



DEV-7 Encroachment Agreements/Licenses Policy

Department: Planning and Development

Purpose:

The purpose of this policy is to provide the standards to which Encroachment Agreements or Licenses may be permitted for landscaping improvements, and/or structures placed within County Lands or Roadways.

Policy Statement:

First and foremost, it is the County's preference to resolve encroachments by having the Landowner remove the encroachment and restore the affected area. However, once an encroachment is identified, the Landowner may make a request to the County for permission to keep the existing development that may be encroaching onto either a Roadway or reserve lands.

The County may, from time to time, enter into Encroachment Agreements pursuant to Section 651.2 of the Municipal Government Act (MGA) pertaining to landscaping improvements or structures that encroach onto a roadway that is under the direction, control, and management of the County on land that is adjoining the roadway. For encroachments on Reserve Lands, the County may, from time to time, enter into an Encroachment License.

Definitions:

1. "County" – means the County of St. Paul.
2. "Encroachment" – means any portion of a landscaping improvement, or structure which extends onto County lands which could be either a roadway or other Reserve Lands.
3. "Encroachment Agreement" – means an agreement, pursuant to Section 651.2 of the MGA under which a municipality permits the encroachment of landscaping improvements, and structures onto a roadway. This Agreement would be registered on the landowner's title as per Section 651 (3) of the MGA.
4. "Encroachment License" – a license which allows the encroachment of landscaping improvements, and structures onto Reserve Lands. This License would not be registered on the landowner's title and does not transfer to the next owner of the land.
5. "GIS" – means Geographic Information System used for gathering, managing, and analyzing data.

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6. “Landowner” – means all owners(s) listed on the Certificate of Title as having an interest in the titled land.
7. “May” – means discretionary compliance or a choice in applying policy.
8. “MGA” – means the Municipal Government Act being the Revised Statutes of Alberta 2000 Chapter M-26, and amendments thereto.
9. “Real Property Report” - means a plan that illustrates the survey performed by a professional land surveyor showing what is and what is not on a parcel of land at the time of the survey.
10. “Reserve Lands” – means any lands owned by the County that are designated as Municipal Reserve (MR), Environmental Reserve (ER), Community Service Reserve (CSR), Reserve lands (R), Conservation Reserve (CR) or other County owned land except a public utility lot.
11. “Roadway” - means a highway or Roadway that is subject to the direction, control, and management of the County.
12. “Shall” – means mandatory compliance.

Scope:

Encroachments are identified and brought to the attention of the County in a number of ways. Sometimes encroachment issues are identified by the County’s assessors who conduct inspections of all properties at least once every five years. Other times these are identified through inspections by our Bylaw Enforcement Officer, complaints, by the Landowners themselves or the request for a compliance certificate.

An Encroachment, once identified, will only be allowed to remain by either the use of an Encroachment Agreement where the Encroachment is on a County Roadway, or an Encroachment License where the Encroachment is on Reserve Lands.

The Landowner will be responsible for all costs associated with execution of an Encroachment Agreement or Encroachment License. A one-time minimum non-refundable administrative fee shall be charged to cover administration’s costs to prepare and facilitate the agreement preparation. This one-time fee is included in the County’s Fees Schedule Bylaw. Other costs associated with the approval may include Real Property Report (Landowner must supply), Land Titles registration, legal fees, and increased insurance costs. Initial costs will be estimated, and final costs will be verified with the Landowner and any differences rectified between the Landowner and the County.

Responsibilities:

Council

1. Review and consider adoption of the policy and any recommended amendments.

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2. Consider appeals of Landowners who are requesting either an Encroachment Agreement or Encroachment License that has been denied by the CAO.

Chief Administrative Officer

1. Implement the policy.
2. Authorize Encroachment Agreements or Encroachment Licenses if they follow the guidelines set out by this policy.
3. Report to Council when a new Encroachment Agreement or Encroachment License has been authorized.
4. Report to Council when a request for an Encroachment Agreement or Encroachment License has been denied.

Communications Coordinator

1. Make the policy available to the public.

Planning & Development Officer

1. Review encroachment requests circulated by the Taxation & Assessment Technician.
2. Determine requirements for development or other safety code permits.

Taxation & Assessment Technician

1. Receive the request for an Encroachment Agreement or Encroachment License.
2. Circulate the request for Encroachment Agreement or Encroachment License to the appropriate County departments.
3. Gather and review all information regarding the Encroachment.
4. Recommend to the CAO approval or denial of the encroachment application.
5. If the Encroachment will be allowed, work with Landowner to obtain a Real Property Report and arrange for payment for the agreement as well as signing of the agreement by both parties.
6. Maintain a register of Encroachment Agreements and Encroachment Licenses.
7. Ensure that the Encroachment Agreement or Encroachment License is uploaded to the County's GIS system.
8. Work with legal counsel to ensure the Encroachment Agreement and Encroachment License wording is current and appropriate.

Bylaw Enforcement Officer

1. Identify potential encroachment issues from inspections and complaints.
2. Initiate correspondence with the Landowner regarding suspected encroachment issues.

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3. Coordinate with the Landowner for inspection or survey of the land to confirm if an Encroachment exists from either inspection or complaint.
4. Where an Encroachment is identified, provide the Landowner with information regarding this policy and advise the Landowner of the requirement to remove the Encroachment within 30 days.
5. Follow-up regarding Encroachments that have been denied, to ensure compliance.

Public Works

1. Provide survey of lands where Encroachment is suspected.
2. Review request for Encroachment Agreement or Encroachment License to determine if the Encroachment will interfere with infrastructure, utilities, or roadways.

Reserves:

Environmental

1. While defined in the Definitions section, there is a need to not only identify the 'label' of reserve land (ER, MR, CSR, R, etc.) but to distinguish why land is labeled as such. Land designated ER that have been taken and designated as such for specific legislative purposes and have specific legislative limitations differ from lands designated as MR, R and CSR.
2. MGA Sections 664(1)(a) & (b) describes, essentially, 'undevelopable land'. This is land upon which development is not wanted or desired, so not allowed through the ER designation.
3. Section 664(1)(c) describes a buffer strip, which may or may not be developable.
4. Further, Section 664(1.1) limits the taking of reserve to:
 - i) preserving natural features
 - ii) preventing pollution
 - iii) ensuring public access, and
 - iv) preventing significant risk of personal injury or property damage.
5. Conservation Reserves (Section 644.2) provides for the protection of environmentally significant features but is not land that would be taken as ER. Land taken as Conservation Reserve requires compensation while land taken as ER does not.

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6. Section 671(1)(a) states that ER 'must be left in its natural state or be used as a public park' subject to Section 676(1).
7. Section 676 outlines a procedure for using ER for other purposes for a limited time period.

Municipal / Community

8. Where land taken as ER is largely undevelopable, land taken as MR / CSR is developable land for municipal or school purposes (Section 671(2) and 671(2.1)). By being 'developable', the premise is that the lands do not pose a risk of personal injury or property damage.

Administrative Considerations

Given the types of reserves, and the legislation surrounding them, Administration will perform an analysis of the site to determine if the encroachment on the land is hazardous under Section 664(1)(a) or (b) or (1.1) (d). The encroachment must be moved if:

- It is polluting a water body in some manner,
- It is disturbing a natural feature (nesting / spawning area or rare vegetation),
- It is moveable.

Policy Guidelines:

1. Unless an Encroachment has been authorized by the municipality, the Encroachment shall be removed from the affected municipal lands or roadway. The Landowner shall remove the Encroachment within 30 days of receiving notice to do so. All work conducted in removing an Encroachment shall be at the Landowner's expense.
2. If an Encroachment is authorized, the Landowner and CAO will execute an Encroachment Agreement or Encroachment License once all applicable fees are paid. If fees are not paid, then the Encroachment shall be removed from the affected municipal land or roadway within 30 days.
3. Encroachments with a permit or other authorization from the County will be allowed to remain and minor maintenance (no structural modifications) will be allowed. If the Encroachment falls into disrepair the Owner shall remove the Encroachment and reclaim the area to a natural state, at the landowner's expense.
4. If the Encroachment is damaged or destroyed, the Encroachment shall be removed within 30 days.

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5. Authorized Encroachments do not relieve a Landowner from the requirement to comply with all applicable federal, provincial, and municipal statutes, regulations, order, bylaws and policies. All costs, expenses, liabilities, or other risk associated with an authorized Encroachment shall be endured by the Landowner.
6. In the event that an Encroachment poses a clear and present danger to the public as determined by the County, the Encroachment shall be removed immediately by the Landowner. Should the Landowner, for whatever reason, be unable or unwilling to remove the Encroachment, the County shall immediately remove it and all costs shall be invoiced to the Landowner. Failure to pay this invoice will result in the amount outstanding to be added the Landowner's tax roll.

Considerations for approval of an Encroachment Agreement or Encroachment License:

1. The Landowner will make a request by completing the Encroachment Agreement or Encroachment License Application Form.
2. This request may require a Real Property Report.
3. The request will be received by the Taxation and Assessment Technician.
4. The encroachment will be considered under the following conditions if it does not pose a risk to County infrastructure or utilities:
 - a. Special needs access (ramps, elevators, etc.)
 - b. Entry Stairs
 - c. Eaves
 - d. Development Authority approved stairways for access on Reserve Lands.
5. The Taxation and Assessment Technician will make a recommendation to either approve or deny the application for Encroachment Agreement or Encroachment License.
6. If approved, the landowner will be required to submit a Real Property Report. The CAO will then enter into the appropriate agreement or license with the Landowner and report the approval to Council.
7. If denied, the CAO will send a letter to the Landowner denying the request and providing notice that the Encroachment must be removed within 30 days. The CAO will also provide information regarding the process to appeal to County Council.
8. If the Landowner decides to move the encroaching structure onto their own property, a development permit and/or a safety codes permit may be required.

Appeals to County Council

1. If the CAO does not approve the application for an Encroachment Agreement or Encroachment License, the Landowner may submit in writing to County Council an appeal requesting a review of the CAO's decision,
2. County Council will review all the information received by Administration.

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3. Council's decision will be final.
4. If approved, the landowner will be required to submit a Real Property Report. The CAO will enter into the appropriate agreement or license with the Landowner.
5. If denied, the CAO will send a letter to the Landowner denying the request and providing notice that the Encroachment must be removed within 30 days.
6. If the Landowner decides to move the encroaching structure onto their own property, a development permit and/or a safety codes permit may be required.

Enforcement

1. If an application for either an Encroachment Agreement or Encroachment License is denied, the CAO will issue a notice to the Landowner for removal of the Encroachment and restoration of the encroached land within 30 days.
2. The Bylaw Enforcement Officer will inspect the property to ensure compliance.
3. If the encroachment is not removed after 30 days, or other reasonable time agreed to by the County, the CAO may take whatever steps or legal remedies are available to the County to enforce the removal.

Long Term Encroachments

A long-term encroachment does not have grandfathered rights. Regardless of the length of time an Encroachment has been in existence, unless the County has formally authorized it, the Encroachment will have to be resolved using this policy.

Council Approval: July 13, 2021
Amended: October 12, 2021