

**CLERK'S REPORT
REPORT 18/09**

TO: Chair and Members of the Strategic Planning Committee

FROM: Meaghen Reid, Clerk/Director of Legislative Services

MEETING DATE: Wednesday, March 21, 2018

SUBJECT: **Encroachments on Road Allowances and Municipally-owned Property**

RECOMMENDATION:

Be it resolved that the Strategic Planning Committee has received Clerk's Report 18/09 regarding Encroachments on Road Allowances and Municipally-owned Property; and

That the Clerk be directed to bring forward a policy regarding Encroachments on Road Allowances and Municipally-owned Property.

BACKGROUND:

A number of encroachment-related matters have arisen for staff in recent months. These matters have been brought to the attention of staff by inquiries from property owners, enforcement matters and planning-related applications.

Staff wish to discuss the topic of encroachments further with the Committee and seeks direction on encroachment matters that arise in future.

A draft policy has been attached to this report for discussion. Upon direction of the Committee, this draft policy will require review by the Township Solicitor.

FINANCIAL IMPACT:

There is no impact to the 2018 budget, as a result of this report.

Respectfully Submitted By:

Reviewed By:

Meaghen Reid, CMO
Clerk/Director of Legislative Services

Ian Roger, P. Eng.
CAO

 Guelph/Eramosa Township		CORPORATE POLICY MANUAL Policy No: COR-0XXX Effective Date: XX/XX/201X
<i>SUBJECT</i>	Encroachments on Road Allowances and Municipally-owned Property	
<i>Department/Category</i>	All Departments	
<i>Related Documents</i>	<i>Application for Encroachment on Township Property</i>	

1. Policy Statement

Township of Guelph/Eramosa property, including road allowances, municipal parks and other Township-owned lands shall be kept free of encroachments. However, there may be certain circumstances in which Council may allow encroachments to occur. This policy outlines the steps necessary to address existing or proposed encroachments on municipal property.

2. Policy

2.1 It is the general policy of the Township of Guelph/Eramosa that encroachments not be permitted on Township-owned lands. If an encroachment has been identified, it must be removed and the lands returned to their original state to the satisfaction of the Township. All related costs shall be at the expense of the encroaching party.

2.2 Council may approve encroachments under special circumstances where:

- Public safety is not affected
- Township interests are not adversely affected
- 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 Township, approved by Council. The Township Clerk or designate is responsible for initiating the agreement process. 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.

2.3 When an existing or proposed building or structure encroaches onto municipal property, the Township will exercise its right to refuse and have the encroachment removed or to require an encroachment agreement if the Township intends to allow the encroachment to remain under certain terms and conditions.

- 2.4 All encroachments, whether existing or proposed, shall be reviewed on a case-by-case basis. No decision of Council on one case of encroachment shall be deemed to bind Council on another case or request for encroachment
- 2.5 Without approval of Council, no person shall encroach upon 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. Other encroachments may be structural (e.g. construction of decks, pools, and retaining walls), non-structural (e.g. pool drainage, application of pesticides, waste dumping), or vegetative (e.g. planting of vegetable gardens, removal of wildflowers, shrubs, and trees).
- 2.6 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, impedes normal access, obstructs vision of traffic or pedestrians, creates operational conflicts or creates hazards.
 - The encroachment diminishes the public's right of usage, such as but not restricted to: impedes the public's passage and/or access along a travelled portion of a road; or interferes or obstructs normal pedestrian, bicycles, snowmobile use
 - The encroachment interferes with the Township's intent and purpose in holding the Township-owned land;
 - The encroachment is over Township-owned park property;
 - 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 Township cannot assign full responsibility to the owner of said encroachment;
 - Construction has commenced prior to the issuance of a required permit from the Township;
 - The encroachment adversely affects municipal operations, work, plans, efforts or initiatives of the Township to maintain municipally-owned lands;
 - The encroachment interferes with any utility or other similar installation located on Township-owned lands including underground infrastructure;
 - The encroachment creates a situation that is contrary to the any Township By-Law, Township policy or resolution or any provincial or federal regulation or legislation;
 - The applicant is unable to reasonably demonstrate a need for the encroachment;
 - The encroachment will be in conflict with and/or create an issue with future capital works projects.

- 2.7 When an encroachment is discovered, the encroaching party may make an application to the municipality to continue the encroachment.
- 2.8 No person shall encroach upon or take possession of any municipally-owned lands by any means whatsoever

3. Insurance

- 3.1 In cases of an approved encroachment on a right-of-way, the landowner must provide insurance in a form satisfactory and acceptable to the Township Clerk's Office, at the time the Encroachment Agreement is signed by the property owner.
- 3.2 The onus is on the landowner to carry the insurance in perpetuity and to provide the Town with a certificate of insurance at renewal.

4. Implementation

- 4.1 Upon the discovery of an encroachment, the registered owner of the property will be notified in writing of the encroachment and the options available to him/her.
- 4.2 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 Township 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 for under section 398(2) of the Municipal Act.
- 4.3 If the encroaching party wants to apply to Council for the right to remain, they may make an application to the Township following the process as outlined under Application for an Encroachment Agreement.
- 4.4 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, survey, legal and registration fees. Where appropriate, the Township may require some compensation towards the value of the lands.

5. Application for Encroachment

- 5.1 The following information must be submitted before Council will approve an existing encroachment upon municipal property:
 - A completed Application Form
 - An application fee as established from time to time by Council.

- A copy of the deed of the encroaching party's lands which abut(s) the subject municipal lands.
 - A plan or sketch of the subject lands with details of the encroachment clearly marketed thereon.
 - Any pertinent history of the encroachment such as the estimated length of time of the said encroachment has been in place, purpose, need to extend, etc.
- 5.2 The Application will be submitted to the Clerk's Office and circulated to appropriate Departments for review, comment and recommendations. A staff report with a recommendation is then presented to the appropriate Committee of Council or Regular Meeting of Council for consideration. If approved by Council, the applicant will be required to pay all costs associated with the transaction, including the costs of the registration of the encroachment agreement. A Registered Reference Plan indicating the encroachment as a Part thereon may be required for the preparation of the Encroachment Agreement and for registration purposes. The Encroachment Agreement will be prepared by the Clerk's Office, in consultation with the Township Solicitor, and registered by the Township's Solicitor.

6. Enforcement

- 6.1 Encroaching on Township property and/or failing to remove encroachments by the owner may result in penalties pursuant to the Municipal Act and Township's policy.
- 6.2 The Township of Guelph/Eramosa shall have the right to remove any encroachments within the Township road allowance or on municipally-owned property in contravention of the Township policy, at the cost of the property owner.
- 6.3 Any fees, costs and/or expenses incurred by the Township shall be enforceable by adding the same to the tax assessment roll pursuant to Section 398 of the Municipa, Act, 2001, as amended, from time to time.

Adopted by Council on: (XX/XX/XXXX)