

Corporate Policy

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Section:	Legal Matters	06
Sub-Section:	Easements and Rights of Way	2360
Title:	Encroachments	01

Related Policies

Number	Title

Approvals

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Amended: September 8, 2015	Resolution #: <u>RC15/302</u>
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Corporate Policy Manual

Encroachments

Policy

Land Management

The City of Port Moody (City) is responsible for the administration and care of City property. In the management of its lands, the City considers the present and future need for its property from an operational perspective, and from land use policies dictated by the City's Official Community Plan. In some cases, there is no present or future planned municipal use for certain parcels of land, and it may be beneficial to sell the property. In other cases, no present need has been identified but a future need is certain or uncertain, and the optimum form of disposition is through an agreement with interested parties for the long term use and enjoyment of the City land until it is needed by the City.

There are two agreements available to convey the long term use of the land to an interested party(s). A property lease conveys a much more exclusive possession/use of the land for the term of the lease, while a licence of occupation merely conveys a legal privilege to use the land for a defined period. The licence of occupation also allows for a short notice of termination of use (e.g. 30 days), and can include restriction clauses in the agreement for the use (e.g. building restrictions).

An encroachment agreement is a subset of a licence of occupation and is an appropriate document whereby property owners have a desire to "encroach" upon adjacent City land. An encroachment is an improvement made to City property that is located entirely or partly on, under or above City property by an adjacent property owner. The City is authorized to enter into encroachment agreements with adjacent owners for the enjoyment and use of City property under Sections 8 and 35(11) of the *Community Charter*.

Encroachments onto City Land

The City recognizes that there are numerous encroachments across the City similar to all cities, many of which are unintentional, historic or insignificant in nature, and many times enhance the neighbourhood and stabilize slopes. The encroachment process is not intended to actively seek out encroachments, but needs to ensure users of City property are paying their fair share of the financial burden. Encroachments must be in the public's best interest, must not jeopardize the health or safety of the public, must not interfere with the City's requirement to maintain or repair infrastructure, and the City must be indemnified from any costs and liabilities arising out of encroachments that are brought to the City's attention.

The purpose of this policy is to formalize procedures detailing steps and controls to manage processes and agreements for encroachments onto City land. This Policy generally discourages encroachments onto City property unless applicants are able to prove the need for the encroachment is reasonable, feasible and no alternative options exist. Encroachments and resulting encroachment agreements must be approved by City Council.

The **Process** section of the Policy is used to facilitate the consideration of requests for encroachment agreements, and summarize the instances in which the City may wish to enter into an encroachment agreement and the instances in which the City generally will not enter into an agreement. In addition, to ascertain whether or not the encroachment should be allowed, a

Corporate Policy Manual

Encroachments

circulation process is employed to obtain comments from internal and external departments, divisions and agencies.

Typically, encroachments are sought because portions of improvements or structures encroach outside the boundaries of an owner's property for various reasons. Types of encroachments that are generally requested include, but are not limited to:

- gardens/landscaping;
- retaining walls;
- awnings;
- porches/decks;
- carports/garages;
- pools/cabanas;
- sports/play courts;
- signs; and
- steps or wheelchair ramps and other accessibility features.

Procedures

Guidelines

When processing an encroachment, the City needs established criteria and guidelines to ensure all applicants are treated fairly and consistently. The City recognizes that certain encroachments may be approved as part of other City processes. For example, a driveway crossing a City boulevard will have been approved at the development permitting stage for the construction of a house or commercial building, and therefore not subject to an encroachment agreement unless it has been significantly altered or there are other considerations.

The City will require an Encroachment Agreement and, potentially, an annual encroachment fee to protect the City interests where:

- a liability has been identified (safety hazards will be removed);
- the property owner is enjoying a financial benefit from the encroachment;
- the encroachment is blocking City services/infrastructure;
- the encroachment is a Substantial Encroachment (see **Definition** section).

Fees

Each encroachment agreement will be charged a one-time administration fee as a recovery of staff time to administer the agreement as established in the fees bylaw. Renewal of encroachment agreements will be charged a renewal fee as established in the fees bylaw.

The City has established a formula (**Appendix A**) to calculate annual fees ^① applicable to the encroachment area based on:

- *Residential* – average assessed value of all RS1 lots between 555m² and 850m² X encroachment area in square meters. For substantial encroachments, the annual fee will be multiplied by 0.5%; if it is not, it will be multiplied by 0.25%;
- *Commercial* – \$1-\$3 per square metre X encroachment area in square metres;
- *Minimum Fee* – The minimum annual fee is \$100.

Corporate Policy Manual

Encroachments

① The annual fee will be adjusted annually in accordance with the previous year's average assessed value of all RS1 lots between 555m² and 850m², based on the revised roll provided by BC Assessment for Residential and by the Vancouver Consumer Price Index for Commercial.

In addition, any survey costs or other related costs associated with formulating or renewing an agreement will be borne by the applicant.

Fee Exemption

The City is predominantly a hilly terrain, and as a result, has a number of retaining walls to stabilize sloped lands, which also add aesthetically to neighbourhoods. Many retaining walls can be insignificant in nature, and this Policy allows for this *passive* use of City land with an encroachment fee exemption. The exemption must be validated based on an established set of criteria (see **Definition** section).

This policy allows for consideration of a fee exemption if the encroachment directly relates to a Heritage Designation Area or is of significant heritage importance. Fee exemptions will be considered on a case by case basis.

While a fee may be exempted, an encroachment agreement may still be needed to indemnify the City from any costs or liabilities related to the encroachment.

Term

To ease the cost of administering an encroachment agreement, terms of up to ten years are permissible. The term of the encroachment agreement shall be determined on a case by case basis.

Process

A property encroachment can be identified from a variety of sources (e.g. request by property owner, complaint, staff concern over safety). Once an encroachment has been verified, the need for an encroachment agreement has been triggered due to the potential for liabilities.

The nature and the magnitude of the encroachment are assessed by City staff, based on following criteria in the following order:

1. Safety Hazard – Does the encroachment structure or landscaping pose a safety hazard, or is it constructed too close to a roadway, sidewalk, or pathway to pose a traffic or pedestrian hazard? If yes, the structure is ordered removed at the sole expense of the property owner. If it is not, the structure can remain, subject to other following criteria.
2. Aesthetically Pleasing – Is the structure or landscaping reasonably aesthetically pleasing? This determination can be subjective but takes into consideration the nature of the construction material (e.g. environmentally unfriendly materials such as creosote ties or rubber tires), colour or other unappealing design features. If it is not, the structure or landscaping is ordered removed at the sole expense of the property owner. If yes, the structure or the landscaping can remain, subject to other following criteria.
3. City Services Blocked – Is the encroachment structure or landscaping blocking City services? If yes and a work around cannot be arranged, then the structure or the landscaping is ordered removed at the sole expense of the property owner. If yes and a

Corporate Policy Manual

Encroachments

work around can be arranged, then the encroachment will be allowed but the agreement will state that removal by City crews to access City services will be at the sole expense of the property owner.

4. Economic Benefit – Does the encroachment provide an economic benefit to the property owner encroaching onto City land? If yes, then the administrative fee and the annual encroachment license fee would apply.
5. Substantial Encroachment – Does the encroachment fit the City's definition of a Substantial Encroachment (see **Definitions** section)? If yes, the annual encroachment license fee is triggered at 0.5%.
6. Pre-existing Retaining Wall – Is the structure a pre-existing retaining wall (constructed by a former property owner)? If yes, then only the administrative fee to formulate the encroachment agreement is applicable (see **Definitions** section). If no, then the administrative fee and the annual encroachment license fee would apply.

Definitions

1. Substantial Encroachment

- Buildings/courts – principal dwellings, carports, garages, swimming pools, cabana, or sports/play courts.
- Retaining Wall – walls that are not pre-existing and above 1.2m.
- Degree of encroachment – if an encroachment exceeds 10 feet or greater onto City land at any one point along the property line.

2. Retaining Wall Exemption

A retaining wall may be exempt if it meets all of the following criteria:

- It is pre-existing (built by a previous property owner);
- The wall is below 1.2m and does not need drainage, a City permit or be certified by a structural engineer (City of Port Moody Building and Plumbing Code Administration Bylaw);
- The wall is not a safety hazard. The Engineering Division will assess the wall to determine whether it poses a safety hazard or is constructed too close to the roadway, sidewalk or pathway to pose a traffic or pedestrian hazard. If a safety hazard is identified, it would need to be removed at the sole expense of the property owner;
- The wall is not blocking City services, or alternatively, a work-around can be agreed upon; and
- The wall is aesthetically pleasing. This determination will be subjective but would take into consideration the nature of the construction material (e.g. environmentally unfriendly materials such as creosote ties or rubber tires), colour, or other unappealing design features.

Monitoring/Authority

Delegated to the General Manager of Finance and Technology, and the Manager of Corporate Purchasing and Risk Management.

Appendix A

Residential Property Encroachment Fee Formula

Fee Formula:

Annual Encroachment Licence Fee = (Average assessed value per square metre for all RS1 lots between 555m² and 850m²) x (square metre area of encroachment) x (0.5% or 0.25% depending on nature of encroachment)

The Fee payable by the Property Owner will be calculated by the City as follows:

- The City uses the prior year's assessed value for each RS1 lot in the City having recorded gross land area between 555m² and 850m², divides each lot by its lot size in square meters, and determines the average assessed value per square meter for all lots between 555m² and 850m².
- The average assessed value per square metre is multiplied by the encroached area occupied by the Property Owner (in square metres). The figure is then multiplied by 0.5% or 0.25% depending on the nature of the encroachment.
- For substantial structures as outlined in this policy, the annual fee shall be multiplied by 0.5%.
- For an area used exclusively which does not include substantial structures, the annual fee shall be multiplied by 0.25%.
- The minimum annual encroachment fee is \$100.00.
- City Council reserves the right to adjust the fee formula on a case by case basis as warranted.
- 2013 Average assessed value per square metre for all RS1 lots between 555m² and 850m² = \$781.90/m²

Corporate Policy Manual

Encroachments

Commercial Property Encroachment Fee Formula

Fee Formula:

Annual Encroachment Licence Fee = (\$1 to \$3 per square metre depending on nature of encroachment) x (square metre area of encroachment)

The Fee payable by the Property Owner will be calculated by the City as follows:

- The City will use a rate of \$1 to \$3 per square metre and multiply it by the encroached area occupied by the Property Owner (in square metres). Rates will be increased annually by the Vancouver Consumer Price Index for the previous year.
- Determination of the rate (\$1 to \$3 per square metre) will be based on the nature of the encroachment, and whether it is used to actively support business activity and business sales/profits.
- The minimum annual encroachment fee is \$100.00.
- City Council reserves the right to adjust the fee formula on a case by case basis as warranted.