

**Town of Saugeen Shores
Corporate Operational Policy**

ENCROACHMENTS ON MUNICIPALLY OWNED LANDS	
Department: Clerk's	Prepared By: Clerk
Date of Passage: June 9, 2005	Resolution Number: 128-2005
Revised: December 14, 2015	Resolution Number: 262-2015

Purpose:

The purpose of the policy is to set out guidelines for dealing with encroachments on municipal property.

Scope:

These guidelines apply to encroachments on all municipally owned lands.

Policy:

It is the policy of the Town of Saugeen Shores that municipal lands are for municipal purposes and/or for the public's use and are to remain free and clear of private encroachments.

Road Allowances

No encroachments shall be placed on municipal road allowances unless expressly authorized by the Town.

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 Public Works or his/her designate. The Director of Public Works or his/her designate shall consider the guidelines set out in this policy prior to granting or denying approval of the request for 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 Town 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.

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

No encroachments shall be placed on municipal property.

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 complied with.

Section 3.19.4.3.6 of the Town of Saugeen Shores' Official Plan establishes the following policy that shall be complied with:

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.

For the purpose of this policy 'existing' means as of June 26, 2006, being the date of adoption of the 2006 Official Plan.

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

Section 4.4.3.3. of the Town of Saugeen Shores' Official Plan establishes the following policy statement for existing historic buildings or structures:

Where historic building or structure encroachments exist, the Town may only consider the sale of a Road Allowance or Public Lands in accordance with the policies of Section 4.4.3.1. and where the relocation of the building or structure is not practical or feasible.

4.4.3.1 The Town will not stop up or sell unmaintained road allowances or other municipally owned lands that provide access to properties where there is any possibility that there is a potential future public use for the lands unless alternative access options are available for impacted properties. Road allowances or public lands leading to water or leading to an original Shore Road Allowance shall not be sold to abutting property owners unless there are other more usable public access points leading to the water in the immediate area.

For the purpose of this policy 'existing' means as of June 26, 2006, being the date of adoption of the 2006 Official Plan.

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 Town.

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 Town's requirements shall be satisfied as a condition of approval of the planning application.

New and Existing Encroachments

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.

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 encroaching party. The cost to remove an encroachment that has not been approved by the Town may be invoiced to the encroaching party.

There may be situations that warrant the Town'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 following:

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 Town's intent and purpose in holding the Town-owned land;
- Construction of the encroachment has commenced prior to the issuance of a required Building Permit or required approval from the Town.
- 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 Town to maintain municipally-owned lands or undertake capital works projects.
- The encroachment interferes with any utility or other similar installation located on Town-owned lands including underground infrastructure.
- The encroachment creates a situation that is contrary to any Municipal By-law, Town Policy or resolution or any provincial or federal regulation or legislation.

Implementation Procedure

Upon discovery of an encroachment, the Owner of the encroachment may be notified of the encroachment and the options 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 Town 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 Town 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 Town's legal fees, registration fees, appraisal fees and the value of the land.

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.

Staff shall forward a report outlining the details of a proposed sale or licence agreement to Council for approval.

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 Clerk's Office and circulated to the appropriate Departments for review, comment and recommendations.

A staff report with a recommendation will be presented to the Committee of Whole of 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 Town of Saugeen Shores as an additional named insured.



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P.O. Box 820
Port Elgin, ON N0H 2C0
Telephone: 519-832-2008
Fax: 519-832-2140
www.saugeenshores.ca

THE CORPORATION OF THE TOWN OF SAUGEEN SHORES

APPLICATION FOR ENCROACHMENT ON TOWN PROPERTY

This is an application to consider the possibility of allowing an encroachment onto Town owned property.

Applicant Name: _____

Mailing Address: _____

Telephone: _____ E-Mail Address: _____

Cell Phone: _____

ENCROACHMENT INFORMATION

Physical Address of Property to Encroach onto Town Property:

Legal Description of Property: Roll # _____

Lot # _____ Conc # _____ Plan # _____ Parts # _____

Description of encroachments: (sketch/survey must be attached or application will be considered incomplete)

Encroachment already exists: Yes No

Proposed Encroachment: Yes No

Reasons for requesting encroachment:

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 Agreement.

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

1. The encroachment interferes with the Town's intent and purpose in holding the Town-owned land;
2. The encroachment diminishes the public's right of usage of public lands;
3. New encroachments onto municipal property;
4. Unable to reasonably demonstrate a need for the encroachment;
5. The encroachment enlarges an existing encroachment;
6. The encroachment poses a danger to the public;
7. The encroachment creates an unsafe condition;
8. Construction has commenced prior to the issuance of a required permit from the Town;
9. Adversely affects municipal operations, work, plans, efforts or initiatives of the Town to maintain municipally-owned lands;
10. The encroachment interferes with any utility or other similar installation located on Town-owned lands;
11. The encroachment creates a situation that is contrary to any Town By-law, Town 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:	Established in the Fees & Charges By-law
Encroachment Agreement Deposit Fee:	\$500.00. Invoiced for actual costs incurred
Annual Fee:	Established in the Encroachment Agreement

SOLICITOR (if applicable)

Name: _____

Address: _____

Telephone: _____ E-Mail: _____

CONSENT

I/We understand and agree to provide the Town with an annual Certificate of Insurance, in perpetuity, as per Town 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 Town property (i.e. 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 Town 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 (please attach letter of authorization)

DATE

**PLEASE RETURN THIS APPLICATION FORM TO:
TOWN OF SAUGEEN SHORES, CLERK'S OFFICE
600 TOMLINSON DRIVE, P.O. BOX 820
PORT ELGIN, ON N0H 2C0**

For further information please contact the Clerk's Office at 519-832-2008

Personal information on this form is collected in accordance with the Municipal Freedom of Information and Protection of Privacy Act and will be used for the purposes of processing an Encroachment Licensing Agreement. Questions with respect to the collection and use of this information should be directed to the Clerk's Office at the address noted above.