



Subject: *Proposed Bylaw A-300 Encroachment on Municipal Real Property*
To: Corporate & Residential Services Committee
Date Prepared: February 9, 2026
Related Motions: In Camera Direction
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Summary

This report presents the proposed *Encroachment on Municipal Real Property Bylaw* for Council's approval, including provisions for managing, licensing and enforcing encroachments on Municipal property.

The proposed Bylaw is drafted to generally prohibit encroachments, unless expressly licensed under the Bylaw. It establishes multiple classifications of encroachments in order to outline requirements for permitting encroachments through Encroachment License Agreements, address encroachments that were permitted historically or prior to Municipal ownership of property, consider proposed encroachments, and support enforcement of unauthorized encroachments. The proposed Bylaw also provides for Council to delegate authority to the CAO to manage encroachments for specific classes of projects, including, but not limited to, the former Dominion Atlantic Railway line.

Financial Impact Statement

This report includes consideration of potential fees for administering the proposed Bylaw, with fees to be set and amended by Council in the *Municipal Fee Policy at a later date*.

The proposed Bylaw permits the Municipality to recover all expenses incurred in the enforcement of the Bylaw.

The Background Section of the report includes a jurisdictional scan, and the Financial Considerations section includes staff's proposed fee. Section 16.2 of the proposed Bylaw indicates Council may, in exceptional circumstances or as part of a specific project or Municipal Real Property, waive payment of all or part of related fees.

Recommendation

Staff recommend giving first reading to the proposed Bylaw.

Recommended Motion

Move that the Corporate & Residential Services Committee recommend that Council give first reading to Bylaw A-300 Encroachment on Municipal Real Property.

Background

At the November 2025 Regular Meeting of Council - Policy & In Camera, staff were directed during in camera discussions to return to Council with a formal encroachment policy. Subsequent discussions considered whether encroachments could/should be regulated through policy or bylaw.

The proposed Bylaw is in compliance with the *Municipal Government Act*, and provides enforceable standards that improve consistency, accountability, and administrative efficiency when compared to a policy-based approach.

Simply put, an encroachment occurs when a property owner intrudes on, in, or under an adjacent Municipal property, either deliberately or inadvertently. Encroachments may be structural (ex. deck, pool, well, retaining wall, portion of dwelling, etc.) or non-structural (i.e. plantings, waste dumping, drainage, cattle crossings, etc.).

Encroachments can create a range of challenges for the Municipality. They can restrict public access or use, create safety hazards, damage infrastructure, increase liability risk, cause environmental harm, and result in unplanned costs to taxpayers.

Benefits to Implementing the Bylaw

Benefits to adopting the proposed Bylaw include:

- Establishing fairness and transparency;
- Supporting consistent, defensible decision-making by staff and Council;
- Reducing Municipal risk and liability exposure;
- Protecting Municipal infrastructure and lands; and
- Improving documentation and long-term management of Municipal real property.

Cross Departmental Collaboration

The proposed Bylaw was developed with input from staff from multiple departments and in consultation with Legal Counsel.

JURISDICTIONAL SCAN

Municipal

A review of municipal practices across Nova Scotia indicates that few municipalities regulate encroachments, with those that do focusing on streets and rights-of-ways. While East Hants may consider a street encroachment bylaw in the future, there is currently no operational need or demonstrated demand for such a bylaw.

Staff reviewed seven (7) Nova Scotia municipalities that have adopted street encroachment bylaws. Municipalities with these types of bylaws are generally those with more historic or pedestrian-oriented town centres, including Town of Amherst, Town of Berwick, Town of Lunenburg, Town of Wolfville, and Halifax Regional Municipality. These bylaws typically include requirements for a formal agreement/license/permit, Council approval for long-term or structural encroachments, and administration is managed by the Development Officer or Municipal Engineer.

Generally, municipalities are implementing fees to help offset administrative costs. Fees range from \$100 to \$250 for administration, typically non-refundable and due at time of application. A summary of fees for the seven (7) street encroachment bylaws reviewed is summarized below:

Municipality	Encroachment Fees
Halifax Regional Municipality	Base Fee: \$60 to \$125, depending on size Annual/Renewal Fee: applicable to some encroachments, at \$1.00/0.1 m ² with minimum fee of \$10
Town of Amherst	Base Fee: \$100 Annual/Renewal Fee: none
Town of Berwick	Base Fee: \$175 per application Annual/Renewal Fee: none
Town of Bridgewater	Base Fee: \$0.30/ft ² Annual/Renewal Fee: none
Town of Lunenburg	Base Fee: \$100, or amount determined by Council Annual/Renewal Fee: none
Town of Shelburne	Not publicly listed.
Town of Wolfville	Base Fee: \$250 Annual/Renewal Fee: none

Provincial

The Province administers fees for activities on Crown Lands, including easements, rights-of-ways, and leases. While not directly comparable, Provincial fees demonstrate a cost-recovery approach based on administrative effort, land area impacted, and use type, with higher fees for commercial uses vs residential uses. A summary of comparable Provincial fees from the *Fees for Activities on Crown Land* schedule is summarized below:

Transaction Type	Administration Fee	One -Time Fee	Ongoing/Annual Fee
Easements and Rights of Way - Commercial Development	\$747.83 + HST Non-refundable; Does not apply to requests initiated by the Province	\$3,738.91 + HST Per Hectare (minimum \$1,495.13)	N/A
Easements and Rights of Way - Municipal Purpose	\$747.83 + HST Non-refundable; Does not apply to requests initiated by the Province	\$1,869.43 + HST Per Hectare (minimum \$747.83)	N/A
Easements and Rights of Way - Residential/Personal/Wood Lot	\$747.83 + HST Non-refundable; Does not apply to requests initiated by the Province	\$747.83 + HST Per Hectare (minimum \$298.78)	N/A
Easements and Rights of Way - Former Rail Corridor	\$747.83 + HST Non-refundable; Does not apply to requests initiated by the Province	\$3,738.91 + HST Per Hectare (minimum \$1,495.13)	N/A
Easements and Rights of Way - Utility Company	\$747.83 + HST Non-refundable; Does not apply to requests initiated by the Province	\$3,738.91 + HST Per Hectare (minimum \$1,495.13)	N/A
Agricultural Lease	\$747.83 + HST	N/A	Greater of: 3% the appraised market value; or 5% of gross sales production
Municipal Lease	\$747.83 + HST	N/A	Greater of: 5% of appraised market value; or \$373.78 + HST
Private Commercial Lease	\$747.83	N/A	Greater of: 10% of appraised market value; or \$373.78 + HST
To assign/transfer/amend agreements	\$373.78 + HST		

Discussion

PROPOSED BYLAW OVERVIEW

General

The proposed Bylaw indicates that encroachments are generally prohibited, unless licensed under the Bylaw.

Per discussion with Legal Counsel, encroachments should be permitted through a license agreement format. The licensing framework makes it clear that any permission granted is temporary and does not convey possessory or adverse possession rights. License terms can be tailored to the nature of the encroachment - shorter or longer term - to avoid undue administrative burden, but without implying permanence.

The proposed Bylaw is drafted to require direction from Council to enter into an Encroachment License Agreement, unless authority is delegated to the CAO. See the Legislative Authority section of this report for more information.

The proposed Bylaw includes four (4) categories of encroachments:

1. Licensed Encroachment - “an encroachment temporarily permitted by the Municipality and documented and subject to the terms of an Encroachment License Agreement.”
2. Existing Permitted Encroachment - “an encroachment that is proven to have existed prior to the enactment of this Bylaw and/or prior to the Municipality taking ownership of the encroached property, which has been otherwise permitted under a prior agreement, approval, or common law.”

3. Unauthorized Encroachment - “an encroachment not licensed under this Bylaw, and is subject to removal.”
4. Proposed Encroachment - “a newly proposed encroachment not previously licensed or otherwise permitted by the Municipality.”

Criteria for Licensing an Encroachment

Section 5 outlines that Council may classify an encroachment as a Licensed Encroachment only when it:

- Does not interfere with current or future use of the land;
- Does not create unacceptable risk (public safety, operations, environment);
- Complies with applicable policies, bylaws, regulations etc.; and
- Can be appropriate managed through an Encroachment Agreement.

Further, Council may consider whether removal of the encroachment would create unreasonable hardship to the Encroaching Property Owner.

Existing Permitted Encroachments

The proposed Bylaw recognizes that there may be encroachments that pre-date the Bylaw and/or Municipal ownership, and have been permitted under prior agreement, approval, or common law:

- Existing Permitted Encroachments are generally grandfathered and may remain, subject to compliance with any prior approvals, and, in the Municipality’s sole discretion, the Existing Permitted Encroachment does not create an unacceptable risk to public safety, municipal operations, or environmental integrity. A new Encroachment License may be required to formalize responsibilities and better manage risk.
- Existing Unauthorized Encroachments must proceed through the Encroachment Application process.

Unauthorized Encroachment

Where a property owner identifies an Unauthorized Encroachment, the Property Owner must submit an Encroachment License Application, as outlined in Section 9.

Where the Municipality identifies an Unauthorized Encroachment, Municipal staff shall issue a written Notice of Encroachment requiring the property owner to submit an Encroachment License Application, per Section 9, or to voluntarily remove the encroachment.

Proposed Encroachment

Where a property owner wishes to encroach on Municipal property, they must receive permission through the Encroachment License Application process, as outlined in Section 9. This process is to occur prior to constructing, installing, placing, or maintaining an encroachment on Municipal property.

Encroachment License Application

Section 9 outlines the Encroachment License Application requirements.

Encroachment License Applications would be brought forward through a staff report to Council. See Legislative Authority Section of this report for comment on Council’s approval of encroachments.

As noted in section 9.3., Council may delegate authority to the CAO to approve Encroachment License Applications that meet Council-approved criteria or fall within specific classes of projects, including, but not limited to, land management activities related to the former Dominion Atlantic Railway line.

Encroachment License Agreements - For Licensed Encroachments

Section 10 outlines the Encroachment License Agreement requirements, once an Encroachment License Application has been approved.

Encroaching Property Owners shall have sixty (60) days to execute the Encroachment License Agreement and pay any applicable fee, unless otherwise authorized by Council. Failure to do so shall result in the application being abandoned and the encroachment will default to being an Unauthorized Encroachment.

Encroachment License Agreements are not intended to run with title, and the license is not transferable without written consent of the Municipality. However, a notice will be registered on title.

Section 10 reiterates that the CAO may execute Encroachment Licenses under the Bylaw subject to Council authorization. Per Section 10.6, the CAO may, without further approval of Council, authorize extensions or renewals where the extension is consistent with the intent of the Bylaw and standard terms and conditions, and may authorize assignments to a new property owner where the encroachment remains unchanged. This provision is to help minimize administrative burden in routine situations, such as a transfer of property ownership, while maintaining Council oversight for new or non-standard encroachments.

Termination provisions shall include termination of the license should the property be required for municipal purposes.

Emergency Situations

Section 13 outlines what can occur if the CAO or designate deems that an encroachment poses a danger to public health or safety. This includes ordering repair or removal, or taking measures on behalf of the Encroaching Property Owner to address emergency concerns. Expenses, if applicable, shall be recovered in accordance with Section 17.

Removal of Unauthorized Encroachments

Section 14 outlines when a Notice to Remove shall be issued, requiring an Unauthorized Encroachment to be removed and the land restored at the Encroaching Property Owner's expense.

The removal notice must be completed within sixty (60) business days of the date of the notice; otherwise, the Municipality may take measures on behalf of the Encroaching Property owner. Expenses, if applicable shall be recovered in accordance with Section 17.

Appeals

Section 15 outlines the option to appeal. Appeals are permitted on the basis of one or more of the following:

- Demonstration that it is an Existing Permitted Encroachment;
- Timeline for removal creates undue hardship and a reasonable extension is warranted;
- Additional information was not previously considered; and/or
- There are unique circumstances that warrant special consideration of Council.

Appeals are to be submitted within thirty (30) days from date of notice. If no appeal is submitted, then the right to appeal is deemed waived.

Staff shall bring appeals forward through a recommendation report. Council shall make the decision to authorize, modify, or reject an appeal. This decision is final and binding.

If an appeal is denied, removal must occur within sixty (60) business days of the notice. If the Encroaching Property owner fails to comply, the Municipality may take measures on behalf of the Encroaching Property Owner. Expenses, if applicable shall be recovered in accordance with Section 17.

Fees

Section 16 outlines that all fees shall be set and amended by Council in the *Municipal Fee Policy*. There are no explicit fees mentioned in the proposed Bylaw.

Based on Council discussion and direction, staff will recommend changes to the *Municipal Fee Policy* at the next reasonable Committee Meeting.

Based on jurisdictional scans (see Background Section) and estimated costs, staff recommend the following fee structure:

- **Encroachment License Application Fee:** None. The Administrative cost of processing Encroachment License Applications is anticipated to be absorbed into regular staff operations. If significant administrative burden is observed, staff will return to Council to propose an adjustment to the *Bylaw/Municipal Fee Policy* to enact a reasonable application fee.
- **Encroachment License Agreement Fee:** A fee of \$300 (HST included) shall be provided by the Encroaching Property Owner at time of signed Encroachment License. Please see Financial Considerations Section of this report for further information.

Recovery of Expenses

Section 17 outlines the Municipality's intention to recover all expenses incurred with the enforcement of the Bylaw. Should a Property Owner fail to pay any amount due within thirty (30) calendar days, the outstanding balance may be applied as a First Lien on the property and recovered in the same manner as taxes.

Enforcement & Offence

A Municipal bylaw enforcement officer, or any person designated to enforce the proposed Bylaw, may enter upon or into private property for the purpose of inspection and enforcement.

Any person who contravenes the proposed Bylaw, or fails to comply with a notice, order, direction or requirement issued under the Bylaw, is guilty of an offence.

GENERAL PROCESS OVERVIEW

At a high-level, Corporate Services will manage encroachment identification, applications, and licensing. Bylaw Enforcement will be engaged where enforcement or removal is required.

STRATEGIC ALIGNMENT

The adoption of the proposed Bylaw supports East Hants' key strategies of Sustainable Infrastructure and Corporate Excellence.

LEGISLATIVE AUTHORITY

Managing Encroachments: per Legal Counsel, it is within a Municipality's power to regulate encroachments on municipal property, under the Municipal Government Action s.172 to address nuisances, safety, and protection of property.

Permitting Licensed Encroachments: the proposed Bylaw recommends that encroachments be permitted through an Encroachment License authorized by Council. As encroachments are identified or requested, staff would prepare a report recommending that Council authorize the CAO to enter into an Encroachment License Agreement for the respective Encroachment License Application.

Under Subsection 9.4.a), Council may delegate authority to the CAO or designate to approve Encroachment License Applications that meet Council-approved criteria for specific projects and/or properties. Encroachment License Applications would continue to be submitted to Council via staff report to Council.

This approach aligns with similar authority granted under the CAO Authority Policy and/or MGA. For example, the CAO requires Council approval to grant easements that may encumber real property, and any lease exceeding one year requires Council approval.

If Council wishes to delegate authority to manage encroachments under the proposed Bylaw to the CAO, staff would review such authority with legal counsel, revise the proposed Bylaw accordingly and return at the next appropriate Committee Meeting with a possible recommendation to amend the CAO Authority Policy.

FINANCIAL CONSIDERATIONS

Encroachment Agreement Fee: \$300 (HST inclusive). Intended to cover Land Registration and courier fees, with balance to provide minor administration off-set.

Alternatives

Council may choose not to enact a bylaw to support the management of encroachments on Municipal Property.

Attachments

Proposed Encroachment on Municipal Real Property Bylaw