



## The Corporation of the Town of Tecumseh

### Policy Manual

<b>Policy Number:</b>	<b>99</b>
<b>Effective Date:</b>	<b>August 8, 2023</b>
<b>Supersedes:</b>	Alley Closing Policy 99 (11/12/2019)
<b>Approval:</b>	RCM 239/23
<b>Subject:</b>	<b>Alley Closing and Sale Policy</b>

#### 1. Purpose

- To abide by Section 270(1) of the *Municipal Act, 2001* (the “**Act**”) that requires all municipalities to adopt and maintain a policy with respect to the “sale and other disposition of land”.
- To establish consistent, transparent, and fair procedures relating to the Disposal of streets, alleys, and road allowances to abutting owner(s).

#### 2. Scope

- The scope includes all municipally owned streets, alleys, and road allowances within the Town. This policy is applicable to the potential disposal of:
  - a. a street, alley, or road allowance not previously deemed surplus to the needs of the Town, to abutting property owner(s) completed with Council direction.
  - b. land that does not have direct access to a highway not previously deemed surplus to the needs of the Town, to the owner(s) of land abutting that land.

#### 3. Procedure

This procedure outlines the process for closing and deeding municipal streets, alleys, and road allowances to abutting owners.

- **Street and/or Alley Search**

- a. An abutting landowner (“**Applicant**”) completes a request for a Street or Alley search, submits it to the Director Legislative Services and Clerk or designate (“**Director**”) and pays the applicable title search fee. The Applicant will be given the “Instructions to Applicants for Right-of-way Closings” document in the form and manner attached hereto as Schedule A (as may be amended from time to time).
- b. Within ten (10) days thereafter the Director processes the form and performs a search to identify:
  - i. Whether the street, alley, or road allowance (collectively “**Right-of-way**”) is an open municipal Right-of-way.
  - ii. Whether the Right-of-way may have easements or other considerations on title that would make the subject property unsuitable for closure.
- c. Within thirty (30) days after performing the search the Director reviews the results of the search and circulates further to internal town departments for consultation as appropriate to review the requested closure and determine if the Right-of-way should be closed and conveyed. In determining if a Right-of-way should or should not be closed and conveyed, the Director shall have regard to the Alley Classification Guidelines attached as Schedule B to this Policy.
- d. If the Director determines that the Right-of-way should not be closed, the Applicant will be notified in writing of the decision, and that decision may be appealed in writing within seven (7) calendar days from the date the Applicant was notified of the Director’s decision. Such appeal to Council shall be:
  - i. by way of correspondence detailing the reasons for such appeal; and
  - ii. addressed to Council and sent to the Municipal Clerk for inclusion on the next available regular council meeting agenda. At such meeting Council will support or not support the appeal by way of resolution.
- e. A Right-of-way may not be closed where the effect of the closure would deprive an abutting property owner of their only means of

access. A partial closure of the Right-of-way may be considered if it maintains access for that affected abutting property owner.

- f. If the Director (or Council) determines the Right-of-way may be closed, the Applicant must then submit an Application to Close a Street or Alley in the form and manner attached as Schedule C hereto (as may be amended from time to time) to the Director within thirty (30) days thereafter.
- g. The application fee must be paid in full but may be split amongst affected abutting property owners.

- **Street and/or Alley Closing Discourse**

- a. Within ten (10) days upon receipt of an Application to Close a Street or Alley, the Director will circulate the application further for comment within thirty (30) days to the appropriate utility companies and other outside agencies such as the Essex Region Conservation Authority, as appropriate.
- b. The Director will review the comments.

- **Reporting and Approval Process**

- a. Within forty-five (45) days after receipt of comments from external agencies, the Director will prepare a report and bring before Council to identify the results of the review, comments received, and provide a recommendation on whether the Right-of-way may or may not be stopped up, closed, and conveyed.
- b. Notification will be provided to all abutting or affected landowners of the Council meeting at which this matter will be discussed.
- c. Landowners will be offered the opportunity to apply to purchase subject lands based upon proximity to the affected lands in the following manner;
  - i. Primacy will be given to landowners abutting the Right-of-way to the middle of the Right-of-way, any constructed barrier (such as a fence), natural features, or any other division of the Right-of-way the Town deems appropriate.
  - ii. In the event the landowner given first choice on the acquisition of a portion of the subject land declines the offer to purchase, secondary consideration will be given to the landowner who abuts the same section of the Right-of-way.

- iii. Tertiary considerations will be given to other landowners abutting the street, alley, or road allowance.

- **Estimate and Notice to Landowners**

- a. Once Council has received the report and directed Administration to provide an estimate of costs to the affected landowners, the within thirty (30) days thereafter an Estimate for Closure and Conveyance of a Street or Alley Notice in the form and manner attached hereto as Schedule D (as may be amended from time to time) will be prepared and sent by the Director to the property owners abutting the Right-of-way to be closed, and will include:
  - i. The cost to reimburse the Town for the completion of a 12R plan from a registered Ontario Land Surveyor;
  - ii. The fair market value cost of the parcel(s)
  - iii. Title registration fees;
  - iv. Costs associated with any applicable easements, relocation or removal of a sewer, water, gas mains, telephone and/or hydro lines;
  - v. The closed Right-of-way will be sold in “as is” condition;
  - vi. Notice that the landowners bear all costs associated with legal fees for the preparation of the deed;
  - vii. Notice that failure by an abutting landowner to accept the estimate constitutes a refusal to participate further in the process and could result in the affected parcel being sold to another abutting landowner;
  - viii. Notice that the costs are proportionate, and estimates may change depending on the number of abutting landowners willing to acquire their portion of the Right-of-way;
  - ix. An amount to be refunded, should the process be stopped for any reason, for example in the case that:
    - The Town terminates the process;
    - There are too few interested parties;
    - A landowner identifies an existing use as a Right-of-way;

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- Easements or other title conditions cannot be accommodated or rectified;
  - x. Notice that by agreeing to apply to purchase the closed municipal Right-of-way, the abutting landowners also agree to any easements, encroachments, or other considerations deemed necessary to close the right-of-way and ensure access to existing utilities or infrastructure.
  - xi. Notice that the Town reserves the right to terminate the process if less than 100% of the subject lands are not claimed.
  - xii. The deadline to respond to the notice and pay the cost estimate.
  - b. An acknowledgement that associated estimated costs which are not recovered will be equally divided amongst the landowners who have agreed to purchase their portion of the Right-of-way. These landowners will be given further notice of any increase in their proportionate share of the costs and will be given a deadline to bring in the increase.
  - **By-law**
    - a. Upon the acceptance of the estimate by the majority of the abutting landowners, the Director will within thirty (30) days thereafter prepare and send to Council a By-law to close the Right-of-way to convert it from a municipal right-of-way to municipally owned lands. The By-law shall include all necessary easements, encroachments or agreements to access, support, repair, or maintain utilities and/or Town infrastructure, how the right-of-way will be divided and the cost to each landowner who has agreed to acquire their section of the right-of-way.
    - b. Upon adoption of the By-law, the Director will thirty (30) days thereafter arrange for the By-law to be registered and distributed, as appropriate.
  - **Deed Preparation**
    - a. Within thirty (30) days thereof the Director will notify the abutting landowners who have agreed to purchase a portion of the Right-of-way of the registration of the By-law.
    - b. Once the By-law is approved, the noted conditions, easements, and/or encroachments shall be added to the title.

- c. The Director will arrange to have deeds prepared for all abutting landowners who have agreed to purchase their portion of the closed Right-of-way including all applicable easements, encroachments, or other conditions, as set out in the By-law.
- d. Deeds prepared in this manner will be reviewed and subject to approval by the Town or an authority that the Town secures for this purpose.
- e. Any costs which have not been recovered must be paid in full prior to the Town releasing the deed to the abutting landowners.
- f. Following the completion of all prior steps, notice is provided of the successful completion of registration on title and the deed is signed and provided to the successful applicant(s).

#### **4. Policy Review**

This policy shall be reviewed every five (5) years from the date it becomes effective, and/or sooner at the discretion of the CAO or designate.

#### **5. References and Related Documents**

- *Municipal Act, 2001*
- *Expropriations Act, 1990*
- *Planning Act, 1990*



### **Instructions to Applicants for Right-of-way Closings (Streets and Alleys)**

The Application Fee is **\$300.00**, payable to the Town of Tecumseh. The sum of \$150.00 will be refunded in the event the application is denied by Town Council or withdrawn by the Applicant **prior to** the any advertising of Town Council's intent to close the Right-of-way.

You may wish to ask your neighbours to share in the cost of the Application Fee.

**Please note:** Neighbours are under **no** obligation to share the costs of the Application Fee and it's your responsibility to submit the total amount, and/or collect money from individual owners, should they agree to cost sharing.

1. Once the application is submitted, the application is circulated to each Town department and affected utility companies for comments. The Director Legislative Services will review the comments received and determine if the application can proceed.
2. If the application can proceed, the Director Legislative Services will prepare a Council Report to consider the application and establish the conditions of closure, including but not limited to, cost for land, division of land and whether any easements will remain, require removal, or be required to be added. If the Application is denied, a letter will be provided to the Applicant.
3. All affected/abutting owners will be notified by letter on the date of when the Council Report will be presented at a Regular Council meeting which any owners may have the opportunity to speak to Council in favour of or opposition of the Application. You must register to speak to Council using the Delegation Form on the Town's website.

Following the Council meeting, should Council approve the application, the Applicant will receive a copy of the Council report which sets out all the details of the closure, including conditions.

The Director will obtain a Reference Plan from an Ontario Land Surveyor describing the limits of closure and the parcels to be offered for sale. See "Cost of Acquiring the Land" below.

4. If an affected or abutting owner does not wish to acquire the land, they may waive their rights to the owner on the opposite side of the Right-of-way by signing the **Cost Estimate for Closure and Conveyance** form. Completing the form and submitting it to the Director allows the abutting owner on the opposite side to acquire the full width of the land. No verbal waivers will be accepted.
5. If the **Cost Estimate for Closure and Conveyance form** is not completed and submitted to the Director by the deadline, any lands may be conveyed as the Town sees fit.

6. A new deed outlining the parcel of lands for each purchaser will be prepared. The exact cost of the land and deed is payable prior to the preparation of the deed, and each owner will be notified by letter of the exact costs.

### **Cost of Land Transfer**

The following criteria shall be applied to determine the conveyance of the closed rights-of-way as set forth by council resolution:

1. The purchase price of closed Right-of-ways shall be set at market value. Each owner wishing to purchase a portion of the closed Right-of-way will also be required to pay, in addition to the purchase price,
  - a. the cost for preparation and registration of the Transfer/Deed of Land;
  - b. all legal fees associated with the transfer of title; and
  - c. their proportionate share for the preparation of the Reference Plan.
2. Street allowances are to be offered for sale at market value as building lots, where possible, regardless of zoning.
3. Where the addition of the portion of an alley or street allowance to be acquired would enable the purchaser to create a severable building lot, the lands to be offered for sale shall be set at market value.
4. Any relocation or removal of sewer, water and/or gas mains, telephone and/or hydro lines, will be at the total expense of the affected property owners.
5. All closed Right-of-ways are offered for sale in “**as is**” condition.
6. Unless otherwise directed, the Town will arrange for the preparation of a Reference Plan by an Ontario Land Surveyor showing the limits of the Right-of-way to be closed and the manner in which it will be divided among the abutting owners, satisfactory to the Town Planner. As stated above, the full cost for preparation and registration of the Reference Plan shall be paid by the purchasers.
7. Conveyances shall be subject to easements as required by the Town, utility companies or other service providers.



## ALLEY CLASSIFICATION GUIDELINES

The Town's alleys fall into one of four general classifications based on their usefulness. Alleys may move from one category to another based on changes in circumstances. (i.e., relocation of utilities).

The four classifications of alleys are:

**1. Indispensable:**

These are alleys serving commercial properties and properties fronting on heavily traveled streets i.e., major arterial routes and alleys which contain sewers and must remain accessible for servicing.

These alleys should not be closed, conveyed, reduced, or otherwise jeopardized through minority interests unless a suitable substitute alley is opened in lieu thereof. They are essential from the viewpoint of fire protection, police protection, loading or unloading of goods, refuse collection, servicing of blocked sewers and utility services. Without such alleys, the above noted services would at least be more costly if not impossible to a complete or adequate extent; and would noticeably interfere with street traffic, thereby reducing the capacity of the adjacent arterial, collector, or business access street.

**2. Dispensable:**

These alleys are typically alleys in residential areas and locations where generally the lots are wide enough for side drives, or those alleys abutting parks and other parcels of land which do not require any servicing from the alley. In short, they serve no useful purpose, either now or anticipated. The alleys in this category should be closed if at all possible, and the owners abutting the alleys should be encouraged to accept conveyance. If an abutting property owner requires access through the public right-of-way, access cannot be denied. Therefore, unless an alternate access can be found, the right-of-way cannot be closed.

**3. Have Some Level of Usefulness:**

These alleys are alleys which, having some usefulness, are nevertheless not indispensable nor on the other hand, a complete liability. (e.g., Alley is grass or gravel and may have a sewer or access to garages). These alleys should be considered for closing only upon request of abutting owners rather than by encouragement of the Town.

**4. Located in planned development districts:**

These alleys are those located in areas that are planned for Development and other similar undeveloped areas where the alley system is clearly obsolete and has never been developed, but where the Town needs to keep its options open until new area plans are prepared, and development is imminent. These alleys should not be closed unless specific development proposals acceptable to the Town are submitted.

In addition to the four general classifications of alleys above, there may be further complicating specific attributes to individual alleys:

- the alley may be fully or partially closed;
- the alley may already be encroached upon.



## Street or Alley Search Request

**Date:**

### **APPLICANT**

**Name:**

**Address:**

**Daytime Phone #:**

**Email:**

### **REQUEST**

**Description/Location of Street/Alley (include lot/plan, if known, address & abutting streets):**

**Reason for Request:**

**I hereby agree to the following conditions:**

1. **Search Fee:** \$40.00

The Search Fee covers the cost for the initial title search of the property and staff time. The Search Fee is subject to change should additional disbursements be incurred for the title search, which additional charges do not apply to costs resulting from the application proceeding.

**2. Easements:**

Should the property contain any existing easements or should new easements be required, no construction will be allowed on the subject lands.

**3. Payment Options:**

Payment of the Search Fee, and/or any additional fees for the title search, may be made by way of cash, cheque, or credit/debit.

**4. Collection of Personal Information:**

I acknowledge that the information requested on this form is collected under the authority of the *Municipal Act* R.S.O. 2001 as amended. The information is required in order to process the application. The name and business address of the applicant and/or authorized agent is public information. The address of the property, which is subject of the application, is also public information. Please be advised that any personal information (i.e., name, address) may become part of a public record in an electronic (i.e., website) and/or paper format (i.e., agenda/minutes).

\_\_\_\_\_ **Print Name**

\_\_\_\_\_ **Signature**

\_\_\_\_\_ **Date**

**FOR OFFICE USE ONLY:**

Check List: Alley Opened or Closed _____ PIN#: _____ By-laws & Judge's Orders (Alley Closing & Assuming): _____ By-laws (Street Closings): _____ Comments: _____ _____ _____ Disposition/Instructions: _____ _____ Search Completed By: _____ <div style="text-align: right; margin-top: 10px;">Date: _____</div>
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**Cost Estimate for Right-of-way Closings  
(Streets and Alleys)**

I/WE \_\_\_\_\_

do solemnly swear to be the legal owner(s) of:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and do hereby confirm that I/we wish to:

- acquire our portion of the closed Right-of-way described below.
- waive our rights to acquire our portion of the Right-of-way described below.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Estimated Costs to be assessed for Right-of-way closing breakdown:

<b>Cost Item</b>	<b>Estimated Cost in Total</b>	<b>Minimum Proportionate Share</b>
Advertising		
Administration Fees		
Additional Title Search Fees/Costs (if any)		
Surveying Fees/Costs		
Preparation/Registration of Transfer/Deed of Land		
Easement (if any)		
Cost of Land		

By confirming to acquire, I/We agree to submit our proportionate share of costs for advertising, survey, preparation and registration of deeds, easement, title search, plus the cost of the closed portion of the street or alley stemming from this estimation of cost.

I/We acknowledge the minimum proportionate share shown above is based upon all of the property owners abutting the street or alley acquiring their respective closed portion.

I/We will be advised of our actual proportionate share once all affected property owners have responded as to their intention to either acquire or waive that right.

Executed on: \_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature