

POLICY

POLICY NO.: PD.1.12
SECTION: PLANNING AND DEVELOPMENT
TITLE/SUBJECT: Encroachment Policy
ADOPTED DATE: April 20, 2022

1. PURPOSE

The purpose of this policy is to assist the public and enable the Municipality to manage encroachments effectively. It is intended to provide a consistent approach in processing applications, enforcing the policy, and protecting and indemnifying the Municipality wherever encroachments have been identified.

2. SCOPE

These guidelines apply to all encroachments on municipally owned lands.

This policy is not exhaustive. The intent of this policy is to consider each encroachment on a case-by-case basis, while having regard to the guidelines set out herein and the unique features of particular encroachments.

3. DEFINITIONS

“Applicant” means any party who has encroached onto lands in which the Municipality holds an interest or is subject to the direction, control, and management of the Municipality.

“Authorized Encroachment” means an encroachment that is authorized by a valid Consent Letter or Encroachment Agreement.

“Council” means the Council of The Corporation of the Municipality of Kincardine.

“Consent Letter” means the Municipality’s standard form of letter, as amended from time to time, for situations in which the Director of Infrastructure and Development or their designate, determines, at their sole discretion, whether an encroachment is minor in nature such that an Encroachment Agreement is not required.

“Encroachment” means anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground that extends on, over or under Municipal lands.

“Encroachment, Minor” means an encroachment that is minor in nature and may include, but is not limited to the following:

- Projections from buildings (including eaves, cantilevers, etc.)
- Sheds 10m² or smaller

- Shrubs, trees, or other natural landscape materials
- Hard landscaping (including asphalt, concrete, brick sidewalks and walkways, curbs, parking pads, aprons, or driveways)

“Encroachment, Major” means an encroachment that is large in scale, difficult to move, secured by a footing and may include, but is not limited to the following:

- Buildings (including dwellings, garages, sheds larger than 10m²)
- Structures (including retaining walls, decks, stairs and patios)
- Fences
- Seasonal patios

“Encroachment Agreement” means a legal and binding agreement between The Corporation of the Municipality of Kincardine and the Owner being granted permission to occupy the Municipal land.

“Municipality” means The Corporation of the Municipality of Kincardine.

“Municipal Lands” means any lands owned by, leased, licensed to or under the management of the Municipality, and shall include but not limited to any road, street avenue, parkway, lane, alley, square, place, viaduct or trestle, water, thoroughfare, way or bridge, park, woodland, storm water management facility, open space, cemetery, and all parts thereof, including any surface, grassed area, boulevard, ditch, curb, gutter and sidewalk.

“Owner” means the registered owner of land abutting Municipal lands.

“Surveyor” means a member of the Association of Ontario Land Surveyors who is authorized under the Surveyors Act to engage in the practice of professional lands surveying in Ontario.

4. RESPONSIBILITIES/AUTHORITY

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 Owner or conveying that portion of property.

The Director of Infrastructure and Development shall have delegated authority to approve or reject encroachment applications subject to the guidelines and circumstances as outlined in this policy.

All determinations upon whether an encroachment is minor or major shall be made by the Director of Infrastructure and Development or designate in consultation with other staff that have been involved in the preliminary review of the application. In cases where it is uncertain whether an encroachment is minor or major, or a consensus cannot be reached by Municipal staff, the encroachment will be deemed major.

5. GUIDELINES

5.1. 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, driveway curbing, irrigation systems, stakes, delineation markers, large boulders, replacing sod with river run stones, shall not be placed on the municipal road allowance without the prior written consent of the Director of Infrastructure and Development or their designate. The Director or their designate shall consider the guidelines set out in this policy prior to granting or denying approval of the request for encroachment.

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

In the event that an encroachment is inadvertently damaged, the repairs and associated costs shall be the responsibility of the encroaching party.

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, irrigation, drainage or servicing.

5.2. Municipal Property – Parkland, Trails, Waterfront Access Points, Etc.

No encroachments shall be placed on municipal property.

Private property encroachments on public waterfront access points, municipal parkland, trails, and natural environment areas will not be permitted. Where existing encroachments exist, the Municipality may enter into lease agreements to recognize the use of these lands.

5.3. Buildings or Structures

No building or structure shall encroach onto municipal property. Building permits will not be issued for buildings or structures that are partially or wholly located on municipal property including road allowances.

If an existing building or structure encroaches onto municipal property, the Municipality may consider entering into an Encroachment Agreement with the encroaching party to allow the encroachment to remain in its current location. The Municipality may also decide that the encroaching building or structure must be removed from the municipal property at the encroaching party's expense.

Existing encroaching agreements are not eligible for improvements. The said encroachments must be removed with consideration given to the permitted uses and circumstances of encroachments permitted.

5.4. Private Wells and Septic Systems

In areas along the Lakeshore that were originally serviced with private wells and septic systems, it is not uncommon for septic systems or wells to be located on municipal property. When a well or septic system that is located on municipal property is replaced, the new well or septic system shall be installed on private property and the well or septic system located on municipal property shall be decommissioned, removed or filled to the satisfaction of the Municipality of Kincardine.

5.5. 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.

5.6. New and Existing Encroachments

If an encroachment is identified, 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 related 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 of Kincardine or encroaching party. The cost to remove an encroachment that has not been approved by Kincardine may be invoiced to the encroaching party.

There may be situations that warrant the Municipality's consideration to authorize private encroachments on municipal property. In considering the merits of the request for the encroachment, Staff and Council shall consider the below.

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 limited to impedes or restricts sight lines, impedes normal access, obstructs vision of traffic or pedestrians, creates operational conflicts, or creates 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 limited to impedes the public's passage and/or access along a travelled portion of a road or interferes or obstructs normal pedestrian or bicycle 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 Municipal-owned land.
- The construction of the encroachment has commenced prior to the issuance of a required Building Permit or required approval from the Municipality.
- The encroachment enlarges an existing encroachment.
- Fencing to delineate an area of municipal property.
- The encroachment adversely affects municipal operations, work, plans, efforts or initiatives of the Municipality to maintain municipally owned lands or undertake capital works projects.
- The encroachment interferes with any utility or other similar installation located on Municipal-owned lands including underground infrastructure.
- The encroachment creates a situation that is contrary to any Municipal By-law, Municipal Policy or resolution or any provincial or federal regulation or legislation.

6. AUTHORIZATION

6.1. Letter of Consent

- a) A consent letter shall be required for all permitted minor encroachments.
- b) A consent letter formally recognizes the encroachment by both the Municipality and the Owner, and clearly establishes the terms and conditions specific to the permission being granted, including but not limited to the provisions that permission for the encroachment is being granted until such a time as it is required to be removed by the Municipality, at its sole discretion.
- c) A drawing shall be provided by the Owner, in a form satisfactory to the Director of Infrastructure and Development or their designate(s), clearly identifying the extent of the encroachment, and serves to assist in eliminating subsequent enlargements of the encroachment without permission.
- d) The Owner shall submit and maintain a liability insurance policy for the encroachment in the amount of two million dollars naming the Municipality as third party insured.
- e) The Owner shall provide proof of the insurance policy to the Municipality on an annual basis.

6.2. Encroachment Agreement

- a) An Encroachment Agreement shall be required for all permitted major encroachments. The entering of an encroachment agreement shall be approved by Council.
- b) An Encroachment Agreement formally recognizes the encroachment
- c) A Reference Plan, prepared by a qualified Surveyor, shall be deposited on title clearly identifying the extent of the encroachment, and serves to assist

in eliminating subsequent enlargements of the encroachment without permission.

- d) Registration of the Agreement on the Owner's property and the subject portion of the Municipal lands shall occur in the process prescribed by the Municipality.
- e) The Owner shall be responsible for the costs associated with the preparation and registration of a reference plan and the registration of the encroachment agreement on title.
- f) The Owner shall submit and maintain a liability insurance policy for the encroachment in the amount of two million dollars naming the Municipality as third party insured.
- g) The Owner shall provide proof of the insurance policy to the Municipality on an annual basis.

7. INSURANCE

In any case of an approved encroachment, the Owner 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 Owner 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 Kincardine must be named as an additional insured.

If the Owner is a private resident, it will be required to keep in force property insurance on a replacement 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 Owner to carry the insurance in perpetuity and to provide the Municipality with a certificate of insurance at renewal.

8. IMPLEMENTATION

Upon discovery of an encroachment, the Owner of the encroachment may be notified of the encroachment and the options below made 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 specific period of time, then the Municipality shall do so at the Owner's expense. All associated fees and charges will be billed to the Owner. If the fees are not paid as requested they will be added to the tax roll as provided for 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 a building encroachment has existed for a number of years, consideration may be given to selling the encroaching party the land on which the encroachment is located. All costs associated with declaring the lands surplus to municipal needs and transferring the land are the responsibility of the encroaching party. Costs include, but are not limited to, advertising costs, survey, the Municipality's legal fees, registration fees, appraisal fees and the value of the land.

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 license agreement to Council for approval.

9. 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 from time to time by Council.
3. A plan or sketch of the subject lands with details of the encroachment clearly marked thereon.

The Application will be submitted to the Infrastructure and Development Office and circulated to the appropriate Departments for review, comments, and recommendations.

A staff report with a recommendation will be presented to Council for its 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 describing the location of the encroachment is required for the preparation of the Encroachment Agreement and for registration purposes. The Encroachment Agreement requires the encroaching party to provide proof of insurance, naming the Corporation of the Municipality of Kincardine as an additional named insured.

**THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE
APPLICATION FOR CONSIDERATION OF ENCROACHMENT ON
MUNICIPAL PROPERTY**

Applicant Information

Applicant Name: Click or tap here to enter text.

Mailing Address: Click or tap here to enter text.

Telephone: (519) xxx-xxxx

Email Address: example@email.com

Encroachment Information

Physical/Civic Address of Property to Encroach onto Town Property:

Click or tap here to enter text.

Legal Description of Property:

Roll # Click or tap here to enter text.

Lot # Click or tap here to enter text. Conc # Click or tap here to enter text.

Plan # Click or tap here to enter text. Parts # Click or tap here to enter text.

Descriptions of encroachments: (sketch/survey must be attached or application will be considered incomplete) Click or tap here to enter text.

Encroachment already exists: Yes No

Proposed Encroachment: Yes No

Reasons for requesting encroachment: Click or tap here to enter text.

Do you have a survey showing the encroachment: Yes No

If yes, please submit one copy of the survey. Survey plan will be required for an Agreement.

The Applicant understands that this application is being taken in accordance with the Municipality's Encroachment Policy and may be denied based on the following criteria:

- The encroachment interferes with the Municipality's intent and purpose in holding the Municipally owned land;
- The encroachment diminishes the public's right of usage of public lands;
- New encroachments onto municipal property;
- Unable to reasonably demonstrate a need for the encroachment;
- The encroachment enlarges an existing encroachment;
- The encroachment poses a danger to the public;
- The encroachment creates an unsafe condition;
- Construction has commenced prior to the issuance of a required permit from the Municipality;
- 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;
- The encroachment creates a situation that is contrary to any Municipal By-law, Municipal Policy, or resolution or any Provincial or Federal regulation or legislation.

In the event that this application is approved, it will be necessary for the Applicant to execute an Encroachment Agreement.

Fees Associated with Application

Administration Fee:

Encroachment Agreement Deposit Fee:

Annual Fee:

Solicitor (if applicable)

Name: Click or tap here to enter text.

Address: Click or tap here to enter text.

Telephone: Click or tap here to enter text.

Email: Click or tap here to enter text.

Consent

I/We understand and agree to provide the Municipality with an annual Certificate of Insurance, in perpetuity, as per Municipal Policy.

I/We understand and agree to the terms of this Application.

I/We have enclosed the application fee: Yes No

I/We have enclosed a detailed sketch, site plan or survey, 'to scale', which clearly shows the location and measurements of all existing and/or proposed structures/encroachments on the applicant's property and all existing and/or proposed structures/encroachments on the abutting Municipal property (ie. Septic systems, well, landscaping, vegetation, fence/wall, driveways and paths) Yes No

I/We have enclosed a letter of authorization from the applicant/property owner appointing an agent: Yes No

I/We agree to pay the current applicable application and agreement fees and annual license fee. I/We authorize Municipal Staff to enter onto the subject lands to conduct a site visit in accordance with the processing of this Encroachment Licensing Agreement.

Signature(s)

OWNER

OWNER

AUTHORIZED AGENT

DATE

PLEASE RETURN THIS APPLICATION FORM TO:

**MUNICIPALITY OF KINCARDINE
INFRASTRUCTURE AND DEVELOPMENT OFFICE
1475 CONCESSION 5, KINCARDINE, ON N2Z 2X6**