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# The Regional Municipality of Durham Report

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To: Works Committee  
From: Commissioner of Works  
Report: #2024-W-25  
Date: December 4, 2024

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**Subject:**

Updated Encroachment Policy for Encroachment, Tieback and Crane Swing Agreements

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**Recommendations:**

That Works Committee recommends to Regional Council:

- A) That the updated Encroachment Policy (Attachment #1) for Encroachment, Tieback and Crane Swing Agreements be approved and adopted;
- B) That the Commissioner of Works be delegated authority pursuant to Section 23.2(1)(c) and Section 23.2(4) of the Municipal Act, 2001 SO 2001, c. 25 to amend the Encroachment Policy from time to time as may be required, including modifications and amendments to the Encroachment, Tieback and Crane Swing Agreements in a form and content satisfactory to the Regional Solicitor; and
- C) That the Commissioner of Works be authorized to attach the template agreements for Encroachment, Tieback and Crane Swing agreements as schedules to the Encroachment Policy once finalized in a form satisfactory to the Regional Solicitor and to execute all agreements associated with the Encroachment Policy.

**Report:****1. Purpose**

- 1.1 The purpose of this report is to seek Regional Council approval for staff to implement an updated Encroachment Policy for Encroachment, Tieback and Crane Swing Agreements.

**2. Background**

- 2.1 The purpose of the Encroachment Policy is to formalize and clarify the procedure for granting encroachments onto Region-owned properties, including streets and road allowances.
- 2.2 This policy mitigates the Regional Municipality of Durham's (Region) exposure to risk and liability and protects the Region's rights and obligations with respect to the subject property. By outlining the Region's process for granting and terminating encroachments, the policy also provides standards and guidelines for Regional staff and transparency for property owners.
- 2.3 The current Encroachment Policy, in place since 1986, needs to be updated.

**3. Tieback Agreements and Crane Swing Agreements**

- 3.1 The updated Encroachment Policy also incorporates the implementation of Tieback Agreements and Crane Swing Agreements.
- 3.2 A Tieback Agreement authorizes a developer to shoot or drill tiebacks under adjoining land owned by the Region of Durham. The Tieback Agreement outlines various rights, obligations, and responsibilities of a developer and the Region being the adjoining property owner.
- 3.3 A Crane Swing agreement refers to an agreement that allows a developer to operate a crane above an adjacent property owned by the Region of Durham. During the development phase of the construction of a project, a crane requires enough space to swing or rotate while lifting materials in the airspace of a Region-owned property. The Crane Swing Agreement outlines various rights, obligations, and responsibilities of the developer and the Region, the adjoining property owner whose airspace would be encroached upon by the operation of a swinging crane.

**4. Previous Reports and Decisions**

- 4.1 Report #77-86, "Policy for Encroachment on Regional Road Allowances and Easements", was approved by Regional Council.

**5. Financial Implications**

- 5.1 Applicable fees under this policy will be updated as required and published annually in the Region's booklet of fees and charges.
- 5.2 Annual fees for Crane Swing and Tieback will be based on the property value discounted at the time of application and adjusted annually to reflect the property value for subsequent years.

**6. Relationship to Strategic Plan**

- 6.1 This report aligns with/addresses the following strategic goals and priorities in the Durham Region Strategic Plan:
- Goal 2.2 - Enhance community safety and well-being.
  - Goal 5.4 – Drive organizational success through innovation, a skilled workforce and modernized services.

**7. Conclusion**

- 7.1 Staff recommend that the attached updated Policy for Encroachment, Tieback and Crane Swing Agreements be adopted, as the policy has not been updated since April 1986.
- 7.2 This report has been reviewed by Legal Services – Office of the CAO.
- 7.3 For additional information, please contact Christine Dunkley, Director of Corporate Infrastructure and Strategic Business Services, at 905-668-7711, extension 3475.

**8. Attachments**

- 8.1 Attachment #1: Updated Encroachment Policy for Encroachment, Tieback and Crane Swing Agreements

Respectfully submitted,

**Original signed by:**

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Ramesh Jagannathan, MBA, M.Eng., P.Eng., PTOE  
Commissioner of Works

Recommended for Presentation to Committee

**Original signed by:**

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Elaine Baxter-Trahair  
Chief Administrative Officer



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**THE REGIONAL MUNICIPALITY OF DURHAM  
ENCROACHMENT POLICY – ENCROACHMENT, TIEBACK AND CRANE SWING ON  
REGIONAL PROPERTY, INCLUDING STREETS AND ROAD ALLOWANCES**

**1. Policy Statement**

- 1.1 All existing and proposed privately owned encroachments on Region-owned properties, including streets and road allowances under the jurisdiction of the Regional Municipality of Durham (the “Region”), shall be subject to this Encroachment Policy.
- 1.2 The Region’s Encroachment Policy governs the application and approval procedure for the authorization of encroachments onto municipal streets and road allowances. If approved, the property owner and The Regional Municipality of Durham shall enter into an Encroachment Agreement.
- 1.3 The Encroachment Policy establishes the process for terminating an existing Encroachment Agreement with the Region.
- 1.4 The purpose of the Encroachment Policy is to formalize and clarify the procedure for granting encroachments onto Region-owned properties, including streets and road allowances. This policy mitigates the Region’s exposure to risk and liability and protects the Region’s rights and obligations with respect to the subject property. By outlining the Region’s process for granting and terminating encroachments, the policy also serves to provide standards and guidelines for members of the regional administration as well as transparency and property owners.

**2. Definitions**

- 2.1 **Commissioner of Works** - means the Commissioner of Works, or their designate or their employees in the Corporate Real Estate Services division.
- 2.2 **Director of Legal Services** - means the Director of Legal Services being the Regional Solicitor or their designate.
- 2.3 **Region** - means The Regional Municipality of Durham.
- 2.4 **Council** - means the Municipal Council of the Corporation or the Council of the Regional Municipality of Durham.
- 2.5 **Encroachment** - means any vegetation or natural object placed by a property owner, or man-made feature or object or item of personal property of a person which exists wholly or partly on or extends from a property owner's premises onto streets or road allowances and shall include any aerial, surface or subsurface encroachments.
- 2.6 **Encroachment Agreement** - means a binding agreement between the Region and the property owner, prepared by the Region, granting authorization for a property owner to erect and maintain an encroachment on a Region-owned property, street, or road allowance.
- 2.7 This policy also includes any applications for a Tieback Agreement and Crane Swing Agreement, for which there is a Region of Durham template for either form of agreement also subject to this policy containing the application and contractual requirements that an applicant must adhere to. The definition of each agreement is as follows.
- 2.8 **Tieback Agreement** - A tieback agreement authorizes a developer to shoot or drill tiebacks under an adjoining property owner's land owned by the Region of Durham. The Tieback Agreement template, attached as Schedule B, outlines various rights, obligations, and responsibilities of a developer and the Region being the adjoining property owner.
- 2.9 **Crane Swing Agreement** - A crane swing agreement refers to an agreement that allows the developer to operate its crane above the property of a nearby neighbour owned by the Region of Durham. During the construction of a project, the crane requires enough space to swing or rotate while lifting materials in the airspace of Region of Durham owned property. The Crane Swing Agreement

template, attached as Schedule C, outlines various rights, obligations, and responsibilities of the developer and the Region being the adjoining property owner and whose airspace will be encroached upon by the operation of a swinging crane from time to time.

2.10 **Property Owner** - means the registered owner of the property.

### **3. Applicability**

3.1 This policy applies to all Region-owned property, including road allowances, streets, and lanes, whether assumed or not under the jurisdiction of the Regional Municipality of Durham.

### **4. The Policy**

#### **Standards for Assessing Encroachments on Streets and Road Allowances**

4.1 The general nature of encroachments to be considered for a formal agreement under this policy is that they are of a permanent or semi-permanent nature, not easily removable and do not involve an area enclosed for exclusive use.

4.2 Temporary encroachments are to be processed as applications for a Licence Agreement or an Encroachment Permit and are not covered under this policy.

4.3 The Region of Durham considers the following non-exhaustive list of factors when considering the appropriateness of an encroachment:

- a. The encroachment interferes with the Region's use, enjoyment or purpose in holding the property;
- b. The creation of unsafe or hazardous conditions if the encroachment is permitted;
- c. The encroachment provides valuable commercial benefits;
- d. The encroachment interferes with any plans, initiatives or works of the Region to the subject property;
- e. The encroachment interferes with a utility or similar installation located on the subject property;
- f. The encroachment diminishes the right of public usage;

- g. The encroachment is deemed incompatible with established neighbourhood aesthetics, particularly in designated heritage districts;
- h. The encroachment creates liabilities for which the Region cannot assign sufficient responsibility to the owner of said encroachment or threatens to nullify the Region's blanket insurance coverage;
- i. Encroachments onto lanes and walkways will generally not be approved due to the limited space and potential interference with throughway traffic; and
- j. Encroachments already under construction or recently constructed prior to receiving approval will not increase the likelihood of an approval being granted.

## **5. Approval Process**

- 5.1 Prior to making a formal application for permission to encroach onto a street or road allowance, property owners shall contact the Commissioner of Works, who shall determine if the encroachment can be approved.
- 5.2 All proposed encroachments will be reviewed and assessed using Regional standards related to health and safety, and in the case of a road allowance, the safe functionality of the road, and any other relevant criteria that may apply. Encroachment requests will be reviewed, but approval is not guaranteed.
- 5.3 Some areas may allow encroachment, while others may prohibit them due to local circumstances. The refusal to approve an existing encroachment may result in the owner having to remove the encroachment from the road allowance.
- 5.4 The Commissioner of Works, at their complete discretion, may circulate the request to other members of the Region of Durham Administration including, but not limited to, the Commissioner of Planning and the Director of Legal Services, where the Commissioner of Works deems it necessary for the purposes of consultation and approval.
- 5.5 Possible outcomes:

### **Acceptable Encroachments that comply with Region standards**

- The property owner will be advised that the proposed encroachment complies with Regional standards and that a formal application for



encroachment agreement will be accepted subject to any applicable conditions.

**Unacceptable Encroachments that do not comply with Region Standards.**

- Encroachments that create an unacceptable risk or otherwise interfere with the use of the street or road allowance by either the public, the Region or utility company operations, now or in the future, will not be permitted and, if existing, must be removed by the owner forthwith. Examples include sight obstructions, any obstacle that creates a trip or fall or snow plough hazard near the publicly travelled portion of the street, and anything that unduly interferes with access to or has the potential to damage existing or proposed Region services or utility infrastructure.

**Minor Encroachments that do not comply with Region Standards.**

- Encroachments that do not comply with Region Standards that otherwise do not create a significant risk to the public or Region or utility companies will not be considered for an encroachment agreement but may remain temporarily at the Region's sole and absolute discretion, it being understood that the property owner is fully responsible for the encroachment and that neither the Region nor utility companies will be responsible for damage caused thereto or for the complete loss of the encroachment no matter how caused. Examples of minor encroachments include irrigation systems, hedges, shrubbery, and simple landscaping at grade.

**Encroachments caused by a property being acquired by the Region.**

- Special consideration will be given should the Region engage in acquiring property for a capital project, or road construction project and an encroachment is created resulting from the Region acquiring the required property. In such instances, should the encroachment be approved, the Commissioner of Works shall have the discretion to waive all fees except for any insurance and indemnity requirements for the encroachment.
- Commissioner of Works may also waive all fees except for any insurance and indemnity requirements for an encroachment in instances where the encroachment may have been created by construction activity, event, or act of negligence as may be attributable to the Region.

## **6. Application Process**

6.1 Formal applications for encroachment agreements are to be made in writing to the Region Works Department and include the following and shall be the same requirements for an application for a Tieback Agreement or Crane Swing Agreement:

- a. A plan drawn to scale deemed acceptable by a professional surveyor that adequately depicts the extent of the encroachment onto the Regional road allowance, fully dimensioned in both plan and profile including heights and underground footings and utility locations, if applicable.
- b. PIN (Property Identifier Number) printout for the property which will benefit from the agreement.
- c. Full name, address, telephone number and email address of the owner and owner's Solicitor.

6.2 The fee shall be the application fee plus any one-time amount as determined by the Region.

6.3 Property owners may make one application per proposed encroachment. Completed applications accompanied by the application fee should be delivered to:

Regional Municipality of Durham

Works Department, 5<sup>th</sup> Floor

605 Rossland Road West,

Whitby, Ontario

Attention: Corporate Real Estate

## **7. Billing and Arrears**

7.1 The Region will invoice the applicant at least thirty-days prior to the expiry of the agreed upon term for the fees of the following term. Any invoice not paid within

ninety days of the invoice date; the Region will have the option to add the arrears to the property tax invoice, including late payment charges, if applicable.

- 7.2 The Region shall have the option to treat the arrears as a charge against the applicant's property.

## **8. Approval Process**

- 8.1 The Commissioner of Works is responsible for reviewing street encroachment applications and granting approvals.
- 8.2 Before approving an application for an encroachment onto a street or road allowance, the Commissioner of Works shall be satisfied that the encroachment meets Region standards.
- 8.3 Upon approval by the Commissioner of Works, the application will be forwarded to the Region's Legal Department. The Legal Service department in coordination with the corporate Real Estate division will draft the Encroachment Agreement which will be sent to the applicant for execution.
- 8.4 Any pending building permits or development approvals will not be issued until the executed agreement is returned from the applicant's lawyer complete with proof of insurance and payment for any charges owing.
- 8.5 The executed agreement will be registered against the applicant's adjoining property after it is returned to the Region.
- 8.6 Registration fees are the responsibility of the Region and are included in the application fee. Encroachment Agreements will be subject to an annual fee to be updated from time to time and listed in the Fees and Charges By-law to be paid in advance for five years, every five years.
- 8.7 Where the Commissioner of Works deems it appropriate to approve an encroachment and depending upon the nature of the encroachment, the agreement may contain a "removal clause" that requires the property owner to remove the encroachment and restore the road allowance to its original condition, at the applicant's sole expense, upon written notice being given by the Commissioner of Works.

**9. Denied Applications**

9.1 If the Commissioner of Works denies an application, the property owner will be advised in writing of the reasons for the denial. Should the applicant wish for a review of the denial they may submit in writing to the Commissioner of Works, which shall in turn be reviewed in consultation with the Regional Solicitor or their designate.

**10. Authority for Approval of Encroachments, Tieback and Crane Swing Agreements**

10.1 The Commissioner of Works shall have delegated authority to approve or reject applications, authorize encroachments, tiebacks and crane swing agreements, execute on behalf of the Region the agreement and terminate existing Encroachment, Tie back or Crane Swing Agreements, whether Region initiated or upon property owner request, on streets and road allowances pursuant to Section 23.2(1)(c) and Section 23.2(4) of the Municipal Act, 2001 SO 2001, c.25.

10.2 The Commissioner of Works delegated authority shall also include the ability to amend this policy from time to time as may be required, including modifications and amendments to the Encroachment, Tieback and Crane Swing Agreement in a form and content as may be approved by the Regional Solicitor, as long as either the policy or agreement is not being altered materially.

**11. Insurance and Indemnity**

11.1 The encroacher must be capable of holding adequate insurance in perpetuity and indemnifying the Region from all claims that may result by reason of the existence of the encroachment.

11.2 The applicant shall provide proof of insurance in a form and amount satisfactory to the Region's Risk Management and Insurance division in the minimum amount of \$5 million or such other amount as determined by the Risk Management and Insurance division, naming The Corporation of the Regional Municipality of Durham as an additional insured. The Certificate of Insurance shall be submitted to the Region at the time the executed Encroachment Agreement is returned to the Region. The Certificate of Insurance must be satisfactory in form and content to the Risk Management and Insurance division. The onus is on the landowner to carry the insurance in perpetuity and to provide the Region with proof of insurance at each renewal of coverage.

- 11.3 The applicant shall agree to indemnify and hold harmless The Corporation of the Regional Municipality of Durham from and against all liability with respect to all claims that may arise or be made against the Region resulting from the encroachment.
- 11.4 All approved encroachments are placed at the property owner's own risk. The Region is not responsible for repairing or replacing an encroachment or providing damages arising from clearing and removing litter, graffiti, posters, snow, or ice, or as a result of repairs or reconstruction.

## **12. Termination of an Encroachment Agreement**

- 12.1 To terminate an existing Encroachment Agreement with the Region the property owner or their lawyer must submit a request, in writing, and provide proof that the encroachment no longer exists, to the Commissioner of Works.
- 12.2 Where a property owner has removed the encroachment to the satisfaction of the Commissioner of Works, the discharge document will be executed and returned to the property owner's lawyer for registration. Proof of registration must be provided to the Region so that any ongoing charges from the property's tax register can be deleted.
- 12.3 Charges relating to the agreement will continue until the Region is formally advised. Any fees paid will not be refunded in whole or in part because of the termination of the agreement.
- 12.4 Where an existing encroachment agreement approved by by-law has been grandparented into this policy, the Commissioner of Works will request the Clerks Office to arrange to have the necessary rescinding by-law submitted directly to Council.

## **13. Form of Agreement**

- 13.1 Attached as Schedule 'A' to this policy is the Form of Agreement to be used in cases where an encroachment has been approved. Minor deviations not impacting the nature of the agreement shall be allowed at the discretion of the Commissioner of Work.
- 13.2 Schedule B contains the form of template Tieback Agreement.
- 13.3 Schedule C contains the form of template Crane Swing Agreement.

**14. Grandparenting**

- 14.1 Any approved outstanding non-registered agreements as of the date this policy is adopted will be accepted as-is and registered under the provisions of this policy. For termination purposes, all existing agreements are grandparented under this policy. Otherwise, the Encroachment Policy does not apply to encroachments approved before the date that the Encroachment Policy is adopted, provided that such encroachments continue to comply with the terms of their original approvals and agreements and have not expired.

**Compliance after expiry**

- 14.2 Under the old policy, encroachment agreements had a term of five years. Therefore, should any encroachment not be covered by a new encroachment agreement at the expiry of that five-year cycle, they shall be subjected to this new policy and enter into an encroachment agreement in compliance with this policy.