



The Corporation of the City of Stratford Policy Manual

Policy Number: P.3.2

Policy Section: P.3. Municipal Property

Department: Engineering

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Date of Last Review:

Policy Type: Council-adopted Policy

Encroachments

Policy Statement:

It is the policy of the City of Stratford that there shall be no unauthorized encroachments onto road allowances or municipal property, including park property.

A property owner shall seek prior permission from the City to encroach onto a road allowance or municipal property and subject to Council approval, enter into an encroachment agreement with the City and pay the required fees.

Where an encroachment exists without City approval, the owner shall be required to remove the encroachment at his/her own expense or seek permission from the City for the encroachment to remain.

No new encroachments onto park property will be permitted.

Purpose:

An Encroachment Agreement is a formal agreement signed between the City and the property owner, approved by By-law and registered against the property that is benefited by the agreement (not the municipal property). The intent of the encroachment agreement is to formally recognize the encroachment and clearly

establish the terms and conditions specific to the encroachment, if it is permitted to remain.

An Encroachment Agreement is required when an existing building or structure encroaches onto municipal property, the City will exercise its right to require an encroachment agreement if the City intends to allow the encroachment to remain under certain terms and conditions.

Scope:

1. Buildings or Structures

Typically, existing encroachments are permanent buildings or structures that were inadvertently and partially erected over a road allowance or municipal property and cannot easily be removed without significant impact to the remaining structure. Examples include existing buildings, garages, retaining walls or signs. Permission will not be given for additions to buildings or structures to encroach onto road allowances or other municipal property.

2. Fences and Walls

City Council may consider allowing a fence or wall to encroach over municipal property where it was the intent by the private property owner to enclose a portion of the municipal property, subject to an encroachment agreement and in accordance with the Fence and Hedge By-law.

3. Landscape Features City

Council may consider granting approval for existing encroachments for landscape features such as:

- a. hedge - an encroachment agreement is not necessary for a hedge that encroaches onto municipal property unless the hedge is being used to define/determine a boundary or used as a fence;
- b. small tree(s) - if a property owner plants a tree on municipal property, the tree then becomes the property of the City and therefore, an encroachment agreement is not necessary;
- c. garden - an encroachment on municipal property requires an encroachment agreement in order to preserve the City's right to require the property owner to remove the garden in the future. An encroachment agreement for gardens on road allowance is not required provided that the garden is in compliance with the Fence and Hedge By-law.
- d. an existing clothesline - the clothesline post should not be on municipal property. If the clothesline post is situated on municipal property, owner must remove it and no encroachment agreement will be authorized.

4. Parking on Road Allowance

Where additional parking cannot be provided on private property, and subject to prior approval of an application under the Planning Act, as required, an encroachment agreement may be approved to permit private parking on the road allowance or municipal property in accordance with the Fence and Hedge By-law.

5. Projections

Consideration may also be given for the following encroachments which project over the road allowance or municipal property:

- Canopies
- Awnings
- Balconies
- Cornices
- Eaves
- Sills
- Brackets
- Air conditioners
- Projecting signs
- Other similar projections beyond the main wall, not less than 8 feet above grade.

6. Area Openings

The Municipal Act R.S.O. 1990 as amended, Section 308(3), authorized Councils to pass by-laws for placing or permitting any person under such conditions as may be agreed upon to place, construct, install, maintain and use objects in, on, under or over sidewalks and highways under its jurisdiction, to permit any person to make, maintain and use areas under and openings in the highways and sidewalks, for prescribing the terms and conditions upon which the same are to be placed, constructed, installed, maintained or used and for making such annual or other charge for the privilege conferred by the by-law as it considers reasonable.

While there are some existing areas and openings (such as former coal chutes, grates in sidewalks etc. to provide access to a private building) covered by agreements with the City, any new requests should not be approved. Site Plan control now covers building access and would generally require building services and accesses to be contained on private property.

7. When Encroachments will not be granted

It is the policy of the City of Stratford that approval for the following will not be granted:

- new encroachments onto park property;
- additions to existing buildings or other structures that would encroach or do encroach onto municipal property or road allowances;
- the encroachment poses a danger to the public;
- when construction has commenced prior to the issuance of a required permit from the City.

8. Insurance Requirement

The property owner is required to indemnify and save harmless The Corporation of the City of Stratford against any and all damages which may result from the encroachment. Insurance is required as recommended by the City's Insurer (In 2006 - minimum of \$2 million). The certificate of insurance shall be submitted to the City on the city insurance form at the time the encroachment agreement is signed by the property owner and in subsequent years - at the request of the City

9. Application and Approval Process

A request for an encroachment must be reviewed and approved by the City prior to the issuance of a building permit and/or prior to construction if a building permit is not required.

Applications shall be submitted initially to the City Clerk's Office, for circulation to the City Engineering and Public Works Department or Community Services Department if park property is involved, and shall include the following:

- Completed encroachment application form;
- 4 paper prints of a legal survey signed by an Ontario Land Surveyor showing the whole property and the area of encroachment with full dimensions;
- PIN (Property Identifier Number) printout for the property which will benefit from the encroachment, showing last transfer including full legal description of the property and address of the owner;
- Application fee payable to the City of Stratford;
- Certificate of Insurance on the City of Stratford Insurance Form - to be submitted at the time the encroachment agreement is signed by the property owner.

10. Application Fee for Encroachment Agreements

The application fee is \$350 plus the annual CPI (Consumer Price Index) increase from Statistics Canada, for any property owner applying for an encroachment in the City of Stratford.

This fee is to cover the City's costs to prepare the encroachment agreement and register the documents in the Land Titles Office. Amendments or changes to an existing encroachment agreement are also subject to the application fee. Upon approval of the encroachment by Council and the signing of the encroachment agreement, an annual fee will be charged to the current tax bill of the property owner benefiting from the encroachment.

The application fee for 2021 is \$544.28.

11. Calculation of Annual Encroachment Fee

The size of the encroachment is used in the calculation of the annual fee. This fee is calculated by taking the current property tax times the size of the encroachment (area) divided by the total area of the owned property. This calculation will be determined by the City on an annual basis. Once calculated, this annual fee is added to the tax bill of the property owner. The minimum annual fee, regardless of the area, is \$50.00 plus the annual CPI increase. An annual fee will not be charged for encroachments in institutional zones.

12. Fee for Release from an Encroachment Agreement

Where a property owner has removed the encroachment from the road allowance or municipal property to the satisfaction of the Director of Engineering and Public Works or Deputy Director, and upon payment of a fee of \$375.00 plus the annual CPI increase from Statistics Canada, the City Clerk is authorized to execute a release and the related documents to remove the encroachment agreement from title. Upon confirmation of the registration of the release of the encroachment agreement from title, the annual fee for the encroachment is no longer required to be paid by the property owner.

The release fee for 2021 is \$388.09.

13. Signing Authority

Encroachment agreements in accordance with the Policy shall be signed by the Mayor and Clerk as authorized by By-law.

Encroachment agreements that are required as a condition of a Committee of Adjustment Decision, or Ontario Municipal Board Decision or Court Decision shall be signed by the Mayor and Clerk without a separate by-law being required. A registered copy shall be filed with the City Clerk's Office.

Requests for encroachment agreements that do not conform with the Policy shall be directed to City Council with a staff report, through the appropriate sub-committee process. The processing fee and all necessary documents must be submitted together to the City when application is being made for permission to encroach onto road allowance or municipal property.

The City Clerk is authorized to execute Releases and related documents for encroachment agreements.

14. Encroachments onto Municipal Easements

- a. The City of Stratford holds easement rights to many sewers and watermains located on private property throughout the City. The terms and conditions of the easement rights are specific to each case and are spelled out in the easement document; however, all easements contain a restrictive covenant prohibiting the landowner from erecting a building or other structure on or over the easement. The purpose of the restrictive covenant is to ensure that the City has unobstructed access at all times to the sewer or watermain for repair, replacement or maintenance purposes.
- b. Under no circumstances will the City release its rights to any portion of an easement unless it is being abandoned entirely.
- c. In the case where a building or other structure has inadvertently been located on a sewer or watermain easement, the City has the right to require that the encroachment be removed to ensure that access to the sewer or watermain is maintained. Under certain circumstances, where the City Engineer deems the encroachment is of a minor nature which does not interfere with the City's right of access, the City will consider entering into an encroachment agreement to allow the encroachment to remain.
- d. What constitutes "building or other structure" Permanent or semi-permanent buildings or structures or portions thereof are included in this restriction and therefore, are prohibited from being erected over an easement. This includes but is not limited to signs, decks, concrete patios, garden sheds, trees, swimming pools and other immovable objects.
- e. Fences and shrubs (less than 1.5 metres high) are permitted. The property owner is responsible for dismantling and removing the fence and relocating shrubs upon notice being given that the City requires access to the sewer or watermain.

- f. Paved driveways may also be permitted to be placed over an easement.

Legislative Authority:

Section 210(107) of the previous Municipal Act authorized municipalities to enter into encroachment agreements “for allowing any person owning or occupying any building or other erection that by inadvertence has been wholly or partially erected upon any highway to maintain and use such erection thereon and for fixing such annual fee or charge as the Council considers reasonable for such owner or occupant to pay for such privilege.”

The City of Stratford intends to carry on with a policy under the Municipal Act, 2001.

Related Documents:

- Fees and Charges By-law 38-2004 as amended
- Fence and Hedge By-law 128-2003
- Policy P.3.3 - Use of Municipal Property, Sidewalks and Boulevards