



**CORPORATE POLICY MANUAL**

Section:	Real Estate and Properties	8
Sub-Section:	Municipal - Encroachments	3158
Title:	ENCROACHMENT AGREEMENTS AND EASEMENTS FOR THE NON COMMERCIAL USE OF HIGHWAY OR MUNICIPAL PROPERTY	1

**POLICY**

1. **An owner of land wishing**
  - 1.1. to erect a new Structure to be situated on a portion of Highway or municipal property, or
  - 1.2. to regularize an existing Structure situated on a portion of Highway or municipal property, or
  - 1.3. to use a portion of Highway or municipal property exclusively or to regularise an existing exclusive use,

shall obtain an Encroachment Agreement in the standard form and pay an annual licence fee for the area occupied.
2. The licensee shall pay an annual rent in advance to be adjusted on January 1<sup>st</sup> in each year based on a percentage of the prior year's average assessed value of RS3 lots in the District having a recorded gross land area between 600 m<sup>2</sup> and 1200 m<sup>2</sup>. The rental rate per square foot per annum shall then be applied against the area occupied by the licensee to arrive at his/her annual licence fee as follows:
  - a) for substantial Structures such as part of a principal dwelling, carport, garage or swimming pool and cabana including surrounding walks and paved areas which facilitate directly or indirectly the use of such Structures, the annual fee shall be 5 % of the above average assessed value; and
  - b) for an area used exclusively so as to deny public access (fencing, hedges or other means) for additional landscaped / vegetable garden area and which may be improved by lesser structures such as a storage shed, deck, stairs, walkway, children's play equipment or other similar improvements of exclusive use, the annual fee shall be 2.5 % of the above average assessed value.

Except that this formula shall not be applied to one existing licence (1554 Burrill Ave), which licence term will not expire until 2008, until that licence term expire.

When an existing structure for which there is no record of a licence or permit in writing having been issued, becomes known to staff, the owners thereof shall forthwith be advised to either:

- 2.1. remove the encroachments from the Highway or municipal property at the owner's sole cost and expense, leaving the surface of the area in a neat and tidy condition and accessible to the general public to the satisfaction of the Municipal Engineer or Section Manager, Real Estate and Properties; or
- 2.2. apply to the Section Manager, Real Estate and Properties for approval of the Encroachment within a Highway or municipal property, and
  - 2.2.1. if approval is given by the Municipal Engineer or Section Manager, Real Estate and Properties, either in whole or in part, regularize the approved Encroachment by obtaining an Encroachment Agreement, or



9. **Where an existing Structure / improvement cannot reasonably be removed from adjacent municipal property because, for example, it is part of a principal dwelling, Council may consider granting an easement limited in duration and subject to early termination if the encroaching Structure / improvement is demolished. The payment to the District of annual rent or prepaid rent will be determined on a case-by-case basis.**

**REASON FOR POLICY**

To allow the Municipal Engineer to regularize encroachments on Highways and the Section Manager, Real Estate and Properties to regularize encroachments on municipal property, and to charge a fee therefore; or to require private owners to remove encroachments on Highways or municipal property.

**DEFINITIONS**

**“Encroachment”** means a Structure or physical object occupying a part of the surface, subsurface or airspace above a Highway or municipal property, including without limitation the area substantially enclosed by a fence or hedge which provides an effective barrier to public access.

**“Encroachment Agreement”** means an agreement granted by the District to an owner of real property adjacent to a Highway or municipal property, permitting the owner to use a portion of the Highway or adjacent municipal property for an Encroachment;

**"Highway"** means the area of every public right of way lying between two property lines title to which area is vested in the District and which is designated or intended for or used by the general public for the passage of vehicles or persons and means the area of every public right of way lying within any District Park title to which area is vested in the District and which is designated or intended for or used by the general public for the passage of vehicles;

**“Structure”** means buildings, decks, garages, carports, swimming pools, or any other improvement affixed on or under a Highway or municipal property but does not include driveways, steps, walks and other improvements that give access to real property adjacent to a Highway or to retaining walls having a height of less than 1.22 metres.

**AUTHORITY TO ACT**

The Municipal Engineer is authorized to execute Encroachment Agreements in respect of Highways and the Section Manager, Real Estate and Properties in respect of municipal property in the limited circumstances set out above. In addition, the Municipal Engineer and the Section Manager, Real Estate and Properties may renew all existing Encroachment Agreements automatically on a year to year basis until cancelled by either party, under Policy 8-3170-4

**PROCEDURE**

Applications for new Encroachment Agreements will be received and processed by the Section Manager, Real Estate and Properties and executed either by the Municipal Engineer or the Section Manager, Real Estate and Properties.

Approval Date:	November 16, 1987	Approved by:	Policy & Planning Committee
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2. Amendment Date:	June 14, 1993	Approved by:	Regular Council
3. Amendment Date:	September 11, 1995	Approved by:	Council - In Camera
4. Amendment Date:	December 11, 1995	Approved by:	Regular Council
5. Amendment Date:	February 14, 2005	Approved by:	Regular Council