AND ENACTED THIS 24TH DAY OF JUNE 2026.

THE CORPORATION OF THE TOWN OF MIDLAND

BILL GORDON – MAYOR

SHERRI EDGAR – CLERK

Written approval of this By-law was given by Mayoral Decision MDE-2026-12 dated June 24, 2026.

THE CORPORATION OF THE TOWN OF MIDLAND

PART I Provincial Offences Act

By-law 2026-45: Encroachment By-law

Set Fines

Item	Column 1 Short Form Wording	Column 2 Provision Creating or Defining Offence	Column 3 Set Fine
1.	Failure to Maintain Boulevard	Section 3.2	\$100.00
2.	Fail to Comply with Terms and Conditions	Section 3.4	\$300.00
3.	Fail to Comply with an Order	Section 3.7	\$800.00
4.	Fail to Comply with an Order issue pursuant to the <i>Municipal Act</i>	Section 3.8	\$800.00
5.	Installation of encroachment without permission	Section 4.1	\$300.00
6.	Installation of Boulevard Garden not in compliance	Section 4.2	\$100.00
7.	Obstruct, hinder or interfere with Town Staff from accessing encroachment	Section 4.3	\$250.00
8.	Failure to provide Town with Certificate of Insurance	Section 7.2	\$100.00
9.	Failure to Comply with Order to discontinue action	Section 19.1	\$500.00
10.	Failure to Comply with an Order	Section 19.9	\$500.00
11.	Failure to Comply with Order pursuant to s. 431 of the <i>Municipal Act</i>	Section 19.10	\$500.00
12.	Failure to produce information required	Section 24.11	\$500.00

NOTE: The penalty provision for the offences indicated above is section 23 and 24 of By-law 2026-45, a certified copy of which has been filed.