

The Corporation of the City of Kawartha Lakes
Council Report

Report Number RS2018-006

Date: February 13, 2018
Time: 2:00 p.m.
Place: Council Chambers

Ward Community Identifier: All

Subject: Proposed By-law to Regulate Encroachments onto City Property

Author Name and Title: Robyn Carlson, City Solicitor and Acting Manager of Realty Services

Recommendations:

That Report 2018-006, **Proposed By-law to Regulate Encroachments onto City Property**, be received;

That the City Lands Encroachment By-law attached as Appendix "A" be approved;

That the policy entitled "Dock Encroachments" attached as Appendix "B" to Report 2018-006 be adopted and numbered for inclusion in the City's Policy Manual;

That the Consolidated Fees and Charges By-law 2016-206 be amended accordingly; and

That the necessary by-laws be brought forward for adoption.

Department Head: _____

Financial/Legal/HR/Other: _____

Chief Administrative Officer: _____

Background:

Currently, the City has a by-law regulating encroachments onto City-owned parks¹, but it does not have a by-law regulating encroachments onto City-owned property throughout the City.

As a result, when persons are encroaching on City property that is not a park (a road allowance, vacant surplus land, etc.) the City has only the *Trespass to Property Act* for enforcement purposes. This can be expensive and cumbersome, requiring a prosecution under Part 3 of the *Provincial Offences Act*. Before every conviction and fine under Part 3, a trial must be held. No one department, including Municipal Law Enforcement Office, has been delegated authority to enforce contraventions under the *Trespass to Property Act*. Accordingly, once the City is aware of an encroachment, usually a letter requiring the person cease encroaching is sent out by any number of Departments, and the matter goes no further. More often than not, the person continues to encroach.

The purpose of this Report is to introduce a City Lands Encroachment By-law, to give Municipal Law Enforcement the ability to issue tickets under Part 1 of the *Provincial Offences Act*. A trial is not required for conviction, making these offences much more efficient to prosecute.

Currently, the Engineering & Corporate Assets Department regulates the seasonal encroachments of patios on City sidewalks through a patio licensing program. There are no changes recommended to this program; the recommended City Lands Encroachment By-law (at Schedule B to that By-law, itself being Appendix A to this Report) simply sets out the fees, process and requirements.

Currently, Public Works issues entrance permits onto City roadways and issues road occupancy permits for temporary work on City roadways, including brushing. There are no changes recommended to this program; the recommended City Lands Encroachment By-law simply refers persons to the correct process.

In 2010, Council passed the following resolution with respect to docks on municipally owned shoreline road allowances:

¹ By-law 2006-147; Regulate Public Parks and Facilities

Moved by Councillor Luff, seconded by Councillor Strangway,
RESOLVED THAT Report LMC2010-048, “Unauthorized Dock Placement on Municipally Owned Land within the City of Kawartha Lakes”, be received; and **THAT** staff be directed to develop an Encroachment Policy for docks on municipal property based upon the following principles:

1. THAT such a policy be structured to deal with matters on the basis only where access to waterfront is being adversely affected;
2. THAT such a policy be structured to protect the general public’s interest in access to the waterfront;
3. THAT such a policy be structured to ensure the municipality’s rights as landowner, along with protecting the municipality from liability;
4. THAT such a policy contemplate a license, permit or encroachment agreement process for those residents wishing to ensure longer term use of municipal property and where previously referenced principles are not impacted; and

THAT staff be directed to bring forward a report to Council in 2011 with a DRAFT policy as outlined above.

CARRIED CR2010-1206

The proposed City Lands Encroachment By-law at Appendix A sets the framework for the Dock License Policy, and allows for non-contractual enforcement. The proposed Dock License Policy at Appendix B complies with the intent and terms set out in Council Resolution CR2010-1206.

Currently, Community Services issues 2 year licenses for docks at Thurstonia Park and Kenstone Beach (both shoreline road allowances). With the passing of the recommended Dock License Policy, these licenses will be shifted into the license program under the Dock Policy as they renew. The Dock Policy will be applicable to all existing and proposed docks on all shoreline road allowances and City-owned land throughout Kawartha Lakes.

The Land Management Committee, a Committee of Staff as set out in the Land Management Committee Policy 032-CAO-005, makes decisions with respect to all acquisitions, dispositions, leases and licenses of City owned land. Realty Services Division, pursuant to application to the Land Management Committee, also administers licenses to construct roadways on unopened road allowances. It is within this framework that the Encroachment Policy and Dock Policy land.

Rationale:

The Realty Services Division presented to Council on the advantages of passing a City-wide Encroachment By-law, and considerations to a dock license policy. A copy of that presentation is attached as Appendix C.

With the exception of certain roadway boulevard encroachments (for flowers, etc.), as set out in Schedule A to the proposed Encroachment By-law, all

encroachments require agreement or are subject to enforcement by the Municipal Law Enforcement Office.

Section 3.1 of the Encroachment By-law sets out the cost to apply to the Land Management Committee for a license (\$125.00). This cost is currently set out in the Consolidated Fees and Charges By-law. Section 3.1 also sets out the annual cost of the license:

- \$125.00, for minor encroachments (stairs, small portion of a building, sign, etc.);
- \$150.00 for a dock or boathouse;
- \$200.00 for major encroachments (shed, garage, etc.);
- \$6,000.00 for co-location of equipment on City-owned tower / building; and
- \$13,000.00 for a tower.

When the City becomes aware of an unauthorized encroachment, the encroacher will be given 30 days' notice to remove the item. Failure to remove the encroachment within the 30 day period can result in the Municipal Law Enforcement Office issuing a ticket (a fine) to the owner and/or removing the encroachment and invoicing the encroacher for the costs of the removal. If not paid voluntarily, the amounts will be added to the tax roll of the encroacher, and collected like property taxes.

The Dock License Policy works within the framework provided by the Encroachment By-law. The Dock License Policy provides the process and considerations of the Land Management Committee in issuing a license, and the terms to that license.

Other Alternatives Considered:

None.

Financial/Operation Impacts:

\$25,000.00 has been placed in the 2018 Operating Budget for Municipal Law Enforcement Office, to pay for the removal of items for which recovery from the encroacher is eventually written off as uncollectable (for example, when the identity of the encroacher is unknown). Once budget actuals for 2018 are compiled, Staff will be able to better predict the cost of enforcing the Encroachment By-law proposed (Appendix "A").

At the end of 2018, once staffing implications are known, Municipal Law Enforcement Office may bring a Report to Council requesting additional staff to administer the by-law.

Community Services estimates that the current licensing program at Kenstone Beach and Thurstonia Park brings in \$44,000.00 to the City every two years, but takes 400 hours to administer for that two year period. By shifting from a 2 year license to a 5 year license, administration time will be reduced. The Dock Policy proposes to increase the docking fee from \$168.75 per two year period to \$150 per annum for a 5 year term, reflecting both the increased value of a longer term license and being in line with existing encroachment fees. By applying dock licensing throughout the entire City, revenue will increase. The increase in revenue is currently unquantifiable.

Relationship of Recommendations to the 2016-2019 Strategic Plan:

The proposals set out in this report align with the strategic enabler of “Efficient Infrastructure & Asset Management”.

Consultations:

Manager of Municipal Law Enforcement
Director of Community Services

Attachments:

Appendix A: Proposed Encroachment By-law



Appendix A -
Proposed City Lands I

Appendix B: Proposed Dock License Policy



Appendix B -
Proposed Dock Policy

Appendix C: Realty Services Division Presentation to Council November 21,
2017 “Encroachment & Trespass to Property”



Appendix C -
Presentation of Realt

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Department Head: Robyn Carlson