



Town of Hinton
STANDING COMMITTEE MEETING
Agenda
September 9, 2014 - 4:00 PM
Committee Room, Hinton Government Centre

TOWN COUNCIL MISSION
*Council serves the interests of our citizens
to enable our community to reach full
potential.*

Page

ORDER

1. Call to Order

ADOPTION OF AGENDA

1. Standing Committee Agenda - September 9, 2014

ACTION AND DISCUSSION ITEMS

- 2 - 12
1. Encroachment Agreements (30 min.)

ADDITIONAL INFORMATION

1. Urgent Matters from Council and Town Manager
2. Executive Assistant Logistics Information

IN CAMERA (if necessary)

1. Personnel Matter (FOIP)
2. Deliberative Matter (FOIP)

ADJOURNMENT

1. Adjournment



TOWN OF HINTON DIRECTION REQUEST

DATE: August 25, 2014

TO: STANDING COMMITTEE MEETING OF SEPTEMBER 9, 2014

FROM: Mindi Petkau, Land Coordinator
REVIEWED BY: Denise Parent, Acting Director of Planning
APPROVED BY: Mike Schwirtz, Acting Town Manager

RE: Encroachment Agreements – Options for Approval Process and Fees

Purpose

This item is before Council to provide options for encroachment agreements and associated fees.

Issue

Encroachments onto municipally owned land or roadways are a common occurrence and municipalities have different mechanisms available with which to deal with them. Does Council wish to continue the current practice for encroachment approvals and the associated collection of fees, or pursue an alternative procedure and fee structure?

Administration Comments on Situation / Options

Encroaching onto another property is illegal until an encroachment agreement is established between landowners. As a landowner, it is prudent for the Town of Hinton to have an established process for allowing encroachments or requiring removal. Controlling the number and scope of encroachments can be achieved using approval guidelines, or fees, or a combination of the two.

Approvals can range from zero tolerance to approving all reasonable requests (after considering safety, operational uses, access etc.). Fees can range from minimal to quite expensive. Attachment 1 provides several alternative options beyond the current policy and fees along with pros and cons to each scenario.

Note: For clarity, an encroachment in this discussion is a development or structure that extends onto roads or Town property. Encroachments are generally small in size and most often do not provide a lot of “useable space”. Trespassing is somewhat different and the Town would not approve such uses. For example, we often see fire pits, moveable sheds, landscaped yard space, vehicles etc. that tend to “creep” out into the green space behind lots. These uses are not permitted and removal is enforced upon discovery.

Administration’s Conclusion / Proposed Direction

If Council wishes to revise the current encroachment procedure and fees, Administration recommends continuing to allow reasonable encroachments and using fees to mitigate the number and scope.

Implementing a fee structure that considers both “property line mistakes” (low cost) and “usable space” (higher cost) offers flexibility for landowners while restricting the use of public lands via an economic deterrent. Administration recommends either implementing large one-time fees similar to our leave as-built variance fees, or using the assessed value and offering an alternative for the landowner to pay over several years.

Town Manager Comments

There are numerous different types of documented and undocumented encroachment scenarios within the Town boundaries. Some of these date back many years. Changes to our current policy need to be carefully considered. Admin has presented several options and undoubtedly there will be some scenarios that do not fit into the recommendations in this report. I think we need to choose the option that most effectively deals the higher priority encroachment scenarios but that leaves room for flexibility when dealing with the lower impact/priority situations.

Attachments

1. Options - pros and cons
2. Fee Schedule (see highlighted sections)
3. Policy 48

CURRENT ENCROACHMENT AGREEMENT GRANTING PRACTICE

Scenario:	Pros	Cons
<p><i>Encroachment on to Town land is generally permitted after consideration of safety, current and future Town or utility uses or operations, size, public access etc.</i></p> <ul style="list-style-type: none"> Agreement is registered on title to protect the Town and the landowner 	<ul style="list-style-type: none"> Allows for both human error and pre-approved development flexibility (within reason) Generally, not overly time consuming for administration Fairly simple process Common practice across most municipalities Public may see the Town as flexible by allowing encroachments 	<ul style="list-style-type: none"> Encroachments continue to occur onto Town owned property There is not a <u>major</u> incentive for landowners to keep development on their property (aside from monetary – see below) Landowners may view the land they encroach on as theirs, when legally it is not

CURRENT ENCROACHMENT FEES

Scenario:	Pros	Cons
<p><i>Minor encroachments under 15m² (160 sq ft)</i></p> <ul style="list-style-type: none"> \$250 fee per owner Each ownership change requires a new agreement and fee 	<ul style="list-style-type: none"> Allows small encroachments to remain but with a small fee for the privilege of using Town land Generally appears to be a minor cost and inconvenience for landowners (most often it is managed by lawyers during a purchase; have not heard a lot of negative feedback about the fees) Small revenue source 	
<p><i>Major encroachments over 15m² (160 sq ft)</i></p> <ul style="list-style-type: none"> \$500 fee per owner plus an annual fee based on size & assessed value Each ownership change requires a new agreement and fee Annual fee updated every 5 years to remain relatively in line with market value 	<ul style="list-style-type: none"> A larger amount of revenue is generated for the privilege of using a larger portion of Town land Has sometimes motivated the landowner to remove the encroachment or to purchase the lands (permanent solution) Allows flexibility while discouraging large encroachments via cost Philosophically similar to leasing the land Consistent with how fees are calculated for leases of Town land 	<ul style="list-style-type: none"> Little incentive for landowners to ensure their development remains on their own property as long as they are willing to pay for it Some landowners think the fees are too expensive Larger pieces of Town land are utilized which may prove to be difficult to remove at a later date (landowner may view the land as “theirs”) Doesn’t effectively address “usable space” vs a “property line mistake” (i.e. extra “useable” yard space vs 6” encroachment along a property line)

ALTERNATIVE PRACTICE OPTIONS

Scenario:	Pros (compared to current practice)	Cons (compared to current practice)
<p><i>Implement a zero tolerance rule for encroachments onto Town lands after date of policy/bylaw amendment (2014)</i></p>	<ul style="list-style-type: none"> No additional legal encroachments (post 2014) Town land is not used by only one benefitting landowner As time passes, theoretically, administrative tasks should decrease 	<ul style="list-style-type: none"> Public may perceive this as too harsh or unfair especially if the encroachment is small or is discovered several years after construction Very hard to prove when a structure was built without surveying the whole Town as of the policy date Conceivably more expensive for landowners (removal or relocation costs, updated RPR etc.) Removal process is more time consuming for staff than agreement process (follow-up/enforcement) If landowners refuse to remove the encroachment, the process for the Town to remove it is a very time consuming process. This process could result in transferring the costs to their property taxes Local contractors may not wish to jeopardize their business interests by removing encroachments Little to no revenue from encroachment agreements moving forward Current staff would not have the time to effectively enforce/manage a complete zero tolerance rule while maintaining the current service level for other tasks
<p><i>Implement a zero tolerance rule for encroachments onto Town lands after date of policy/bylaw amendment (2014) but with an allowance for human error (minor encroachment)</i></p> <ul style="list-style-type: none"> Similar to the current definition of a minor encroachment but could be defined with a linear measurement instead, or a combination of the two (i.e. allow encroachments up to “X” amount into Town land up to a certain area (Calgary uses 0.3m and 5m²)) 	<ul style="list-style-type: none"> Limits amount of future larger encroachments (post 2014) Allowance for human error provides flexibility while maintaining the idea that development must remain on a landowner’s property Easier to manage for staff and likely better received by the public than a complete zero tolerance rule As time passes, theoretically, administrative tasks should decrease 	<ul style="list-style-type: none"> Public may still perceive this as too harsh especially if an encroachment is discovered several years after construction Very hard to prove when a structure was built without surveying the whole Town as of the policy date Conceivably more expensive for landowners (removal or relocation costs, updated RPR etc.) Removal process is more time consuming for staff than agreement process (follow-up/enforcement) If landowners refuse to remove the encroachment, the process for the Town to remove it is a very time consuming process. This process could result in transferring the costs to their property taxes Local contractors may not wish to jeopardize their business interests by removing encroachments

<p>Allow minor encroachments and allow major encroachments</p> <ul style="list-style-type: none"> • calculate the difference between minor and major via both a lineal measurement and an area measurement <ul style="list-style-type: none"> • Minor - less than 0.3m and 15m² • Major - over 0.3m or 15m² 	<ul style="list-style-type: none"> • Easier to manage for staff and likely better received by the public than a zero tolerance rule • Allows for both human error and development flexibility (within reason) • Less encroachments requiring removal compared to the previous two scenarios • Less enforcement and follow-up issues; less administrative time invested • This method addresses “usable space” vs a “property line mistake” 	<ul style="list-style-type: none"> • Encroachments will still be allowed to remain on Town land after 2014 (individual use of public land)
<p>“Grandfather” encroachments built prior to a certain date</p>	<ul style="list-style-type: none"> • Would likely be favored by encroaching landowners • Potentially less administrative time spent (depending on the size of the encroachment) 	<ul style="list-style-type: none"> • Difficult to prove when a structure was built in most cases • Landowners are not held responsible for their mistakes • Potentially less revenue (if only a nominal fee is charged)
<p>Require encroaching landowners to prepare and register their encroachment agreement (via lawyer)</p> <ul style="list-style-type: none"> • The Town is not required to allow encroachments onto public lands and our current practice of preparing and registering encroachment agreements is considered a service above the base service requirements of a municipality • Fees could be universal or based on severity of encroachment 	<ul style="list-style-type: none"> • Considerably less administrative time spent processing and preparing encroachment agreements • Landowners may understand their obligations more fully • Likely the local law firms would see a small increase in their revenue (supports local business) 	<ul style="list-style-type: none"> • Perhaps more expensive for landowners to pay a lawyer to perform this service • Smaller revenue stream

ALTERNATIVE FEE OPTIONS

Scenario:	Pros (compared to current practice)	Cons (compared to current practice)
<p>Charge a nominal fee to cover registration fees for all encroachment agreements</p> <ul style="list-style-type: none"> • i.e. \$50 	<ul style="list-style-type: none"> • Affected landowners likely happier with a reduced fee 	<ul style="list-style-type: none"> • General public may feel that encroaching landowners get “free” land • Continued use of public land by one landowner with little to no benefit to the community (some existing encroachments are quite large) • If no limit is placed on the size then expansion of yard space could become quite large • No revenue generated but with the same amount of administrative time spent • There is little incentive for landowners to keep their development legal
<p>Charge a nominal fee only when ownership changes</p> <ul style="list-style-type: none"> • When an encroachment is first discovered the full rate is charged but with subsequent landowners only a nominal registration fee is charged 	<ul style="list-style-type: none"> • Theoretically, the landowner who made the mistake would be responsible to pay the larger fee; subsequent landowners would just pay the registration fee 	<ul style="list-style-type: none"> • This would not always apply to the landowner who built improperly; it depends on the timing of discovery • Less revenue generated
<p>Charge a one-time fee for encroachments based on lineal measurements and size</p> <ul style="list-style-type: none"> • Below is a suggested fee schedule: \$250 ⇒ Minor - less than 0.3m and 15m² \$5,000 ⇒ Major 1 - 0.3m to 1.5m or 15m² to 100m² \$10,000 ⇒ Major 2 - over 1.5m or over 100m² <p>Note:</p> <ul style="list-style-type: none"> • Current major encroachments range from 60m² to 210m² and are encroaching from 1.25m to 6m into public lands • Fees for these encroachments currently range from about \$400 to \$2,600 per year • all are on property used for a business 	<ul style="list-style-type: none"> • Minor encroachments (property line mistakes) are fairly low cost • Major encroachments (usable land) are higher cost due to the usability • Simplified process (no annual fee or 5 year review process) • Many other municipalities increase fees with larger encroachments • Could be thought of as “similar” to a zero tolerance rule but with some flexibility • Major encroachments are discouraged via economical means (it is cheaper to build it correctly or remove the structure) • Conceivably the number of major encroachments would be minimal • Similar and consistent with how the Town handles variance fees (the larger the variance, the larger the fee; post construction is a larger fee to encourage due diligence) • Payment for the privilege to use public land and legalize an illegal structure • Easier to justify to encroaching landowners than a continuing fee • Small revenue stream • Addresses “usable space” vs a “property line mistake” 	<ul style="list-style-type: none"> • Some landowners may feel the cost is too high (could also be seen a “pro”) • Public may perceive this as too harsh/expensive especially if an encroachment is discovered several years after construction or if a new landowner inherits the problem • No ongoing revenue from large encroachments

Charge the assessed value for major encroachments (i.e. over 0.3m or 15m²)

- Fees could be spread out over a number of years (Edmonton offers 10 years – for encroachments over 0.3m and/or 5m²)
- Major encroachments (usable land) are higher cost due to the usability
- Simplified process (no annual fee or 5 year review process)
- Could be thought of as “similar” to a zero tolerance rule but with some flexibility
- Major encroachments are discouraged via economical means (it is cheaper to build it correctly or remove the structure)
- Conceivably the number of major encroachments would be minimal
- Payment for the privilege to use public land and legalize an illegal structure
- Easier to justify to encroaching landowners than a continuing fee
- Small revenue stream
- Addresses “usable space” vs a “property line mistake”
- Could be thought of as “paying for the land” by the landowner and they therefore could view the land as theirs
- Some landowners may feel the cost is too high (could also be seen a “pro”)
- Public may perceive this as too harsh/expensive especially if an encroachment is discovered several years after construction or if a new landowner inherits the problem
- No ongoing revenue from large encroachments
- If the land is sold before the encroachment fee is fully paid off, the new landowner may be upset if they are unaware of the agreement

Planning and Development Fee Schedule

Refer to Bylaws 960, 1047 and 1050

Description	Fee
Residential Development Permit Fees	
Development without a permit	Double the application fee
Single Family Dwelling	\$200.00
Two Family Dwelling/Duplex	\$250.00
Triplex	\$300.00
Fourplex	\$350.00
Apartments, Row Housing, Condominiums	\$350.00 + \$50.00/unit
Garages, Additions	\$75.00
Other Accessory Buildings and/or Structures (Sheds, Decks, Retaining Walls, Fire Pits, BBQ)	\$50.00
Secondary/Garden Suites	\$200.00
Development Permit Revisions/ Extensions (max. 6 months)	Half the application fee
Commercial, Industrial & Institutional Development Permit Fees	
New Development, renovations, façade improvements	Minimum base fee \$200.00, plus \$2.00/m ² of total floor area
Change of Use (Commercial, Industrial or Institutional)	\$100.00 with or without minor renovations
Development Deposits: (In addition to the Development Permit Fee)	
Single Family Dwelling	\$2,000.00
Duplex	\$2,500.00
Manufactured Home (Subdivision)	\$1,000.00
Manufactured Home (in Manufactured Home Park)	\$150.00
Garage	\$500.00 with back lane \$1,000.00 no back lane
Addition to Residential Building (Note: no deposit required for attached decks or Manufactured Home in a Park)	\$250.00 – Less than 40m ² (430 ft ²) \$250.00 + \$6.00/m ² – Greater than 40m ²
Commercial/Industrial or Institutional Buildings	\$5.50 per m ² of total floor area to a maximum of \$20,000.00 plus, \$100.00 per lineal meter of lot/parcel frontage to a maximum of \$20,000.00 plus additional security for landscaping or other conditions, as may be required to a maximum of \$20,000.00.
Multi-Family Residential	\$500 per unit to a maximum of \$20,000.00 plus, \$100.00 per lineal meter of lot/parcel frontage to a maximum of \$20,000.00, plus additional security for landscaping or other conditions, as may be required to a maximum of \$20,000.00.
Landscaping, Tree Clearing, Parking, Storage, Lot Grading, or Similar Permits	\$5.00 per m ² of land affected, to a maximum of \$20,000.00

Planning and Development Fee Schedule

Refer to Bylaws 960, 1047 and 1050

Description	Fee
Home Occupations	
Type A – Home Office	\$50.00
Type B – Home Craft	\$50.00
Type C – Home Day Care	\$75.00
Type D – Home Business (approved by Development Authority)	\$75.00
Type D – Home Business (approved by MPC)	\$200.00
Type E – Bed and Breakfast	\$100.00/unit
Demolition:	
Commercial, Industrial or Institutional	\$250.00
Residential Accessory Building(s)	\$30.00
Residential 1, 2, 3 & 4 Family units	\$100.00
Residential greater than 4 units	\$200.00
Signage:	
Billboard Signs	\$200.00/sign
All other Signs	\$50.00/sign
Variance of Standards and Leave as Built:	
Pre-development Variance of Standards	
Up to 10% (Reviewed by Development Authority)	\$100.00
Up to 33.33% (Reviewed by MPC)	\$250.00
Greater than 33.33% (Reviewed by MPC)	\$1,500.00
Post-development Proposed "Leave as Built"	
Non-compliance up to 10% (Reviewed by Development Authority)	\$500.00
Non-compliance up to 33.33% (Reviewed by MPC)	\$2,500.00
Non-compliance greater than 33.33% (Reviewed by MPC)	\$5,000.00
Development/Subdivision Appeal	
Application Fee	\$250.00
Amendment to Planning Documents:	
Land Use Bylaw	\$1,000.00
Statutory Planning Documents (MDP & ASP's)	\$1,000.00
Requests for Letter of Compliance:	
Single Family Residential Compliance	\$50.00 (3 – 5 working days) \$100.00 (rush 1 – 3 working days)
All Other Compliance	\$100.00 (3 – 5 working days) \$200.00 (rush 1 – 3 working days)

Planning and Development Fee Schedule

Refer to Bylaws 960, 1047 and 1050

Description	Fee
Property File Search (Historical Search, Phase 1 Environmental Search) Non-FOIP requests:	
Residential	\$50.00/lot
Commercial, Industrial or Institutional	\$100.00/lot
Miscellaneous Services/Charges:	
Development Agreements	\$250.00 + \$10/lot
Development Agreements Revisions	\$50.00/revision or change to schedule at developer's request
Road Closure Application	\$500.00
Municipal Reserve Disposal (Applicant's Request)	\$500.00
Billboard Leases	\$1,000.00/year/side
Zoning Certificates	\$30.00
Copies of Planning Documents	Cost per page as per photocopy policy
Encroachment Agreements (Roads & Utility Right-of-Ways):	
Minor – 15 m ² or less	\$250.00
Major – Greater than 15m ²	\$500.00 + an annual fee of assessed value from the land in which the encroachment comes from multiplied by the area of the encroachment divided by 10
Subdivisions	
Subdivision Applications	
Commercial & Industrial	\$500.00 + \$100.00/lot created
Residential	\$500.00 + \$100.00/lot created
Subdivision Endorsement	
Commercial & Industrial	\$100.00/lot created
Residential	\$100.00/lot created
Condominium Subdivision & Endorsement	\$40.00/unit
Extension to Subdivision Endorsement	
Up to 6 Months	\$250.00
6 Months to a Year	\$500.00
Revision to Subdivision Approval	\$250.00



TOWN OF HINTON

Encroachment Fee Structure – Roadways

Policy No. 048

Created By: Planning and Technical Services

Approved By: Town Council

Approved On: 1997 07 15

POLICY STATEMENT

1. GOALS

Roadway encroachments be granted providing they are:

- between the sidewalk and property line
- less than 1m into the roadway when there are no sidewalks
- do not impede pedestrian traffic
- were in place prior to 1990 with no outstanding orders for removal.
- have been reviewed by administration and found to have no restrictions on operations, traffic safety and pedestrian safety.

Roadways are to mean; lane, road and walkway right-of-ways.

2. DEFINITIONS

3. METHODS AND PROCEDURES

An Administrative fee of the following:

- \$500 if processing time is required within 30 days
- \$250 if processing time can be in excess of 30 days
- upon receipt of application.

4. RESPONSIBILITIES

The Town of Hinton's Director of Engineering & Development be delegated power to enter into road encroachment agreements.

The encroachment agreements shall contain the protections as noted in the general encroachment agreement form and as may be required to protect the public's interest.

There will be no charge to those encroachments being investigated before the passing of this policy.

5. GUIDING PRINCIPLES TO STAFF