



Policy Name: Use of Unopened Road Allowances Policy

By-law Number:	XX-2026
Revision Date:	
Approval Date:	_____, 2026

1. Policy Statement

- a) The Corporation of the Village of Merrickville-Wolford (hereafter the “Municipality”) is committed to reviewing and implementing Requests for Use of Unopened Road Allowances in a manner that is fiscally responsible, transparent, accountable and consistent.

2. Purpose

- a) The purpose of this Policy is to provide guidance and procedures to govern the process for the use of Unopened Road Allowances within the Municipality.

3. Scope

- a) This Policy applies to Council and all municipal departments.
- b) This Policy applies to the use of Unopened Road Allowances initiated through an unsolicited written application received from the public.
- c) This Policy does not apply to road closures or conveyances.

4. Legislative Authority

- a) Section 35 of the *Municipal Act, 2001* provides that Council may pass by-laws removing or restricting the common law right of passage by the public over a highway and the common law right of access to the highway by an owner of land abutting a highway.

5. Definitions

- a) For the purposes of this Policy, the following definitions shall apply:

“Abutting” shall mean a parcel of land adjoining another parcel of land having one (1) or more lot lines in common;

“Agricultural Access” means a driveway over an Unopened Road Allowance with the primary purpose being for access to agricultural lands.

“CAO” means the Chief Administrative Officer appointed by By-law of Council or their designate.

“Closure” means the closure of a road to remove its status as a Public Highway under the Act and to convert the land holding from that of a road authority to other lands owned by the Municipality.

“Council” means the elected Council for the Corporation of the Village of Merrickville-Wolford.

“Encroachment Agreement” means a legal document authorizing an existing encroachment of a building, driveway or private lane on municipal property.

“Landlocked” means a parcel of land that will not have sufficient access to a public road if the whole or a portion of road allowance is restricted.

“Licence Agreement” means a legal document entered into with the Municipality authorizing the use of Municipal Property, namely untraveled portions of Unopened Road Allowances.

“Municipality” means the Corporation of the Village of Merrickville-Wolford.

“Municipal Act” means the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended.

“Municipal Lands” means Lands owned by the Municipality, including road allowances.

“Private Driveway” means access over an Unopened Road Allowance with the primary purpose being for access to non-agricultural lands.

“Reference Plan” means a plan prepared by an Ontario Land Surveyor which pictorially details the dimensions of a parcel of land or easement, and which provides a legal description for registration purposes. May also be referred to as a **“Survey”**.

“Road” means a Public Highway under the Municipal Act and the terms Street, Highway, Common Highway, Original Road Allowance, Road Allowance, Shore Road Allowance, Quarter Session Road (all whether open or not opened), are all used within the meaning of ‘Road’.

“Unopened Road Allowance” as defined by the *Municipal Act* is a public highway that has not been opened and assumed for maintenance purposes by By-law of the Municipality. Unopened road allowances may accommodate seasonal (summer) traffic, private access to a farm, house, or vacant lands, logging access, or may function as a trail or public access to a water body. Where an Unopened Road Allowance currently has some form of use it is referred to as an existing or public right of way.

6. General

- a) All requests for use of an Unopened Road Allowance shall be in accordance with this Policy and shall conform to the procedures outlined herein.
- b) All requests for use of an Unopened Road Allowance shall generally be initiated by a property owner Abutting the subject road, however in limited circumstances requests by organizations may be permitted.
- c) Any required Surveys shall be conducted by the Municipality, and applicants are advised that they do not have authority to conduct Surveys of Municipally owned land. A preliminary survey plan may be initiated to assist in the review.
- d) The Municipality will generally refuse to permit any person to open any Unopened Road Allowance within the Municipality by way of a trail, driveway, or road capable of being used by any motor vehicle whatsoever. The purpose of this policy is to protect the Municipality from liability claims by persons using unimproved Unopened Road Allowance and from demands that such Unopened Road Allowance be improved and maintained at the expense of general ratepayers.
- e) The Municipality may consider permitting the opening up of an Unopened Road Allowance where the number of potential users warrants the expense of maintaining it, 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 Municipality, and where an agreement is signed between the parties respecting the opening and maintenance of the road allowance.

- f) No person shall erect a dock or any kind of structure on an Unopened Road Allowance leading to the water so as to have the effect of restricting public use of the Unopened Road Allowance.
- g) No person shall store any vehicle, boat, trailer, etc. on an Unopened Road Allowance.
- h) No person shall perform any work, remove any trees, soil, or other material, or erect upon or use any Unopened Road Allowance without specific written approval of the Municipality.
- i) If permission is granted by Council for use of a road allowance, or an encroachment on to either an open or an unopened road allowance, the following policies shall apply, as determined by the Municipality:
 - i. The actual location of the road allowance must be clearly determined. This is the responsibility of the applicant and may be required to be verified by an Ontario Land Surveyor, at the expense of the applicant.
 - ii. If a new entrance way is required, the approval of the Public Works Department as to its location, width, size, and length of culvert to be installed and the grade at which it intersects the Municipal Road, and the Unopened Road Allowance, is required.
 - iii. Where entry is upon a roadway not under the jurisdiction of the Municipality, the standards and specifications of the Ministry of Transportation shall apply, and for clarity to the same standards as similar publicly maintained roads located elsewhere in the Municipality.
 - iv. If brushing and clearing of the road allowance is undertaken, arrangements for the disposal of brush and/or compensation for wood of value harvested on the road allowance shall be obtained in writing by the applicant from the Municipality.
 - v. If the application is for the provision of an access road, driveway or right-of-way, the minimum width of clearance shall be as stipulated in the Municipal Zoning By-law (approximately six metres). The driveway shall generally be in the centre of the road allowance wherever possible, leaving an equal buffer on either side of the cleared area, unless otherwise approved by Council.
 - vi. The applicant shall acknowledge in writing that all improvements to the road allowance are at the sole expense of the applicant, and all such improvements must be approved by the Municipality.

- vii. The applicant must acknowledge in writing that the Municipality assumes no liability, responsibility, or obligation whatsoever to construct and/or maintain and/or repair the road allowance.
- viii. The applicant must agree to indemnify and save harmless the Municipality its employees and councillors from all manner of actions, causes of actions, claims or demands whatsoever for or by reason of any personal injury and/or property damage of or in any way arising out of any accident whatsoever occurring on the road allowance.

7. Review Process

- a) Applications for permission to use or encroach upon an Unopened Road Allowance shall be submitted in writing to the Clerk. The application must state the intended use, the applicant's interest in the allowance, and be accompanied by an accurate location and description plan as well as any other material or studies contemplated by this policy. Requests for Encroachment Agreements shall be accompanied by a survey of the lands illustrating the encroachment.
- b) Following receipt of the completed application form, staff will conduct a review of the application with respect to the following criteria:
 - i. The distance to be traveled along the road allowance is short, generally less than 30 meters from the front of the lot, except longer distances may be considered for Agricultural Access.
 - ii. The number of property owners who could access the section of road allowance to be used is very limited, no new lot creation is to be permitted, and in no case will the Municipality assume maintenance of an Unopened Road Allowance used as a Private Driveway.
 - iii. Each of the adjoining owners mentioned in the previous sub-paragraph enters into 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 Municipality and protecting the Municipality from liability claims of users of the driveway.
 - iv. Where necessary, the boundaries of the portion of road allowance to be used are marked by an Ontario Land Surveyor and a Reference Plan prepared and, if further necessary, filed at the Land Registry Office at the expense of the applicant, prior to the commencement of any work to avoid trespassing on neighbouring land.
 - v. The proposal is completed in such a way as to prevent or discourage members of the public from using the portion of the road allowance

subject to the application. Such measures may include locating part of the driveway / travelled portion of the driveway on private property so that it can be gated, and access controlled where required by the Municipality.

- vi. Notwithstanding 'v.', the use of the Unopened Road Allowance should not result in a hardship for any existing users and/or does not result in any property being landlocked. Confirmation from property owners adjacent to the Unopened Road Allowance may be required.
 - vii. Any Provincial or Federal requirements dealing with Environmental Approvals have been obtained.
- c) Staff will circulate review documents and background information to affected departments and the solicitor (if necessary) for comment.
 - d) For Agricultural Access requests, should the review in 7 b) and c) not result in any identified concerns, and should there be no objections from property owners adjacent to the Unopened Road Allowance, the Clerk is authorized to enter into an Agreement with the Applicant on behalf of the Municipality for the use of the Unopened Road Allowance.
 - e) For all other requests, the procedure will follow Section 8.

8. Report/ By-law with Agreement to Council

- a) Staff shall submit a staff report outlining the request and confirmation that the review process outlined under Section 7 has been satisfied, to Council with a staff recommendation and by-law to proceed with the request, in whole or in part, to enter into a License or Encroachment Agreement with the Municipality.
 - i. Should the staff recommendation not be in favour of the request for use of the Unopened Road Allowance, a by-law to enter into the Agreement will still be required with the report in the event that Council wishes to proceed with the request.
- b) Following Council's review of the application:
 - i. Should the application be denied, the applicant will be so advised in writing.
 - ii. Should the application be recommended to proceed, the process outlined below will be followed for the applicable agreement.

9. Encroachment Agreements

- a) Where there are existing buildings or structures, including foundations, partially encroaching on to a road allowance this policy encourages relocation of said buildings, structures, and foundations off the said road allowances wherever practical and reasonable.
- b) Where it is not practical and possible to relocate a building or structure partially encroaching on to a road allowance, this policy shall allow the encroachment to continue through an agreement with the municipality. The agreement shall specify terms of the encroachment including required notice of termination of the agreement, rights of the Municipality to use the road allowance, public access rights and similar. As a general principle the Municipality will not limit continued public access to any road allowance even where an encroachment agreement is permitted.
- c) This policy does not permit the expansion, redevelopment or increase in size of any existing encroachment on a road, whether it is recognized by an encroachment agreement or not.
- d) The Encroachment Agreement shall be approved by By-law and shall be registered on the title of the benefitting lands. No registrations shall occur on the title of the Unopened Road Allowance.
- e) Any encroachment agreement will contain a provision that on reasonable notice the Municipality may require the encroachment to be removed.
- f) Any person requesting the Municipality to permit an encroachment to continue shall comply with the requirements of this policy.

10. License Agreements

- a) Licence Agreements shall be permitted on Unopened Road Allowances where the continued use requires a Licence Agreement from the Municipality. The Agreement will allow the applicant to use the lands for access to a property or other such reasons. The municipal Council must deem a new use necessary and appropriate. The granting of a new Licence Agreement may be withheld for any reason.
- b) Licence Agreements shall acknowledge that there will be no negative impact to abutting landowners and if negative impacts occur due to the alterations, the road allowance is to be brought back to the original state with the cost borne by the applicant.

- c) Licence Agreements shall be registered on the title of the benefitting lands. No registrations shall occur on the title of the Unopened Road Allowance.

11. Costs

- a) The applicant shall be responsible for all costs associated with the request which may include legal opinions and advice, title searches, registrations, advertising, and surveys.
- b) All costs for improving and maintaining the Unopened Road Allowance in accordance with the Agreement are the sole responsibility of the applicant.

12. Responsibility and Implementation

- a) Council is responsible for approving this Policy.
- b) The CAO or designate is responsible for:
 - i. Directing compliance and resolving any conflicts with this Policy;
 - ii. Assigning appropriate service departments for the administration of this Policy as required; and
 - iii. Establishing procedural guidelines.
- c) Staff shall be responsible for:
 - i. The administration and management of this Policy in consultation with such departments or committees as deemed appropriate and as described in the Policy;

13. Documentation and Forms

- a) All requests for use of an Unopened Road Allowance shall be submitted on the application form prescribed by the municipality from time to time.