

Bill No. 367  
2014

By-law No. S.-\_\_\_\_\_

A by-law to permit Michael Peter Dymus and Jamie Sue Sherrell to maintain and use a boulevard parking area upon the road allowance for 941 Elias Street, City of London.

WHEREAS Michael Peter Dymus and Jamie Sue Sherrell (the "Owners") represent that they are the registered owners of certain lands and premises in the City of London, in the County of Middlesex, known municipally as 941 Elias Street, in the said City of London, County of Middlesex, and which are more particularly described in the boulevard parking agreement attached hereto as Schedule "A" (the "said lands");

AND WHEREAS the Owners Michael Peter Dymus and Jamie Sue Sherrell have petitioned the Council of The Corporation of the City of London for permission to use a portion of the City-owned road allowance which abuts the said lands as a boulevard parking area (the "said parking area") for the purpose of parking motor vehicles;

AND WHEREAS the Council of The Corporation of the City of London has approved the entering into of a Boulevard Parking Agreement (the "said Agreement") with the Owners relating to the use of the said parking area;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The said Agreement attached hereto as Schedule "A" of this by-law is authorized and approved.
2. The Mayor and the City Clerk are authorized and directed to execute the attached Agreement on behalf of The Corporation of the City of London and to cause the seal of the Corporation to be affixed thereon.
3. The City Clerk is authorized upon the receipt of the required registration fee from the Owners and upon the authorization of the Site Plan Administrator for The Corporation of the City of London to register this by-law in the Land Registry Office for the Land Titles Division of Middlesex No. 33.
4. Nothing in this by-law limits the covenants and agreements between the parties to the said Agreement.
5. This by-law comes into force and effect on the day it is passed.

PASSED in open Council on July 29, 2014.

J. Baechler  
Mayor

Catharine Saunders  
City Clerk

First Reading – July 29, 2014  
Second Reading – July 29, 2014  
Third Reading – July 29, 2014

SCHEDULE "A" to By-law No.

THIS AGREEMENT made in duplicate this 5<sup>th</sup> day of May, 2014  
BETWEEN

THE CORPORATION OF THE CITY OF LONDON  
(hereinafter called "the Corporation")

OF THE FIRST PART

AND

MICHAEL PETER DYMUS AND JAMIE SUE SHERRELL  
(hereinafter called "the Owner")

OF THE SECOND PART

WHEREAS by section 11(1) of the *Municipal Act 2001*, as amended, the Corporation is authorized and empowered to pass by-laws for leasing or licensing the use of untravelled portions of highways, under the jurisdiction of the council, except highways that are extensions or connecting links of the King's Highway;

AND WHEREAS the Owner represents that it is the registered owner of certain lands and premises in the City of London, in the County of Middlesex, known municipally as, 941 Elias Street in the City of London, County of Middlesex, and being more particularly described in Schedule "B" attached hereto;

AND WHEREAS the Owner has petitioned the Municipal Council of the Corporation for permission to use, for the purpose of parking motor vehicles, the lands and premises as shown on the parking plan attached hereto as Schedule "C", hereinafter called "the Premises" being part of the untravelled portion of the highway adjacent to 941 Elias Street in the City of London on the terms and conditions as set out in this Agreement;

NOW THEREFORE THIS AGREEMENT witnesseth that in consideration of the premises and the sum of TWO DOLLARS (\$2.00) of lawful money of Canada, now paid by the Owner to the Corporation, the receipt whereof is hereby acknowledged, the Owner covenants and agrees with the City to do and perform, at its expense the following matters and things:

1. The Corporation agrees to allow the Owner, at the Owner's sole expense, to construct, maintain, repair and use in accordance with the terms of this Agreement a parking area on the Premises as set out in Schedule "C" attached.
2. The Owner shall pay all applicable realty taxes assessed against the parking area constructed on the Premises on or before the City of London tax instalment due date(s).
3. The Owner shall ensure that the parking area is constructed on the Premises in accordance with the approved parking plan attached as Schedule "C" and shall obtain approval from the General Manager of Environmental and Engineering Services and City Engineer for the Corporation for a curb cut, if required.
4. All terms and conditions of this Agreement and all works to be carried out on the Premises shall be completed within one hundred and eighty days (180) days from the date of this Agreement or by such other date as may be specified in writing by the Corporation.
5. The Owner shall, at its expense, maintain the parking area on the Premises in accordance with the plan as set out in Schedule "C" and shall make no alterations or additions to the parking area on the Premises without the written approval of the Corporation which approval may not be unreasonably withheld.
6. The Owner covenants:
  - (a) to use the Premises solely for the purpose of parking motor vehicles and the parking must be accessory to an abutting legal residential use;
  - (b) to remove from the Premises, upon receiving written notice from the Corporation, any inoperable, unserviceable or incapacitated motor vehicles;
  - (c) not to permit nor to undertake the repair or servicing of motor vehicles on the Premises;
  - (d) to keep the Premises free from dust, papers and rubbish of any kind;

- (e) to use the Premises in a proper and orderly manner and not to permit anything to be done upon the Premises which is in violation of any by-law of the Corporation in force during the time of this Agreement or which may create a nuisance or be objectionable;
- (f) not to use the parking area constructed on the Premises to accommodate a vehicle with dimensions in excess of the following:

length	-	6.0 meters (20.0 feet)
width	-	2.4 meters (7.9 feet)
height	-	2.4 meters (7.9 feet)

or to accommodate any other vehicle which is deemed by City Council to be unacceptable; and

- (g) not to use the Premises for the storage of any materials.
  - (h) that the parking area constructed on the Premises shall not encroach onto adjacent properties.
7. The Owner acknowledges and agrees that the parking area constructed on the Premises is solely for the use and enjoyment of the resident or occupant of the Owner's lands as set out in Schedule "B".
  8. The Owner shall, at all times, indemnify and save harmless the Corporation of and from all loss, costs and damages which the Corporation may suffer, be at or be put to, for or by reason or on account of any matter or thing which may occur, be done or arise by reason of the use of the Premises or of any other property of the Corporation to gain ingress to or egress from the parking area or anything which may be done thereon or which may be neglected to be done thereon by the Owner, his agents, servants, or others.
  9. The Owner shall, throughout the term of this Agreement, at its own expense obtain and maintain and provide the Corporation with evidence of comprehensive general liability insurance for an amount not less than Two Million (\$2,000,000) dollars or such greater amount as the Corporation may advise is required and shall include the Corporation as an additional insured with respect to the Owner's obligations under this Agreement. The above-mentioned insurance will not be cancelled or permitted to lapse unless the Owner's insurer notifies the Corporation in writing at least thirty (30) days prior to the date of cancellation or expiry. The Owner will provide that evidence of such insurance shall be delivered to the Corporation promptly upon request.
  10. This Agreement may be terminated by either party upon sixty (60) days notice in writing and such notice having been given, this Agreement and all of the conditions, covenants and provisos herein shall cease on the day set out in the said notice.
  11. On termination of this Agreement for any reason, including but not limited to default, the Owner shall, within ninety (90) days therefrom, remove from the Premises all works associated with the parking area and restore, at its own expense, the Premises in a manner and to a condition satisfactory to the General Manager of Environmental and Engineering Services and City Engineer which may include, but not be limited to, the restoration of the boulevard to grass and the construction of curbs to prevent ingress to or egress from the Premises.
  12. Notwithstanding anything contained herein, the Corporation shall have the right of free, uninterrupted and unobstructed access at all times to the Premises for the purpose of inspecting the facilities, works and matters, and for the purpose of installing and maintaining services and utilities and the Corporation shall only be liable to restore the premises to the approximate condition in which it existed at the time of each any every entry upon the premises.
  13. Any notice by the City to the Owner shall be effectually given by personal service upon or by first class registered mail to the Owner at the address shown on the last returned assessment roll as updated from time to time as to any change in ownership received in writing by the City Clerk, and every such notice shall be deemed to be given upon the day it was personally served or so mailed.
  14. It is intended that all provisions of this Agreement shall be fully binding and effective between the parties, but in the event that any particular provision or provisions or a part of one is found to be invalid or unenforceable for any reason whatever, then the particular provision or provisions or part of the provision shall be deemed to be severed from the remainder of this Agreement and all other provisions shall remain in full force and effect.



SCHEDULE "B"

ALL AND SINGULAR that certain parcel or tract of land and premises, lying, being and situate on PT LT 36, BLK P, PL 352 (3rd), AS IN 890234 LONDON.

