



City of Dawson

Encroachment Policy

2018-05

1. POLICY STATEMENT

- a) The City of Dawson has a rich and complex history of land development. In many cases throughout town, this has resulted in infrastructure and/or development that encroaches beyond the property lines of the subject property, causing liability issues and conflicts between land owners. The purpose of this policy is to provide a framework for how to manage these discrepancies in a fair and consistent manner as they are identified.

2. OBJECTIVES

- a) It is the purpose of this policy to:
 - i. Provide a fair, consistent, and transparent framework for managing both new/proposed and existing/historic encroachments within the municipal boundary.
 - ii. Provide a tool that both administration and the general public can refer to for guidance when conflicts arise due to an encroachment.

3. DEFINITIONS

BOARD OF VARIANCE: is a Board of members appointed by Council who hear and decide upon requests for variance or exemption from a zoning bylaw provision where there are practical difficulties or unnecessary hardships in the way of carrying out the development in accordance with the plan or bylaw.

ENCROACHMENT: a situation in which a development, structure, or associated infrastructure that belongs to one individual/group is partially or entirely situated on the property of an adjacent property owner. An encroachment cannot be resolved or approved by the Board of Variance.

COUNCIL: means the Council of the City of Dawson.

LICENCE OF OCCUPATION: means a legal agreement authorizing the temporary occupation and use of City of Dawson land for such a period of time and under such terms and conditions as the City of Dawson determines to be appropriate.

ROAD RIGHT-OF-WAY: a publicly owned parcel of land, primarily for the purposes of providing a corridor for the passage or parking of vehicles.

TRAVELLED ROADWAY: the developed portion of a road right-of-way.

4. FRAMEWORK: EXISTING ENCROACHMENTS

- a) All consolidations and boundary adjustments required as a result of a provision of this Policy are required to comply with any relevant legislation, policies, and bylaws in effect at the time, including but not limited to the *Municipal Act*, *Subdivision Bylaw*, and *Zoning Bylaw*.
- b) When a travelled roadway is identified to be encroaching onto private property, the City of Dawson shall work with the private property owner directly to resolve the encroachment in one of the following ways:
 - i. City of Dawson to relocate the roadway off of the private property and into the surveyed road right-of-way, at the expense of the City of Dawson;
 - ii. If relocation is not possible, the City of Dawson may purchase the land as per the *Sale of Municipal Lands Policy*;
- c) When a dwelling or structure is identified to be encroaching onto a surveyed road right-of-way, the City of Dawson shall work with the owner of the structure directly to resolve the encroachment in one of the following ways:
 - i. If the road right-of-way is not in use as a travelled roadway and could be deemed surplus as per the *Sale of Municipal Lands Policy*, the City of Dawson could initiate a Permanent Road Closure process, allowing the owner of the structure to purchase a portion of the road right-of-way in accordance with the policies and procedures outlined in the *Sale of Municipal Lands Policy*;
 - ii. If the road right-of-way is not in use as a travelled roadway but cannot be deemed surplus as per the *Sale of Municipal Lands Policy* due to being earmarked for a future municipal purpose (e.g. lot development, road expansion), the structure may be relocated off the road right-of-way at the expense of the owner of the structure;
 - iii. If the road right-of-way is not in use as a travelled roadway but cannot, for any reason, be deemed surplus as per the *Sale of Municipal Lands Policy*, and if a resolution through s. c(i) or s. c(ii) is not feasible, at the discretion of Council, a Licence of Occupation may be negotiated between the City of Dawson and the owner of the structure.
- d) When a dwelling or structure is identified to be partially or completely situated on a surveyed land parcel titled to the City of Dawson, the City of Dawson shall work with the owner of the structure directly to resolve the encroachment in one of the following ways:
 - i. Owner of the structure to purchase the City of Dawson titled property (or a portion thereof) in accordance with the *Sale of Municipal Lands Policy*;
 - ii. Relocation of the structure off the City of Dawson titled property at the expense of the owner of the structure;
 - iii. If a resolution through s. d(i) or s. d(ii) is not feasible, at the discretion of Council, a Licence of Occupation may be negotiated between the City of Dawson and the owner of the structure.

- e) When a dwelling or structure on a privately-owned lot is identified to be extending onto an adjacent lot under the same ownership, the structure may be classed as 'legally non-conforming' under the provisions of the *Municipal Act*. The structure may be allowed to remain 'as is' until such time as the owner wishes to enlarge, add to, rebuild, or structurally alter the structure. If the owner wishes to enlarge, add to, rebuild, or structurally alter the structure, the City of Dawson may require the owner of the lots to resolve the issue in one of the following ways:
 - i. Complete a consolidation or boundary adjustment to resolve the issue, at the cost of the property owner.
 - ii. Relocation of the structure to a location entirely within one property and compliant with all setbacks and *Zoning Bylaw* provisions in effect at the time.
- f) Where utilities or infrastructure systems of any kind are identified to be crossing a road right-of-way or privately titled land in the ownership of someone other than the owner of the infrastructure, this situation may be resolved using an easement agreement registered on title.
- g) Where it is identified that a balcony or awning encroaches into or projects onto a City of Dawson boardwalk or road right-of-way in the C1: Core Commercial Zone as per the *Zoning Bylaw* in effect at the time, the City of Dawson and the owner of the structure may be required to enter into a Licence of Occupation.

5. FRAMEWORK: NEW/PROPOSED ENCROACHMENTS

- a) New encroachments shall only be permitted in extenuating circumstances at the discretion of the Community Development and Planning Officer and/or the Public Works Superintendent, under the following circumstances:
 - i. Where utilities or infrastructure systems of any kind are proposed to cross a road right-of-way or privately titled land, an easement agreement registered on title shall be required.
 - ii. Where a balcony or awning is proposed to encroach into or project onto a City of Dawson boardwalk or road right-of-way in the C1: Core Commercial Zone as per the *Zoning Bylaw* in effect at the time, the City of Dawson may approve the request by entering into a Licence of Occupation with the property owner.
 - iii. When a dwelling or structure proposed on a privately-owned lot is planned to extend onto an adjacent lot under the same ownership, the City of Dawson shall require the owner of the lots to complete a consolidation or boundary adjustment to resolve the issue, at the cost of the property owner, prior to issuance of a Development Permit.
 - iv. When a property owner approaches the City of Dawson to complete landscaping in the road right-of-way adjacent to their property for safety purposes or protection of a dwelling, the City of Dawson may choose to enter into a Licence of Occupation in order to accommodate the request.

6. MINIMUM REQUIREMENTS FOR A LICENSE OF OCCUPATION

- a) A License of Occupation shall contain, at minimum, provisions dealing with the following:
- i. Name and contact information of the individual/party responsible;
 - ii. Detailed description of the nature of the occupation and reason, including any required supporting documentation such as maps, site plans, or elevation drawings;
 - iii. Period of time the license is valid for;
 - iv. Renewal requirements;
 - v. Prescribed fee (if applicable), including a provision for who is responsible for payment of property taxes;
 - vi. Responsibilities of the City of Dawson and of the Licensee;
 - vii. Insurance requirements; and
 - viii. Termination/expiration details.

POLICY TITLE:	Encroachment Policy
POLICY #:	2018-05
EFFECTIVE DATE:	January 15, 2019
ADOPTED BY COUNCIL ON:	January 14, 2019
RESOLUTION #:	C19-01-12

Original signed by:
Wayne Potoroka, Mayor

Cory Bellmore, CAO