

TITLE: ENCROACHMENTS

RESOLUTION NUMBER: 2024-04-18

POLICY #: CP-004

EFFECTIVE DATE: APRIL 23, 2024

SUPERSEDES:

UP FOR REVIEW: 2028

PURPOSE

The Town of Magrath recognizes that encroachments exist and will continue to be discovered on Municipal land. The Town has established this policy to provide a consistent process for evaluating applications for encroachment authorization.

POLICY STATEMENTS

1. The Town recognizes the importance in assisting the public by effectively managing encroachments.
2. The Town recognizes the importance of providing a consistent approach in processing applications for encroachment authorizations.
3. The Town must ensure that encroachments do not adversely affect the Town's ability to maintain services for public use by maintaining sufficient access to the infrastructure located within easements or roads upon which encroachments exist.
4. Encroachments both authorized and not authorized by the Town must be required either by agreement or by order be removed at the expense of the owner of the encroachment as directed.
5. Encroachments on Municipal Lands are to be discouraged where defined curbs or sidewalks don't exist, operations may be affected, or utilities exist.
6. In the case of existing encroachments that cannot practicably be removed, the Town shall obtain compensation to offset the negative effects of an undesirable encroachment.
7. Formal authorization of encroachments will be in the form of an Encroachment Agreement or Letter of Consent to protect the Town, the Utilities, and the public when encroachments are identified on Town-owned parcels, roads, easements, or reserve parcels.

This policy applies to all Town-owned parcels, reserve parcels, roads, and easements within the corporate boundaries of the Town of Magrath.

Encroachments

1. There is an encroachment when a property owner intrudes on, in, or under the ground space or in the air space of an adjacent Town-owned or managed property, either deliberately or inadvertently and/or the Town land is used by individuals for their own personal purposes. Encroachments are either structural (i.e. construction of decks, pools, retaining walls, fences, etc.), non-structural (i.e. pool drainage, application of pesticides, waste dumping), or vegetative (i.e. planting of vegetable gardens, shrubs, trees, etc.).
2. Encroachments are of concern because they:
 - a. May restrict or limit the use and enjoyment of public lands maintained by the Town for the benefit of all residents;
 - b. May create work obstacles for Town or Utility personnel;
 - c. May pose a safety hazard to the public and give rise to potential liability claims from resultant injuries;
 - d. May damage the natural environment and undermine the Town's stewardship role in protecting natural features;
 - e. May destabilize public lands with resultant damage to adjacent private lands; and
 - f. May result in ratepayers absorbing costs to restore degraded public lands.
3. Encroachments are only to be permitted in circumstances when the encroachment, in the opinion of Administration, has no detrimental effect on the Town or its residents. In these circumstances, consideration may be given to allowing an encroachment to continue if an agreement is entered into between the property owner and the municipality and registered on the property's title.

Action Taken When Encroachment(s) is Identified:

1. When an encroachment is identified, the CAO or designate(s) shall give written notice to the property owner, who has been identified as encroaching on municipal property. This notice shall include a copy of the encroachment policy for the Town of Magrath.
2. A property owner may request that Administration consider an encroachment agreement, which would allow the encroachment to continue under specific terms and conditions. Each application for encroachment agreement will be adjudicated on a case-by-case basis.

3. Should the property owner not desire to enter into an encroachment agreement they shall have thirty (30) days from the date of the notification to remove the encroachment and shall notify the Town of such removal.
4. Where an encroachment is deemed to be a safety hazard by the Town, the property owner shall remove the hazard in a shorter time schedule deemed appropriate by the Town.
5. If the property owner, within the allotted time, has not rectified the encroachment and restored the property to the satisfaction of the Town, the town shall retain the services of a company and/or other applicable services it deems necessary to remove the encroachment, restore the property and take any other remedial action, as may be required. Town staff shall not provide this corrective work.
6. The property owner shall be responsible for all expenses incurred by the Town in registering and/or remedying the encroachment. These expenses shall be invoiced to the property owner. If the invoice is left unpaid, after 30 days it shall be transferred to the property owner's tax account and be recovered in the same manner as property taxes.

Encroachment Agreement Criteria:

1. The following criteria shall be used to determine if an encroachment agreement should be considered by Administration, the encroachment:
 - a. Was constructed inadvertently, contrary to applicable zoning regulations;
or
 - b. Is structurally sound and does not constitute a public or private nuisance or a threat to public health or safety or to the environment;
and
 - c. In the view of Administration:
 - i. does not occupy municipal property which will impact municipal or utility operations, or;
 - ii. has been reserved, dedicated, or zoned to provide public access to any of the municipality's properties, unless there has been a significant period of time with no reasonable public access to the area and no plans for public access in the future.

- d. Any other criteria Administration may decide is pertinent to a specific case.
2. Administration may reject any request for an encroachment agreement. A property owner may appeal this decision to Council.
3. Council, at its discretion, may approve or reject any appeal request for an encroachment agreement.

Encroachment Agreement Fees and Insurance

1. The property owner pays the Town the encroachment agreement application fee, land titles registration fees, and shall be responsible for all costs (legal fees, survey fees, etc.). The application fee shall be equal to the application fee for a development waiver as indicated in the current Fees and Rates Bylaw.
2. The property owner shall carry continuous property liability insurance for the duration of the encroachment and agrees to hold the Town harmless and indemnify the Town for any and all claims which might arise from third parties, who are injured as a result of the Owner's use of Town property for private purposes, or from the failure of the Owner's improvements.

Adverse Possession

In all cases, according to the Municipal Government Act (MGA) no person can acquire an estate or interest in land owned by a municipality by adverse or unauthorized possession, occupation, enjoyment or use of the land.