



THE CORPORATION OF THE MUNICIPALITY
OF NORTHERN BRUCE PENINSULA

POLICY: Encroachments on Municipally-Owned Lands	POLICY NUMBER: 20-01
APPROVED BY BY-LAW: By-law No. 2020-90	ADMINISTERED BY: Clerk's Office

PREAMBLE

Municipal property including road allowances, municipal parks and other municipally-owned lands shall be kept free of encroachments; however, under certain circumstances, Council may allow encroachments at its discretion. This policy outlines the steps necessary to address existing or proposed encroachments on municipal property.

PURPOSE

The purpose of this policy is to provide guidelines for dealing with encroachments on municipal property, and if warranted, the processing of applications to recognize existing encroachments upon property owned by the Municipality of Northern Bruce Peninsula.

There are a number of examples around the Municipality where individual property owners have improved or built on open or unopened road allowances or on other Municipally-owned property without the express permission of Council. Where these situations exist, the Municipality has the authority under the provisions of the *Municipal Act, 2001, S.O., 2001*, to deal with the encroachments to minimize the risk to the Municipality and to continue to maintain access to public property either by removing the encroachments, entering into an Encroachment Agreement with the adjacent property owner or conveying that portion of property.

POLICY

It is the general policy of the Municipality of Northern Bruce Peninsula that municipal lands are for municipal purposes and/or for the public's use and are to remain free and clear of private encroachments.

If an encroachment has been identified it must be removed and the lands returned to their original state to the satisfaction of the Municipality. All related costs shall be at the expense of the encroaching party.

Council may approve encroachments under special circumstances where public safety is not affected, Municipal interests are not adversely affected, and the public right of usage is not diminished by permitting the encroachment. Permission to allow an encroachment shall be by written agreement between the property owner and the Municipality. Failure on the part of the encroaching party to agree to this process will result in the removal of the encroachment at the encroaching party's expense.

Road Allowances

No encroachments shall be placed on municipal road allowances unless expressly authorized by the Municipality.

Private property encroachments such as, but not limited to, landscaping materials, driveways, irrigation systems, stakes, delineation markers, large boulders, shall not be placed on the municipal road allowance without the prior written consent of the Public Works Manager or his/her designate. The Manager of Public Works or his/her designate shall consider the guidelines set out in this policy prior to granting or denying approval of the request for the encroachment.

If an encroachment is discovered, the encroaching party may make an application to the municipality to continue the encroachment.

This policy does not preclude the Municipality from entering into an easement or servicing agreement with a private landowner to authorize the installation and maintenance of a privately owned conduit, pipe or line installed under a road allowance or municipal land for purposes such as, but not limited to, drainage or servicing.

Municipal Property

No person shall encroach upon or take possession of any municipally-owned lands by any means whatsoever, including the construction, installation or maintenance of any fence or structure, the dumping or storage of any materials or plantings, or planting, cultivating, grooming or landscaping thereon.

Planning Applications

In the event that an encroachment is identified on a property that is subject to a Planning Application, the applicant shall be notified that the policy statements contained herein are applicable to the subject property and the Municipality's requirements shall be satisfied as a condition of approval of the Planning Application.

New and Existing Encroachments

When an encroachment is identified, the encroaching party may make an application to the municipality to continue the encroachment. Consideration for encroachments to

remain will only be given in the event that the encroachments do not interfere with municipal operations and/or capital construction or the public right of usage.

Alternatively, the Municipality may require the encroachment to be removed and the lands returned to its original state to the satisfaction of the Municipality. All costs relate to the removal of the encroachment shall be at the encroaching party's expense.

If the Municipality requires the land for municipal purposes such as, but not limited to, the construction of capital projects or installation of services, the encroaching party shall be notified of the construction timeline and the encroachment shall be removed either by the Municipality or encroaching party. The cost to remove an encroachment that has not been approved by the Municipality may be invoiced to the encroaching party.

There may be circumstances that warrant the Municipality to consider authorization of private encroachments on municipal property. In considering the merits of the request for the encroachment, staff and Council shall consider the following:

Encroachments will not be permitted in the following circumstances:

- The encroachment creates an unsafe condition or poses a danger to the public, such as but not restricted to: impeding or restricting sight lines, impeding normal access, obstructing vision of traffic or pedestrians, creating operational conflicts or creating hazards during the winter season when snow covers the ground, such as rocks, boulders, wires, lines, etc.;
- The encroachment diminishes the public's right of usage, such as but not restricted to: impeding the public's passage and/or access along a travelled portion of a road, or interfering with or obstructing normal pedestrian, bicycle or snowmobile use;
- The applicant is unable to reasonably demonstrate a need for the encroachment;
- The encroachment interferes with the Municipality's intent and purpose in holding the municipally-owned land;
- The encroachment is an addition to existing buildings or other structures that would encroach or do encroach onto municipal property or road allowances;
- The encroachment creates liabilities for which the Municipality cannot assign full responsibility to the owner of said encroachment;
- Construction has commenced prior to the issuance of a required permit from the Municipality;
- The encroachment enlarges an existing encroachment;
- The encroachment adversely affects municipal operations, work, plans, efforts or initiatives of the Municipality to maintain municipally-owned lands;
- The encroachment interferes with any utility or other similar installation located on municipally-owned lands including underground infrastructure;
- The encroachment creates a situation that is contrary to any Municipal by-law, policy or resolution or any Provincial or Federal regulation or legislation.

Implementation Procedure

Upon discovery of an encroachment, the registered owner of the property will be notified in writing of the encroachment and the options available:

1. Where the encroachment is to be removed, removal and the associated expenses are the responsibility of the encroaching party. Should the encroaching party not remove the encroachment within the specified period of time, then the Municipality shall do so at the registered owner's expense. All associated fees and charges will be billed to the encroaching landowner. If the fees and charges are not paid as requested, they will be added to the tax roll as provided under Section 398(2) of the *Municipal Act*.
2. If the encroaching party wants to apply to Council for the right to remain, they may make an application to the Municipality following the process as outlined below under Application for Encroachment Agreement.
3. Where the encroachment has existed for a number of years and the use has been exclusive to the encroaching party, consideration may be given to the disposition of the occupied lands for costs including, but not limited to, advertising costs, survey and legal, registration and appraisal fees. Where appropriate the Municipality may require some compensation towards the value of the lands.

If the Municipality does not wish to sell the land or the encroaching party does not wish to purchase the lands, then an encroachment agreement may be considered.

Staff shall forward a report outlining the details of a proposed sale or encroachment agreement to Council for approval.

Insurance

In any case of an approved encroachment, the landowner must provide insurance in a form satisfactory and acceptable to the Municipality, at the time the Encroachment Agreement is signed by the property owner.

If the landowner is a company, it will be required to maintain property damage and general liability insurance in the amount of \$2,000,000 and the Corporation of the Municipality of Northern Bruce Peninsula must be named as an additional insured.

If the landowner is a private resident, it will be required to keep in force property insurance on a replacement cost basis for the building(s) against fire and such other perils including liability in the amount of \$2,000,000.

The onus is on the landowner to carry the insurance in perpetuity and to provide the Municipality with a certificate of insurance at renewal.

Application for Encroachment

The following information must be submitted to commence the Encroachment Agreement process:

1. A complete Application Form attached as Appendix A to this policy.
2. An application fee as established in the current Fees and Charges By-law.
3. A copy of the deed of the encroaching party's lands which abut the subject municipal lands.
4. A plan or sketch of the subject lands with details of the encroachment clearly marked thereon.
5. If applicable, verification of consultation with neighbouring property owners in the form of written comments and where required by the Municipality, proof of public consultation.
6. In the case of an existing encroachment, any pertinent history of the encroachment such as the estimated length of time said encroachment has been in place, purpose, need to extend, etc.

The Application will be submitted to the Clerk's Office and circulated to the appropriate departments for review, comment and recommendation.

A staff report with a recommendation will be presented to Council for their consideration.

If approved by Council, the applicant will be required to pay all costs associated, including the costs of the registration of the Encroachment Agreement. A Registered Reference Plan indicating the encroachment as a part thereon is required for the preparation of the Encroachment Agreement and for registration purposes.

ENFORCEMENT

Encroaching on municipal property and/or failing to remove encroachments by the owner may result in penalties pursuant to the *Municipal Act* and Municipal policy.

The Municipality of Northern Bruce Peninsula shall have the right to remove an encroachment within a municipal road allowance or on municipally-owned property in contravention to municipal policy at the cost of the property owner.

Any fees, costs and expenses incurred by the Municipality shall be enforceable by adding the same to the tax roll pursuant to Section 398 on the *Municipal Act, 2001*, as amended, from time to time.