



Town of Saugeen Shores Corporate Policy

Policy Title:	Encroachment on Town-Owned Land Policy
Policy Number:	POL-PLD-07
Category:	Planning and Development
Department:	Development Services
Author:	Clerk and Director, Development Services
Approved by:	Council
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1. Intent

Municipally owned land is an asset that is to be maintained for public or the Town's use. Any encroachment on Town owned land that removes the land from use by the public or the Town, no matter the degree, is in contravention to its intended purpose and may not be in the best interest of the public or the Corporation. This policy provides a framework for when an encroachment may be considered, establishes roles and responsibilities, and provides a consistent approach for when an encroachment is requested.

2. Policy Statement

The purpose of the policy is to establish when encroachments on municipally owned land, including highways, may be considered, provide direction to Staff when other policies may be more appropriate, and create a framework for receiving and processing applications. Existing encroachments shall not be permitted to expand further onto Town owned land.

3. Authority

Municipal Act, 2001, S.O. 2001, c. 25
Town of Saugeen Shores Official Plan
Road Access Act, R.S.O. 1990, c. R.34
Building Code Act, 1992, S.O. 1992, c. 23

4. Scope

These guidelines apply to any encroachments on municipally owned land, including highways.

5. Definitions

5.1 **"Alteration"** means any change made on or to Town owned lands or structures.

5.2 **"Council"** means the Mayor, Deputy Mayor, Vice Deputy Mayor and Councillors, as a collective, that are elected, acclaimed, or appointed to the Council of the Corporation of the Town of Saugeen Shores.

- 5.3 **“Chief Building Official”** means the Chief Building Official for the Town of Saugeen Shores or their designates.
- 5.4 **“Director”** means the Director, Development Services or their designates.
- 5.5 **“Encroachment”** means any type of feature, object, structure, building or item of personal property of a person, which was placed, installed, constructed, or planted, wholly or partly upon, or extends from a private property owner’s property onto, municipally owned land, including highways, and shall include any aerial, surface or subsurface encroachments, that was not placed, installed, constructed, planted, or otherwise altered by the municipality.
- 5.6 **“Existing Encroachments”** means encroachments in place prior to June 26, 2006 (the date of the approval of the Official Plan the original Encroachment policy was based on).
- 5.7 **“Highway”** means both “highway” as defined in the Highway Traffic Act, RSO 1990, cH.8, and “highway” as defined in the Municipal Act, 2001, and any amending or successor legislation, and for greater clarity, includes road allowances, streets and lanes, whether assumed or not, but shall not include a shore road allowance.
- 5.8 **“Municipality”** or **“Town”** or **“Corporation”** means the Corporation of the Town of Saugeen Shores.
- 5.9 **“Property Owner”** means the registered owner of the property.
- 5.10 **“Shore Road Allowance”** means a road allowance identified as an original shore road allowance as of the date of an original Crown survey of the municipality or reserved as a shore road allowance at the time of the issuing of original Crown patents or an original road allowance, as determined by an Ontario Land Surveyor, the Municipal Solicitor, the Director of Land Titles or the Superior Court of Justice.

6. Policy

a. Framework

6.1 Encroachments and Alterations prohibited

6.1.1 No person shall:

- i. place, install, construct or plant, or cause to be placed, installed, constructed or planted, an encroachment of any kind on Town owned lands except as may be permitted under any by-law, statute, regulation, policy, resolution of the Town, or agreement, or where permitted to do so by way of a current encroachment agreement or otherwise in accordance with this By-law; or
- ii. undertake or carry on any alteration of any kind on or to Town owned

lands except as may be permitted under any by-law, statute, regulation, policy, resolution of the Town, or agreement, or otherwise in accordance with this By-law.

6.2 Highways

- 6.2.1 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 a highway, including the road allowance, without the prior written consent of the Director. The Director shall consider the guidelines set out in this policy prior to granting or denying approval of the request for the encroachment.
- 6.2.2 If an encroachment has been approved by the Director as per section 6.2.1., and it is inadvertently damaged, any repairs and associated costs shall be the responsibility of the encroaching party.
- 6.2.3 This policy does not preclude the Town from entering into an easement or servicing agreement with a private property owner to authorize the installation and maintenance of a privately owned conduit, pipe or line installed under a highway or municipal land for purposes such as, but not limited to, irrigation, drainage or servicing.

6.3 Municipally Owned Land

- 6.3.1 In addition to the policy statements established in this policy document, the Town of Saugeen Shores' Official Plan also provides specific policy statements that must be considered and shall be complied with.
- 6.3.2 Section 3.19.4.3.6 of the Town of Saugeen Shores' Official Plan reads "Private property encroachments on public waterfront access points, municipal parkland, trails, and natural environment areas will not be permitted. Where existing encroachments exist, the Town may enter into lease agreements to recognize the use of these lands. The Town may also develop a by-law to recognize existing encroachments and to regulate how encroachments are to be considered".
- 6.3.5 If an encroachment is identified, the Town may require the encroachment to be removed and the lands returned to its original state to the satisfaction of the Town. All costs related to the removal of the encroachment shall be at the encroaching party's expense.
- 6.3.6 If the Town 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 Town or by the encroaching party. All costs of removing an encroachment, unless agreed to otherwise by the Town in writing, shall be borne by the encroaching party regardless of who removes the encroachment.

6.3.7 There may be situations that warrant the Town's consideration to authorize private encroachments on municipal land. In considering the merits of the request for the encroachment, Staff and Council shall consider the following:

6.3.8 Encroachments will not be permitted in the following circumstances:

- i. The encroachment creates an unsafe or hazardous condition or poses a danger to the health, safety and well being of any person 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.
- ii. The encroachment diminishes or restricts the public's right of usage, such as, but not limited to, impeding vehicular, pedestrian, bicycle and/or other passage or access by the public, along, on, over or within a travelled portion of a highway.
- iii. The applicant is unable to reasonably demonstrate a need for the encroachment.
- iv. The encroachment interferes with the Town's intent and purpose in owning the land.
- v. Construction of the encroachment has commenced prior to the issuance of a Building Permit, if required, or the Town's consent.
- vi. The encroachment enlarges an existing encroachment.
- vii. The encroachment involves fencing that delineates municipal property.
- viii. The encroachment adversely affects municipal operations, work, plans, efforts or initiatives of the Town to maintain municipally owned lands or undertake capital works projects.
- ix. The encroachment has the potential to significantly depreciate the municipally owned land, for example contaminate the land, render the municipal land unusable, etc.
- x. The encroachment interferes with any public utility or other similar installation located on municipally-owned lands including underground infrastructure.
- xi. The encroachment creates a situation that is contrary to any Town By-law, Town Policy or resolution, County of Bruce By-law or County of Bruce Policy, or any provincial or federal regulation or legislation.
- xii. The encroachment creates a risk to the Town, that cannot be

sufficiently mitigated by entering into an Agreement.

6.4 Shore Road Allowance

6.4.1 Encroachments on a shore road allowance shall not be permitted, save and except in exceptional circumstances, and only if approved by the Town, at its sole discretion. Any approval granted shall not to be construed as the practice.

6.5 Private Wells and Septic Systems

6.5.1 The placement, installation and construction of wells and septic systems wholly or partially on municipally owned land shall not be permitted, save and except in exceptional circumstances, and only if approved by the Town, at its sole discretion. Any approval granted shall not to be construed as the practice.

6.5.2 Any existing private wells and septic systems wholly or partially on municipally owned land without the consent of the Town shall be removed, decommissioned or filled as required by, and to the satisfaction of, the Chief Building Official. Any costs associated with the removal, decommissioning or filling of a private well or a private septic system shall be borne by the private property owner.

6.6 Buildings or Structures

6.6.1 No building or structure shall encroach onto municipally owned land. Building permits will not be issued for buildings or structures that are partially or wholly located on municipally owned land, including highways.

6.6.2 If an existing building or structure encroaches onto municipally owned land, the Town may consider entering into an Encroachment Agreement with the encroaching party to allow the encroachment to remain in its current location when the relocation of the building or structure is not practical or feasible as determined by the Town (Section 4.4.3.3 of the Town Official Plan). If the Town determines, at its sole discretion, that the encroaching building or structure must be removed from the municipal land then the cost of doing so shall be borne by the encroaching party and the encroaching party is responsible for leaving the Town's land in a clean and safe condition, as determined by the Chief Building Official.

6.6.3 Encroachments will not be permitted on municipally owned lands where the said lands provide access to other private properties, Public Lands (i.e. beaches, water), lands that may be considered for potential future public use, or to Shore Road Allowances, save and except if there are alternative access options available for the impacted properties or other more usable public access points leading to the beach or water in the immediate area.

6.7 Planning Applications

6.7.1 In the event that an encroachment is identified wholly or partially on municipally owned lands during a Planning Application, and the subject property is the encroaching property, the applicant shall be promptly notified of the applicability of the within policy statements and the Town's requirements to address the noncompliance. The Town may require the encroachment to be addressed to the Town's satisfaction as a condition of approval of the planning application.

6.8 Exclusions

6.8.1 If deemed applicable, an encroachment or an encroachment-like situation may be addressed as follows (this is not an exhaustive list):

- i. sidewalk patios or sidewalk cafés shall be referred to the Sidewalk Patio and Sidewalk Café Policy;
- ii. existing encroachments that are permanent buildings or structures may be considered under the Sale or Other Disposition of Land Policy;
- iii. the ongoing use of municipal land that may not qualify as an encroachment may be considered for a Licencing Agreement; and
- iv. where, in the opinion of the Director and the Municipal Solicitor, another form of legal agreement would be more appropriate to mitigate the risk to the municipality, while meeting the needs of the applicant.

6.9 Implementation Procedure

6.9.1 Upon discovery of an Existing encroachment, the Owner of the encroachment may be notified of the encroachment and advised to remove the encroachment by a certain date. In that circumstance, the following shall apply:

- i. Where the encroachment is to be removed, the Owner shall consult with the Director and/or the Chief Building Official, as applicable, as to the process to remove the encroachment. If required, the Owner will apply for and obtain the applicable permit(s) and co-ordinate with the Chief Building Official when the removal work will be completed and by whom.
- ii. Any removal of an encroachment from municipally owned land shall be to the satisfaction of the Chief Building Official.
- iii. Any expenses and costs incurred to remove an encroachment is the responsibility of the encroaching party.
- iv. Should the encroaching party not remove the encroachment within the time required by the Town, then the Town shall be entitled to remove the encroachment off of municipally owned land and shall not be liable for any damage to the encroachment or the encroaching party's property. Any costs incurred by the Town shall be paid for by the

encroaching party.

- v. All associated fees and charges incurred by the Town will be billed to the Owner. If the fees are not paid as requested, the fees will be added to the private property tax roll pursuant to Section 398(2) of the Municipal Act, 2001.
- vi. If the Owner of the encroachment wishes to apply to Council for approval to remain on municipally owned land, they may make an application to the Town in accordance with the application process outlined in this Policy below.

6.9.2 If the Town 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 subject to the provisions of this policy and the authorization of Council.

6.10 Application for Encroachment

6.10.1 The following information must be submitted to commence the Encroachment Agreement process:

- i. A complete Application Form.
- ii. An application fee in accordance with the Town's Fees and Charges By-law, as amended from time to time.
- iii. A plan or sketch of the subject lands with details of the encroachment clearly marked thereon (if an existing encroachment include photographs of the encroachment) as well as an accurate location of the lot lines between the applicant's property and the municipally owned land (a draft reference plan or building location survey prepared by an Ontario Land Surveyor may be required by the Director at this stage and any costs of obtaining same shall be paid for by the applicant).

6.10.2 The Application will be submitted to the Director and circulated to the appropriate Departments for review, comment and recommendations.

6.10.3 A staff report with a recommendation will be presented to Council for its consideration.

6.10.4 If approved by Council, the applicant will be required to pay all costs associated with this process, including the Town's Municipal Solicitor's costs and 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 Town of Saugeen Shores as an additional named insured for the term of the Agreement.

b. Development and Review

6.11.1 The Director shall review, or cause to be reviewed, this policy every five years to ensure ongoing alignment with provincial statute, common law, and the values and principles of the Town as included in the Official Plan and the Strategic Plan.

c. Attachments

None.