

Deputy City Manager's Office Report to
SPC on Utilities and Corporate Services
2020 February 19

ISC: UNRESTRICTED
UCS2020-0228

Proposed Encroachment Bylaw to Replace Encroachment Policy CS008

EXECUTIVE SUMMARY

On 2019 July 29, through UCS2019-0914, Administration provided an update to Council on its review of the Council approved corporate Encroachment Policy CS008 (the “Encroachment Policy”). The update included Administration’s recommendation to replace the Encroachment Policy with a proposed Encroachment Bylaw. Replacing the Encroachment Policy with a proposed Encroachment Bylaw will enable The City of Calgary (“The City”) to: authorize more minor encroachments on certain City-owned land, streets and easements; better ensure utility provider and City infrastructure access, safety and service delivery; better ensure public access to and enjoyment of lands intended for public use, such as City parks; better position Administration to enforce its encroachment rules and regulations; and align Calgary with the practices of other comparable municipalities in Canada. For clarity, generally speaking a minor encroachment can be defined as an encroachment that does not adversely affect The City’s or a utility provider’s ability to access, maintain and provide safe and effective services to the citizens of Calgary; and an encroachment that does not restrict public access to and enjoyment of lands intended for public use, such as City parks. Administration’s recommendations in UCS2019-0914 were approved by Council.

On 2020 February 10, through report ALT2020-0162, Administrative Leadership Team approved Administration’s recommendations by endorsing the rescindment of the Encroachment Policy and directing that the proposed Encroachment Bylaw go to Council for three readings through the SPC on Utilities and Corporate Services.

Through this report, Administration is seeking Council approval to rescind Encroachment Policy CS008 and replace it with the proposed Encroachment Bylaw shown in Attachment 1.

ADMINISTRATION RECOMMENDATION:

That the Standing Policy Committee on Utilities and Corporate Services recommends that Council:

1. Give three readings to the proposed Encroachment Bylaw (Attachment 1); and
2. Rescind Encroachment Policy CS008 (Attachment 2).

RECOMMENDATION OF THE STANDING POLICY COMMITTEE ON UTILITIES AND CORPORATE SERVICES:

That Council adopt the Administration Recommendations contained in Report UCS2020-0228.

1. Give three readings to the Proposed Encroachment Bylaw **9M2020** (Attachment 1); and
2. Rescind Encroachment Policy CS008 (Attachment 2).

PREVIOUS COUNCIL DIRECTION / POLICY

On 2019 July 29, Council approved UCS2019-0914 – Encroachment Policy CS008 Review – Update and directed Administration to firstly, prepare and bring forward a proposed Encroachment Bylaw to Council for three readings through the SPC on Utilities and Corporate Services and the Administrative Leadership Team to replace Encroachment Policy CS008 by Q4 2019; and secondly, to amend other City Bylaws, as required, that contain rules around

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encroachments on City-owned land, rights-of-way and easements to align with the proposed Encroachment Bylaw by Q4 2019, which were both deferred at the request of Administration to Q1 2020.

At the 2017 July 31 Combined Meeting of Council, Council carried an Administrative Inquiry regarding an Encroachment Policy Amendment Request.

The current Encroachment Policy CS008 was approved by Council effective 1996 July 01 and amended 1998 February 23.

BACKGROUND

In 2019, Administration initiated a review of the Encroachment Policy to align with Council Policy Program CC046. The review had three primary objectives: to ensure the Encroachment Policy aligned with current business practices and standards, to ensure policy alignment with municipal best practices and to look for opportunities to improve the policy. As a result of the policy review findings, Administration brought forward an update report to Council on 2019 July 29 with a recommendation to replace the current Encroachment Policy with a proposed Encroachment Bylaw. Administration identified two major opportunities resulting from the replacement of the Encroachment Policy with a proposed Encroachment Bylaw. These opportunities include an opportunity for The City to authorize more minor encroachments on certain City-owned land, streets and easements, and the opportunity to better position The City to enforce its encroachment rules and regulations. In addition, the proposed Encroachment Bylaw will better ensure utility provider and City infrastructure access, safety and service delivery, and public access to and enjoyment of lands intended for public use, such as City parks.

Through this report, Administration is seeking Council approval to rescind Encroachment Policy CS008 and replace it with the proposed Encroachment Bylaw shown in Attachment 1.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

To ensure consistency in enforcement of encroachments across The City, Administration has prepared the proposed Encroachment Bylaw, shown in Attachment 1, which covers encroachments onto all City-owned land, streets and easements (including utility rights-of-way and overland drainage easements). The proposed Encroachment Bylaw will be supported by a set of proposed Encroachment Guidelines (the "Guidelines"), shown in Attachment 3, and the proposed Application and Encroachment Fee Schedule (the "Fee Schedule"), shown in Attachment 4. The proposed Guidelines and Fee Schedule were prepared by Real Estate & Development Services in order to guide its decision making with respect to encroachments onto City-owned land, streets and easements. If the proposed Encroachment Bylaw is approved, the proposed Guidelines and Fee Schedule will come into effect immediately.

A number of improvements were made to The City's encroachment rules within the proposed Encroachment Bylaw, Guidelines, and Fee Schedule. The key features of each have been summarized below.

Proposed Encroachment Bylaw:

The proposed Bylaw:

- Will enable The City to approve more minor encroachments onto certain City-owned land, streets and easements. The current Encroachment Policy does not permit new

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encroachments onto City-owned land, streets or easements that were constructed after the policy went into effect on 1996 July 01; the proposed Encroachment Bylaw will eliminate this restriction;

- Will increase The City's ability to enforce its encroachment rules and regulations. For example, the proposed Encroachment Bylaw will require every citizen who is encroaching onto City-owned land, streets or easements to formalize the encroachment with The City or remove the encroachment. While this is currently a requirement of the Encroachment Policy, the difference in the proposed Encroachment Bylaw is that if a person refuses to comply with any requirement under the Bylaw, their refusal would be considered an offence and subject to Bylaw enforcement action, including fines and remedial orders;
- Aligns with the practices of other comparable cities in Canada who have their encroachment rules contained within city bylaws including, but not limited to, the cities of Edmonton, Ottawa, Toronto and Vancouver;
- Includes consequential amendments to Parks and Pathways Bylaw 11M2019, Streets Bylaw 20M88 and Real Property Bylaw 52M2009 to ensure alignment with these City bylaws; and
- Will enable the Manager, Land & Asset Management to establish the Guidelines and the Fee Schedule, and to update these documents as necessary from time to time. This proposed authority aligns with the current delegation authorities granted to the Manager, Land & Asset Management with respect to encroachments within Real Property Bylaw 52M2009. This is a major benefit to The City as it enables Administration to more readily respond to the changing needs of not only City business units and utility providers, but also the citizens of Calgary.

Encroachment Guidelines:

The proposed Guidelines are a public facing document that will be used by the Encroachment's team in Real Estate & Development Services to guide its decisions with respect to encroachments onto City-owned land, streets and easements. The Guidelines have been written in consultation with all affected City business units and internal and external utility providers. The Guidelines have been written in plain language, to make it easier for both Administration and citizens to understand The City's encroachment rules and regulations. The Guidelines largely mirror the guidelines set out in the current Encroachment Policy and are consistent with current business practices and standards. The major difference between the proposed Guidelines and the current Encroachment Policy is that The City will now consider certain new minor encroachments onto City-owned land, streets and easements for approval.

Under the proposed Encroachment Bylaw, the Manager, Land & Asset Management will have the authority to approve and update both the proposed Guidelines and Fee Schedule from time to time as required. As previously mentioned, this proposed authority aligns with the current delegation authorities granted to the Manager, Land & Asset Management with respect to encroachments within Real Property Bylaw 52M2009.

Key features of the proposed Guidelines include:

- Ensuring that encroachments do not adversely affect The City's or a utility provider's ability to access, maintain and provide safe and effective services to the citizens of Calgary;

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- Ensuring that encroachments do not restrict public access to and enjoyment of lands intended for public use, such as City parks;
- Identifying how Administration will handle encroachments into different types of City properties and interests such as encroachments into parks, non-park land, streets, utility rights-of-way, overland drainage easements, and other easements;
- Identifying which encroachments require engagement with (circulation to) City business units and utility providers for approval, and which minor encroachments can be authorized by Real Estate & Development Services without circulation;
- Outlining the Fee Schedule, how total fees are calculated and where citizens can find an up to date Fee Schedule; and
- Identifying how the encroachment rules will be enforced and how Administration will handle complaints.

Application and Encroachment Fees:

The City's encroachment fees were last set in 1996 and have not changed in over twenty years. The current fees for City encroachment agreements fall into one of three categories:

1. Schedule "A" encroachments which cost \$35 plus GST:
 - Schedule "A" encroachments represent the most minor types of encroachments into a City street or utility right of way; for example a fence enclosure encroaching into a street by less than 0.34m. Administration's review and approval of Schedule "A" encroachment applications typically does not require consultation with (circulation to) other City business units and/or utility providers.
2. Schedule "B" encroachments which cost \$200 plus GST:
 - Schedule "B" encroachments represent a few specific types of encroachments into a City street or utility right of way, such as minor eave and building footing encroachments. Schedule "B" encroachments represent a small percentage of the encroachment applications Administration reviews and approves.
3. Schedule "C" with approved circulation encroachments which cost \$500 plus GST:
 - Schedule "C" encroachments represent all other types of encroachments that do not fall into the category of Schedule "A" or "B" encroachments. Administration's review and approval of Schedule "C" encroachments requires consultation with (circulation to) other City business units and/or utility providers.

Schedule "A" and Schedule "C" encroachments represent the most frequent types of encroachments The City approves. There are a couple important facts to note with respect to The City's current practice pertaining to both Schedule "A" and Schedule "C" encroachments.

With respect to Schedule "A" encroachments, The City historically has not charged a fee for Schedule "A" encroachments. As the Encroachment's team is a full cost recovery section within our business unit, Administration relies upon fees to cover staff salary and wages and all other administrative costs for the section. Administration is proposing to introduce a fee for Schedule "A" encroachments in order to ensure we are recovering our cost to review and approve these types of encroachments.

With respect to Schedule "C" encroachments, The City has charged a flat fee of \$500 plus GST, regardless of the type or extent of the encroachment, since the Encroachment Policy went into effect in 1996. This means that someone who has a fence encroaching by several metres into

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City-owned land or a street has been paying the same encroachment fee as someone who is encroaching by just over a foot into the same. This is an inequity that Administration is proposing to change by increasing our encroachment fees where encroachments are greater than one (1) metre into City-owned land (non-park land) or streets. This practice is consistent with the practices of other municipalities including, but not limited to, the cities of Edmonton, Ottawa, Toronto and Vancouver whose fees are based on the type and extent of the encroachment.

In addition to the proposed changes mentioned above, Administration is proposing a few more changes to our encroachment fee structure including:

- Dividing encroachment fees into application fees and encroachment fees. The application fee represents the staff time and cost to review and approve encroachment applications; and the encroachment fee represents the cost to citizens to use and occupy City-owned land, streets and easements for private encroachments. Total fees are calculated as the application fee plus the encroachment fee plus GST and any applicable municipal property taxes. This proposed re-structuring of fees aligns with the practices of other comparable municipalities including, but not limited to, the cities of Edmonton, Ottawa, Toronto and Vancouver;
- Eliminating the encroachment fee for encroachments constructed before the Encroachment Policy went into effect on 1996 July 01. To align with Council direction in its 2017 July 31 Administrative Inquiry with respect to an Encroachment Policy Amendment request, Administration is proposing to only charge an application fee with respect to applications for encroachments that existed prior to the Encroachment Policy being established on 1996 July 01. This will ensure that citizens who have pre-1996 July 01 encroachments are only paying for the cost of staff reviewing and approving an encroachment, not for the encroachment itself;
- Increasing the cost of encroachments for multi-family, commercial, retail and industrial property encroachments. We are proposing to increase the fees for these types of encroachments to account for the increased staff time and effort to review these types of encroachment applications, and to account for the often larger types of encroachments seen; and
- Adding of a fee for reviewing and approving withdrawal and discharge of City utility rights-of-way requests. Many of these requests originate out of our Encroachments section when owners want to seek approval from The City to discharge a City utility right-of-way off of their title to avoid having to enter into an encroachment agreement with The City. Currently staff are reviewing, circulating, approving and discharging these utility right-of-way agreements at no charge, however there is a cost that the business unit is absorbing. The cost includes the staff time to review and circulate the request to internal and external utility providers for approval, and the cost to prepare and register the discharge at the Alberta Land Titles Office. Administration is proposing to recover the costs of processing these types of requests.

The fees proposed in the Fee Schedule represent a very modest change from the current encroachment fees under the Encroachment Policy. Most of the fee increases are the result of a fee restructuring that will see owners with larger encroachments onto City-owned land, streets and easements paying more than an owner with a smaller encroachment.

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Stakeholder Engagement, Research and Communication

Administration researched the encroachment practices of several other comparable municipalities in Canada including, but not limited to, the cities of Edmonton, Ottawa, Toronto and Vancouver. Through the municipal best practice review, it was determined that all major cities reviewed had their encroachment rules and regulations contained within a city bylaw and had the ability to fine individuals for non-compliance of encroachment rules and regulations.

To date, Administration has also engaged multiple City business units including: Legal Services, Calgary Parks, Water Resources – Development Approvals, Calgary Roads, Water Services – Drainage, Calgary Building Services – Customer Advisory Services, Bylaw Services and City Clerks; and two external stakeholders: Enmax Power Corporation and ATCO Gas Ltd. on proposed changes to the Encroachment Policy. No internal City business unit stakeholders identified issues with Administration's recommendation to replace the Encroachment Policy with a proposed Encroachment Bylaw. External stakeholders were consulted on proposed changes to Encroachment Policy, not on Administration's recommendation to replace the Encroachment Policy with a proposed Encroachment Bylaw. All internal and external stakeholders had an opportunity to provide feedback on the proposed Guidelines. Where feedback was received, Administration worked with stakeholders to update the Guidelines accordingly.

If Administration's recommendations are approved, upon replacement of the Encroachment Policy with proposed Encroachment Bylaw, Administration will work with Communications staff to establish a plan to engage citizens and inform them of changes to The City's Encroachment Policy. This would include updates to The City's external website content and may also include further engagement with citizens through other means. Any encroachment applications received before the passing of the proposed Encroachment Bylaw will be honoured at the fees set out in the Encroachment Policy, unless lower in the proposed Fee Schedule. In addition, citizens who are notified that they are required to submit an encroachment application prior to the passing of the proposed Encroachment Bylaw will have one year to submit an application and be eligible for the fees set out in the Encroachment Policy, unless lower in the proposed Fee Schedule.

Strategic Alignment

The proposed recommendations align with Council's priority to have a "well-run city" with an efficient municipal government. The recommendations will also enable Administration to "cut red tape" through a proposed Encroachment Bylaw that is clear, concise and supported by streamlined internal processes.

The proposed Encroachment Bylaw includes consequential amendments to Parks and Pathways Bylaw 11M2019, Streets Bylaw 20M88 and Real Property Bylaw 52M2009 to ensure alignment with these City bylaws.

The proposed Encroachment Bylaw aligns with the recently approved Guiding Principles and direction of the Corporate Land Strategy project. The proposed Encroachment Bylaw provides an implementation approach and the tools to manage specific land challenges:

- Citizen Value: Ensures City-owned land, streets and easements are managed well and continue to provide public benefits and long-term value for all Calgarians;

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- Transparent and Accountable Decision-making: Addresses the risks and liabilities to City land and operations in a transparent, fair and accountable manner; and
- Reliable and Flexible: Provides a consistent approach to protecting City property and interests, with flexibility to address varying types and impacts of encroachments.

Social, Environmental, Economic (External)

Social

Through improved enforcement measures, Administration will mitigate some of the risks associated with its desire to allow more minor encroachments on certain City-owned land, streets and easements. Improvement to The City's enforcement measures should also act as a deterrent to individuals who do not comply with encroachment rules and regulations and requests for removal of encroachments off of City land, streets and easements. In addition, the proposed Encroachment Bylaw will better ensure utility provider and City infrastructure access, safety and service delivery, and public access to and enjoyment of lands intended for public use, such as City parks.

Administration is dedicated to providing a citizen centric and business friendly single source of information for all City encroachment rules and regulations.

Environmental

No implications were identified.

Economic

Greater enforceability of encroachment rules and regulations will enable The City to better manage encroachments onto City-owned land, streets and easements.

An update to the structure of our encroachment fees will enable greater equity in the charging of fees to owners who are encroaching onto a City property or interest. An update to the encroachment fees will also ensure that Administration is covering the cost of reviewing, circulating and approving all applications for encroachments onto City-owned land, streets and easements.

Financial Capacity

Current and Future Operating Budget:

The Encroachments section in Real Estate & Development Services operates under a self-funded model whereby fees collected for encroachment agreement applications are used in support of staff and operating expenses. It is expected that the proposed Fee Schedule identified in Attachment 4 will result in yearly encroachment fee revenue remaining at least at the average levels seen in 2018 and 2019, assuming the number of applications received in future years is consistent with the numbers received in 2018 and 2019. Administration will review revenues each year to ensure we are recovering our costs and make adjustments to fees where necessary.

Current and Future Capital Budget:

Not applicable.

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Risk Assessment

If Administration's recommendations are approved, the risks associated with Administration's desire to allow more minor encroachments on certain City-owned land, streets and easements will be mitigated in part by a corresponding increase in The City's authority to enforce removal of encroachments through the proposed Encroachment Bylaw. The proposed Encroachment Bylaw should reduce the likelihood that encroachments cause issues with The City's or utility provider's ability to maintain and operate safe and effective services for the citizens of Calgary.

There is a risk that there will be opposition from the general public to increased authority around encroachment rules and regulations. To mitigate this risk, Administration will continue to work with Communications staff to ensure that citizens are provided with clear and consistent messaging and information with respect to encroachment rules, regulations and processes.

Additionally, there is a risk that increased application and encroachment fees for some owners will be unwelcome. Administration's collection of fees for encroachment agreement applications is required in order to support the self-funded model. In addition, changes to the fee structure will ensure that owners who have larger encroachments onto City-owned land and interests are paying a higher fee for the use of City-owned land and interests than owners with smaller encroachments into same.

If Administration's recommendations are not approved, Administration will proceed with the work required to update the Encroachment Policy. Without a City bylaw in place to enforce removal of encroachments off of all types of City-owned land and interests, there is a greater risk to The City of having to go through lengthy and costly legal proceedings to enforce encroachment removals, having reduced utility provider and City infrastructure access and safety, and having to undertake removal costs at The City's expense. There is also a risk of inconsistency in decision making and confusion amongst both citizens and City staff as encroachment rules and regulations will continue to be documented in multiple bylaws and a corporate Encroachment Policy.

REASON(S) FOR RECOMMENDATION(S):

Administration recommends rescinding Encroachment Policy CS008 and replacing it with the proposed Encroachment Bylaw shown in Attachment 1 to enable The City to authorize more minor encroachments on certain City-owned land, streets and easements, and better position Administration to enforce its encroachment rules and regulations. It will also align Calgary with the practices of other comparable municipalities.

ATTACHMENT(S)

1. **Attachment 1 – Proposed Bylaw 9M2020**
2. Attachment 2 – Encroachment Policy CS008
3. Attachment 3 – Proposed Encroachment Guidelines
4. Attachment 4 – Proposed Application and Encroachment Fees