



REPORT TO COUNCIL

DATE: September 1, 2017

REPORT NO.: 17-148

SUBMITTED BY: Brenda Ginter
Director of Corporate Administration

FILE NO.: 1-1-9

SUBJECT: Trespass/Encroachment Policy – Third Revision

PURPOSE

To provide Council with proposed revisions to the Encroachment Policy for consideration.

SUMMARY/BACKGROUND

The first draft of the Encroachment Policy was provided to Council and the Public for a 30 day review after it's initial presentation to Council on July 17th. Comments were received from members of the public and from Council.

At the August 21, 2017 meeting, Council referred the policy back to staff and requested the following revisions for consideration at the next meeting of Council.

- Revise the name of the document to include Trespass, and
- Revise wording to state that staff will actively enforce any new trespasses/encroachments.

In response to Council's request for wording changes, Staff requested legal advice regarding the terms 'trespass' and 'encroachment'. Their response is included below:

- The meanings of trespass and encroachment overlap, so both could be used. In this situation, trespass means a wrongful entry upon the land of another person, with damage to that land. If the City were to sue any person who put their property or structures on City land, we would frame the case by claiming a trespass.
- Encroachment is less confrontational, and has the connotation of small, gradual, or insidious advances on another person's property, especially by fences or other structures. At law, it has the same sense of intrusion as trespass, but generally refers to one owner enclosing or otherwise appearing to add someone else's land into his own. It is not a tort that can be claimed in a lawsuit, but rather a statement about the fact that someone has advanced or intruded beyond a recognized limit.
- Trespass can be done by any person by simply walking onto another's property, but encroachment is about one owner extending his own rights over property to the detriment of the adjoining owner.
- To the extent that the policy is about regularizing and permitting someone else's property to

remain on City property in certain circumstances, it is more appropriate to talk about the incursions as encroachments rather than trespasses.

- The revisions provided to the Trespass/Encroachment Policy attempts to draw a distinction between an encroachment and a trespass, as we have given them separate definitions.
- Encroachment is the physical object placed by someone else on the City property.
- Trespass is defined as some damage to the City property that results from wrongful entry – for instance, in a clear case, someone breaks into the city works yard and dumps hazardous material or damages something, extending to people digging or doing some other harm to a park that you couldn't recover under bylaw fines in your parks bylaw.
- In the case of a trespass, we wouldn't necessarily be granting encroachment agreements, but we'd be giving notice to those people to remedy the damage to the City property.

The third revision of the Trespass/Encroachment Policy is attached to this report for Council consideration. The amendments are noted below.

1. Trespass has been defined within the policy as follows and has been added where applicable.

Trespass: means a wrongful entry upon land owned or occupied by the City resulting in damage to that land.

2. Proactive enforcement wording has been added to the Enforcement Section as follows:

Enforcement

It is the intention of the City to apply this policy when a complaint is received or when trespasses/encroachments are identified by the City through its normal process and management of municipal land, or upon request by a landowner.

Trespasses or Encroachments that existed PRIOR to adoption of this policy will not be proactively enforced, but the City will take action when a complaint is received, in accordance with clause No. 2 of the Bylaw Enforcement Guidelines Policy.

As an exception to clause No. 2 of the City's Bylaw Enforcement Guidelines Policy, a trespass or encroachment that occurs AFTER the date this policy is adopted will be proactively enforced when the City becomes aware of the Trespass or Encroachment through its normal process and management of municipal land. City staff will be directed to actively identify and report any new trespasses/encroachments on City land.

For Council's reference, Clause No. 2 of the Bylaw Enforcement Guidelines Policy is provided below:

2. Enforcement action with regard to Bylaws shall only be entertained under circumstances where there exists a clearly identified complainant who is directly affected by the alleged violation, and further, where the complainant is the City itself, only under circumstances where a lack of compliance represents a real and substantial harm to the City's interest.

It should be noted that adoption of the attached policy would require staff and Council to consider encroachments on a case by case basis. This would not be in line with the current direction of Council from the February 6th Regular Meeting – which has not yet been actioned by staff.

Council would either need to waive the newly adopted policy, or to rescind the un-actioned direction from the February 6th meeting“...**that those property owners found to be trespassing be required to remove all structures within a 24 month period; further, that the park be restored to its natural state in accordance with the OCP; and further, that the trespass at 10721 Willowview Drive be removed and restored in accordance with a qualified environmental professional.**”

In the event that Council wishes to rescind this direction, a resolution of Council is required. Councillors Parslow, Gevatkoff and McFadyen would not be permitted to make a motion or second a motion to rescind this direction as they all voted against this resolution on February 6th.

ALTERNATIVES

1. Council may approve the revised policy as presented or may wish to amend the policy prior to approval.
2. Council may wish to waive the second 30 day review period and provide final adoption to the policy immediately.
3. Council may wish to provide a more active approach to trespasses/encroachments by dealing with all trespasses/encroachments, not just those that are newly developed. Due to the large number of trespasses/encroachments that currently exist within City limits, additional staffing would be required.
4. Council may refer the policy back to staff for further research.

IMPLICATIONS

(1) Social

The City must ensure that encroachments do not adversely affect the City's land or restrict public access and enjoyment of the land for public use. Applicants submitting a request through the Encroachment Policy need to be aware that staff will be reviewing each application on a case by case basis, and that this process must be provided the necessary time to thoroughly examine all consequences.

(2) Environmental

There are varying levels of encroachments throughout the City. With regards to encroachments within a riparian zone, the City may need a qualified environmental professional to provide guidance on what actions should be taken to restore the land to its natural state.

(3) Personnel

City staff that are involved in this process include Bylaw, Engineering, Administration, and the City Planner. If the revised policy is approved, there will be a great deal of staff time required to finalize the procedures and fees prior to implementation.

Once implemented, staff will also be required to spend considerable time reviewing applications to ensure they are in accordance with all

City bylaws and policies as well as provincial and federal legislation.

All applications need to be thoroughly reviewed on a case by case basis, therefore taking considerable staff time.

(4) Financial

To date, the City has incurred costs for surveying the Chamberlain Park Boundary (approximately \$7500) and has also requested legal advice during this process. Legal fees relating to this issue have not yet been invoiced.

Should Council approve the attached Trespass/Encroachment policy, staff will develop applicable application fees and ensure that market value is considered within future encroachment agreements. Staff will also consider the City's costs and staff time when calculating the fees for encroachment applications and agreement preparation.

(5) Risk Assessment

Compliance: *Community Charter, Local Government Act, City bylaws and policies, and permits in accordance with Provincial and Federal legislation for any work being done around the creek, such as erosion control, debris removal, maintenance of drainage ditches that lead into the creek, etc.*

Risk Impact: Medium. Although this policy provides a method to deal with current and future encroachments onto City property, staff and Council need to be diligent in ensuring compliance with other City policies and bylaws so that this process does not encourage future encroachments or foster a culture of non-compliance. The sale of City land should only be considered following a very thorough review.

Internal Control Process:

Administration staff ensures the policy manual is current, and that a historic record is kept on file regarding each policy.

Upon Council approval of the Trespass/Encroachment policy, a process for encroachment agreements will be developed including applications and agreements as well as the associated fees.

GUIDING PRINCIPLES

The Environment: We will demonstrate respect for the future of the earth by advocating for the preservation of clean air, clean water, and healthy land.

Health: We will optimize opportunities for healthy living by developing an environment free from undue risk, and enhancing the cleanliness and aesthetic appearance of our community.

STRATEGIC PRIORITIES

N/A

IMPLEMENTATION/COMMUNICATION

If the revised policy is approved by Council, and a second 30 day review receives no additional input from the public or Council, then staff will proceed with developing a comprehensive set of procedures to deal with trespasses/encroachments that staff are made aware of - either through a complaint being received from the public or as identified during their daily work.

Any fees associated with the permits/agreements will need to be included within the City’s Fees and Charges Bylaw. This would be presented to Council following the 30 day review of this third version of the policy.

After the Trespass/Encroachment Policy completes it’s 30 day review and the application procedures and fees are finalized, City staff would need clear direction on how to proceed with the Chamberlain Park trespasses/encroachments. The Policy would have staff dealing with these property owners on a case by case basis because the City was made aware of these trespasses/encroachments through a complaint.

RECOMMENDATION

That Report No. 17-148 from the Director of Corporate Administration re: Trespass/Encroachment Policy – Third Draft be received; further, that the third draft of the Trespass/Encroachment Policy as attached to this report be approved pending a second 30 day review period; further, that the following direction from Council from the February 6, 2017 meeting be rescinded:

“...that those property owners found to be trespassing be required to remove all structures within a 24 month period; further, that the park be restored to its natural state in accordance with the OCP; and further, that the trespass at 10721 Willowview Drive be removed and restored in accordance with a qualified environmental professional.”;

And further, if no issues arise from the second 30 day review period, that all trespasses/encroachments that were identified within Chamberlain Park be dealt with in accordance with the new Trespass/Encroachment Policy.

Respectfully submitted,

ORIGINAL SIGNED BY

APPROVED FOR AGENDA BY CAO

Brenda Ginter
Director of Corporate Administration

BG/slw

Attachment:
Trespass/Encroachment Policy - Third Draft