



POLICY CAO-13: Encroachments upon Municipal Property

Office of the CAO

Approval Date: September 10, 2002
Approval Authority: Council, Resolution No. 31
Effective Date: September 10, 2002
Revision Date/s: January 30, 2008, July 9, 2019

1. Background:

Norfolk County realizes private encroachments on County property exist and will continue to be discovered. The County must ensure that encroachments do not adversely affect these properties, the County's ability to maintain effective services, or restrict public access and enjoyment of public land. We also must ensure that appropriate indemnification and insurance is provided to the municipality for all encroachments.

Encroachments are required to be removed unless authorized by a consent letter, encroachment agreement or expressly permitted by this policy.

2. Purpose:

This policy will 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.

3. Definitions:

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

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

"By-Law Enforcement Officer" means the Bylaw Enforcement Officer for the County of Norfolk or his/her delegate.

"Council" means the Council of the Corporation of the County of Norfolk.

“Consent Letter” means the County’s standard form of letter, as amended from time to time, for situations in which the General Manager, Public Works, County Clerk, or their designate, determines, at their sole discretion, whether an encroachment is minor of 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 County 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 County of Norfolk and the Owner being granted permission to occupy the County land.

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

“Clerk” means the County Clerk of Norfolk, or his/her designate.

“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.

“County” means the Corporation of the County of Norfolk.

“County Lands” means any lands owned by, leased, licensed to or under the management of the County , and shall include but not be limited to any public

highway, road, street avenue, parkway, lane, alley, square, place, viaduct or trestle, water, thoroughfare, way or bridge, park, woodland, greenbelt, storm water management facility, open space, cemetery, and all parts thereof, including any surface, grassed area, boulevard, ditch, curb, gutter and sidewalk.

4. Application/Administration:

This policy applies to all encroachments on County lands. The County Clerk or his/her designate is responsible for administration of this policy.

5. General Provisions:

- A) An encroachment occurs when objects are placed on, in, or under the ground space or in the air space of County lands, either deliberately or inadvertently. Encroachments may be man-made or natural features and include, but are not limited to:
- i. "Structural" ie. construction of fences, gates, decks, buildings, pools, wells, septic systems, docks, retaining walls, parking lots, signs and appurtenances.
 - ii. "Non-structural" ie. pool drainage, waste dumping etc.
 - iii. "Vegetative" ie. planting of floral or vegetable gardens, decorative landscaping including shrubs, trees, stones etc.
- B) Encroachments are of concern because they:
- i. May restrict or limit the use and enjoyment of County lands which are for the benefit of all abutting property owners, residents, tourists and visitors
 - ii. May pose a safety hazard to the public and give rise to potential liability claims from resultant injuries
 - iii. May damage the natural environment and undermine the County's stewardship role in protecting natural features
 - iv. May destabilize public lands with resultant damage to adjacent private lands
 - v. May result in ratepayers absorbing costs to restore degraded County lands
 - vi. May interfere with existing or future municipal infrastructure (ie. drainage, highway improvements, water and/or sewer lines)
- C) New encroachments of a major nature shall not be permitted. All existing encroachments in place prior the enactment of this policy in September 10, 2002, shall not be considered new. The requirement to furnish proof that an encroachment existed prior to September 10, 2002 is the sole responsibility of the applicant. Pre-existence of an illegal encroachment prior to September 10, 2002

shall not be interpreted to remove any requirements of this policy.

- D) All encroachment contracts will continue in perpetuity with the provision that the municipality may end the agreement with reasonable notice. The County Clerk may enter into new agreements to replace expired existing encroachment agreements that were approved by By-Law prior to 2016 and have a specified expiry date.
- E) All existing encroachment agreements in force on the date of passing of this policy shall remain in force until the encroachment is removed or until the property changes ownership. The County Clerk may transfer encroachment agreements to new owners without a review if they are satisfied that the new owner(s) has provided appropriate insurance and indemnification to the County and the footprint of the encroaching area remains unaltered.
- F) Norfolk County reserves the ability to address complaints from the public respecting illegal encroachments on County land in the manner it deems appropriate. This includes to option of taking no action. Norfolk County has no comment upon illegal encroachments between private property owners and does not mediate civil disputes of that nature.

6. General Guide Lines:

- A) The following guidelines shall be applied when considering encroachments on all County lands:
 - i) Determine whether that part of the County land so encroached upon is required for municipal purposes
 - ii) Determine whether the encroachment:
 1. Has been constructed inadvertently
 2. Has existed for a long period of time
 3. Is maintained in good repair, used or abandoned
 4. Poses a safety hazard to the public and gives rise to potential liability claims from resultant injuries
 5. Destabilizes public lands with resultant damage to adjacent private lands
 6. Damages the natural environment and undermines the County's stewardship role in protecting natural features
 7. Is a natural feature which should be preserved or protected – i.e. mature trees and sensitive flora or fauna

8. Conflicts with the County's Official Plan, Zoning Bylaw or other applicable By- Laws or legislation
 9. Interferes with any existing, planned proposed or possible future municipal improvements
 10. Comprises drainage or interferes with existing or proposed drainage works
 11. Is minor in nature
 12. Takes into consideration the surrounding neighbourhood
- iii) In the case of a structure, determine also whether the encroachment:
1. Is constructed on a permanent foundation
 2. Is being maintained in good condition
- iv) Notwithstanding anything contained in this policy to the contrary:
1. Mature trees, which do not hinder or discourage public access to or on County lands, shall be deemed permitted encroachments. Encroachment agreements shall not be required for such mature trees.
 - a) Notwithstanding that Subsection above, the General Manager, Public Works, or his/her designate, may, at his/her sole discretion, require the removal of such mature trees in order to facilitate the completion of present or future municipal works or improvements on or to County lands.
- v) All determinations upon whether an encroachment is minor or major shall be made by the County Clerk or designate in consultation with a minimum of the General Manager, Public Works, or his/her designate, and other staff that have been involved in the preliminary review of the application.
- vi) In cases where it is uncertain whether an encroachment is minor or major, or a census cannot be reached by County staff, the encroachment will be deemed major.
- v) These guidelines set out above are 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.

7. Letters 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 County 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 County, in its sole discretion.
- C) A drawing shall be provided by the Owner, in a form satisfactory to the General Manager, Public Works, County Clerk, 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 maintain a liability insurance policy for the encroachment in the amount of two million dollars naming the County as third party insured.
- E) The Owner shall provide proof of the insurance policy to the County on an annual basis.

8. Encroachment Agreements

- 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 by both the County 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 County, in its sole discretion.
- C) A Reference Plan, prepare 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 County lands shall occur in the process prescribed by the County.
- 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 maintain a liability insurance policy for the encroachment in the amount of two million dollars naming the County as third party insured.
- G) The Owner shall provide proof of the insurance policy to the County on an annual

basis.

9. Other Lease Scenarios:

Norfolk County is aware of pre-existing instances where residences, buildings or garages substantially encroach upon municipal property. These historical illegal encroachments have benefitted property owners by allowing occupation of a portion of land free of property taxes or other fees.

County staff are authorized to examine long-term lease agreements as an alternative to removal of these substantial and long-existing encroachments.

Attachment:

[Form FO-32 - Application for an Encroachment \(Appendix "A"\)](#)