

THE CORPORATION OF THE TOWNSHIP OF NORTH ALGONA WILBERFORCE

BEING A BY-LAW TO REGULATE THE USE OF UNOPENED ROAD ALLOWANCES

BY-LAW NO. 2021-04

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 right of passage over any public highway within the boundaries of the Municipality;

AND WHEREAS, North Algona Wilberforce Township is the owner of all road allowances within its jurisdiction;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF NORTH ALGONA WILBERFORCE ENACTS AS FOLLOWS:

The Policy for Use of Unopened Road Allowance attached hereto as Schedule "A" is hereby approved and adopted.

1.0 DEFINITIONS

- a) **"Council"** means the elected Council for the Corporation of the Township of North Algona Wilberforce.
- b) **"Municipal Law Enforcement Officer" and "Officer"** means a person appointed or employed by North Algona Wilberforce for the purpose of enforcing the provisions of this by-law and related provincial offences by authority of the Police Service.
- c) **"Structure"** means a building or other object constructed from several parts
- d) **"Unopened Road Allowance"** means a road, street, lane or highway which has not been established as a public highway by a by-law of Council or otherwise assumed for public use by the Corporation.

2.0 GENERAL REGULATIONS

No person shall at any time

- 2.1 Erect any gates or barriers on the unopened road allowance.
- 2.2 Use of a motor vehicle that causes destruction of an unopened road allowance owned by North Algona Wilberforce Township.
- 2.3 Erect any kind of structure on an unopened road allowance owned by North Algona Wilberforce Township.
- 2.4 Store any vehicle, boat, trailer, etc. on an unopened road allowance owned by North Algona Wilberforce Township.
- 2.5 Perform any work, remove any trees, vegetation, soil, or other material from an unopened road allowance owned by North Algona Wilberforce Township.
- 2.6 Discharge a firearm for the purpose of hunting game or fowl on any unopened road allowance owned by North Algona Wilberforce Township.
- 2.7 Dump, place, or deposit or permit to be dumped, placed, or deposited any quantity of waste on any unopened road allowance owned by North Algona Wilberforce Township.

3.0 EXEMPTIONS

- 4.1 This By-Law shall not bind North Algona Wilberforce Township or any local board of the Township, the Province of Ontario, the Government of Canada or any of its respective agents.

4.0 RIGHT OF ENTRY

- 4.1 An officer may at any reasonable time, enter onto land to determine whether this By-law is being complied with.

- 4.2 Every owner shall permit the Officer to inspect any land for the purposes of determining compliance with this By-law.
- 4.3 Notwithstanding any provision of this By-law, an Officer shall not enter or remain in any room or place actually being used as a dwelling, unless:
- a) The consent of the occupier is obtained, the occupier first having been informed that the right of entry may be refused and, if refused, may only be made under the authority of a warrant issued under the Provincial Offences Act, R.S.O. 1990, as amended.

5.0 OBSTRUCTION

- 5.1 No person shall hinder or obstruct, or attempt to hinder or obstruct, any Officer exercising a power of performing a duty under this By-law.
- 5.2 Any person who has been alleged to have contravened any of the provisions of the By-law, shall identify themselves to the Officer upon request, failure to do so shall be deemed to have obstructed or hindered the Officer in the execution of his or her duties.

6.0 PENALTY

- 6.1 Any person who contravenes or causes or permits the contravention of any provision of the By-law is guilty of an offence and upon conviction is liable to a fine, pursuant to the provisions of the Provincial Offences Act, R.S.O. 1990, c. P.33, as laid out in Schedule "B" to this By-law.
- 6.2 Every person who fails to comply with a notice made under this By-law is guilty of an offence.
- 6.3 It shall be an offence for a person to hinder or obstruct, or attempt to hinder or obstruct, an Officer who is exercising a power or performing a duty under the Municipal Act, 2001, as amended, or under a by-law passed under the Municipal Act, 2001, as amended.
- 6.4 Any person who has been alleged to have contravened any of the provisions of a By-law passed under the Municipal Act, 2001, as amended shall identify themselves to the Officer upon request. Failure to do so shall be deemed to have obstructed or hindered the Officer in the execution of the Officer's duties.
- 6.5 Every person who contravenes any section of this By-law under a Part 1 ticket, upon conviction shall be liable to fine as provided for in the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended.
- 6.6 Upon conviction any penalty imposed under this By-law may be collected under the authority of the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended.

7.0 SEVERABILITY

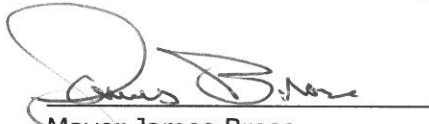
- 7.1 Each clause of this By-law is an independent clause and the holding of any clause or part of any clause to be void or ineffective for any cause shall not be deemed to affect the validity of any other clause or parts of any clause.

8.0 EFFECTIVE DATE

- 9.1 This By-law shall come into force and take effect immediately upon the passing thereof by the Council of the Corporation of North Algona Wilberforce Township.

Read a First and Second Time this 19th Day of January 2021.

Read a Third Time and Finally Passed this 19th Day of January 2021.


Mayor James Brose


Clerk Michelle Mantifel

**THE CORPORATION OF THE TOWNSHIP OF NORTH ALGONA
WILBERFORCE
By-Law 2021- 04
SCHEDULE "A"
POLICY ON USE OF UNOPENED ROAD ALLOWANCES**

POLICY STATEMENT

1. The Council of the Corporation of the Township of North Algona Wilberforce will generally not permit any person to open any unopened road allowance within the Township by way of a trail, pathway, driveway, or road capable of being used by any motor vehicle. The purpose of this policy is to protect the Corporation from liability by persons using unimproved unopened road allowances and from demands that such unopened road allowances be improved and maintained at the expense of the general ratepayers of the Township.

OWNERSHIP OF UNOPENED ROAD ALLOWANCES

2. Municipal Act, Section 262 provides the ownership of every highway is vested in the Municipality for the time being having jurisdiction over it subject to any rights reserved by the person who laid out or dedicated the highway. With some exceptions all unopened road allowances within the boundaries of a Municipality are owned by the Township of North Algona Wilberforce.

LIABILITY FOR NON-REPAIR OF UNOPENED ROAD ALLOWANCE

3. Municipal Act, Section 284 (1) requires the Corporation to keep public roads in repair and is liable in damages for default of their duty to repair. However, by subsection 284 (7) the duty does not extent to a road unless it is established by by-law of the Council or otherwise assumed for public use by the corporation. Section 286 provides that the registration of a plan of subdivision showing streets or highways does not render the Corporation liable for non-repair of the highway. The Corporation, therefore, does not have a duty to repair unopened road allowances and it is not liable for non repair.

RIGHT OF THE PUBLIC TO USE UNOPENED ROAD ALLOWANCES

4. Members of the public generally have a right of access over and along unopened road allowances for the purpose of traversing ONLY.

RIGHT TO MAKE IMPROVEMENTS ON UNOPENED ROAD ALLOWANCES

5. The public's right of access to an unopened road allowance does not carry with it the right to make any improvements or alterations to the land to exercise that right of access without the consent of the Corporation.

OWNERSHIP OF TREES ON AN UNOPENED ROAD ALLOWANCE

6. The Corporation owns and has control over all trees and vegetation on unopened road allowances.

SCOPE

7. The Council of the Corporation of the Township of North Algona Wilberforce may consider opening an unopened road allowance where the number of potential users warrants, in the sole discretion of the Council, the expense of maintaining it and where such potential users are prepared to pay the cost of initially constructing a road to the same standard as similar publicly maintained roads located elsewhere in the Township.

8. The Council of the Corporation of the Township of North Algona Wilberforce will consider permitting the location of a private driveway on an unopened road allowance where each of the following criteria are met:
 - (a) The distance to be traveled along the road allowance is less than 40 meters.
 - (b) The use of the unopened road allowance is for normal access to and from the said lands by persons, vehicles or animals and acknowledges that members of the public have the right to traverse the road allowance.
 - (c) Adjoining owners are required to enter an agreement to be registered on title and binding subsequent owners of their property not to demand future improvement of the road allowance by the Township and protecting the Corporation from liability. The person applying to use the road allowance will pay the full legal costs of the Corporations Solicitor in drawing and registering the agreement(s), also cover any cost to current adjoining owners.
 - (d) The boundaries of the portion of the road allowance to be used are marked by an Ontario Land Surveyor at the expense of the applicant, prior to the commencement of any work to avoid trespassing on neighbouring land.
 - (e) Any Provincial or Federal requirements regarding Environmental Protection or other issues are met at the expense of the Applicant.
9. Application for permission to use an unopened road allowance shall be submitted in writing to the Clerk/Treasurer. The application must state the intended use, the applicant's interest in the allowance, and be accompanied by an accurate location and description plan.
10. If permission is granted by the Council of the Corporation of the Township of North Algona Wilberforce to use the unopened road allowance, the following policies shall apply, as determined by the Corporation:
 - (a) The actual location of the allowance is the responsibility of the applicant and shall be required to be verified by an Ontario Land Surveyor, at the expense of the applicant.
 - (b) If a new entrance way is required, the applicant will apply to the Township's Public Works Coordinator as to its location, width, size and length of culvert to be installed and the grade at which it intersects the Township Road is required, this will be done through a separate entrance permit. Where entry is upon a roadway not under the jurisdiction of the Township, the standards, specification and permit requirements of the Ministry of Transportation or the County of Renfrew shall apply.
 - (c) If brushing and clearing of the road allowance is undertaken, all wood larger than 4 inches in diameter shall be piled for pick-up by the Township. Alternatively, the Township may agree to sell the wood to the applicant at a pre-set fee per face cord, the volume of wood sold will be determined jointly by the applicant and the Public Works Coordinator. All brush shall be chipped, and stumps shall be cleared to 12 centimeters below grade.
 - (d) If the application is for the provision of an access road, driveway or right of-way, the minimum width of clearance shall be 5 meters. These 5 meters shall be located in the centre of the road allowance, leaving an equal buffer on either side of the cleared area, unless otherwise approved by the Council of the Corporation of the Township of North Algona Wilberforce.

- (e) The applicant shall acknowledge in writing that any and all improvements to the road allowance are the sole expense of the applicant and all such improvements must be approved by the Public Works Coordinator. The applicant must also acknowledge in writing that any member of the general public has the right to use the subject road allowance.
 - (f) The applicant shall be responsible for any costs incurred for installing or changing the location of any fences, hydro poles, lines and attachments if required when opening a road allowance.
 - (g) The applicant must post the road allowance with a notice, in a form mandated by the Township, advising all users of the road allowance that the roadway is an unassumed Township roadway and is used at his/her own risk.
 - (h) The applicant shall acknowledge in writing that they will not be entitled to nor will the applicant demand any municipal services available to lands fronting on an opened public highway maintained by the Township and that such services may include road maintenance, fire protection, school bus service.
 - (i) The applicant shall acknowledge in writing that the Township assumes no liability, responsibility, or obligation whatsoever to construct and/or maintain and/or repair the road allowance.
 - (j) The applicant shall agree to enter into an agreement in writing to indemnify and hold harmless the Corporation of the Township of North Algona Wilberforce from any and all manner of actions, causes of action, claims or demands of every nature and kind which if any arise for any reason whatsoever and without limiting the generality of the foregoing including as a result of any personal injury and / or property damage.
11. No person shall erect any gates or barriers on the unopened road allowance.
 12. No person shall use a motor vehicle that causes the destruction of an unopened road allowance owned by North Algona Wilberforce, as deemed by an appointed Municipal Law Enforcement Officer.
 13. No person shall erect any kind of structure on an unopened road allowance owned by North Algona Wilberforce Township.
 14. No person shall store any vehicle, boat, trailer, etc. on an unopened road allowance owned by North Algona Wilberforce Township.
 15. The Corporation owns and has control over all trees and vegetation on unopened road allowances. Therefore, no person shall perform any work, remove any trees, soil or other material, or erect upon or use any unopened road allowance without the specific written approval of the Council of the Corporation of the Township of North Algona Wilberforce.
 16. No person shall discharge a firearm for the purpose of hunting game or fowl on any unopened road allowance owned by North Algona Wilberforce Township.
 17. No person shall place, dump, or deposit or permit to be placed, dumped, or deposited any quantity of waste on any unopened road allowance owned by North Algona Wilberforce Township.
 18. No public or private utilities may be installed on any unopened road allowance owned by North Algona Wilberforce Township without written permission from Council.

19. Unopened road allowances may be used as livestock pathways with written permission from Council.
20. The use of an unopened road allowance can not be changed without permission from North Algona Wilberforce Township.
21. Existing buildings or structures, including foundations that encroach on unopened road allowances should be corrected or rectified legally where the Township receives a written request.
22. Logging and Timber operations will be permitted. An application shall be submitted to the Township for consideration. If a permit is agreed, a deposit will be required of \$10,000. Adequate insurance in an amount of at least \$1,000,000.00 must be procured. At the discretion of the Municipality a reforestation plan may also be required.

The Township recognizes First Nation Land claims and its duty to consult before undertaking work. This may influence the Townships consideration when requests to occupy road or shore allowances.

TOWNSHIP OF NORTH ALGONA WILBERFORCE
Part 1 Provincial Offences Act
By-Law No. 2021-04
Use of Unopened Road Allowances
Schedule "B"
Schedule of Fines

Item	Column 1 Short Form Wording	Column 2 Provision creating or defining offence	Column 3 Set fine
1	Erection of any gates or barriers	2.1	\$250.00
2	Use of a motor vehicle that caused destruction	2.2	\$500.00
3	Erection any kind of structure	2.3	\$250.00
4	Storage of any vehicle, boat, trailer, etc.	2.4	\$250.00
5	Perform work, removed trees, vegetation, soil, or other materials	2.5	\$500.00
6	Discharge a firearm on an unopened road allowance	2.6	\$250.00
7	Dump or deposit or permit to dump or deposit waste	2.7	\$250.00

NOTE: The penalty provisions for the offences cited above are section 6 of By-law 2021-04; a certified copy of which has been filed.