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Presented by: Dawny George, Director, Engineering

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6/21/2021	1	City Council	adopted	

TAMRMS#: B06

**8.2**

**Council Policy - Encroachments onto Public Land and other City Interests**

Presented by: Dawny George, Director, Engineering

**RECOMMENDED MOTION**

That Council Policy C-P&E-13 Encroachments onto Public Land and other City Interests, provided as Attachment 1, be approved.

**PURPOSE OF REPORT**

Encroachments onto City-owned Land, and other City interests, have become increasingly problematic and time-intensive for Administration. This report summarizes past encroachment management practices and formalizes how encroachments involving city interests will be managed.

**ALIGNMENT TO PRIORITIES IN COUNCIL’S STRATEGIC PLAN**

Strategic Priority # 6: “Environmental Stewardship: Explore innovative environmental and conservation opportunities”

Seek innovative practices to protect environmental footprint, to ensure the vitality of our natural resources for future generations.

**ALIGNMENT TO LEVELS OF SERVICE DELIVERY**

N/A

## ALIGNMENT TO COUNCIL DIRECTION OR MANDATORY STATUTORY PROVISION

On December 4, 2017 Council passed the following motion:

(CM-17-114)

That Administration review residential encroachment onto public property history and propose any policy or bylaw work in 2019.

## BACKGROUND AND DISCUSSION

Encroachments can be structures, landscape features, plantings, unauthorized use of land (ie: dumping soil or other material) and/or any elements that may impact safety or access to City infrastructure. They can occur on Reserve lands, Public Utility Lots (PULs), Road Right-of-Ways, and City Utility Right-of-Ways (URWs) located within private lots. Private encroachments between homeowners are not a City interest.

Encroachments are typically identified through the City's compliance application process when a home is being sold. As part of this process, a Real Property Report, prepared by an Alberta Land Surveyor, is submitted to the City indicating property lines, existing structures and any possible encroachments. Since 2010, Engineering has used an informal Administrative process for direction on encroachments found during the compliance review or identified through a complaint.

On average, Engineering reviews about 110 encroachments per year. Most encroachment matters (80-90%) have been resolved using this process by either providing a conditional letter of consent, entering into an Encroachment Agreement (EA), or through the removal of the encroachment. EAs are registered on the Land Title for as long as the encroachment exists and shift potential liability related to encroachments from the City to the private homeowner. EA application fees are authorized in the *Master Rates Bylaw* fee schedule. The 2021 fee is \$543.00. Fees are waived only when the City previously approved the encroachment without the requirement for an EA. Approximately 25-30 EAs are processed yearly on average.

Park encroachments have proven to be the most challenging to resolve. They are often extensive and costly to remove. Potential engineering requirements to protect slope stability and remediation of parkland can be additional costs incurred by a homeowner upon removal. Additionally, EAs are not used as a mechanism for resolving park encroachments as private structures do not fall within the acceptable uses for reserve land in the *Municipal Government Act*. All encroachment outcomes are documented by Engineering.

Historically, the City has most often taken a soft approach to encroachments. Over time, the consequences of this approach have become more apparent. Long-standing parkland encroachments have fallen into disrepair and City projects have been negatively impacted when work is impeded. Administration has faced additional project costs and resource time related to the removal of these encroachments. Additionally, Administration has noted an increased risk of liability for park encroachments that have not been maintained, in some cases over decades.

In some cases, the City of St. Albert's *Traffic Bylaw 18/2005* is used to enforce road right-of-way and park encroachments. This is usually in cases where safety, access, or an external complaint may be involved. This Bylaw covers obstructions within a Public Place. In the *Traffic Bylaw* an obstruction is

defined as “an encroachment, excavation, structure, or other obstacle including a tree, shrub or hedge, that interferes with or prevents the vision, passage, maintenance or use of Public Places by Vehicles or Pedestrians; or interferes with or prevents the proper operation of a public work.”

In 2017, Administration decided to address park encroachments through the *Parks Bylaw 19/65*, which is currently under review. However, due to COVID-19 related delays, that implementation is currently on hold. As a step toward formalizing consistent management of encroachments by the City, Administration recommends the approval of a formal Council Policy.

A review of other Alberta municipalities was completed to see how encroachments are being managed. The majority of those reviewed have formal encroachment policies of some type. There are some that have park encroachments covered in a bylaw. For example, the City of Edmonton has an *Unauthorized Use of Parkland Bylaw 12308*, as well as a policy. Strathcona County and City of Calgary both have more robust Encroachment Bylaws that cover parkland but also municipal lands such as Roads, PULs, City-Owned Parcels and URWs, along with policies.

Taking a stronger stance on encroachments through a Council Policy, along with public education, may impact homeowner behaviour to minimize encroachments in the future. Fewer encroachments will cost the City and its residents less as fewer dollars would be required for removal and administrative resources over time.

## **STAKEHOLDER COMMUNICATIONS OR ENGAGEMENT**

The Council Policy has been circulated among relevant internal departments, including Public Works, Utilities, Engineering, Planning and Development, Recreation and Parks, and Municipal Enforcement. Reviews by Legislative Services and Legal have also been conducted.

External consultation is not required as the Policy is related to encroachments onto City owned land and interests only. However, a public awareness campaign is planned, through Communications, to potentially reduce future encroachments by residents who may be unaware of the implications.

## **IMPLICATIONS OF RECOMMENDATION(S)**

### Financial:

Financial implications may include the potential for associated costs related to escalations where legal action may be required as part of enforcement of encroachment removal where necessary. However, over the long term, resources and costs used to deal with encroachments may decrease from improved public knowledge along with the formal policy.

### Legal / Risk:

Potential escalations, as part of stricter enforcement, may lead to increased risk of legal challenges. However, the absence of a formal policy puts the City at increased risk of liability related to the deterioration of unauthorized encroachments and the associated removals as required.

### Program or Service:

It is expected that some residents with unauthorized encroachments onto City-owned land or other

City interest may be dissatisfied with a strong City stance and process. The Public awareness campaign will be important to make impacted residents aware of the implications to City resources and costs related to these encroachments.

Organizational:

Administration recognizes that there may be an increase in complaints and inquiries as part of policy adoption and the public awareness campaign. Currently, there are no dollars allocated for surveying in relation to unauthorized encroachments. If direction moves to a stricter stance for remediation and review of historically documented unauthorized encroachments, additional funding and resources may be required in the future.

## **ALTERNATIVES AND IMPLICATIONS CONSIDERED**

If Council does not wish to support the recommendation, the following alternatives could be considered:

Alternative 1. That Council not support the adoption of a Council Policy with Administration continuing the informal process using this as a guidance document.

The risks of this approach are continued lobbying efforts and non-compliance by residents requiring additional staff resources to address. The City would continue to be exposed to liability when the existing unauthorized encroachments fall into disrepair or someone becomes injured.

Alternative 2. That Council direct Administration to append encroachment changes to the upcoming Parks Bylaw and create an accompanying policy.

Alternative 3. That Council direct Administration to prepare a standalone Encroachment Bylaw and create an accompanying policy.

Alternative 4. That Council not support the adoption of this Council Policy and direct Administration to consider revisions and present the policy at a future Council meeting for consideration.

Report Date: June 21, 2021

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