



City of Moose Jaw

COMMUNICATION # CC-2019-0256

TITLE: Encroachments on City Land

TO: City Council

FROM: Department of Planning and Development Services

DATE: November 26, 2019

PUBLIC: PUBLIC DOCUMENT

RECOMMENDATION

That City Administration proceed with public education regarding encroachments on City-owned or controlled lands.

TOPIC AND PURPOSE

The purpose of this report is to inform City Council of the on-going issue of encroachment on City-owned or controlled lands. For the purposes of this report, an encroachment refers to any portion of a building, structure, or other object which extends onto City property.

BACKGROUND

City Council has been previously made aware of this matter. This report is brought forward to provide information on the encroachment issues and move forward with public education.

DISCUSSION

The City has historically enforced encroachment issues on a complaint-driven basis, using Section 17 of The Miscellaneous Bylaw:

"No person shall cultivate, plow or cut up or do anything whatsoever to any street or other public place in the City without permission from the Council of the City."

Using a complaint-driven process has been effective in addressing specific circumstances that the public deems a nuisance. However, it does not always allow the City to act on issues of damage to public space or misuse of public lands. Administration believes there are three categories of encroachment issues that will require proactive solutions.

Vehicle Access through Park Space

In some areas where residential blocks back onto park space or other City lands, residents use this space to access their properties from the rear. Administration has identified several locations in the City where continuous vehicle traffic through park space has caused damage to public property. This damage can cost the City time and money to remedy, and often impacts the quality of public amenities such as pathways.

In cases where vehicle access is not required by the Department of Parks and Recreation, trees can be planted to prevent access by anything other than foot traffic. If vehicle access is required for the maintenance of the park or other public space, temporary removable obstructions may be used. In consultation with the Department of Parks and Recreation, the Bylaw Enforcement division can choose strategic locations to install obstructions.

Legal Laneways

The original subdivision plan for the core industrial and commercial areas of Moose Jaw included legal laneways between blocks. The purpose of these laneways was to accommodate railway tracks or other utilities and provide rear access to commercial and industrial operations. Over time, the railway tracks and other services have been removed, and adjacent property owners have taken over use of the lands for additional yard space. Administration has received enquiries from several property owners about the potential purchase of these lands. Since the laneways are not required by the City for utilities or other services, it is recommended that they be closed and sold to the adjacent land owners. The closure of legal laneways will only occur in areas where physical access to the rear of the properties is no longer required. The closures will not take place in residential areas, and will be limited to commercial and industrial areas where adjacent property owners have requested to purchase the lands.

The process for closing a legal laneway is time and resource intensive. Communication with property owners and the associated bylaws and subdivisions are a challenge to navigate. City Administration is in the process of developing a policy that will standardize the process and establish criteria for identifying the appropriate situations to close and sell a laneway.

Structures on City Land

In some areas, buildings or structures have been constructed either partially or fully within City-owned or controlled land. Encroachment agreements have been used to formally register these encroachments and assign liability. The agreements are primarily used for signage, accessibility features, or when a building or structure has existed for many years. Using encroachment agreements is time consuming and is not recommended for all situations. Other solutions may be dependent on the nature of the encroachment.

Temporary encroachments = gardens, RV's, boats, trailers, vehicles, etc.

Permanent structures = sheds, fences, driveways, buildings, etc.

In situations where temporary encroachments exist on City land, education will take precedence over enforcement. These encroachments are often easily relocated, and should only require communication with the owners to remedy.

In situations where permanent structures encroach on City land, the land can be leased for the duration of the use of the structure. This solution cannot apply to a legal right-of-way or Municipal Reserve lands due to the purpose of these lands. The intent of Municipal Reserve and Public Reserve as described in Section 192(1) of *The Planning and Development Act, 2007*, is to provide amenity space for public and community uses. Instead, if permanent structures from the adjacent property encroach on these lands, an interest can be registered on the property requiring future property owners to remove the encroachment.

It is recommended that all unauthorized encroachments be addressed through education and enforcement. Administration will begin by identifying the areas that have a high risk of causing damage to public amenities. Educating property owners on the encroachments will be a priority before any enforcement action is taken. Administration may undertake several measures concurrently over time but will not prioritize these measures over other initiatives.

OPTIONS TO RECOMMENDATION

- City Council may decide to maintain the current standard of complaint-driven (reactive) enforcement;
- City Council may decide to proactively pursue some of the encroachment issues;
- City Council may propose alternative solutions to address encroachment issues.

COMMUNICATION PLAN

Prior to any enforcement, Administration will seek to educate residents on the importance of preserving public property and associated amenities (pathways, park space, etc.). A news release will be sent out as a general reminder, followed by letters to individual property owners explaining their encroachments, and reminding them of City requirements.

STRATEGIC PLAN

This report will align with the “Core Amenities and Services” objective, since it involves the management of City-owned and controlled land.

OFFICIAL COMMUNITY PLAN

Section 13 of the Official Community Plan states the objectives and policies related to parks, open space, and community recreation:

13.1 OBJECTIVES

- b) *To manage all forms of the open space system in a planned and environmentally sensitive manner.*

The recommendation aligns with the objective of maintaining an acceptable standard for the open space system in Moose Jaw.

BYLAW OR POLICY IMPLICATIONS

Administration will create a policy describing the procedure for closing and selling legal laneways that are no longer needed.

FINANCIAL IMPLICATIONS

The Department of Parks and Recreation may require additional funds to install obstructions (stump posts, removable bollards, etc.), or plant trees in strategic locations to block vehicle access to park space.

PUBLIC NOTICE

Public Notice pursuant to the Public Notice Policy is not required.

PRESENTATION

VERBAL: Ms. Michelle Sanson, Director of Planning and Development Services, will be in attendance to provide a brief overview of the report.

ATTACHMENTS

All attachments are confidential under Section 18 of *The Local Authority Freedom of Information and Protection of Privacy Act*, since they contain third party information.

- i. Confidential Attachment 1 – Sample Situation (Encroachment Agreement)
- ii. Confidential Attachment 2 – Parks and Buffers
- iii. Confidential Attachment 3 – Streets and Lanes
- iv. Confidential Attachment 4 – City-owned Land

REPORT APPROVAL

Written by: Veronica Blair, Planner 1
Reviewed by: Michelle Sanson, Director of Planning and Development Services
Myron Gulka-Tiechko, City Clerk/Solicitor
Tracy Wittke, Assistant City Clerk
Approved by: Jim Puffalt, City Manager
Approved by: Fraser Tolmie, Mayor

To be completed by the Clerk's Department only.

Presented to Regular Council or Executive Committee on _____.

No. _____ Resolution No. _____

Report Approval Details

Document Title:	Encroachments on City Land - CC-2019-0256.docx
Attachments:	<ul style="list-style-type: none">- Confidential Attachment 1 - Encroachment Agreement.pdf- Confidential Attachment 2 - Parks and Buffers.pdf- Confidential Attachment 3 - Streets and Lanes.pdf- Confidential Attachment 4 - City Owned Land.pdf
Final Approval Date:	Dec 3, 2019

This report and all of its attachments were approved and signed as outlined below:

Sue Brabant



Michelle Sanson



Tracy Wittke



Jim Puffalt

**No Signature - Task assigned to Fraser Tolmie was completed by assistant
Caroline Dreger**

Fraser Tolmie